

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE
	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
)	
Additional Counterclaim Defendants.	)	Consolidated With
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
)	
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
Defendant.)	
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,)	
v.	)	ACTION FOR DEBT AND
	)	CONVERSION
FATHI YUSUF,)	
)	
Defendant.)	
FATHI YUSUF and)	
UNITED CORPORATION,)	
	)	CIVIL NO. ST-17-CV-384
)	
Plaintiffs,)	
)	
	)	ACTION TO SET ASIDE
v.	)	FRAUDULENT TRANSFERS
)	
THE ESTATE OF MOHAMMAD HAMED,)	
Waleed Hamed as Executor of the Estate of)	
Mohammad Hamed, and)	
THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
Defendants.)	

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**OPPOSITION TO MOTION FOR LEAVE TO FILE SURRESPONSE TO YUSUF'S
REPLY IN SUPPORT OF HIS MOTION TO STRIKE HAMED'S CLAIMS H-41
THROUGH H-141 AND ADDITIONAL "MAYBE" CLAIMS**

Defendant/counterclaimant Fathi Yusuf ("Yusuf"), through his undersigned counsel, respectfully submits this Opposition to "Hamed's Motion for Leave to File Surreponse to Yusuf's Reply in Support of his Motion to Strike Hamed's Claims H-41 through H-141 and Additional "Maybe" Claims" filed on April 23, 2018 (the "Motion")¹, which should be summarily denied because it violates the unequivocal provisions of V.I. R. Civ. P. 6-1(c), it is untimely, and it is based on a false premise, namely, that Yusuf made "statements contrary to an existing Order of the Court in his Reply without opportunity for response by Hamed." *See* Motion at page 2.

1. BECAUSE THE MOTION VIOLATES V.I. R. Civ. P. 6-1(c), IT SHOULD BE STRICKEN.

The provisions of V.I. R. Civ. P. 6-1(c) could not be clearer:

(c) Permitted Filing of Motion, Response and Reply.

Only a motion, a response in opposition, and a reply may be served on other parties and filed with the court; further response or reply may be made only by leave of court obtained before filing. Parties may be sanctioned for violation of this limitation. (Emphasis supplied)

Throughout this case, Hamed has repeatedly exhibited a sense of entitlement to the "last word" on any disputed issue, even when he is not the movant, who the rules provide the opportunity for the "last word" in the form of a reply. That sense of entitlement has emboldened Hamed to ignore Rule 6-1 (c), which clearly prohibits him from doing exactly what he did, namely, filing his surreponse before obtaining leave of Court to do so. Because the Motion represents a blatant violation of the rules of this Court, Yusuf respectfully submits that it should be stricken from the record and appropriate sanctions imposed.

¹ Although the Motion ostensibly seeks the Court's permission to file a surreponse, the Motion is actually a surreponse filed without leave of Court.

2. THE MOTION SHOULD BE SUMMARILY DENIED BECAUSE IT IS UNTIMELY.

The Motion was filed on April 23, 2018, thirty- one (31) days after Yusuf's March 8, 2018 Reply in support of his Motion to Strike Hamed's Claim Nos. H-41 through H-141. Pursuant to V. I. R. Civ. P. 6-1(f) (1)-(5), responses are due within fourteen (14) days after service of the motion and replies are due within fourteen (14) days after service of the response. Without obtaining prior leave of this Court or even attempting to explain his delay, Hamed unilaterally filed his sursesponse 31 days after Yusuf's Reply without even attempting to justify his delay. Accordingly, the Motion/sursesponse should be stricken.

3. THE UNDERLYING PREMISE OF THE MOTION IS FALSE.

The Motion states that "Yusuf makes statements contrary to an existing Order of the Court in his Reply without opportunity for response by Hamed." *See* Motion at page 2. Hamed quotes the offending statement as follows: "Because his purported claims H-41 through H-141 and the others identified in Yusuf's Motion are in the nature of questions rather than claims, **they do not comply with the Court's directives.**" *Id.* (Emphasis provided by Hamed).

Hamed has not identified any statement in Yusuf's Reply that is contrary to any order of the Court. Indeed, the only Order identified by Hamed (attached as Exhibit 1 to the Motion) is an Order dated July 21, 2017 denying three (3) Motions to Strike filed by Yusuf on October 14, 2016, October 24, 2016, and December 12, 2016. The October 14, 2016 Motion to Strike was premised on two violations, namely, Hamed's refusal to follow the directives of the Master embodied in emails from the Master to counsel dated August 31, 2016 and September 22, 2016 requiring the partners to file their accounting claims only with the Master as opposed to the Court, and Hamed's failure to remove personal data identifiers in his Claims and Objections improperly filed with the Court on September 30, 2016. On October 17, 2016, Hamed unilaterally filed his "Revised Notice

of Partnership Claims and Objections to Yusuf's Post- January 1, 2012 Accounting,"² which purportedly removed the personal data identifiers contained in his previous filing. Accordingly, Yusuf's October 24, and December 12, 2016 Motions to Strike were primarily concerned with the fact that Hamed was filing his accounting claims on the public record of the Court whereas Yusuf was complying with the directives of the Master and filing his claims only with the Master.³

Nothing in the July 21, 2017 Order attached as Exhibit 1 to the Motion contradicts anything said in Yusuf's Reply. On the contrary, that Order supports Yusuf's claim that Hamed did not comply with the Court directives:

Although Yusuf is correct that the above referenced filings were submitted to the Court **in clear violation of the Master's directive**, in this limited instance, the Court finds Hamed's failure to comply with the Master's directive to be harmless, as all filings concerning the partners' § 71 (a) accounting claims will ultimately need to be submitted to the Court in order to allow for substantive review of the Master's final recommendation on the partnership accounting.

See Exhibit 1 to the Motion at p.2 (emphasis supplied). The July 21, 2017 Order simply declined to strike Hamed's accounting claims, including H-41 through H-141, because of Hamed's failure to comply with the Master's directives. That Order certainly did not go as far as Hamed argues: "the Court has specifically recognized 'all filings' in the October 30, 2017 [sic] Revised Claims as 'RUPA §71(a) Claims' that must be heard." *See* Motion at page 3.

As Judge Brady found, he will ultimately "review . . . the Master's final recommendation on the partnership accounting." In another Order dated July 21, 2017, Judge Brady denied Hamed's Motion to Terminate the Special Master, leaving the Master's role provided for in the Final Wind-Up Plan intact. That role included an obligation to make a report and recommendation regarding the partners' competing accounting and distribution claims. Accordingly, no Order

² The Motion falsely states, at page 3, that the "Revised Claims" were filed on October 30, 2017 and that "Hamed was directed by the Court to submit REVISED claims."

³ In addition to improperly filing his accounting claims with the Court, Hamed also posted them on one of his attorney's website: <http://www.federal-litigation.com/hamed-claims.html>.

entered to date by Judge Brady has removed or limited the authority of the Master to review, report, and recommend regarding the partners' competing account claims. That is exactly what Yusuf has asked the Master to do with respect to his Motion to Strike H-41 through H-141, much like Hamed has asked the Master to strike certain Yusuf claims or to allow certain Hamed claims.

Finally, Hamed argues that he is entitled to file a surrejoinder because he had no opportunity to respond to Yusuf's argument that these claims were mere questions that did not comply with the Court's directives. This is demonstrably untrue. These same arguments are set forth at length in the original Motion to Strike filed on February 6, 2018 at pages 2- 5. *See, e.g.*, § B of the original Motion to Strike entitled "Hamed Did Not Submit Accounting Claims - Mostly Questions"; "At best, Hamed provided only a smattering of challenges to specific transactions as well as a list of 100 questions (H-41 through H-141), which he mislabeled as 'claims.'" *Id.* at p. 3. Yusuf's original motion also specifically referenced the Master's directives, which were ignored by Hamed, and the fact that "Hamed improperly filed his claims with the Court, as opposed to the Master." *Id.* at p. 2. Accordingly, Hamed had every opportunity to respond to these assertions in his opposition, which he did. He simply did not attempt to make the bogus argument, set forth in the Motion and his April 7, 2018 Reply to Yusuf's Opposition to Hamed's Motion to Compel Regarding Request for Admissions quoted at length on pages 2-3 of the Motion, that the July 21, 2017 Order somehow forecloses the Master from striking Hamed's claims H-41 through H-141. Again, that Order does not prejudge these "claims." Pursuant to the Wind-Up Plan and Judge Brady's Order denying Hamed's Motion to Terminate the Master, the validity of these questions that Hamed has mislabeled as claims must first be determined by the Master by way of his report and recommendation.

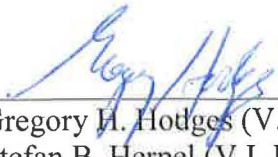
For all the foregoing reasons, Yusuf respectfully submits that the Motion should be stricken from the record and appropriate sanctions imposed for Hamed's intentional violation of V.I. R. Civ. P. 6-1(c).

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: May 7, 2018

By:



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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of May, 2018, I caused the foregoing **OPPOSITION TO MOTION FOR LEAVE TO FILE SUR-RESPONSE TO YUSUF'S REPLY IN SUPPORT OF HIS MOTION TO STRIKE HAMED'S CLAIMS H-41 THROUGH H-141 AND ADDITIONAL "MAYBE" CLAIMS** which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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