

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

**MOHAMMAD HAMED, BY HIS
AUTHORIZED AGENT WALEED HAMED,**

PLAINTIFF/COUNTERCLAIM DEFENDANT,

v.

**FATHI YUSUF AND UNITED
CORPORATION,**

DEFENDANTS/COUNTERCLAIMANTS,

v.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED,
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

**WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

**ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, PARTNERSHIP
DISSOLUTION, WIND UP, and
ACCOUNTING**

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

ORDER¹

THIS MATTER came before the Special Master (hereinafter “Master”) on Hamed’s motion as to Hamed Claim No. H-3: Partnership funds in the amount of \$504,591.03 unilaterally taken by Yusuf to pay his counsel for defending this instant lawsuit.² Yusuf filed an opposition and Hamed filed a reply thereafter. Subsequently, United/Yusuf filed a sur-response³ and Hamed filed a reply thereto.

In his motion, Hamed argued that “a total of \$504,591.03 was paid for Yusuf’s personal defense of this case after the complaint here was filed” and that “[t]hese were fees paid to Attorney DiRuzzo’s firm for work in this case.” (Motion, p. 3) (emphasis omitted) More specifically, Hamed argued that “the claim is for \$504,591.03 in checks to Fuerst Ittleman David & Joseph, PL in the following amounts plus \$216,991 interest accruing from the date of each check:

\$15,067.26 plus \$6,824 in interest from October 19, 2012
\$29,011.50 plus \$13,141 in interest from October 19, 2012
\$99,254.45 plus \$44,272 in interest from November 16, 2012
\$111,660.24 plus \$47,989 in interest from January 21, 2013
\$112,383.32 plus \$47,662 in interest from February 13, 2013
\$82,274.84 plus \$34,467 in interest from March 6, 2013
\$54,938.89 plus \$22,636 in interest from April 3, 2013.” (Id.)

Hamed claimed that discovery is not necessary yet Yusuf, as the Liquidating Partner, “has held off having this declared a valid claim by repeatedly saying discovery may be necessary.” (Id.) (emphasis in original) Hamed further claimed that, “[a]s Judge Brady’s memorandum makes

¹ All references made to DiRuzzo’s firm in this Order refers to “Fuerst Ittleman David & Joseph, PL.” All references made to the criminal matter in this Order refers to *The United States of America v. United Corporation, et al.*, case no. 1:05-cr-15.

² The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed Claim No. H-3 falls within the scope of the Master’s report and recommendation given that Hamed Claim No. H-3 is alleged debts owed by Yusuf to the Partnership (or in other words, potential Partnership Assets).

³ United/Yusuf filed a motion for leave to file a sur-response which included their sur-response. The Master will grant United/Yusuf’s motion for leave and consider both their sur-response and Hamed’s reply thereto.

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clear, those fees plus interest constitute a valid claim and must be returned to the Partnership.” (Id., at p. 4; Exhibit 2: Memorandum Opinion and Order granting Hamed’s emergency motion to renew application for TRO, dated April 25, 2013) As such, Hamed requested the Master to find that this claim is ripe and determine that the \$504,591.03 to Fuerst Ittleman David & Joseph, PL was improperly paid by the Partnership. (Id.)

In their opposition, Yusuf and United argued that “this claims requires discovery before it will be ripe for determination.” (Opp., p. 2) Yusuf and United further argued that it is disingenuous for Hamed to argue that Judge Brady has “already ruled that the \$504,591.03 that was paid to Fuerst Ittleman David & Joseph, PL should be disgorged by Yusuf, citing the Court’s April 25, 2013 Memorandum Opinion and Order.” (Id.) Yusuf and United pointed out that what the Court actually found was: “Funds from supermarket accounts have been utilized unilaterally by Yusuf, without agreement from Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing. Tr. 76:5-82:9, Jan. 25, 2013; Pl. Ex. 15, 16.” (Id., at p. 2-3) Yusuf and United further pointed out that “[n]othing in that Order or any other Order of the Court finds or rules that Hamed has a valid claim for recovery of the \$504,591.03 addressed in this claim.” (Id., at p. 3) Moreover, Yusuf and United also pointed out that while Hamed claimed that \$504,591.03 were fees paid to Attorney DiRuzzo’s firm for work in this instant lawsuit, Hamed failed to provide any evidence—such as invoices describing the work performed for the aforementioned payments. (Id.) Accordingly, Yusuf and United explained that discovery is necessary because “the actual invoices reflect that much of the \$504,591.03 was paid for Fuerst Ittleman’s defense of the ‘Criminal Action.’”⁴ (Id.) Furthermore, Yusuf and United also cited to Hamed’s

⁴ As an example, Yusuf and United cited to check no. 3979, in the amount of \$15,067.26—the first payment listed in Hamed’s motion—and claimed that it was payment “for work performed from August 6, 2012 through September 28, 2013 exclusively in the Criminal Action.” (Opp., p. 3; Exhibit 2: Invoices from Fuerst Ittleman David & Joseph, LP, dated September 11, 2012 and October 3, 2012)

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response to Yusuf's bench memo wherein Hamed conceded that discovery is required regarding "Wally's payment of criminal fees (approx. \$300,000)" (item 10 at page 2 of the Master's December 4 Order) and "Attorney and accounting fees paid by the partnership in the criminal case" (item 12 of the Master's December 4 Order). (Opp., at p. 4) Thus, Yusuf and United requested the Master to deny Hamed's motion since "discovery will clearly be required to allocate what portion of the work included in the claim was for defending 'this' action and what portion was properly charged to the Partnership for defending the Criminal Action." (Id., p. 3-4)

In his reply, Hamed reiterated that "this claim can be resolved on the record before the Master without any further discovery." (Reply, p. 2) Hamed again cited to the Court's April 25, 2013 Memorandum Opinion and Order as evidence that the Court has already "noted that a total of at least \$365,000 has been paid to Yusuf's personal lawyers from Partnership funds, without Hamed's consent, as of April 25, 2012 [sic]."⁵ (Id.) Hamed pointed out that "Yusuf does not deny that funds in the amount of \$504,591.03 were eventually paid to DiRuzzo's law firm, as evidenced by the checks submitted with Hamed's motion" but instead Yusuf "suggests that a portion of those funds were used for work in the criminal case, which Yusuf should not have to pay." Hamed argued that, it does not matter whether DiRuzzo billed for this case or the criminal case because "all of these funds paid to DiRuzzo were paid for the personal legal

⁵ Hamed cited to the following sections of the April 25, 2013 Memorandum Opinion:

"Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Hamed, to pay legal fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary hearing." (April 24, 2013 Memorandum Opinion, p. 11)

"Plaintiff [Hamed] has submitted Exhibit 30 with his February 19, 2013 Second Request to Take Judicial Notice and Request to Supplement the Hearing Record, granted by separate Order. Defendants' [Yusuf] opposition to Plaintiffs' Motion did not address Exhibit 30, consisting of two checks in the total sum of more than \$220,000 in payment to defense counsel in this action, dated January 21, 2013 and February 13, 2013, drawn on a supermarket account by Defendants without Plaintiffs' consent. Although the evidence is cumulative and not essential to the Court's decision herein, it reflects an ongoing practice of unilateral withdrawals and the possibility of continuing unilateral action in the future." (Reply, p. 2)

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fees of Fathi Yusuf, and not for the Partnership” and therefore, should be paid back to the Partnership. (Id.) (emphasis omitted) In support of his argument, Hamed attached the declaration of Attorney Gordon Rhea, dated January 15, 2018, “verifying that neither DiRuzzo nor his firm did any criminal work on behalf of the Partnership under the Joint Defense Agreement, which ended on September 25, 2012. (Id., at p. 3; Exhibit 1: Declaration of Gordon Rhea, Esq., dated January 15, 2018) Hamed clarified that “[t]o the extent Hamed’s claim may have been misconstrued as only seeking reimbursement of fees related to the civil case, that misconception is hereby clarified—the claim for \$504,591.03 (plus interest) is for all fees paid by the Partnership for Yusuf’s personal legal fees, whether incurred in regard to the criminal case or the civil case.” (Id., at p. 3) As such, Hamed concluded that there is no need for discovery with regards to this claim and requested the Court to order Yusuf to reimburse the Partnership in the total amount of \$504,591.03 plus interest, or in the alternative, have the Partnership pay the equal amount to Hamed. (Id.)

In their sur-response, Yusuf and United argued that, again, Hamed failed to provide any evidence to support his allegation that “all of these funds paid to DiRuzzo were paid for the personal legal fees of Fathi Yusuf, and not for the Partnership, regardless of whether DiRuzzo billed for the criminal or civil case.” (Sur-response, p. 2) Furthermore, Yusuf and United pointed out that the Partnership was not a defendant in the criminal case, and thus, Attorney Gordon Rhea’s declaration cannot verify that “neither DiRuzzo nor his firm did any criminal work on behalf of the Partnership under the Joint Defense Agreement” as alleged by Hamed. (Id.) In fact, Yusuf and United pointed out that, “[o]n September 7, 2012, Attorney DiRuzzo noticed his appearance in the criminal action on behalf of United Corporation.” (Id.; Exhibit A: Notice of Appearance of Attorney Joseph A. DiRuzzo, III for United Corporation in *The United States of America v. United Corporation, et al.*, dated September 7, 2012) Yusuf and

United further pointed out that, “[w]hile the Partnership was not a named defendant in the criminal case and was not even recognized as a partnership until this Court’s Order of November 7, 2014, there is no dispute that the Partnership operated under the corporate umbrella of United and that work performed on behalf of United in the criminal case redounded to the benefit of the Partnership.” (Id., at p. 2-3) As such, Yusuf and Hamed requested the Master to deny Hamed’s motion and allow for discovery with regards to this claim.

In his reply to Yusuf and United’s sur-response, Hamed argued that Yusuf and United’s argument that “a portion of the \$504,591.03 paid to DiRuzzo’s law firm was actually authorized by the partnership in defending the ‘criminal case’” is without merit. (Sur-reply, p. 2) (emphasis omitted) First, Hamed pointed out that “all payments made to DiRuzzo’s firm were made by Fathi Yusuf using Partnership funds for his individual obligations—without the permission of Hamed, one of the partners” and that “Hamed made it absolutely clear that DiRuzzo had no authority to do anything on behalf of the Partnership, so any fees incurred by him were solely Yusuf’s responsibility, whether the work was for the criminal case or the civil case.” (Id.) Second, Hamed also pointed out that “it has long been resolved (by Judge Brady’s summary judgment decision of November 7, 2014) that the Partnership was the sole entity operating the Plaza Extra Stores, not United” so “Yusuf’s ‘argument’ as to who was the Defendant in the criminal case has no relevance in deciding whether the payments to DiRuzzo’s law firm should be reimbursed to the Partnership.” (Id.) (emphasis omitted) Lastly, Hamed again cited to the Court’s April 25, 2013 Memorandum Opinion and Order as evidence that the Court has already decided on this matter.⁶ As such, Hamed concluded that there is no need for discovery with regards to this claim and requested the Court to order Yusuf to reimburse the

⁶ *Supra*, fn. 5.

Partnership in the total amount of \$504,591.03 plus interest, or in the alternative, have the Partnership pay the equal amount to Hamed. (Id.)

DISCUSSION

The Master must note at the outset that Hamed essentially amended its Claim No. H-3 from seeking reimbursement of “Partnership funds in the amount of \$504,591.03 unilaterally taken by Yusuf to pay his counsel for defending **this instant lawsuit**” to “Partnership funds in the amount of \$504,591.03 unilaterally taken by Yusuf to pay his counsel for defending **this instant lawsuit and the criminal lawsuit.**” *See* Hamed’s Reply, p. 3 (“To the extent Hamed’s claim may have been misconstrued as only seeking reimbursement of fees related to the civil case, that misconception is hereby clarified—the claim for \$504,591.03 (plus interest) is for all fees paid by the Partnership for Yusuf’s personal legal fees, whether incurred in regard to the criminal case or the civil case.”) However, Hamed has previously agreed to proceed with more discovery as to the attorneys’ fees paid by the Partnership for the criminal case.⁷ As such, it is unfair for Hamed to combine the two matters—attorneys’ fees paid by the Partnership in this instant lawsuit and attorneys’ fee paid by the Partnership in the criminal lawsuit—in his reply, and now renege on his agreement to proceed with discovery on attorneys’ fee paid by the Partnership for the criminal case.

Furthermore, while it is true that that Plaza Extra is a distinct entity from United and that the Court did not formally recognize the existence of a Partnership until its November 7,

⁷ On December 13, 2017, Yusuf and United filed a bench memo for status conference, wherein they submitted that “items 2, 3, 5, 10, and 12 listed on page 1 of the Master’s December 4, 2017 Order should be removed from that list because further discovery is required for each of the matters described in those items.” (Yusuf’s Bench Memo for Status Conference, dated December 13, 2017) In his response thereto, Hamed stated that it is fine to proceed with discovery on the aforementioned items. (Hamed’s Response to Yusuf’s Bench Memo, dated December 14, 2017)

According to the Master’s December 4, 2017 Order, item 12 refers to “Attorney and accounts fees paid by the Partnership for the criminal case.” This is a separate matter from item 10, which refers to “Wally Hamed’s payment of accounting and attorneys’ fees (approx. \$300,000) in *United States of America v. United Corp., et al.*”

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2014 Order and, the Court has long found indicia of the existence of a partnership and that the partners operated Plaza Extra under the corporate name of United. See April 25, 2013 Memorandum Opinion and Order (“Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the ‘partners operated Plaza Extra under the corporate name of United Corp.’”). Based on the joint motion to vacate the criminal temporary restraining orders submitted in the criminal case, *The United States of America v. United Corporation, et al.*, case no. 1:05-cr-15, United was named as a defendant as “United Corporation d/b/a Plaza Extra” (hereinafter “Joint Motion”). (Yusuf’s Sur-response, Exhibit C: The United States of America and Defendant United Corporation d/b/a Plaza Extra’s Joint Motion to Vacate the Criminal Temporary Restraining Orders) Moreover, the Joint Motion was filed to vacate the restraining orders that had frozen the assets of the Partnership. Thus, it is disingenuous for Hamed to argue that Yusuf was trying to confuse the Master by arguing that United—and not the Partnership—was named as a defendant in the criminal case. As such, the Master finds Hamed’s argument that all of these funds paid to DiRuzzo’s firm—counsel for United in the criminal case—were for the personal legal fees of Fathi Yusuf, and not for the Partnership to be unpersuasive. At this juncture, the Master will deny Hamed’s motion and allow for Parties to proceed with discovery as to the \$504,591.03 paid to Fuerst Ittleman David & Joseph, PL to determine whether the fees charged was for work performed in this instant lawsuit, in the criminal lawsuit, and for whom.

CONCLUSION

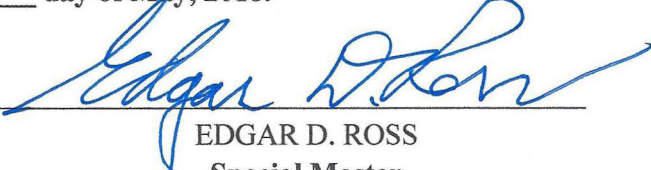
Based on the foregoing, the Master will deny Hamed’s motion. Accordingly, it is hereby:

ORDERED that Yusuf's motion for leave to file a sur-response, dated January 25, 2018, is **GRANTED**. Both Yusuf's sur-response and Hamed's reply thereto was considered herein. It is further:

ORDERED that Parties may commence discovery in connection with Hamed Claim No. H-3. Discovery in connection with Hamed Claim No. H-3 shall be completed no later than **June 1, 2018**. And it is further:

ORDERED that Hamed's motion as to Hamed Claim No. H-3 is **DENIED WITHOUT PREJUDICE**. Hamed may re-file his motion upon the completion of discovery in connection with Hamed Claim No. H-3.

DONE and so ORDERED this 8th day of May, 2018.


EDGAR D. ROSS
Special Master