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ADMITTED: USVI, NM & DC

May 16, 2018

Charlotte Perrell, Esq.
DTF
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By Email Only

RE: Request for Rule 37 Conference re RFPD 18 of 50: re H-167

Dear Attorney Perrell:

I am writing regarding one of the Yusuf/United claims responses served on May 15, 2018. It is my intention to file a motion for the Special Master to compel. Pursuant to Rule 37.1, I request a conference to discuss the bases of our motion, and seek amendment. I would appreciate a date and time convenient for you within the week.

Let me begin by noting that Yusuf's responses were appalling, again violate the applicable discovery rules and were a clear attempt to totally avoid responding. Thus, once again, I will ask the Court to review this response to provide direction and require you to re-do most of the materials your client provided.

RFPD 18 of 50: H-167 "Checks to Daytona Beach Market & Deli."

This is \$19,500 payment **to a vendor that Hamed has never even heard of**, which (coincidentally) was spent solely by Yusuf **during a period when Judge Brady found that Yusuf had excluded Hamed from the accounting.** ("Deprivation of access to bank accounts and signature authorization on bank accounts clearly constitute denial of partnership management rights. . . .") Most egregious is the fact that though you characterize it a burdensome, **it relates to only two entries**

295456, PJ, Daytona Beach Market And Deli, \$15,000 5/27/13, 37866,
Cdj, Daytona Beach Market And Deli - Invoice: 295456

Stt, 10/18/2013, 2751, PJ, Daytona Beach Market And Deli, \$4,500/
10/19/13, 38691, Cdj, Daytona Beach Market And Deli - Invoice: 2751

As part of Hamed's claim, Yusuf was not only given the two entries with the specific dates -- but was given the specific invoice numbers.

Moreover, you state: "Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense." However, these two entries are from the 2012-end general ledgers that are virtually the sole issue remaining, not some pre-2012 amount. I'm afraid that if Yusuf was writing checks to vendors during the period when he was trying to steal the stores, he is going to have to explain where the money went.

I also note that in response to all of the Hamed requests for production, not a single document was produced. If the Court is unwilling to deal with your client's evasion en mass, unfortunately Hamed will have to file 116 motions to compel. In this vein, as we have already done deficient RFA's, I use one of RFPDs as this exemplar. We will provide another letter as to a representative interrogatory.

ANALYSIS OF DEFICIENCIES IN THIS RFPD RESPONSE

1. The discovery request and response

The original RFPD 13, and Yusuf's response are set forth below:

RFPDs 18 of 50: H-167 "Checks to Daytona Beach Market & Deli."

With respect to H-167, please provide all documents which relate to, support and explain all [two] of the 2013 general ledger entries "checks to Daytona Beach Market & Deli," including, but not limited to documents identifying that entity, invoices, bank statements, credit card statements, and canceled checks. This is an unfamiliar vendor to the Hameds.

Response:

Defendants object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the

Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost. Without waiving any objection, Defendants show that the documentation relating to same has been provided previously as part of the documentation provided with the Bi-Monthly report. Hence, Yusuf objects to further reproducing information that has already been provided as the burden to secure the information is equally borne by Hamed.

2. Parsing the "Objections"

Below, Hamed sets out each of the three Yusuf objections *verbatim*. Only emphasis and headings have been added.

a. Yusuf Objection #1 of 3 - This must be directed to Mr. Gaffney, not Yusuf

the responsive information cannot be readily obtained by making reasonable inquiries **as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers.** Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. **To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United.** Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses.

Thus, Yusuf attempts to avoid his having to participate in ANY discovery as to ANY payments he made -- even those made when Hamed was excluded, and as to vendors Hamed does not know. The fact that Gaffney may have been the accountant is irrelevant. Yusuf was the actor. Yusuf was the partner. Yusuf was the thief trying to steal Hamed's 50%. Most importantly, Yusuf was "in charge" of "all financials" when this occurred. Mr. Gaffney was just an employee.

b. Yusuf Objection #2 of 3 - This was too long ago to bother with

Reorienting now **as to transactions from years ago** constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost

Again, these are two payments after the books were being done on a regular basis. This is a RUPA winding up. There is no such thing as "too old" in the 2012-end books.

c. Yusuf Objection #3 of 3 - We gave it to you already

Without waiving any objection, Defendants show that **the documentation relating to same has been provided previously as part of the documentation provided with the Bi-Monthly report.** Hence, Yusuf objects to further reproducing information that has already been provided as the burden to secure the information is equally borne by Hamed.

This is complete BULL. The only thing that was provided in the materials with the Bi-Monthly Reports are the two entries above -- the very ones Hamed is questioning. There is absolutely no detail as to who the vendor /was, what this was for, or the underlying "documents identifying that entity, invoices, bank statements, credit card statements, and canceled checks" as demanded in the request.

3. Applicable Law

**Rule 26. Duty to Disclose; General Provisions Governing Discovery
(b) Discovery Scope and Limits.**

(1) Scope in General. Unless otherwise limited by court order, **the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.** Information within this scope of discovery need not be admissible in evidence to be discoverable.

(2) Limitations on Frequency and Extent.

* * * *

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is not relevant to any party's claim or defense.

(D) Duplicative discovery. Duplicative disclosure is not required, and if all information and materials responsive to a request for disclosure has

already been made available to the discovery party, the responding party may, for its response, state specifically how and in what form such prior disclosure has been made. Where only part of the information has previously been provided to the discovering party, the response may so state and must then further make available the remaining discoverable information or materials.

* * * *

(c) Protective Orders.

(1) In General. **A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending** — or as an alternative on matters relating to a deposition, in the court where the deposition will be taken. **The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action.** The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

- (A) forbidding the disclosure or discovery;
- (B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;
- (C) prescribing a discovery method other than the one selected by the party seeking discovery;
- (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;
- (E) designating the persons who may be present while the discovery is conducted;
- (F) requiring that a deposition be sealed and opened only on court order;
- (G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and
- (H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) Ordering Discovery. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) Awarding Expenses. Rule 37(a)(5) applies to the award of expenses in motions relating to protective orders.

* * * *

(3) Sanction for Improper Certification. If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay the reasonable expenses, including attorney's fees, caused by the violation.

In addition, the revision notes provide:

NOTE. Rule 26 is the foundational provision regarding mandatory early disclosures and the scope of discoverable information throughout the action.

* * * *

Subpart (b) is the general "scope" provision governing discovery in the Virgin Islands. It defines discoverable materials as "any nonprivileged matter that is relevant to any party's claim or defense."

* * * *

Subpart (c) authorizes regular protective order practice. Any such motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action. The full range of dispositions will be open to the court, from barring production to enforcing it, and including a variety of protective provisions in the order.

Under Subpart (d) a party may not seek discovery from any source before the parties have conferred as required by Rule 26(f), except in a proceeding exempted from initial disclosure under Rule 26(a)(1)(B), or when authorized by these rules, by stipulation, or by court order. There is a provision in this rule for so-called "early Rule 34 requests" to be made more than 21 days after the summons and complaint are served on a party, which will be deemed to have been served at the first Rule 26(f) conference.

A separate "sequencing" provision expressly addresses the effect of motions interposed by a defendant. Subpart (d)(4) expressly states that discovery is not stayed or deferred by the filing of a motion, including so-called dispositive motions such as applications under Rule 12 or Rule 56.

Rule 34 controls as to document production:

Rule 34. Producing Documents, Electronically Stored Information, and Tangible Things, or Entering onto Land, for Inspection and Other Purposes

(a) In General. A party may **serve on any other party** a request within the scope of Rule 26(b):

(1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party's possession, custody, or control:

(A) any designated documents or electronically stored information — including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations — stored in any medium from which information can be obtained either directly or, if

necessary, after translation by the responding party into a reasonably usable form; or

* * * *

(b) Procedure.

(1) Contents of the Request. The request:

(A) must describe with reasonable particularity each item or category of items to be inspected;

(B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and

(C) may specify the form or forms in which electronically stored information is to be produced.

(2) Responses and Objections.

(A) Time to Respond. The party to whom the request is directed must respond in writing within 30 days after being served or — if the request was delivered under Rule 26(d)(2) — within 30 days after the parties' first Rule 26(f) conference. A shorter or longer time may be stipulated to under Rule 29 or be ordered by the court.

(B) Responding to Each Item. For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection. The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.

(C) Objections. An objection must state whether any responsive materials are being withheld on the basis of that objection with sufficient particularity to identify what has been withheld. An objection to part of a request must specify the part and permit inspection of the rest.

(D) Responding to a Request for Production of Electronically Stored Information. The response may state an objection to a requested form for producing electronically stored information. If the responding party objects to a requested form — or if no form was specified in the request — the party must state the form or forms it intends to use.

(E) Producing the Documents or Electronically Stored Information. Unless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information:

(i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request;

(ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and

(iii) A party need not produce the same electronically stored information in more than one form.

(c) Nonparties. As provided in Rule 45, a nonparty may be compelled to produce documents and tangible things or to permit an inspection.

The revision notes provide:

NOTE. . . .Rule 34, the provision governing production of documents including electronic records and files, applies — as in prior practice — to materials "in the responding party's possession, custody, or control."For each item or category, the response must either state that inspection and related activities will be permitted as requested **or state with specificity the grounds for objecting to the request, including the reasons.**The response and objection provision now states that any objection must set forth whether any responsive materials are being withheld on the basis of that objection with sufficient particularity to identify what has been withheld.

3. Application of the Law to Yusuf's Objections

a. Yusuf Objection #1 of 3 -- This must be directed to Mr. Gaffney, not Yusuf

the responsive information cannot be readily obtained by making reasonable inquiries **as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers.** Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. **To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United.** Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses.

This is identical to the same argument advanced (and rejected by the Special Master) with regard to the three RFAs. Thus Hamed will re-state his counter-argument.

Deficiency. First, the Discovery Plan as to the "Section B" claims absolutely does not either allow or require diversion to Mr. Gaffney— [Claim H-167] is in **Section B** of the Plan. Yusuf stipulated to that Plan—he *fully agreed* to these definitions and these procedures. The Master then Ordered the Plan based on this agreement. **Yusuf now seeks to say that other claims must go to Gaffney—despite the clear language. Yusuf**

cannot change it unilaterally now—he knew when he stipulated which claims would and would not be diverted to Mr. Gaffney, and which were in "B" and would be answered by Yusuf.

Second, Mr. Gaffney is not a party here. **RFPDs cannot [under Rule 34] be directed to non-parties.** Rule 34(a) ("A party may **serve on any other party** a request within the scope of Rule 26(b)")

Third, Nor would Mr. Gaffney's responses be admissions that can be used like RFPDs against United and Yusuf.

Fourth, Yusuf IS a party. Thus, pursuant to Rule 26(b)(1) any potentially relevant question can reasonably be put to him. He is both the defendant and he was the Liquidating Partner.

Fifth, the fact that it could also be put to another witness is totally irrelevant for RFPDs. Any actions of the defendants or of the Partnership that occurred while he was in those two roles, are answerable by him. It is not a proper response to an RFPD to state that "the Plaintiff already knows this" or "someone else can also testify"—the main purpose of RFPD is to get acknowledged documents for use in motions or at trial. He as the "party" must respond—Yusuf cannot refuse to "obtain" and answer as to information within his control. Moreover, as the Liquidating Partner he cannot refuse to answer as to Partnership information

Sixth, no statement as to objected materials as required by Rule 34

(C) Objections. **An objection must state whether any responsive materials are being withheld on the basis of that objection with sufficient particularity to identify what has been withheld.** An objection to part of a request must specify the part and permit inspection of the rest.

You must state whether you believe such invoices, bills and checks are believed to exist.

Seventh, there has been very little cooperation from Yusuf in allowing Hamed access to the facts and admissions. The time is now for meaningful discovery responses.

b. Yusuf Objection #2 of 3 - This was too long ago to bother with

Reorienting now **as to transactions from years ago** constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost

There is no such "too long ago" for objection under either rule. The relevant time period has been defined. These are two payments after the books were being done on a regular basis. This is a RUPA winding up. There is no such thing as "too old" in the 2012-end books.

c. Yusuf Objection #3 of 3 - We gave it to you already

Without waiving any objection, Defendants show that **the documentation relating to same has been provided previously as part of the documentation provided with the Bi-Monthly report**. Hence, Yusuf objects to further reproducing information that has already been provided as the burden to secure the information is equally borne by Hamed.

This is simply lying to the Court in discovery. You want to be VERY careful here, as Hamed can certainly prove the negative. He will request that the Special Master haul Mr. Yusuf and Mr Gaffney in for a 5 minute hearing -- and under oath demonstrate where there is *anything* other than the journal entries in those reports. There are no invoices, no bills, no checks regarding Daytona in those reports -- of that we are certain.

Eventually, I hope, Judge Ross will tire of this -- and will drop the house on your client for these types of discovery. Until then, Hamed will be forced to proceed in this manner.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl J. Hartmann", with a long horizontal flourish extending to the right.

Carl J. Hartmann