

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.)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	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,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
)	
FATHI YUSUF,)	
)	
Defendant.)	
FATHI YUSUF and UNITED CORPORATION,	)	CIVIL NO. ST-17-CV-384
)	
Plaintiffs,	)	ACTION TO SET ASIDE
	)	FRAUDULENT TRANSFERS
v.)	
)	
THE ESTATE OF MOHAMMAD HAMED, Waleed Hamed as Executor of the Estate of Mohammad Hamed, and THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
Defendants.)	

DUDLEY, TOPPER
AND FEUERZEIG, LLP

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422

**REPLY TO HAMED’S OPPOSITION TO MOTION TO CLARIFY OR MODIFY
JOINT DISCOVERY AND SCHEDULING PLAN**

Defendants/counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”) (collectively, the “Defendants”), through their undersigned counsel, respectfully submit this Reply to “Hamed’s Opposition to the Motion to Modify the Discovery Order” filed on May 5, 2018 (the “Opposition”).¹

Even though the second sentence of Yusuf’s Motion to Clarify or Modify the Joint Discovery and Scheduling Plan (the “Motion”) stated that it was “necessitated because Carl J. Hartmann, III (“Hartmann”) . . . sent an email to John Gaffney on April 26, 2018 attaching a memorandum that seeks to place unilateral restraints on Mr. Gaffney’s potential work under the Plan,”² incredibly, the Opposition completely ignores the Memo sent to John Gaffney and the email exchanges relating to that Memo, which were attached as Exhibits 1 through 3 to the Motion. Instead of addressing these uncontested exhibits in a direct and forthright manner, Hamed attempts to dodge them by vaguely describing them as “improper ‘testimony’ of counsel without affidavit or evidentiary support” See Opposition at p. 2 and p. 5 (“counsel once again ‘testifying in his motion’ about the facts, without affidavits or evidentiary support”; “counsel again testifying about matters that by both Rule and agreement were confidential and privileged communications seeking a settled, joint submission”; and “Yusuf’s counsel’s improper, evidence-free ‘testimony in the instant motion’) (emphasis in original). The only evidence referenced in the Motion was an email from Hartmann to counsel for Yusuf dated April 25, 2018 (Exhibit 1) attaching the Memo clearly authored by Hartmann (Exhibit 2) and an email exchange between Hartmann and counsel

¹ On May 4, 2018, Hamed filed a similar opposition. On May 5, 2018, at the same time the Opposition was filed, Hamed filed a “Notice of Filing of Corrected Opposition” stating: “Certain material was not redacted and other corrections were necessary.” Although the original opposition was not withdrawn and Hamed did not edify Defendants or the Master regarding what “corrections were necessary,” this Reply will treat the Opposition filed on May 5, 2018 as the operative filing.

² Capitalized terms not otherwise defined in this Reply shall have the meaning provided in the Motion.

for Yusuf reflecting, among other things, that on April 26, 2018 at 10:02 a.m. Hartmann sent his Memo to Gaffney, which was ostensibly “circulated for comment” less than 24 hours beforehand. Since Hamed does not bother to identify the “testimony” he finds so improper or the statements that “are patently untrue . . .,” *see* Opposition at p. 5 (emphasis in original), what else could he possibly be referring to but these three exhibits so studiously ignored? Since the Opposition does not dispute that Hartmann sent and/or received the emails, attached as Exhibits 1 and 3 to the Motion, or that Hartmann authored the Memo, attached as Exhibit 2 to the Motion, this evidence has been conceded.³

It should be perfectly clear that Yusuf would not have filed the Motion but for Hartmann’s improvident and premature delivery of the Memo, which purports to advise, direct, and instruct Gaffney regarding his possible⁴ work under the Plan. It is disingenuous for Hamed to claim: “This is a disagreement regarding the Plan’s ‘Schedule A’ discovery process and it is before the Master because Yusuf *did not discuss this discovery matter at all with Hamed before filing*, nor was any proposal or draft supplied.” *See* Opposition at p. 2 (emphasis in original). Without stating as much, Hamed appears to argue that the Motion implicates V.I.R. Civ. P. 37-1(a), which requires a pre-motion conference “prior to filing any motion relating to discovery pursuant to Rules 26 through 37” The Motion clearly is not subject to V.I.R. Civ. P. 37-1(a) because it seeks to clarify or modify a scheduling order - the Plan - pursuant to V. I. R. Civ. P. 16(b)(4), a rule not mentioned in Rule 37-1(a). While Yusuf formally moved for clarification or modification of the Plan, Hamed, via his counsel’s Memo, sought to unilaterally modify the Plan in accordance with his one sided interpretation of the Plan’s terms. Counsel for Hamed simply chose to send the

³ Hamed also did not bother to identify the “Rule and agreement” he claims made these exhibits “confidential and privileged communications.” Defendants are aware of no such rule or agreement.

⁴ “Possible” because no such work would be required under §A of the Plan, if the Master grants Defendants’ February 6, 2018 Motion to Strike Hamed’s Claim Nos. H-41 through H-141 and Additional “Maybe” Claims (the “Motion to Strike”).

Memo to Gaffney before there was any discussion or meaningful opportunity for discussion with counsel for Defendants.

In a bizarre effort to divert the Master's attention from the Memo, which precipitated the Motion, Hamed spends most of his twelve page Opposition setting up a false argument that Yusuf seeks to amend five negotiated provisions of the Plan. *See, e.g.*, Opposition at p. 2-3. Even a cursory review of the four page Motion clearly reveals it seeks no such relief. Accordingly, Hamed's efforts to establish a timeline of how and when these five provisions were negotiated is a complete red herring and waste of time. Given the incomprehensible⁵ redactions set forth in the body of the Opposition, and the completely or heavily redacted exhibits to the Opposition, it is virtually impossible to decipher Hamed's "timeline" argument anyway.

After all the sound and fury, *ad hominem* attacks, and diversionary tactics displayed in the Opposition, Hamed ultimately concedes some of the points of clarification sought by Defendants as a result of the errant Memo. The first argument in the Motion is that counsel for Yusuf should be included in the communications contemplated under §A(1) of the Plan. *See* Motion at p. 2 and 4. In the Opposition, Hamed "stipulates that he will voluntarily supply copies of these [daily] reports [between Gaffney and Hamed's counsel] to Yusuf's counsel immediately on receipt from Mr. Gaffney." *See* Opposition at n. 1 (emphasis in original). Instead of saddling Hamed's counsel with the responsibility of immediately forwarding all daily email communications between

⁵ In a purported effort to protect "confidential and privileged communications," portions of the Opposition (at p.8-11) were redacted and most of the thirteen exhibits to the Opposition were completely or heavily redacted even though unredacted versions of many of these same exhibits were attached as Exhibits C through G of Yusuf's Opposition to Motion to Compel filed on April 6, 2018. Hamed acknowledged these unredacted exhibits at p. 6 of his Reply filed on April 7, 2018. Again, the timeline of the development of the terms of the Plan is completely irrelevant. What is relevant is Hamed's effort to unilaterally amend or modify the terms of the Plan as shown in Exhibits 1 through 3 to the Motion. Nothing in those exhibits constitutes "confidential and privileged communications." They are simply documents prepared by Hamed's counsel that he would now like to ignore.

Gaffney and Hartmann to counsel for Defendants, it is respectfully submitted that it is far easier to simply copy Defendants' counsel on the original email communications.⁶

The second argument in the Motion is that nothing in the Plan precludes Gaffney from engaging in *ex parte* communications with counsel regarding his work under the Plan. *See* Motion at p. 2 and 4-5. The Opposition does not dispute this argument. The Opposition provides, in pertinent part: "Nor does Hamed seek to stop *all* communications with Yusuf Hamed seeks to stop *interference, directions or 'advice'.*" *Id.* at n. 2 (emphasis in original). Of course, Hamed fails to explain why it would be improper for Defendants or their counsel to give directions or advice while it is perfectly proper for Hamed's counsel to provide unsolicited directions and advice in the form of the Memo. The Opposition goes on to say:

Despite dire warnings, Hamed does not seek to stop, or interfere with [Gaffney's] communication with Yusuf, just "directions" on the responses and legal advice regarding them. Hamed does not suggest that he should direct or instruct Mr. Gaffney how to address his going through the list of claims sorted by amount, nor will he do so.

Id. at p. 12.

Although the Memo clearly evinces an attempt by counsel for Hamed to direct or provide legal advice to Gaffney, Defendants will give counsel for Hamed the benefit of the doubt and take him at his word that he will no longer do so. Neither Defendants nor their counsel ever presumed to be in a position to direct, instruct or provide legal advice to Gaffney regarding any of his potential work under the Plan, nor will they do so in the future. In any event, it is effectively undisputed that the Plan does not preclude Gaffney from engaging in *ex parte* communications

⁶ The Motion (p. 4) also expressed concern that Exhibits 1-3 "suggest that counsel for Yusuf may be excluded from communications between Hartmann and the Master regarding any Gaffney work disapproved by Hartmann for payment by his client." That concern has been adequately addressed in the Opposition (p. 13): "Hamed does not seek *ex parte* communication with the Special Master as to issues Named's [sic] counsel might bring to him or anything else, nor will he have any."

with counsel regarding his work under the Plan. Defendants respectfully submit the Master should so inform the parties and Gaffney.

Finally, the Motion argues that nothing in the Plan requires United to continue paying Gaffney's regular salary while he works on the discovery matters for which Hamed must pay him under the Plan. *See* the Motion at p. 2 and 5. Nothing in the Opposition effectively disputes this argument. Nor does Hamed dispute the proposition set forth at p. 5 of the Motion that if Gaffney works a full day performing "Plan" work, it makes no sense to require United to pay him his regular salary for that same day even though he performed no work for United. Hamed, via his counsel's Memo, is not entitled to expand upon the express terms of the Plan. As long as Gaffney does not pay or share any portion of the amounts paid to him by Hamed under the Plan, the amounts Gaffney receives from United are simply irrelevant. If Hamed is worried about "tricks like a 'reduction of this year's bonus' or a 'reduction in this year's salary,'" he can always inquire about these issues when he deposes Gaffney or Defendants.⁷

For all of the foregoing reasons, Defendants respectfully requests the Master to clarify or modify the Plan as requested in the Motion and this Reply, and provide such further relief as is just and proper under circumstances.

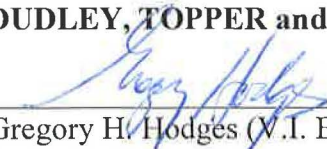
⁷ Hamed's suggestion at n. 13 of the Opposition that "[i]f Gaffney cannot complete the work in vacation, weekend or evening periods, and there is some 'arrangement' for 'time off' it must be disclosed and transparent to the Special Master and parties" is simply another attempt to modify the terms of the Plan. Again, these are issues that Hamed has prematurely forced on Defendants and the Master by sending the Memo before the Master has ruled on the Motion to Strike the claims at issue in § A of the Plan.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

DATED: May 18, 2018

By:



Gregory H. Hodges (V.I. Bar No. 174)
Stefan B. Herpel (V.I. Bar No. 1019)
Charlotte K. Perrell (V.I. Bar No. 1281)
1000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00804
Telephone: (340) 715-4405
Telefax: (340) 715-4400
E-mail: ghodges@dtflaw.com

Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of May, 2018, I caused the foregoing **Reply To Hamed's Opposition To Motion To Clarify Or Modify Joint Discovery And Scheduling Plan** 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:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
2132 Company Street
Christiansted, V.I. 00820
Email: holtvi.plaza@gmail.com

Carl Hartmann, III, Esq.
5000 Estate Coakley Bay, #L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com

Mark W. Eckard, Esq.
Eckard, P.C.
P.O. Box 24849
Christiansted, VI 00824
Email: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
C.R.T. Building
1132 King Street
Christiansted, VI 00820
Email: jeffreymlaw@yahoo.com

The Honorable Edgar D. Ross
Email: edgarrossjudge@hotmail.com

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade
P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756
(340) 774-4422

Hamed v. Yusuf
Civil No. SX-12-CV-370
Page 8

and via U.S. Mail to:

The Honorable Edgar D. Ross
Master
P.O. Box 5119
Kingshill, St. Croix
U.S. Virgin Islands 00851

Alice Kuo
5000 Estate Southgate
Christiansted, St. Croix
U.S. Virgin Islands 00820



R:\DOCS\6254\1\DRFTPLDG\17V7834.DOCX

**DUDLEY, TOPPER
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, U.S. V.I. 00804-0756

(340) 774-4422