

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,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

WALEED HAMED, WAHEED HAMED,)
MUFEEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)

Additional Counterclaim Defendants.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

UNITED CORPORATION,)

Defendant.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

FATHI YUSUF and)
UNITED CORPORATION,)

Plaintiffs,)

v.)

THE ESTATE OF MOHAMMAD HAMED,)
Waleed Hamed as Executor of the Estate of)
Mohammad Hamed, and)
THE MOHAMMAD A. HAMED LIVING)
TRUST,)

Defendants.)

CIVIL NO. SX-12-CV-370

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

Consolidated With

CIVIL NO. SX-14-CV-287

ACTION FOR DAMAGES AND
DECLARATORY JUDGMENT

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE
FRAUDULENT TRANSFERS

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**UNITED'S OPPOSITION TO HAMED'S
MOTION TO STRIKE UNITED CLAIM Y-6 ON PROCEDURAL GROUNDS**

Hamed's Motion to Strike United Claim Y-6 on Procedural Grounds: \$49,997 "Black Book Balance Allegedly Owed" (the "Motion") is in reality a thinly disguised and untimely motion for reconsideration of the Master's Order of February 8, 2018 denying Hamed's earlier motion to strike Claim Y-6 (and two other claims, Y-7 and Y-9) on statute of limitation grounds. *See Exhibit A*, Master's February 8, 2018 Order. As the Master's Order stated, "United Claim Y-6 is based on a 1994 reconciliation of entries made in a black ledger book (hereinafter "Black Book") that allegedly left a balance due to United . . ." *Id.* at p. 1. Hamed had argued that since this claim is based on a 1994 ledger entry, and the "statute of limitations for actions for debt, breach of contract, and conversion of property is 6 years," the claim should be stricken as time-barred. *See id.* at p. 2. The Master, after considering the arguments why the claim for reimbursement did not accrue until years after 1994, and why the claim was timely asserted when United filed its counterclaim in this case,¹ ruled that "it is evident that genuine issues of material fact exist as to whether the statute of limitations should be equitably tolled as to United Claims Y-6, Y-7 and Y-9." *See id.* at p. 5.

Hamed's instant motion is styled as a motion to deny Claim Y-6 "on procedural grounds," but the motion makes it clear that those grounds are precisely the same statute of limitations grounds advanced in the prior motion. *See* Hamed's Motion at pp. 2, 4 (stating that Y-6 should be struck "pursuant to the applicable statute of limitations" and that "[t]he applicable SOL is 6 years"). Hamed conspicuously avoids citing to the Master's February 8, 2018 Order denying the motion to

¹*See* United's January 11, 2018 Brief in Opposition to Motion to Strike United Claim Y-6, Y-7 and Y-9, p. 2. That brief attached as exhibits Yusuf's August 12, 2014 declaration made in connection with a motion for summary judgment regarding United's claim for rent owed for the 1994 to 2004 time period, and also attached Exhibit G from the Black Book in support of Claim Y-6.

strike on limitations grounds, because doing so would only highlight the fact that he is asking the Master to reconsider the ruling. Instead, Hamed suggests that United's "SOL defense [has] collapsed due to his admissions in discovery" that took place after the Master's Ruling, and hence that summary judgment on limitations grounds is now proper. Hamed's Motion at p. 2, n.2. Specifically, Hamed contends that the genuine issues of material fact that the Master relied on to deny his first motion have been resolved by Yusuf's admission that the \$49,997.00 entry was made in the Black Book in 1994. *See* Hamed's Motion at p. 3. But the fact that the \$49,997.00 entry was made in 1994 was never in dispute. United conceded that in its January 11, 2018 brief (at p. 1), and the Master stated in his Order that Claim Y-6 was based on a 1994 entry made in the Black Book. *See* Exhibit A, p. 3. Admitting what was already undisputed by United and accepted as fact in the Master's prior denial of the motion to strike Y-6 on limitations grounds is hardly a basis for revisiting the Master's February 8, 2018 Order.²

Hamed's instant motion is simply a rehash of arguments previously made by him regarding Claim Y-6 in his December 18, 2017 motion and in his January 17, 2018 reply brief seeking to strike that claim on statute of limitations grounds – arguments which have already been rejected by the Master.³ This is an untimely motion for reconsideration offering no new evidence to resolve

²Hamed also complains about additional statements made in the response to the request for admission, which for the most part simply summarize assertions made in United's January 11, 2018 brief opposing the original motion for summary judgment and cited in the Master's February 8 Order. The additional reference in that response to the fire in the Plaza Extra East store that shut that store down for some time is also drawn from the August 12, 2014 declaration of Yusuf attached to United's brief (at ¶¶ 5 and 6). The closure of that store was one reason (among others cited in the declaration) why Yusuf was willing to defer collection of debts owed to United (including rent) to enable the supermarket business to grow. *See generally* United's January 11, 2018 Brief at 4. In any event, Hamed's discussion of these statements is a red herring, because it is nothing more than an attempt to relitigate matters already decided by the Master. It is not an attempt to show that genuine issues of material fact precluding summary judgment have been resolved by subsequent discovery.

³Among the arguments made in Hamed's instant motion that have already been considered and rejected by the Master is Hamed's argument in his January 17, 2018 reply brief (at p. 2) that none

the genuine issues of material fact that the Master has ruled preclude summary judgment on this claim and two related claims.⁴

CONCLUSION

For all of the foregoing reasons, and for the reasons already articulated in the Master's February 8, 2018 Order, Hamed's Motion to Strike Claim Y-6 on Procedural Grounds should be denied.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: June 11, 2018

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of the arguments for equitable tolling which flow from the FBI's seizure of the Black Book in 2001 preclude summary judgment because the statute of limitations had already expired as to Y-6 by the time of that seizure.

⁴Hamed also advances a brand new argument, not made in its January 17, 2018 reply brief, which is that if Y-6 "were viewed as an equitable claim" being asserted by Yusuf, it would be barred by Judge Brady's Order limiting his accounting claim to transactions post-dating September 17, 2006. See Hamed's Motion at pp. 5; see also Motion at pp. 6, 7. Even if the Master were inclined to consider this untimely argument, it would have to be rejected because, *inter alia*, its premise is faulty. Like the rent claim for which Judge Brady granted summary judgment (over Hamed's statute of limitations defense), Y-6 is a claim being asserted by United for amounts owed to it by the partnership – and not by Yusuf as a partnership claim. See United's January 11, 2018 Brief at 3, n. 3. It is neither covered by the Revised Uniform Partnership Act nor by Judge Brady's Order limiting each partner's accounting claims. Hamed correctly referred to Y-6 as "United Claim Y-6" in the title of his December 18, 2017 Motion, but has without explanation changed his nomenclature to "Yusuf Claim Y-6" in the title of the instant Motion. Defendants have consistently treated this Claim as one belonging to United. See, e.g., the statement of amended claims filed by Yusuf on October 30, 2017 at p. 11 ("as to funds which United paid on behalf of the Plaza Extra stores, the Black Book entries reveal that the Partnership owes United \$49,997.00 for various expenses it paid on behalf of the Partnership").

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of June, 2018, I caused the foregoing **UNITED'S OPPOSITION TO MOTION TO STRIKE UNITED CLAIM Y-6 ON PROCEDURAL GROUNDS**, 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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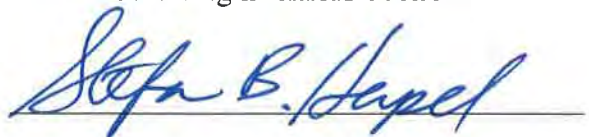
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IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

**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**

ORDER

EXHIBIT A

THIS MATTER came before the Special Master on Hamed's motion to deny United Claims Y-6, Y-7, and Y-9¹ due to applicable statutes of limitations. United filed an opposition and Hamed filed a reply thereafter.

In his motion, Hamed argued that since the statute of limitations for actions for debt, breach of contract, and conversion of property is 6 years under Title 5 V.I.C. § 31(3), United Claims Y-6, Y-7, and Y-9 should be denied and stricken due to the applicable statutes of limitations. United Claim Y-6 is based on a 1994 reconciliation of entries made in a black ledger book (hereinafter "Black Book") that allegedly left a balance due to United (Motion, Exhibit D)²; United Claim Y-7 is based on entries in another ledger book that allegedly show a balance due to United for the various Partnership expenses United paid for in 1994, 1995, and 1998 (*Id.*, Exhibit E)³; United Claim Y-9 is based on a list of allegedly unreimbursed transfers of money by United to the Partnership in 1996 (*Id.*, Exhibit G)⁴.

In its opposition, United pointed out that "Hamed's argument ignores extensive briefing on the statute of limitations that United made in connection with... [past due] rent" because "[i]n that briefing, which was supported by two declarations of Yusuf, United gave a number of reasons why the statute of limitations was no bar to rent claims covering the period 1994 to 2004." (Opp., p. 2) United further pointed out that "Judge Brady relied on some of those arguments...when he rejected Hamed's statute of limitations defense and ordered payment to United of past due rent for the 1994 to 2004 time period..." (*Id.*) In support of its opposition, United attached a declaration of Yusuf, dated August 12, 2014 (hereinafter "August 12, 2014

¹ The Master was appointed by the Court to "direct and oversee the winding up of the Hamed-Yusuf Partnership" (Sept. 18, 2015 order) and "make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination." (January 7, 2015 order) The Master finds that that United Claims Y-6, Y-7, and Y-9 fall within the scope of the Master's report and recommendation given that United Claims Y-6, Y-7, and Y-9 are alleged debts owed by the Partnership to United.

² The same exhibit was attached to United's opposition as "Exhibit G."

³ The same exhibit was attached to United's opposition as "Exhibit H."

⁴ The same exhibit was attached to United's opposition as "Exhibit I."

Yusuf Declaration”), whereby Yusuf declared under the penalty of perjury that “[u]nder the business agreement between Hamed and me that I now describe as a partnership, profits would be divided 50-50 after deduction for rent owed to United, among other expenses” and that “[u]nder our agreement, I was the person responsible for making all decisions regarding when the reconciliation would take place.”⁵ (August 12, 2014 Yusuf Decl., p. 2) United argued that “[c]onsistent with Yusuf’s declarations submitted in Defendants’ briefing on the statute of limitations defense asserted in connection with the rent claim, the evidence will show that Yusuf and Hamed agreed that any Partnership expenses advanced by United from revenues earned in rents paid by third party tenants for space at the United Shopping Center would be reconciled with the Partnership whenever Yusuf in his exclusive discretion determined that they should be reconciled” and that “Hamed understood and agreed that United would not be entitled to reimbursement for those expenses until Yusuf determined that it made economic sense for the supermarket business to make that reimbursement.” (Id., p. 4) Yusuf further argued that “even if he had been inclined to declare reimbursement for United’s advances due at an earlier time, the pendency of the criminal case precluded him from doing so until late 2011” because “all of the Plaza Extra accounts were frozen by an injunction entered contemporaneously with the filing of the criminal case in September 2003” and “both the Black Book and the ledger had been seized by the FBI in the October 2001 raid...which made calculations of the amounts owed to United very difficult.” (Id.) Moreover, Yusuf also argued that “[t]hus, even apart from the fact that Yusuf never exercised his exclusive authority to declare these advances due and payable until after the instance case was brought, the doctrine of equitable tolling would apply because he was prevented by extraordinary circumstances

⁵ The August 12, 2014 Yusuf Declaration was the declaration United attached to its prior briefing on the statute of limitations defense asserted in connection with the past due rent for Bay #1. (Opp., fn. 1)

from doing so until late 2011.” (Id., at p. 5) As such, Yusuf concluded that “[t]his agreement between Hamed and Yusuf means that the debts did not accrue for statute of limitations purposes until Yusuf determined that they should be paid (i.e., when he filed his counterclaim in the instant case), and that Hamed’s reliance on the statute of limitations defense as to the claims at issue in the Motion to Strike is without merit.” (Id.)

In his reply, Hamed incorrectly pointed out that the August 12, 2014 Yusuf Declaration “deals with past due rent, not any of these three claims...[t]hus, this irrelevant declaration is not sufficient to defeat this SOL motion on these three items.” (Reply, p. 2) Furthermore, Hamed pointed out that “the SOL for all of these claims expired by August of 2001, except a claim for \$3000 in May of 1998 in Exhibit H [to United’s opposition]” and thus, the FBI seizure “which occurred after August of 2001, does not revive the claims in Exhibits G and H [of United’s opposition], except for possibly this one \$3000 claim in Exhibit H [of United’s opposition] (if the seizure of the document is even a basis for tolling the SOL in the first place).” (Id., p. 2-3) Moreover, as for United Claim Y-9 for unreimbursed transfers of money by United to the Partnership in 1996 (Motion, Exhibit G; Opp., Exhibit I), “no claim was made that this document was seized by the feds in 2001, so that argument does not save the items in Exhibit I from being barred by the SOL.” (Id., p. 3) Finally, Hamed pointed out that the Court, in its July 24, 2017 memorandum opinion and order, directed the Partnership, inter alia, to pay United for past due rent with regard to Bay #1 from 1994 to 2004, but “refused to extend that ruling regard Bay #1 to other claims for rent for different locations” and that **“Mohammad Hamed never acknowledged these three United claims were valid or could be paid at anytime, as the Court found he had expressly done for the past due rent on Bay #1.”** (Id.) (Emphasis added) Thus, Hamed argued that “the statute of limitations has run on all of these claims asserted by United, so they should be stricken now.” (Id.)

Based on the foregoing, it is evident that genuine issues of material fact exist as to whether the statute of limitation should be equitably tolled as to United Claims Y-6, Y-7, and Y-9. As such, the Court will deny Hamed's motion to deny United Claims Y-6, Y-7, and Y-9 due to applicable statutes of limitations at this juncture. Accordingly, it is hereby:

ORDERED that Hamed's motion to deny United Claims Y-6, Y-7, and Y-9 due to applicable statutes of limitations is **DENIED WITHOUT PREJUDICE**.

DONE and so **ORDERED** this 7th day of February, 2018.



EDGAR D. ROSS
Special Master