

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff,*

vs.

UNITED CORPORATION, *Defendant.*

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff*

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*
Defendants.

**HAMED'S NOTICE
AS TO CLAIM Y-8 (WATER REVENUES)**

1. Introduction. The Special Master need not read beyond this paragraph, as Hamed hereby agrees to withdraw his procedural motion as to Y-8, *without prejudice*, and continue discovery, just as Yusuf requests. Withdrawal is based on two points:

- a. Hamed's motion was predicated on very poor responses to *explicit* discovery on Y-8, which, as shown below, Yusuf said he would supplement as to new information. Instead, (1) Yusuf tries to now (partially) answer as to what *his client* "will testify to" at some later time,¹ (2) his counsel improperly testifies to those facts (*sans* any support), (3) he adds the facts here, and (4) then files based on all of it.
- b. United also seemingly interjects murky "special benefits" on SOL, which makes it impossible for Hamed to reply to (or understand) pending Judge Brady's review.

2. The Special Master is asked to note: Yusuf failed to file adequate responses and now attempts to "sandbag" Hamed in motions practice² with *counsel's* testimony as to facts not adduced in discovery. **Defendants should be warned to refrain from this.**

Hamed asks the Special Master to review Yusuf's response below, and answer one question to determine whether this is necessary: If Fathi Yusuf will testify as to this information at deposition, as his counsel states, why was it not provided in his discovery response to this identical question so that Hamed can prepare for that deposition?³ Isn't

¹ The phrase "Yusuf will testify. . . ." appears twice on the first non-caption page. As an example, see counsel's testimony at page 2 of the Opposition (emphasis added):

Mr. Yusuf will testify that Hamed was aware of and agreed that because the *water was collected and stored by equipment that was part of the real estate owned by United*, any revenues of sales of water belonged exclusively to United, just as revenues from any rent payments by tenants at the United Shopping Center, belonged exclusively to United. (Footnote omitted.)

And even as a testifying fact witness, counsel is really poor at his job. He also "testifies" about the funds to buy the property all being provided by Yusuf—but when mentioning in passing that some came from 'insurance', neglects the fact that it was a Partnership settlement for insurance even Yusuf has admitted was paid ENTIRELY by Plaza Extra ! THAT is why such testimony must be supported by sworn declaration—so it is under oath.

² All future United/Yusuf motions which rely on such "new" facts (i.e., facts withheld in discovery which suddenly appear in motions) will be met similar protests, with motions to strike such information and for sanctions. This is more than fair warning, and Hamed does not request such results here only to save the Special Master's time and the parties' funds.

³ The inquiry was to describe "any witnesses who would have knowledge and what knowledge you believe they have." This is the simplest, most basic request possible.

that is what written discovery is for? As the Master will note reading *Interrogatory 2 of 50*, the facts that counsel testifies to in this opposition should have been in the discovery responses. Nothing Fathi Yusuf "is going to testify to" about later should be here or in deposition that wasn't in discovery, certainly not a "mine, because it's from my roof" theory.

The interrogatory response is not only evasive, but it states that it "will be supplemented 'as and when appropriate.'" First, written discovery is over—written responses are already late. Second, Yusuf's opposition is filed just a month after the responses—surely this is not "new" information that Yusuf/United lacked when responses were submitted on May 15th. Third, the discovery response WAS NOT SUPPLEMENTED before the opposition was filed. **This is classic sandbagging: Refusal to answer discovery, and then using "new" facts—positions withheld—in motions practice.**

If the Special Master will compare the 100's of pages of Hamed responses and 100's of documents produced, with the **ZERO** documents Yusuf produced and the repeatedly and aggressively evasive responses, he will understand this problem.

Interrogatory 2 of 50 - New Claim Number Y-08- Water Revenue Owed United

Describe in detail, by month, from Sept 17, 2006 to 2014, the amount of water sold to the Partnership, by whom it was sold, the number of gallons per month, the per gallon cost in each of those months, the total value of the gallons sold by month, year and total amount - and describe any ledgers, shipping invoices, receipts or other documents which support your claim as well as **any witnesses who would have knowledge and what knowledge you believe they have**. [*i.e.*, who should we depose and about *what*?]

RESPONSE: Defendants first object that this Interrogatory is unclear as it requests information about water sold "to the Partnership." United's claim against the Partnership is that the Partnership sold United's water from the Plaza Extra -East location. After May 5, 2004, the proceeds from the sale of United's water were to be paid to United, not the Partnership. Nonetheless, in an effort to respond to what appears to be questions relating to the support and calculations for water sales due to United from the Partnership, Defendants submit that the calculations set forth Yusuf s Amended Accounting Claims Limited to Transactions Occurring On or After September 17, 2006 ("Yusuf s Claims") were based upon two years of sales in 1997 (\$52,000) and 1998 (\$75,000) for an average of \$5,291.66 per month. As Waleed Hamed was in charge of the Plaza Extra -East location where the sales took place, Yusuf will be seeking additional information from him as

part of the written discovery propounded on him. The number listed in the claims was the average monthly sales multiplied by 131 months demonstrating that United is owed \$693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015. **Yusuf submits that discovery is on-going and that he will supplement this response as and when appropriate.** (Emphasis added.)

There is nothing in there about the facts and positions that counsel "testifies" to here—no "it is my real estate's water" claim that did not appear in the interrogatory response.

Dated: June 16, 2018



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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of June, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross (w/ 2 Mailed Copies)
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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).

