

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, )  
MUFEED 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

DUDLEY, TOPPER  
AND FEUERZEIG, LLP

1000 Frederiksberg Gade  
P.O. Box 756

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

**YUSUF'S OPPOSITION TO HAMED'S REQUEST FOR AWARD OF  
PREJUDGMENT INTEREST RE: CLAIM H-3**

Hamed has requested that the Master enter an order awarding interest in the amount of \$216,991 on conceded claim H-3 despite the fact that pending before the Master for resolution are millions of dollars of accounting claims asserted by each partner against the other, in addition to third party claims for resolution. Until all of those claims on each side have been approved or denied (or approved or denied in part), and there is an accounting true-up by the Master showing which partner owes money to the other, and in what amounts, granting interest to any partner for any individual claim is inappropriate. Yusuf believes that after all accounting claims are resolved that Hamed will owe him amounts which far exceed the \$504,591.03 that Yusuf has conceded to be owed under Claim H-3. To the extent that the Master finds in the true-up that Hamed received any amount equal to or greater than \$504,591.03 in distributions of partnership monies, the amount conceded by Yusuf will operate as an offset, and there will be no net recovery by Hamed that would entitle him to any award of interest.

The Stipulation resolving this claim stated that “[t]he parties expect that the Master will appropriately address the effect of this conceded claim in his Report and Recommendation for Distribution to be provided to the Court pursuant to section 9, step 6 of the Final Wind Up Plan.” See May 30, 2019 Stipulation at p. 2, ¶ 1. Once the Master tabulates the true-up or reconciliation of each partners’ section 71(a)<sup>1</sup> account in his Report and Recommendation, he will at that time determine which partner is entitled to a net recovery, and the issue of whether any award of prejudgment interest is appropriate for the party obtaining the net recovery, and, if so, how it should be calculated, including from what date the interest should run. The parties will presumably

---

<sup>1</sup> See Revised Uniform Partnership Act, 26 V.I.C. § 71(a).

be given an opportunity to be heard on that issue after the Master resolves the final claim that is pending before him.<sup>2</sup>

In his July 21, 2017 Opinion and Order Striking Jury Demand, Judge Brady found that despite the assertion of various nominal counts for damages in the Complaint and Counterclaim in this case, both parties had in reality asserted a single equitable accounting claim. *See id.* at pp. 11-12, 14-17; *see also* Court's July 21, 2017 Opinion and Order Limiting Accounting Claim, p. 10, n. 9. And this single accounting claim is made up of "numerous alleged individual debits and withdrawals from partnership funds made by the partners of their family members over the lifetime of the partnership that have been, and, following further discovery will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan. *See id.* at p. 11. As such, the equitable accounting claim is an unliquidated claim, in the sense that the final dollar amount to be awarded to one partner or the other on their respective accounting claims is unknown and not easily ascertained. The Third Circuit has held that "[u]nder Virgin Islands law, the district court is given discretion to award prejudgment interest on unliquidated sums as justice requires." *American Home Assurance Company v. Sunshine Supermarket, Inc.*, 753 F.2d 321, 329 (3d Cir. 1885). Again, at the conclusion of the claims resolution process, when the Master is able to make a reconciliation or true-up showing which partner is entitled to a net recovery on his accounting claim, and in what amount, the parties can brief whether equitable considerations support an award of interest in the court's discretion.

Finally, even assuming *arguendo* that a piecemeal award of interest on a single claim were somehow appropriate, the amount being sought by Hamed on Claim H-3 is grossly excessive for

---

<sup>2</sup> Judge Brady found in his July 21, 2017 Opinion and Order that both parties had "unclean hands" as to their respective accounting claims. *See* July 21, 2017 Opinion and Order, p. 31, n. 33. The future briefing on the availability of prejudgment interest will likely discuss the impact of that finding as to any partner's claim to prejudgment interest for net amounts owed to him pursuant to the true-up.

at least two reasons, and should at the very least be greatly reduced. First, the Master has already found that Hamed “essentially amended its Claim No. H-3” in his January 16, 2018 reply brief filed on that claim to transform it into a claim for fees used to defend both the criminal case and the civil case. *See* Master’s Order May 8, 2018 Order at p. 7. Because the claim was not articulated properly and clearly until January of this year, any interest award should run from that date.

In addition, in the Stipulation to concede the claim, Yusuf points out that he settled the claim because of what promised to be “expensive discovery over disputed issues regarding what legal services in the criminal case benefitted the partnership . . .” May 30, 2018 Stipulation, p. 2, ¶1. Hamed was seeking the depositions of three former Florida lawyers of United and Yusuf, to question them about all work product they created or service performed in the criminal case for the period September 20, 2012 to April 30, 2013, to determine how it benefitted United. Since United was a defendant in the criminal case and since the partnership operated through United, all services performed for United were presumptively for the benefit of the partnership. Nevertheless, the former lawyers in Florida were no longer being retained by United or Yusuf, and could not ethically be paid as fact witnesses to study four or five year old voluminous files to be able to prepare adequately for those depositions. A Dudley, Topper and Feuerzeig lawyer would have had to go to Florida and spend many days poring through those files and attempting to learn the nature of work product in those files and how it related to the defense of United and hence the partnership in order to meaningfully respond to this discovery. These considerations made it uneconomical to defend a claim that could have otherwise been defended. The settlement was hardly an admission of theft, as Hamed suggests with his customary hyperbole.

**CONCLUSION**

For all of the foregoing reasons, Hamed's Request for an Award of Prejudgment Interest re: Claim H-3 should be denied.

Respectfully submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

**DATED:** June 19, 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)

Law House 1000 Frederiksberg Gade

P.O. Box 756

St. Thomas, VI 00804-0756

Telephone: (340) 715-4422

Telefax: (340) 715-4400

E-Mail: [ghodges@dtflaw.com](mailto:ghodges@dtflaw.com)

Attorneys for Fathi Yusuf and United Corporation

**DUDLEY, TOPPER  
AND FEUERZEIG, LLP**

1000 Frederiksberg Gade

P.O. Box 756

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

(340) 774-4422

**CERTIFICATE OF SERVICE**

I hereby certify that on this 19<sup>th</sup> day of June, 2018, I caused the foregoing **OPPOSITION TO HAMED'S MOTION FOR AWARD OF PREJUDGMENT INTEREST RE: CLAIM H-3**, 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**  
Quinn House - Suite 2  
2132 Company Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

E-Mail: [holtvi.plaza@gmail.com](mailto:holtvi.plaza@gmail.com)

Mark W. Eckard, Esq.  
**ECKARD, P.C.**  
P.O. Box 24849  
Christiansted, St. Croix  
U.S. Virgin Islands 00824

E-Mail: [mark@markeckard.com](mailto:mark@markeckard.com)

The Honorable Edgar D. Ross  
E-Mail: [edgarrossjudge@hotmail.com](mailto:edgarrossjudge@hotmail.com)

Carl J. Hartmann, III, Esq.  
5000 Estate Coakley Bay – Unit L-6  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

E-Mail: [carl@carlhartmann.com](mailto:carl@carlhartmann.com)

Jeffrey B.C. Moorhead, Esq.  
**JEFFREY B.C. MOORHEAD, P.C.**  
C.R.T. Brow Building – Suite 3  
1132 King Street  
Christiansted, St. Croix  
U.S. Virgin Islands 00820

E-Mail: [jeffreymlaw@yahoo.com](mailto:jeffreymlaw@yahoo.com)

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\PLDGV\17X5684.DOCX