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.	**Civil No. SX-12-CV-370** **ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, PARTNERSHIP DISSOLUTION, WIND UP, and ACCOUNTING**
WALEED HAMED, AS EXECUTOR OF THE ESTATE OF MOHAMMAD HAMED, PLAINTIFF, **V.** **UNITED CORPORATION,** DEFENDANT.	CONSOLIDATED WITH **Civil No. SX-14-CV-287** **ACTION FOR DAMAGES and DECLARATORY JUDGMENT**
MOHAMMAD HAMED, PLAINTIFF, **V.** **FATHI YUSUF,** DEFENDANT.	CONSOLIDATED WITH **Civil No. SX-14-CV-378** **ACTION FOR DEBT and CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter "Master") on United and Yusuf's motion to strike Hamed's Claim Nos. H-142: Parcel No. 2-4 Rem Estate Charlotte Amalie, St. Thomas, and H-143: Plot 4-H Estate Sion Farm, St. Croix.[1] In response, Hamed filed an opposition and Yusuf filed a reply thereafter.

BACKGROUND

Hamed alleged in Hamed Claim Nos. H-142 and H-143 that Parcel No. 2-3 Rem Estate Charlotte Amalie, St. Thomas ("Parcel No. 2-3") and Plot 4-H Estate Sion Farm, St. Croix ("Plot 4-H"), respectively, are assets of the Partnership.

On June 24, 2017, the Court entered a memorandum opinion and order regarding limitations on accounting whereby the Court ordered that "the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), **based upon transactions that occurred on or after September 17, 2006**." ("Limitation Order") *Hamed v. Yusuf,* 2017 V.I. LEXIS 114, *45 (Super. Ct. July 21, 2017) ("Emphasis added").

On February 26, 2018, United and Yusuf filed this instant motion to strike Hamed Claim Nos. H-142 and H-143.

DISCUSSION

A. Hamed Claim No. H-142

In their motion, United and Yusuf pointed out that Hamed's description of Hamed Claim No. H-142 in his revised notice of Partnership claims and objections to Yusuf's post-

[1] The Master was appointed by the Court to "direct and oversee the winding up of the Hamed-Yusuf Partnership" (Sept. 18, 2015 order: Order Appointing Master) and "make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination." (Jan. 7, 2015 order: Final Wind Up Plan) The Master finds that that Yusuf's instant motion to strike Hamed Claim Nos. H-142 and H-143 falls within the scope of the Master's report and recommendation given that Hamed Claim Nos. H-142 and H-143 are alleged assets of the Partnership.

January 1, 2012 accounting, filed on October 17, 2016, his submission of suggestions as to the further handling of the remaining claims per the master's discretion of August 24, 2017, filed on October 30, 2017, and his motion for a hearing before Special Master, filed on November 16, 2017, were all "remarkably terse." (Motion, p. 2) United and Yusuf argued that Hamed Claim No. H-142 is "completely irrelevant since the Partners obviously chose to take title to that property in the name of Plessen[2] pursuant to a deed dated July 26, 2006 and recorded on August 24, 2006" and "[f]rom that date forward until Plessen conveyed the property to United pursuant to the Deed In Lieu of Foreclosure signed by Mohammad Hamed, the property was an asset of Plessen, not the Partnership."[3] (Id., at p. 3) United and Yusuf also argued that "[i]n any event, the transaction involving the acquisition of this property occurred before September 17, 2006 and is therefore clearly barred by the Limitation Order." (Id., at p. 3-4) As such, United and Yusuf requested the Master to grant their motion and strike Hamed Claim No. H-142.

In his opposition, Hamed claimed that "[t]hree completely distinct and independent reasons exist as to why this claim cannot be summarily stricken—but instead must proceed to briefing and a decision by the Master like all other claims." (Opp., p. 2) First, Hamed argued that "[Parcel No. 2-4] is a Partnership Asset (paid for with partnership funds), not a 'Claim'" and the "[Final] Wind Up Plan distinguished between "Claims" and "Partnership Assets." (Id.) Hamed pointed out that, as of the date of entering the Final Wind Up Plan, United owned Parcel No. 2-4 Rem, and in fact, said property was listed as an "asset" on the Partnership's balance sheet when the Final Wind Up Plan was entered and on the combined balance sheet for the

[2] All references to "Plessen" and "Plessen Enterprises" by Parties and herein refers to Plessen Enterprises, Inc.

[3] In support of their argument, United and Yusuf attached to their motion, *inter alia*, a copy of the warranty deed, dated July 26, 2006 and recorded on August 24, 2006, a copy of the first priority mortgage, dated and recorded on August 24, 2006, and a copy of the deed in lieu of foreclosure, dated October 23, 2008 and recorded March 24, 2009.

period January 31, 2015 through December 31, 2015.[4] Thus, this claim is not barred by the Limitation Order. (Id., at p. 3) Second, Hamed argued that since United took title to Parcel No. 2-4 on October 23, 2008, title to this disputed property was vested in 2008, after the date set forth in the Limitation Order, and "[t]hus, it is totally irrelevant that another 50/50 Hamed-Yusuf entity, Plessen Enterprises, took title to this property at some earlier date..." (Id., at p. 4) Hence, again, this claim is not barred by the Limitation Order. (Id.) Third, Hamed argued that, pursuant to the discovery plan agreed upon, Parties agreed that discovery was needed as to Hamed Claim No. H-142, and Hamed had already propounded discovery thereto, so "at the very least, this motion should be denied as premature." (Id., at p. 4-5)

In their reply, United and Yusuf responded to arguments raised in Hamed's opposition. First, United and Yusuf argued that Hamed's argument that this is a "Partnership Asset" and not a "Claim" is a "non sequitur" because "[a]ny interest the Partnership had in this property ceased when the two Partners decided that title to the parcel would be held in the name of their jointly owned company, Plessen Enterprises, Inc., pursuant to the deed dated July 26, 2006." (Reply, p. 3) Hamed pointed out that "[t]he fact that this property was reflected as an asset on the balance sheets attached to Exhibits 3 and 4 to the Opposition[5] is of no moment because both of these balance sheets were prepared by John Gaffney, who acknowledged: 'Land with a Cost of $330,000 was recorded as an asset of the [P]artnership in error. Reduction to zero corrects the mistaken entry.'" (Id., at p. 4) Second, United and Yusuf argued that "[t]he fact that the land was originally purchased with Partnership funds does not mean that it should be included among Partnership Assets" because "[i]f that were the case, hundreds of acres

[4] The Master must note that the balance sheets referenced by Hamed did not specifically refer to Parcel 2-3. The balance sheets simply listed "Land, $330,000.00" under "ASSETS."

[5] Exhibit 3 of Hamed's opposition is a copy of the balance sheet attached to the Final Wind Up Order and Exhibit 4 of Hamed's opposition is a copy of the combined balance sheet for the period January 31, 2015 through December 31, 2015.

purchased with Partnership funds but titled in the names of Plessen and other companies jointly owned by Hamed and Yusuf...would all constitute Partnership Assets requiring liquidation." (Id.) United and Yusuf pointed out that Hamed failed to provide any evidence in support of Hamed's argument that the conveyance to United were intended by the Partners to be conveyances to the Partnership. (Id., at p. 5) Third, United and Yusuf argued that Hamed misrepresented that they agreed to further discovery. (Id.) As United and Yusuf stated in their previous filings,[6] "[b]ecause this claim is clearly barred by the Limitation Order, no discovery is needed or should be allowed." (Id., at p. 6)

United and Yusuf essentially argued in their motion that the Master should grant their motion to strike Hamed Claim No. H-142 because: (1) Hamed's description for this claim was terse; (2) Parcel 2-3 is not an asset of the Partnership; and (3) this claim is barred by the Limitation Order. First, the fact that United and Yusuf found Hamed's description for Hamed Claim No. H-142 terse does not, in and of itself, warrant it meritless. The fact of the matter is, Parties are aware that this claim alleged that Parcel No. 2-3 is an asset of the Partnership. Second, the fact that "United" owns Parcel No. 2-3 pursuant to the deed in lieu of foreclosure, dated October 23, 2008 and recorded on March 24, 2009, does not, in and of itself, preclude Parcel No. 2-3 from being considered an asset of the Partnership. The Court and the Master have both recognized in the past that "the Court has long found indicia of the existence of a partnership and that the partners operated Plaza Extra under the corporate name of United. *See* the Master's Order re Hamed's motion as to Hamed Claim No. H-3, dated May 8, 2018; *see*

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[6] On December 13, 2017, United and Yusuf filed a bench memorandum for the December 15, 2017 status conference. Exhibit A of the bench memorandum stated the following as to Hamed Claim No. H-142:

> As reflected in multiple Bi-Monthly Reports of the Liquidating Partner (*see, e.g.,* Ninth Bi-Monthly Report filed on August 1, 2006 at p. 5-6), a deed conveying Parcel 2-4 Rem. To Plessen Enterprises, Inc. and a $330,000 mortgage from Plessen to United have been of record since August 24, 2006. Accordingly, any claims by Hamed are clearly barred by the Limitation Order. To the extent they are not barred, discovery is required. (Reply, p. 6)

also April 25, 2013 Memorandum Opinion and Order ("Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the 'partners operated Plaza Extra under the corporate name of United Corp.'"); *The United States of America v. United Corporation, et al.*, case no. 1:05-cr-15 (United was named as a defendant as "United Corporation d/b/a Plaza Extra"). Here, similar to United and Yusuf's accusation that Hamed failed to provide any evidence in support of Hamed's argument that the conveyance was to United operating as the Partnership and not to United operating as a separate distinct entity from the Partnership, United and Yusuf also failed to provide any evidence to support their argument that the conveyance was to United operating as a separate distinct entity from the Partnership, and not United operating as the Partnership.[7] Third, Hamed Claim No. H-142 is not barred by the Limitation Order because the transaction relevant here—from Plessen to United, assuming *arguendo* it was United operating as the Partnership—did not occur until October 23, 2008, which is after September 17, 2006, the limitation date set forth in the Limitation Order. As such, the Master will deny Yusuf's motion to strike as to Hamed Claim No. H-142.[8] Furthermore, as United and Yusuf admitted in their previous filings as to Hamed

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[7] United and Yusuf noted in their motion that Waleed Hamed signed the mortgage and the deed in lieu of foreclosure on behalf of Plessen. However, United and Yusuf failed to explain why this fact supports their claim that the conveyance was to United operating as a separate distinct entity from the Partnership, and not United operating as the Partnership.

[8] The Master will nevertheless briefly address the "claim v. partnership asset" argument raised by Hamed in his opposition. The Limitation Order did not make the distinction between claims or partnership assets. In the Limitation Order, the Court ordered that "that the accounting in this matter, to which each partner is entitled under 26 V.I.C § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C § 71(a), based upon transactions that occurred on or after September 17, 2006." *Hamed*, 2017 V.I. LEXIS *44-45. *See supra*, footnotes 2-3.

Title 26 V.I.C. §177(b) provides: "Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account but excluding from the calculation charges attributable to an obligation for which the partner is not personally liable under section 46 of this chapter."

Title 26 V.I.C. §71(a) provides: Each partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes

Claim No. H-142, they acknowledged that "[t]o the extent they are not barred, discovery is required."[9] Thus, the Master will allow discovery as to Hamed Claim No. H-142.

B. Hamed Claim No. H-143

In their motion, United and Yusuf pointed out that Hamed's description of Hamed Claim No. H-143 was similarly terse in his revised notice of Partnership claims and objections to Yusuf's post-January 1, 2012 accounting, filed on October 17, 2016, his submission of suggestions as to the further handling of the remaining claims per the master's discretion of August 24, 2017, filed on October 30, 2017, and his motion for a hearing before Special Master, filed on November 16, 2017. (Motion, p. 3) United and Yusuf argued that it is "undisputed that United has been the record owner of [Plot 4-H] since October 6, 1992."[10] United and Yusuf also pointed out that the "transaction involving Plot 4-H occurred almost fourteen years before the cut off period established by the Limitation Order and is therefore barred by that Order." (Id., at p. 4) As such, United and Yusuf requested the Master to grant their motion and strike Hamed Claim No. H-143.

Hamed prefaced his opposition with the following statement: "When Plaza [Extra-East] burned down in 1992, it was insured by the Partnership – not by United. As part of that insurance settlement, the Partnership received enough funds to not only re-build the existing Plaza [Extra]-East store, which was done – but to also purchase an adjacent parcel of land (Plot

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to the partnership and the partner's share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

Here, Hamed Claim No. H-142 alleged that Parcel No. 2-3 is an asset of the Partnership and believes Parcel 2-3 should be sold or split between the Partners. *See* Hamed's submission of his suggestions as the further handling of the remaining claims, Exhibit A, p. 12, filed on October 30, 2017 ("Hamed Claim No. H-142…. sale or split of property"); Hamed's motion for a hearing before Special Master, Exhibit 3, p. 12, filed on November 16, 2017 ("Hamed Claim No. H-142…. sale or split of property"). As such, the Master finds Hamed Claim No. H-142 to fall within the scope of the Limitation Order.

[9] *Supra*, footnote 6.

[10] In support of their argument, United and Yusuf attached to their motion, *inter alia*, a copy of the warranty deed, dated and recorded October 6, 1992.

4-H), which added some additional space to the interior of the store as well as a large open area behind the store."[11] (Opp., p. 5) Hamed then stated that "[t]here are two distinct reasons exist as to why this claim cannot be summarily stricken—but instead must proceed to briefing and a decision by the Master like all other claims." (Id.) First, Hamed argued that "in dividing the stores under the [Final Wind Up Plan], the Court recognized that Yusuf would not get the existing Plaza [Extra]-East store unless the Court included Plot 4-H, as the store had been extended onto part of that parcel" and "[a]s such, the Court specifically carved this plot out in Section 8 of the [Final Wind Up] Plan."[12] Based on that, Hamed reasoned that "the Court clearly did not intend for the value of this asset to become a windfall to Yusuf when it entered its subsequent Bar Order" and that, "[i]n short, the Court clearly intended for Hamed to get the value of this asset in the accounting phase of this case, it just did not want it sold because Plaza [Extra]-East was partially located on it." (Id., at p. 6) As such, Hamed argued that this claim is not barred by the Limitation Order. Second, Hamed argued that, pursuant to the discovery plan agreed upon, Parties agreed that discovery was needed as to Hamed Claim No. H-143, and Hamed had already propounded discovery thereto, so this motion should be denied as premature. (Id., at p. 6-7)

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[11] In support of his statement, Hamed attached to his opposition, *inter alia*, an affidavit of Wally Hamed, dated March 5, 2018, whereby Wally Hamed declared under the penalty that:

> …
>
> 3. When Plaza [Extra-East] burned down in 1992, it was insured by the [P]artnership, not through funds paid by the landlord, United Corporation.
>
> 4. As part of that insurance settlement, the [P]artnership received enough funds to not only re-build the existing Plaza [Extra]-East store, which was done – but to also purchase an adjacent parcel of land, Plot 4H [Estate] Sion Farm, which added some additional space to the interior of the store as well as a large open area behind the store.

[12] The Final Wind Up Plan provided in pertinent part:

> For purposes of winding up the Partnership, Plot 4-H Estate Sion Farm shall not be considered Partnership property and is not subject to division under this Plan, without prejudice to any accounting claim that may be presented by Hamed.

In their reply, United and Yusuf responded to arguments raised in Hamed's opposition. First, while United and Yusuf acknowledged that the Partnership paid for the insurance of Plot 4-H for the benefit of the property owner, United, and that the insurance proceeds were paid to United after Plaza Extra-East burned down in 1992, United and Yusuf argued that "Hamed has absolutely no claim on the merits with respect to the use of $150,000 of insurance proceeds since the Partnership benefitted from the reduced rental rate for 10 more years."[13] (Reply, p. 6) Moreover, United and Yusuf pointed out that "Hamed fails to address why, if the Partnership allegedly owned Plot 4-H, it would pay rent that covers those premises for decades." (Id., at p. 7) Second, United and Yusuf argued that Hamed cannot presume to know the Court's specific intent as to Section 8 of the Final Wind Up Plan.[14] Instead, United and Yusuf argued that this claim is clearly barred by the Limitation Order because the transaction date "occurred in 1992 almost fourteen years before the bar date." (Id.) Third, United and Yusuf argued that, similarly to Amended Hamed Claim No. H-142, Hamed misrepresented that they agreed to further discovery.[15] (Id.) As United and Yusuf stated in previous filings, no discovery is needed or should be allowed as to Hamed Claim No. H-143 because it is clearly barred by the Limitation Order. (Id.)

United and Yusuf essentially argued in their motion that the Master should grant their motion to strike Hamed Claim No. H-143 because: (1) Hamed's description for Hamed Claim No. H-143 was terse; (2) Plot 4-H is not an asset of the Partnership; and (3) this claim is barred

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[13] United and Yusuf noted that "[a]t that time, Yusuf agreed with Hamed to keep the lower than market rate rent of $5.55 per square foot in place for 10 more years following the date the rebuilt store opened for bsiness." (Reply, p. 6)

[14] *Supra*, footnote 12.

[15] On December 13, 2017, United and Yusuf filed a bench memorandum for the December 15, 2017 status conference. Exhibit A of the bench memorandum stated the following as to Hamed Claim No. H-143:

> The deed conveying Plot 4H [Estate Sion Farm] to United has been of record since October 6, 1992. *See* Exhibit 2. Accordingly, any claims by Hamed are clearly barred by the Limitation Order. To the extent they are not, discovery is required." (Reply, p. 7)

by the Limitation Order. First, as the Master stated above, the fact that United and Yusuf found Hamed's description for Hamed Claim No. H-143 terse does not, in and of itself, warrant it meritless. The fact of the matter is, Parties are aware that Hamed alleged in Hamed Claim No. H-143 claims that Plot 4-H is an asset of the Partnership. Second, for the same reason stated above, the fact that "United" owned Plot 4-H pursuant to the warranty deed, dated October 1, 1992 and recorded on October 6, 1992, does not, in and of itself, preclude Plot 4-H from being considered an asset of the Partnership. However, here, unlike Parcel 2-3, the Partnership rented Plot 4-H from United and paid rent to United. Hamed never addressed the issue of why the Partnership, if it was the owner of Plot 4-H, had to pay rent to United for Plot 4-H. Thus, there is some evidence that the conveyance was to United operating as a separate distinct entity from the Partnership, and not United operating as the Partnership. Nevertheless, at this time, the Master lacks sufficient record before him to make a determination as to the true ownership of Plot 4-H. Third, even if United operating as the Partnership owned Plot 4-H, Hamed Claim No. H-143 is barred by the Limitation Order because the transaction relevant here—from Darnley A. Petersen, as Trustee of the Albert David Trust to United, assuming *arguendo* it was United operating at the Partnership—occurred in October 6, 1992, which is before September 17, 2006, the limitation date set forth in the Limitation Order. As such, the Master will grant Yusuf's motion to strike as to Hamed Claim No. H-143.[16]

[16] The Master will briefly address the arguments raised by Hamed in his opposition. First, the fact that Plot 4-H was insured by the Partnership (the tenant) and not by United (the landlord) is not, in and of itself, proof that Plot 4-H is owned by the Partnership. It is not uncommon for landlords to require long term tenants to purchase insurance and name the landlord as an additional insured. Second, the Master finds that Hamed Claim No. H-143 falls within the scope of the Limitation Order for the same reason Hamed Claim No. H-142 falls within the scope of the Limitation Order. Here, Hamed Claim No. H-143 alleged that Plot 4-H is an asset of the Partnership and believes Plot 4-H should be sold or split between the Partners. *See* Hamed's submission of his suggestions as the further handling of the remaining claims, Exhibit A, p. 12, filed on October 30, 2017 ("Hamed Claim No. H-143…. sale or split of property"); Hamed's motion for a hearing before Special Master, Exhibit 3, p. 12, filed on November 16, 2017 ("Hamed Claim No. H-143…. sale or split of property"). Third, based on the Master's finding that Hamed Claim No. 143 is barred by the Limitation Order, there is no need for discover and the Master need not address whether Yusuf chipped in $100,000.00 of his own funds to purchase Plot 4-H.

CONCLUSION

Based on the foregoing, the Master will grant in part and deny in part Yusuf's motion to strike. Accordingly, it is hereby:

ORDERED that Yusuf's motion to strike as to Hamed Claim No. H-142 is **DENIED**. It is further:

ORDERED that Parties may continue with discovery in connection with Hamed Claim No. H-142. Discovery in connection with Hamed Claim No. H-142 shall be completed no later than **August 10, 2018. And** it is further:

ORDERED that Yusuf's motion to strike as to Hamed Claim No. H-143 is **GRANTED**. Hamed Claim No. H-143 shall be and is hereby **STRICKEN**.

DONE and so ORDERED this 11th **day of July, 2018.**

EDGAR D. ROSS
Special Master