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ADMITTED: USVI, NM & DC

July 19, 2018

Charlotte Perrell, Esq.
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By Email Only

RE: Request for Rule 37.1 Conference re Interrogatory 21 of 50 (re H-142 Tutu Land)

Dear Attorney Perrell:

I write regarding one of the Yusuf/United supplemental claims discovery responses served on July 19, 2018. It is Hamed's intention to file an emergency motion to compel directed to the Special Master. Pursuant to Rule 37.1, I request an immediate conference to discuss the basis of the proposed motion and seek amendment to the Yusuf response. Because out time is limited to three more weeks, I would appreciate a time convenient for you or your co-counsel tomorrow (Friday 7/20). The item at issue is: Interrogatory 21 of 50 which relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu,"

ANALYSIS OF DEFICIENCIES IN THIS INTERROGATORY

1. The discovery request and response

The original Interrogatory 12, and Yusuf's response are set forth below:

Interrogatory 21 of 50:

Interrogatory 21 of 50 relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to Claim No. H-142, state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the

purchase, with reference to all applicable documents, communications and witnesses.

Supplemental Response:

Defendants show that all documents relating to the purchase of the half acre in Estate Tutu are those documents, which have already been provided in this case including the Warranty Deed and the First Priority Mortgage. Further responding, Defendants show that Mr. Yusuf is out of the country until August 18, 2018 and to the extent that any additional information is required of him, Defendants are unable to provide that information at this time, but will readily supplement as soon as he is available.

2. Parsing the “objections”

Below, Hamed sets out each of the Yusuf objections *verbatim*. Only emphasis and headings have been added.

a. Yusuf Objection #1 of 2 – Mr. Yusuf is away until August 18th

c. Yusuf Objection #2 of 2 – So no facts are supplied now --
or will be supplied until then

If your client is away and you cannot respond within the time set by the Court, the burden is on you to obtain a protective order – as you will be in contempt of the Special Master’s Order dated July 12, 2018.

Even if this were not the case, Yusuf has given no facts whatsoever in response to the request, in interrogatory 21, that Yusuf:

state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and any discussions or agreements about the funds or the purchase

3. Applicable Law

Applicable Order

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. . . .**
(Emphasis added.)

Applicable Rules

Rule 37(d) - Party's Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.

(1) In General. (A) Motion; Grounds for Sanctions. The court may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent — or a person designated under Rule 30(b)(6) or 31(a)(4) — fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

(2) * * * *

(3) Types of Sanctions. Sanctions may include any of the orders listed in Rule 37(b)(2)(A)(i)-(vi). Instead of or in addition to these sanctions, the court must require the party failing to act, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

Rule 26. Duty to Disclose; General Provisions Governing Discovery (b) Discovery Scope and Limits.

(1) Scope in General. Unless otherwise limited by court order, **the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense.** Information within this scope of discovery need not be admissible in evidence to be discoverable (emphasis added).

(2) Limitations on Frequency and Extent.

* * * *

(C) When Required. On motion or on its own, the court must limit the frequency or extent of discovery otherwise allowed by these rules if it determines that:

(i) the discovery sought is unreasonably cumulative or duplicative, or can be obtained from some other source that is more convenient, less burdensome, or less expensive;

(ii) the party seeking discovery has had ample opportunity to obtain the information by discovery in the action; or

(iii) the proposed discovery is not relevant to any party's claim or defense.

(D) Duplicative discovery. Duplicative disclosure is not required, and if all information and materials responsive to a request for disclosure has already been made available to the discovery party, the responding party may, for its response, state specifically how and in what form such prior disclosure has been made. Where only part of the information has previously been provided to the discovering party, the response may so state and must then further make available the remaining discoverable information or materials.

* * * *

(c) Protective Orders.

(1) In General. **A party or any person from whom discovery is sought may move for a protective order in the court where the action is pending** — or as an alternative on matters relating to a deposition, in the court where the deposition will be taken. **The motion must include a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without court action** (emphasis added). The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

(A) forbidding the disclosure or discovery;

(B) specifying terms, including time and place or the allocation of expenses, for the disclosure or discovery;

(C) prescribing a discovery method other than the one selected by the party seeking discovery;

(D) forbidding inquiry into certain matters, or limiting the scope of disclosure or discovery to certain matters;

(E) designating the persons who may be present while the discovery is conducted;

(F) requiring that a deposition be sealed and opened only on court order;

(G) requiring that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way; and

(H) requiring that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs.

(2) Ordering Discovery. If a motion for a protective order is wholly or partly denied, the court may, on just terms, order that any party or person provide or permit discovery.

(3) Awarding Expenses. Rule 37(a)(5) applies to the award of expenses in motions relating to protective orders.

* * * *

(3) Sanction for Improper Certification. If a certification violates this rule without substantial justification, the court, on motion or on its own, must impose an appropriate sanction on the signer, the party on whose behalf the signer was acting, or both. The sanction may include an order to pay

the reasonable expenses, including attorney's fees, caused by the violation.

In addition, the revision notes provide:

NOTE. Rule 26 is the foundational provision regarding mandatory early disclosures and the scope of discoverable information throughout the action.

* * * *

Subpart (b) is the general "scope" provision governing discovery in the Virgin Islands. It defines discoverable materials as "any nonprivileged matter that is relevant to any party's claim or defense."

Rule 33 controls as to interrogatories (emphasis added).

Rule 33. Interrogatories to Parties

(a) In General.

* * * *

(2) Scope. An interrogatory **may relate to any matter that may be inquired into under Rule 26(b). An interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact. . . .**

* * * *

(b) Answers and Objections.

(1) Responding Party. The interrogatories **must be answered:**

(A) by the party to whom they are directed; or

3. Application of the Law to Yusuf's Objections

Yusuf provided no written answer. That violated Rule 37(d).

Yusuf stated that he will be unable to answer within the time given – but has not sought a protective order. That violates Rule 26(c) as well as Rule 37(d).

The entire response violates Rule 26(b)(1), as it does not address a valid inquiry.

I will await your response with dates/times.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carl J. Hartmann". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Carl J. Hartmann