

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,	)	CIVIL NO. SX-12-CV-370
v.)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND
	)	PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING
Defendants/Counterclaimants,)	
v.)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,)	
)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
Defendant.)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND CONVERSION
v.)	
FATHI YUSUF,)	
)	
Defendant.)	
FATHI YUSUF and UNITED CORPORATION,	)	CIVIL NO. ST-17-CV-384
)	
Plaintiffs,	)	ACTION TO SET ASIDE FRAUDULENT TRANSFERS
v.)	
THE ESTATE OF MOHAMMAD HAMED, Waleed Hamed as Executor of the Estate of Mohammad Hamed, and THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
Defendants.)	

**YUSUF'S REPLY TO HAMED'S OPPOSITION TO MOTION FOR LEAVE
TO FILE A SURRESPONSE TO HAMED'S REPLY REGARDING CLAIM H-13**

Hamed's "Opposition To Yusuf's Motion For Surreply [sic] As To Claim H-13" ("Opposition") uses this briefing opportunity to respond to arguments made in Yusuf's proposed surrespense. But the main takeaway from Hamed's Opposition is what he has chosen not to respond to in the surrespense. Like his prior briefs regarding H-13, he says nothing at all in response to Yusuf's principal argument that Hamed's "me too" relief sought in H-13 is not available in an accounting claim, and that Claim H-13 simply cannot be maintained. He clearly has no answer to the argument that the Master should dismiss H-13 without even reaching the merits of the Claim or whether part of it is barred by the Court's limitation on accounting claims.

Insofar as the Master wishes to consider the substantive arguments Hamed makes in response to Yusuf's proposed surrespense, Yusuf will briefly address them below. After separating the wheat from the chaff, the salient points that the Master should distill from all of these filings and counter-filings are as follows:

1. United's subchapter S election occurred in 1999. Whether it was imprecise for Yusuf to initially have described the election as having taken place "decades ago" (instead of "nearly two decades ago") is much ado about nothing. The effect of this election necessarily meant that henceforth the profits of Plaza Extra would be imputed to the shareholders of United, even though not actually distributed to them. And when United paid those income taxes, it was indeed paying income taxes of Yusuf's sons. But Hamed has admitted in response to a request to admit quoted in Yusuf's proposed surrespense that it was proper and consistent with the partnership agreement for United to have paid the income taxes on Plaza Extra profits ascribed to its shareholders by reason of the subchapter S election. *See* proposed surrespense, p. 7. This admission, which Hamed conveniently ignores, means that the fact of the subchapter S election (and that it was made in 1999) is irrelevant to any issues raised by Claim H-13.

2. Hamed contends that, in addition to United's income tax payments for Plaza Extra profits imputed to the shareholders, "ALL of the actual evidence of record, and all of the exhibits attached to this motion and opposition, state that for just the years 1999-2001, Partnership funds were used to pay the personal income taxes of Yusuf family members for totally unrelated income." Opposition at p. 3 (emphasis in original). The font enhancements used by Hamed for emphasis do not alter the fact that no evidence whatever has been adduced to support this proposition. Both Yusuf's "lion's share" statement and the U.S. Attorney's statement¹ cited in Hamed's brief relate solely to the \$6.5 million dollar payment and, as Waleed Hamed's June 2013 declaration acknowledges, that payment covered tax deficiencies for the 2002-2010 tax years only. Neither Yusuf's statement in his brief nor the U.S. Attorney's statement from the August 2013 hearing in the criminal case relates in any way to income taxes that United paid for the 1999 to 2001 tax years. Yusuf does not claim that United paid unrelated income taxes for his sons when they filed their returns for 1999, 2000 and 2001 and, contrary to Hamed's contention, Yusuf is not asking the Master to "rely on what [he] did for just the years 1999-2001" as a substitute for an "amendment" to the oral partnership agreement. *Id.* at 6. Hamed has set up and knocked down a straw man in this entire argument about income tax payments made by United in conjunction with returns filed for the 1999 to 2001 tax years.

3. Hamed contends that "we now have Yusuf's clear admission that the 2013 assessment [\$6.5 million dollar payment] was not, and could not be based on the actual 2002-2012 taxes," but was instead "simply a settlement of all possible outstanding taxes that were the result of the operations." Hamed's Opposition, p. 4 (emphasis in original). This sentence is

¹All taxes still owed for the 1999 to 2001 tax years had been paid well before the August 2013 hearing in which the U.S. Attorney is quoted by Hamed. They were covered by the \$10,000,000 restitution amount paid in 2011, pursuant to the 2010 plea agreement and 2011 addendum that are attached as Exhibits 1 and 2 to Yusuf's proposed surresponse. See Exhibit 2, Plea Agreement, p. 4, ¶ III.A.3 (requiring restitution for taxes owing for "the indictment years of 1996, 1997, 1998, 1999, 2000 and 2001"); and Exhibit 1, Addendum to Plea Agreement, p. 1 (requiring payment of \$10,000,000 in restitution to the VIBIR for taxes owed for the years referenced in Plea Agreement, ¶ III.A.3, along with a \$1,000,000 dollar fine).

hardly a model of clarity, and Yusuf has no idea what Hamed is trying to say here. What we do know is that Waleed Hamed has stated unequivocally in his declaration attached to Yusuf's Surreponse as Exhibit 5² (in ¶¶29 and 30) that the \$6.5 million dollar payment covered the tax years 2002 through 2010 and was "primarily" for income taxes still owed on Plaza Extra profits. See proposed surreponse at p. 8. And the only way the IRB could determine the amount of income taxes still owed (i.e., the income taxes not already covered by estimated tax payments made during those tax years) was by examining the tax returns for the 2002 through 2010 tax period for United and its shareholders. As discussed in Yusuf's proposed surreponse (at p. 3) and as explained in the plea agreement, those returns were not filed until 2013.

4. In his Opposition, Hamed insists for the first time in his extensive briefing on H-13 that "[t]he only relevant 'past conduct' was that **all of the taxes for both families were being paid** from Partnership funds up until 2011." Hamed's Opposition, p. 5 (emphasis in original). Hamed cites a statement from the U.S. Attorney made during the August 2013 hearing in support of this contention, but neglects to point out that she was referring to United's restitutionary payment of \$10,000,000 made in 2011 for the tax years 1996 to 2001, which covered the outstanding income tax liabilities of United and all of the individual defendants in the criminal case for those tax years. See footnote 1, *supra*. Hamed seems to be making a brand new argument that because United chose to pay income taxes owed for the 1996 to 2001 tax years for all defendants in the criminal case, including Waleed and Waheed Hamed, as part of a plea agreement with the U.S. Attorney, it should also be compelled to do the same for the 2002 to 2010 tax years. But if that is what Hamed now wants to argue, he has long since waived it by first raising it in an opposition to a request to file a surreponse.³

² The same declaration was attached as Exhibit C to Yusuf's May 17, 2018 Opposition to Hamed's Motion Re Claim H-13.

³ Hamed has had a moving target of theories regarding why Yusuf refused to pay the income tax deficiencies for Waleed and Waheed Hamed for the 2002-2012 tax years. First, he claimed, without any evidentiary support whatsoever, that the IRB was willing to settle both the Yusuf

CONCLUSION AND RELIEF REQUESTED

Hamed's Opposition to Yusuf's Motion for Leave to File a Surreponse is primarily an extended debate about the merits of Claim H-13, which continues to ignore entirely Yusuf's principal argument regarding the procedural deficiency of that claim. If anything, the Opposition reinforces the need for the Master to have before him Yusuf's proposed surreponse in resolving this Claim. Yusuf's Motion should be granted.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: July 20 2018

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and Hamed tax deficiencies for \$6.5 million and that Yusuf acted out of “**pure, unadulterated spite**” in refusing to have United pay the Hamed sons' deficiencies, since it would have cost him nothing. See Hamed's April 27, 2018 Motion As To Hamed Claim H-13, p. 4 (emphasis in original). Yusuf thoroughly debunked that theory with citations to record evidence in his May 17, 2018 Opposition to that Motion (at pages 5-6), and Hamed never mentioned it again. Hamed's June 27, 2018 Reply instead advanced the new theory that the subchapter S election in 1999 was part of a plan hatched then to cheat the Hameds, but only fully realized 14 years later, when the \$6.5 million dollar payment was made to the IRB. Now that Yusuf has shown that theory to be just as baseless in his proposed surreponse, Hamed has contrived yet another theory based on the \$10,000,000 payment to the IRB in 2011.

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of July, 2018, I caused the foregoing **YUSUF'S REPLY TO HAMED'S OPPOSITION TO YUSUF'S MOTION FOR LEAVE TO FILE A SURRESPONSE TO HAMED'S REPLY REGARDING CLAIM H-13**, 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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A handwritten signature in black ink, appearing to read "Alice Kuo", is written over a horizontal line.