

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,
MUFEEED HAMED, HISHAM HAMED,
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

**WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

**ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, PARTNERSHIP
DISSOLUTION, WIND UP, and
ACCOUNTING**

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter “Master”) on Hamed’s motion as to Hamed Claim No. H-2: Partnership fund in the amount of \$2,784,706.25 that Yusuf unilaterally withdrawn in 2012.¹ Yusuf filed an opposition and Hamed filed a reply thereafter.

In his motion, Hamed pointed out that “[t]his litigation began in 2012 when Fathi and Mike Yusuf unilaterally took \$2,784,706.25 from a Partnership account and transferred it to an account to which the Hameds did not have access” and that “[t]his was the main issue in Hamed’s 2012 complaint—and the central issue during the early portion of this case.” (Motion, p. 2) Hamed further pointed out that, after an extensive TRO hearing, the Court ruled for Hamed on the matter in a memorandum opinion and order, entered on April 25, 2013.² (Id.) Hamed argued that “[t]here is no way that Yusuf can now alter the Court’s decision on this matter—having since conceded that there was a Yusuf/Hamed partnership that owned the Plaza Extra Stores, and Judge Brady having entered summary judgment.”³ (Id., at p. 3) Hamed further argued that, while Yusuf has delayed having this declared a valid claim by repeatedly saying he too has claims that must be heard as well, “there is no doubt that the Yusufs took the money and (as Judge Brady’s memorandum makes clear) that \$2.7 million plus interest is a valid claim and must be returned to the Partnership.” (Id.) As such, Hamed requested the Master to order Yusuf to reimburse the Partnership in the total amount of \$2,784,706.25, plus statutory interest at the rate of 9% from August 15, 2012 (the date of the unilateral withdrawal from the Partnership fund by Yusuf) until paid. (Id.)

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 Hamed’s instant motion for prejudgment interest as to Hamed Claim No. H-2 falls within the scope of the Master’s report and recommendation given that Hamed Claim No. H-2 is alleged debt owed by Yusuf to the Partnership (or in other words, potential Partnership Assets).

² In support of his assertion, Hamed attached the Court’s memorandum opinion and order, entered April 25, 2013.

³ In support of his assertion, Hamed attached the Court’s order, entered November 7, 2014.

In his response, Yusuf argued that “[w]hile there is no dispute that Yusuf’s account should be charged with the withdrawal [of \$2,784,706.25], and it has been in the report prepared by [Fernando Scherrer of BDO Puerto Rico, P.S.C.], the accounting which gave rise to this withdrawal is disputed and requires discovery.” (Opp., p. 2) Yusuf claimed that his “entitlement to the [\$2,784,706.25] as a matching withdrawal to reconcile certain corresponding past withdrawals taken by Hamed,” including “\$1.6 million in acknowledged withdrawals removed by the Hameds from the Plaza Extra stores, \$44,355.50 and \$44,696.00 to off-set Waleed Hamed’s unilateral withdrawal of all the funds in the two bank accounts, one in St. Maarten and one at Cairo Amman Bank in 2012, together with receipts evidencing additional Hamed withdrawals totaling [\$2,784,706.25].” (Id.) Yusuf further claimed that despite Hamed’s claim that “the \$1.6 million portion of this withdrawal is time-barred by Judge Brady’s Order dated July 21, 2017 (“Limitation Order”) or, at least, requires discovery, if not barred,” the \$1.6 million withdrawal “is not time barred because Hamed acknowledged the \$1.6 million in withdrawals in 2012 to various individuals including Bakir Hussein.”⁴ Thus, Yusuf argued that the withdrawal of \$2,784,706.25 should not be viewed in isolation but considered together with various allocations and transactions that make up the report prepared by Fernando Scherrer of BDO Puerto Rico, P.S.C. of past Partnership withdrawals, and concluded that his “matching withdrawal of [\$2,784,706.25] was not wrongful, has been acknowledged, and is allocated to Yusuf as part of the extensive accounting prepared by [Fernando Scherrer of BDO Puerto Rico, P.S.C.] to reflect past Partnership withdrawals.”⁵ (Id.)

⁴ In support of his assertion, Yusuf attached an affidavit of Bakir Hussein, dated August 10, 2014 (Opp., Exhibit B); and a table reflecting allocation to Yusuf in the Fernando Scherrer of BDO Puerto Rico, P.S.C.’s report. (Opp., Exhibit D). Yusuf also attached the Court’s April 27, 2015 order relating to United’s motion to withdraw rent and pointed out that, “Judge Brady has already found that an oral acknowledgement of a debt means, for statute of limitation purposes, that the debt is deemed to have arisen or accrued on the date of the acknowledgement.”

⁵ Yusuf pointed out that, historically, “the Partners and their agents (i.e., their sons) would withdraw cash from safes at the Plaza Extra Stores” and “[i]n addition, the Partners and their agents used funds generated by the Plaza Extra Stores for personal expenses.” (Opp., p. 3) Yusuf further pointed out that “[t]he withdrawals and payments for personal expenses were supposed to be done on the ‘honor system,’ which relied upon each Partner and their

Yusuf also argued that since various transactions identified and allocated by Fernando Scherrer of BDO Puerto Rico, P.S.C. are in dispute, “it is Yusuf’s position that further discovery is needed as to these claims as well as any accounting claims that Hamed asserts involving transactions occurring on or after September 17, 2006 and that review of a single transaction, viewed in isolation is not appropriate and cannot be ruled upon individually.” (Id., at p. 4) In conclusion, Yusuf contended that he “acknowledged [\$2,784,706.25] withdrawal, it is charged against his account and is properly dealt with as part of the cumulative reconciliation, which, at this point, ultimately has the Hameds owing the Yusufs” and “[h]ence, this transaction, which occurred in 2012, is disputed and requires further discovery...[and] not ripe for resolution at this point.” (Id., at p. 6) As such, Yusuf requested the Master to deny Hamed’s motion and grant additional discovery as to this claim. (Id., at p. 7)

In his reply, Hamed simply pointed out that Yusuf conceded that “there is no dispute that Yusufs account should be charged with this withdrawal.” (Reply, p. 2) Hamed argued that “Yusuf’s argument that his off-set claims of \$1.6 million from 1996 is a valid claim has already been rejected in Judge Brady’s ‘Laches opinion’” and that since “this claim is now conceded as being due...nothing further is needed to enter an order on Hamed’s Claim [No.] H-2 for \$2,784,706.25 plus \$1,305.988 in statutory interest from August 15, 2012.” (Id.)

agents to disclose to the other Partner, via ‘tickets’ or receipts left in the store safes, when withdrawals were made or personal expenses were paid from Partnership funds” and that “[o]ccasionally, the Partners would reconcile the various withdrawals and expenses between them.” (Id.) Yusuf claimed that “[u]nder the Original Claims, Yusuf calculated that \$9,670,675.36 should be awarded to him to equalize the distributions between the partners so that both Partners have equal distributions of \$18,820,989.98” but “[s]ubsequent to the Limitation Order limiting the accounting claims to those transactions occurring on or after September 17, 2006, [Fernando Scherrer of BDO Puerto Rico, P.S.C.] adjusted their calculations to reflect only transactions from that date forward.” (Id., at pp. 3-4) Yusuf further claimed that “[a]s per the revised calculations, Yusuf contends that Hamed received \$5,099,638.44 more than Yusuf for the defined period” and “[a]s a result of these amended calculations, Yusuf contends that \$2,549,819.22 should be awarded to him to equalize the distributions between the Partners for the disparity in distributions from September 17, 2006 forward so that both Partners have equal distributions.” (Id., at p. 4)

DISCUSSION

A. The Court's Previous Rulings

On January 9, 2013, Hamed filed an emergency motion and memorandum to renew his September 18, 2012 application for a temporary restraining order. On April 25, 2013, the Court entered a memorandum opinion (hereinafter "April 25, 2013 Memorandum Opinion") whereby the Court stated that the following statement of issues:

By his Verified Complaint, Plaintiff [Hamed] alleges that Defendants [Yusuf and United], acting personally and through authorized agents, committed several unilateral acts in contravention of the partnership relationship between [Hamed] and [Yusuf] and established understandings and agreements the parties. [Hamed] avers that those acts threaten the businesses and his interests in the businesses established by the partnership as a result of those agreements. Accordingly, [Hamed] demands injunctive and declaratory relief to determine the status of the parties' relationships and the framework under which they must conduct their business operations in light of those relationships. (April 25, 2013 Memorandum Opinion, p. 2)

The Court, "[u]pon the review of the parties' case and controversy, submission and presented evidence, the Court ma[de] the following findings of fact", *inter alia*, in its April 25, 2013 Memorandum Opinion:

35. On or about August 15, 2012, Yusuf wrote a check signed by himself and his son Mahar Yusuf and made payment to United in the amount of \$2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection of Waleed Hamed on behalf of Plaintiff and the Hamed family, who claimed that, among other objections, the unilateral withdrawal violated the terms of the District Court's restraining order in the Criminal Action, *Tr. 246:1-250:250:14, Jan. 25, 2014; Pl. Group Ex. 13*.

36. On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Major Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business, but that none of the funds were used to purchase properties overseas. *Tr. 250:2-251:15, Jan. 25, 2013; Tr. 118:12-120:12, Jan. 31, 2013*. (April 25, 2013 Memorandum Opinion, p. 10)

Thereafter, the Court considered "the four factors required for the issuance of a preliminary injunction *in seriatim*, and ma[de] the following conclusions of law" as to each of the four

factors:⁶ (1) the movant has shown a reasonable probability of success on the merits: “[Hamed’s] has demonstrated a reasonable probability that he will succeed on the merits of his claim as to the existence of a partnership between himself and Yusef [sic] with regard to the three Plaza Extra stores”; (2) the movant will be irreparably injured by the denial of the relief: “[Hamed] has met his burden of establishing irreparable injury if injunctive relief is not granted”; (3) granting preliminary will not result in even greater harm to the nonmoving party: “[t]he relief sought and the relief to be imposed does not deprive Yusuf of his statutory partnership rights to equal management and control of the business,” that “[r]ather, it simply assures that Hamed is not deprived of the same legal rights to which he is entitled” and that “[t]he relief sought and granted to provide equal access to all aspects of the business will not harm [Yusuf and United] more than the denial of such relief harms [Hamed]; and (4) granting the preliminary relief will be in the public interest: “[t]he public interest is best served by the continued success of Plaza Extra Supermarkets or, in the alternative, by the orderly dissolution or winding down of the business relationship of the parties pursuant to their own agreement” and that “[t]he public interest is served by the continued employment of 600 Virgin Islands and the continuity of this Virgin Island institution operated according to law and their agreement.” (April 25, 2013 Memorandum Opinion, pp. 13-22) At the end of the Court’s analysis, the Court entered an order granting Hamed’s emergency motion to renew his September 18, 2012

⁶ The Court noted in its April 25, 2013 Memorandum Opinion that:

Although this matter is before the Court on [Hamed’s] Renewed Motion that seeks a temporary restraining order, the parties agree that following the full evidentiary hearing conducted, the relief Plaintiff seeks is a preliminary injunction pursuant to Fed. R. Civ. P. 65(a). The Court cannot issue a preliminary injunction unless on the basis of the evidence on the record, [Hamed] prevails as to each of the four factors recently delineated by the Virgin Islands Supreme Court in *Petrus*, namely: (1) the movant has shown a reasonable probability of success on the merits; (2) the movant will be irreparably injured by the denial of the relief; (3) granting preliminary will not result in even greater harm to the nonmoving party; and (4) granting the preliminary relief will be in the public interest. 56 V.I. at 554 (April 25, 2013 Memorandum Opinion, p. 13)

application for a temporary restraining order, or in the alternative, preliminary injunction, whereby the Court ordered as follows:

ORDERED that the operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, without unilateral action by either party, or representative(s), affecting the management employees, methods, procedures and operations.

ORDERED that no funds will be disbursed from supermarket operating accounts without the mutual consent of Hamed and Yusuf (or designated representative(s)).

ORDERED that all checks from all Plaza Extra Supermarket operating accounts will require two signatures, one of a designated representative of Hamed and the other of Yusuf or a designated representative of Yusuf.

ORDERED that a copy of this Order shall be provided to the depository banks where all Plaza Extra Supermarket operating accounts are held.

ORDERED that Plaintiff [Hamed] shall forthwith file a bond in the amount of Twenty-Five Thousand Dollars (\$25,000.00) with the Clerk of the Court, and shall provide notice of the posting to Defendants [Yusuf and United]. (Plaintiff's interest in the "profits" accounts of the business now held at Banco Popular Securities shall serve as additional security to pay any costs and damages incurred by Defendants if found to have been wrongfully enjoined.) (April 25, 2013 order)

On November 7, 2014, the Court entered an order whereby the Court granted Hamed's renewed motion for partial summary judgment as to the existence of a partnership, found and declared "that partnership was formed in 1986 by the oral agreement between Plaintiff [Hamed] and Defendant Yusuf for the ownership and operation of the three Plaza Extra Stores, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities" and that Plaintiff [Hamed] may properly maintain this action against Defendant Yusuf for legal and equitable relief to enforce his rights under the parties' partnership agreement and the Uniform Partnership Act." (Nov. 7, 2014, pp. 2-3)

Unlike what Hamed argued in his motion, the Court did not rule in his favor as to Yusuf's withdrawal of \$2,784,706.25 from the Partnership Fund. In its April 25, 2013

Memorandum Opinion, the Court merely acknowledged that Yusuf unilaterally withdrew \$2,784,706.25 from the Partnership Fund. The Court never made a ruling as to the appropriateness of Yusuf's withdrawal of \$2,784,706.25 from the Partnership Fund as a distribution. As such, Hamed cannot claim that the Court already ruled on Hamed Claim No. H-2 in its April 25, 2013 Memorandum Opinion and Order.

B. Yusuf's Withdrawal of \$2,784,706.25 from the Partnership Fund

Here, Yusuf did not dispute that he withdrew \$2,784,706.25 from the Partnership Fund. *See Opp.*, p. 2 (“there is no dispute that Yusuf’s account should be charged with the withdrawal [of \$2,784,706.25]”); *Id.*, at p. 6 (“Yusuf has acknowledged the \$2.7 million withdrawal...”). Instead, Yusuf argued that his withdrawal of \$2,784,706.25 from the Partnership Fund was justified because of his “entitlement to the [\$2,784,706.25] as a matching withdrawal to reconcile certain corresponding past withdrawals taken by Hamed,” including “\$1.6 million in acknowledged withdrawals removed by the Hameds from the Plaza Extra stores, \$44,355.50 and \$44,696.00 to off-set Waleed Hamed’s unilateral withdrawal of all the funds in the two bank accounts, one in St. Maarten and one at Cairo Amman Bank in 2012, together with receipts evidencing additional Hamed withdrawals totaling [\$2,784,706.25].” *See Opp.*, p. 2; *Id.*, at p. 6 (“Yusuf has acknowledged the \$2.7 million withdrawal, it is charged against his account and is properly dealt with as part of the cumulative reconciliation...”).

In other words, Yusuf withdrew \$2,784,706.25 from the Partnership to allegedly equalize the distributions between the Partners based on the expert report prepared by Fernando Scherrer of BDO Puerto Rico, P.S.C.; Yusuf did not withdraw \$2,784,706.25 from the Partnership to fund personal expenses.⁷ As such, the Master finds it premature to grant or deny

⁷ As to money taken by Partner to pay for personal expenses, the Master has previously pointed out in his order addressing Hamed Claim No. H-3 (Partnership funds in the amount of \$504,591.03 that Yusuf paid to his counsel, Fuerst Ittleman David & Joseph, PL, from September 2012 to April 2013) that:

this motion at this juncture. There are currently a few other motions pending that may bring forth more evidence regarding Partnership distributions, including but not limited to Hamed's motion to preclude Yusuf's claims prior to September 17, 2006, including but not limited to Yusuf's claim for Hamed's withdrawal of \$1.6 million from the Partnership fund and Hamed's motion to strike Yusuf "revised BDO report" claims. Accordingly, the Master will hold in abeyance his ruling on Hamed's instant motion.

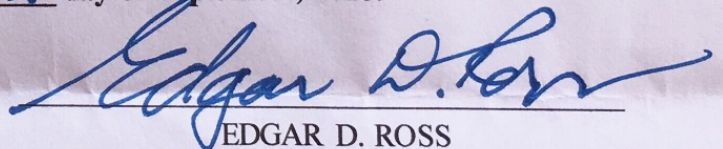
CONCLUSION

Based on the foregoing, the Master will hold in abeyance his ruling on Hamed's motion as to Hamed Claim No. H-2: Partnership fund in the amount of \$2,784,706.25 that Yusuf unilaterally withdrawn in 2012. Accordingly, it is hereby:

ORDERED that Hamed's motion as to Hamed Claim No. H-2: Partnership fund in the amount of \$2,784,706.25 that Yusuf unilaterally withdrawn in 2012, is hereby **HELD IN ABEYANCE** pending review of relevant briefs. It is further:

ORDERED that Parties may continue with discovery in connection with Hamed Claim No. H-2 in accordance with the joint discovery and scheduling plan.

DONE and so ORDERED this 12th day of September, 2018.



EDGAR D. ROSS

Special Master

"...the Master finds that there should be no offset between the final amounts Hamed and Yusuf are found to owe to the Partnership because the money is owed to the Partnership and not owed to each other. Furthermore, the Final Wind Up Plan provides that the Claims Reserve Account will be funded by "any Litigation Recovery realized" and did not include any offsets as Yusuf argued in his opposition." (July 12, 2018 Order)