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 Hamed's motion for reconsideration of the Master's September 14, 2018 order as to Hamed Claim No. H-2: Partnership fund in the amount of $2,784,706.25 that Yusuf unilaterally withdrawn in 2012, filed on September 14, 2018.

BACKGROUND

On September 14, 2018, the Master entered an order whereby the Master found that:

> 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. (Sept. 14, 2018 Order, pp. 7-8)
> …
> 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 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. (Id., at p. 8)

[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:

> "…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)

As such, the Master ordered that: (1) Hamed's motion as to Hamed Claim No. H-2 is held in abeyance pending review of relevant briefs; and (2) Parties may continue with discovery in connection with Hamed Claim No. H-2 in accordance with the joint discovery and scheduling plan. (Id., at p. 9)

DISCUSSION

In his motion, Hamed argued that the Master's September 14, 2018 order "is based solely and completely on a single error of law" – "He misreads the Court's April 25, 2013 order as to the use to which Yusuf put the $2.8 million at issue – and thus, mistakes that Court's clear an [sic] unequivocal holding" and that "Judge Brady EXPLICITLY FOUND AND HELD that Yusuf both took and personally used the funds for his own totally unrelated businesses." (Motion, p. 2) (Emphasis in original). More specifically, Hamed argued that the following two statements in the Master's September 14, 2018 order is "totally incorrect both as a matter of fact and as a matter of law": (Id.)

> 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.[1] As such, the Master finds it premature…
>
> and
>
> 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.

Hamed further argued that "Judge Brady explicitly found that the Yusuf's not only used the funds for non-partnership purchases for Yusuf's other, totally unrelated businesses (including a Yusuf mattress business) – but that the Yusufs had lied to the Court in testimony to make it

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[1] 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:

> "…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)

look like the funds were used for valid purchases."[2] (Id.) (Emphasis omitted) Thus, Hamed concluded that "the Master relied on totally false factual statements in the instant Yusuf briefs on this – that directly contradict Judge Brady's findings and holding on this exact point." (Id., at p. 3) Furthermore, Hamed noted that "any offsetting claims to the $1.6 million or other amounts will be separate determined in their own merits as they have already been made and fully laid out as independent Yusuf claims Y-7, Y-9 and Y-10." (Id.) As such, Hamed requested the Master to reconsider its September 14, 2018 order and enter an order for Hamed. (Id.)

The Master finds Hamed's argument unpersuasive. First, in its April 25, 2018 memorandum opinion, the Court did not address the issue of Partnership distribution calculation. In other words, the Court did not address the issue as to whether $2,784,706.25 was a proper Partnership distribution to Yusuf. Instead, the Court merely acknowledged that Yusuf unilaterally withdrew $2,784,706.25 from the Partnership. 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. Thus, it is incorrect for Hamed to argue that the Court made a ruling in his favor as to $2,784,706.25 in the Court's April 25, 2018 order. Second, as to what Yusuf did with $2,784,706.25 thereafter, it is of no consequence here because assuming, arguendo, that $2,784,706.25 was a proper Partnership distribution to Yusuf, then it becomes the personal funds of Yusuf and Yusuf is free to spend his personal funds however he sees fit. As the Master pointed out in his September 14, 2018 order, Yusuf did not use Partnership money to fund

[2] Hamed quoted the following section of the Court's April 25, 2013 memorandum opinion:

> 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, Majar 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)

personal expenses, like Yusuf's personal attorney's fees, etc. (Sept. 14, 2018 Order, p. 8) The distinction here is that $2,784,706.25 was a Partnership distribution to Yusuf, and was, therefore, Yusuf's personal fund, and not Partnership fund. The Master would like to point out that he has yet to rule on whether this amount—$2,784,706.25—is the correct calculation of Partnership contribution to Yusuf. The Master simply found in its September 14, 2018 order that it is premature to grant or deny Hamed's motion as to Hamed Claim No. H-2 at this juncture. (Id., at pp. 8-9) Lastly, unlike what Hamed argued, the alleged offsetting claims have not been ruled on on their own merits. As the Master also pointed out in his September 14, 2018 order, "[t]here 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." (Id., at p. 9) Accordingly, the Master will deny Hamed's instant motion for reconsideration.

CONCLUSION

Based on the foregoing, the Master will deny Hamed's motion for reconsideration of the Master's September 14, 2018 order as to Hamed Claim No. H-2. Accordingly, it is hereby:

ORDERED that Hamed's motion for reconsideration of the Master's September 14, 2018 order as to Hamed Claim No. H-2 is **DENIED**.

DONE and so ORDERED this 24th **day of September, 2018.**

EDGAR D. ROSS
Special Master