

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants,

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

Consolidated with

Case No.: ST-18-CV-219

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff,*

vs.

UNITED CORPORATION, *Defendant.*

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff*

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*
Defendants.

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,
Defendant.

**HAMED'S OPPOSITION TO YUSUF'S MOTION FOR RECONSIDERATION
OF ORDER STRIKING \$1.6 MILLION IN PRE-2006 "CHITS"**

Introduction

Not only is Yusuf's motion for reconsideration wrong and based on a misstatement of the facts – his misstatement of the facts is so blatant, so calculated, that it should be sanctioned – and the cost for Hamed's attorneys' time should be awarded.

Yusuf's motion relies on the omission of a full answer – he quotes one phrase of an interrogatory answer out of context, *intentionally* changing the meaning of the answer. This motion is nothing more than a blatant lie to the Special Master and should not go unpunished.

Facts

The only relevant fact here is that Hamed filed full interrogatory responses to discovery – something that Yusuf largely neglected to do. In his answer regarding the \$1.6 million in “chits” Hamed told the whole story of what had happened, including the facts that:

1. The parties DID do calculations for one of three stores that added up to \$1.6 million,
2. BUT....that this was just a partial calculation and that it did not take into account the other two stores.....and thus **did not reflect a DEBT at the time**.

To achieve this being an “admitted” “debt” in the quote below from Yusuf's motion, Yusuf excludes and does not discuss the balance of the interrogatory answer. The answer never used the term “debt” and not only does not acknowledge a debt, but repeatedly and specifically denied one existed!

The following quote is what Yusuf states about Hamed's discovery response – intentionally leaving out the most important parts:

The Master distinguished Judge Brady's grant of summary judgment on United's rent claim from the instant motion on the basis that the evidence of debt acknowledgment in the former motion consisted of "Hamed's own

admission at [his] deposition that the Partnership owes United rent." Id. at 6. The Master stated that here, by contrast, "Yusuf did not provide any evidence of Waleed Hamed personally admitting to [the 1,600,000] debt," and, "this alleged admission is disputed by Waleed Hamed." Id. at 6. In so distinguishing Judge Brady's rent ruling, **the Master overlooked Waleed Hamed's sworn interrogatory answers that are tantamount to an admission by Waleed Hamed that the \$1.6 million dollar debt to Mr. Yusuf was a real one** (albeit one that Hamed contends is unenforceable). Specifically, in a May 15, 2018 answer to an interrogatory, Waleed Hamed stated that "it is true that in 1999 Mafi Hamed and Maher Yusuf met and reconciled the outstanding chits related to 50/50 distribution of the Sion Farm Plaza Extra-East grocery store profits, showing \$1.6 million was due to the Yusuf's to true up the differences in the 50/50 2 profit withdrawals at that time for that store . . ." See Exhibit A, excerpt from 'Waleed Hamed's May 15, 2018 Answers to Interrogatories. Waleed Hamed's interrogatory answer is every bit as much an acknowledgement of a debt as was Mohammad Hamed's deposition testimony an acknowledgement of the rent debt in the motion for summary judgment on United's rent claim. The Master should accordingly revisit his finding that Judge Brady's ruling on the rent claim is inapplicable to Yusufs \$1.6 million dollar debt claim. (Emphasis added.)

Utter nonsense. Contrast that with what Waleed Hamed actually did say about that \$1.6 million – which directly proves the Special Master's point in the Order – that these are much disputed factual claims whose truth in the undocumented past can never really be unraveled because the Partner who was "in charge" and "kept the books" has no records and a selective memory. See attached **Exhibit A**, emphasis is in the original.

Hamed Response: There are multiple problems with this accounting, which was recently supplied to my lawyers after repeated requests that it be provided. While this investigation and review continues, which will be the subject of an expert accounting report, several problems have already been noted. First, it states that \$1.6 million was due and owing at the time of the removal of the \$2.7 million. That claim is time barred. Moreover, while it is true that in 1999 Mafi Hamed and Maher Yusuf met and reconciled the outstanding chits related to 50/50 distribution of the Sion Farm grocery store profits, showing \$1.6 million was due to the Yusufs to "true up" the differences in the 50/50 profit withdrawals at that time for that store, **there are other offsets to that amount. For example, there were amounts to "true up" from the other stores as well.** Likewise, after that time, Fathi Yusuf and his sons took funds that were required to be offset against that amount, as he well knows. . . .(Emphasis added.)

What Mohammad Hamed stated, at page 102-103 of his 3/31-4/1, **2014** deposition was:

n.9 Q. (Mr. Hodges) And as I understand it, as of today, In.10 you -- you are still not aware of the facts and In.11 circumstances surrounding the \$1.6 million that's referenced In.12 in Exhibit No. 3, is that right? In.13 MR. HARTMANN: Object. Asked and answered. In.14 MR. HODGES: Show him the letter while In.15 you're -- In.16 THE INTERPRETER: This one? In.17 MR. HODGES: No, the 1.6. In.18 THE INTERPRETER: Right. In.19 MR. HODGES: You want me to ask the question In.20 again? In.21 THE INTERPRETER: Please. * * * In.3 Q. (Mr. Hodges) Okay. If you would point out the In.4 1.6 million on Exhibit 3? And the -- the words to the In.5 left -- left of it, Past confirmed withdrawal? In.6 **Okay. So, Mr. Hamed, as -- as you're sitting In.7 here today, you are not aware of any of the facts In.8 surrounding the, quote, Past confirmed withdrawals of In.9 \$1.6 million, is that correct?** In.10 MR. HARTMANN: Object. Asked and answered. In.11 THE INTERPRETER: Okay. In.12 **He says no.** In.13 MR. HODGES: Okay. I guess that's a good In.14 time to break, then.

This was just one small part of the relationship between the parties that was **partially accounted at one time, and thus was incomplete.** Mike Yusuf testified that Plaza Extra - East receipts were tallied between the Hameds and the Yusufs, showing that Hameds had taken out approximately \$1.6 million more than the Yusufs prior to the 2001 FBI raid. However, Mike Yusuf also testified that the reconciliation did not include St. Thomas and it did not include all of the Plaza Extra-East receipts. See, 30(b)(6) Deposition of United Corporation through its representative, Mike Yusuf, *Hamed v Yusuf*, SX-12-CV-370, April 3, 2014, pp. 64-68. The \$1.6 million was just one facet of various claims between the Yusufs (not United) and the Hameds at that time. **To get what was "owed" as an effect of ALL ACCOUNTS at that time, one would have to know the similar amounts from the other operations at the same time.** Thus, Hamed objects to this amount because 1) it is outside of the applicable timeframe for claims and 2) it is clear that a full accounting prior to the FBI raid was not done, thus making the \$1.6 million one data point in the various claims between the Partners.

ARGUMENT

1. The Alleged Admission of a Debt

There is no admission of a debt in this response, unless one totally ignores the full answer. The Special Master missed nothing – this is Yusuf (again) taking things out of

context and then just plain lying about what was said, what actually happened and what the record shows.

The Hamed response has NOTHING TO DO with the sort of exception that Judge Brady pointed to. The effort to take one phrase of a sentence in an answer not discuss the balance of the thought is a lie by conscious omission. It should be sanctioned.

2. The other Yusuf non-argument: Laches

Yusuf's "laches" argument is directly contrary to what Judge Brady held, and mischaracterizes what the Special Master held. Judge Brady applied laches to this specific set of facts – in finding that exactly this sort of pre-2006 self-dealing back-and-forth was impenetrable, and the Court not only could not disentangle these arguments, but **would not** do so.

Conclusion

Yusuf mischaracterizes evidence, lies about what was said by omitting full responses, and falsely cites Judge Brady's and the Special Master's prior holdings. The motion should be denied and costs for the opposition allowed.

Dated: October 16, 2018



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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of October, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

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and Hamed is unclear where BDO's came up with an amount of \$1,778,103.00. The amount in the letter refers to "Past Confirmed Withdrawals" as \$1,600,000.00, and that is the amount referenced below. See, HAMD200104-HAMD200104.pdf. In any event, Hamed does not owe the \$1.6 or \$1.77 million.

Hamed stated in Plaintiff's Response to Defendant United's First Set of Interrogatories to Plaintiff Hamed, December 23, 2013, *Hamed v Yusuf*, 12-SX-CV-370, as follows:

Describe in detail what objections you have to the accounting provided to you by Fathi Yusuf regarding the \$2.7 million dollars amount that was withdrawn by United Corporation in August of 2013 as an offset to your previous withdrawals and identify all persons with knowledge of any such facts and all documents which support your answer to this interrogatory.



Hamed Response: There are multiple problems with this accounting, which was recently supplied to my lawyers after repeated requests that it be provided. While this investigation and review continues, which will be the subject of an expert accounting report, several problems have already been noted.

First, it states that \$1.6 million was due and owing at the time of the removal of the \$2.7 million. That claim is time barred. Moreover, while it is true that in 1999 Mafi Hamed and Maher Yusuf met and reconciled the outstanding chits related to 50/50 distribution of the Sion Farm grocery store profits, showing \$1.6 million was due to the Yusufs to "true up" the differences in the 50/50 profit withdrawals at that time for that store, **there are other off-sets to that amount. For example, there were amounts to "true up" from the other stores as well.** Likewise, after that time, Fathi Yusuf and his sons took funds that were required to be offset against that amount, as he well knows. . . .(Emphasis added.)

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In.7 **here today, you are not aware of any of the facts**
In.8 **surrounding the, quote, Past confirmed withdrawals of**
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