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

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| **MOHAMMAD HAMED, BY HIS AUTHORIZED AGENT WALEED HAMED,**<br><br>PLAINTIFF/COUNTERCLAIM DEFENDANT,<br><br>**V.**<br><br>**FATHI YUSUF AND UNITED CORPORATION,**<br><br>DEFENDANTS/COUNTERCLAIMANTS,<br><br>**V.**<br><br>**WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, AND PLESSEN ENTERPRISES, INC.,**<br><br>COUNTERCLAIM DEFENDANTS. | **Civil No. SX-12-CV-370**<br><br>**ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, PARTNERSHIP DISSOLUTION, WIND UP, and ACCOUNTING** |
| **WALEED HAMED, AS EXECUTOR OF THE ESTATE OF MOHAMMAD HAMED,**<br><br>PLAINTIFF,<br><br>**V.**<br><br>**UNITED CORPORATION,**<br><br>DEFENDANT. | CONSOLIDATED WITH<br><br>**Civil No. SX-14-CV-287**<br><br>**ACTION FOR DAMAGES and DECLARATORY JUDGMENT** |
| **MOHAMMAD HAMED,**<br><br>PLAINTIFF,<br><br>**V.**<br><br>**FATHI YUSUF,**<br><br>DEFENDANT. | CONSOLIDATED WITH<br><br>**Civil No. SX-14-CV-378**<br><br>**ACTION FOR DEBT and CONVERSION** |

# ORDER

**THIS MATTER** came before the Special Master (hereinafter "Master") on Yusuf and United's motion for a letter rogatory as to MRW Consulting Group, LLP.[1] Yusuf filed an objection and Hamed filed a reply thereafter.

## BACKGROUND

On May 31, 2018, Yusuf and United filed a notice of intent to serve subpoenas on six professionals who provided legal and accounting services in the criminal case, *United States v. Yusuf, et al.*, 1:05-CR-15-RLF-GWB (hereinafter "Criminal Case"). MRW Consulting Group, LLP (hereinafter "MRW"), a Florida forensic accounting consult, was one of the six professionals. On June 4, 2018, Hamed filed a notice of "no privilege" assertion regarding the Yusuf deposition notices/subpoena to criminal counsel as to "Joint Defense Agreement" fees (hereinafter "Notice of No Privilege Assertion"). In his Notice of No Privilege Assertion, Hamed stated that he "asserts no privilege with regard to the materials for work done during the pendency of the Joint Defense Agreement"—which is from September 17, 2006 to September 20, 2012,[2] and requested Yusuf and United to revise the subpoena by changing "for the period September 17, 2006 to the present" to "for the period September 17, 2006 to September 20, 2012." (Ntc. Of No Privilege Assertion, p. 4) (Emphasis omitted). On June 18, 2018, Yusuf and United filed this instant motion.

## DISCUSSION

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[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) Subsequently, the Court entered an order, dated July 21, 2017, whereby the Court ordered that "the Master is empowered to establish and enforce a plan for conducting further discovery in this matter and to hear and resolve all disputes related thereto." (July 21, 2017 order: Discovery Order") As such, the Master finds that Yusuf and United's instant motion regarding discovery falls within the scope of the Master's role.

[2] Exhibit 1 to Hamed's reply as to Hamed Claim No. H-3 - Declaration of Gordon Rhea, Esq., dated January 15, 2018, stated that the Joint Defense Agreement was terminated on September 19, 2012. Nevertheless, in their briefs for this instant motion, Parties referred to September 20, 2012 as the termination date for the Joint Defense Agreement. As such, the Master will treat September 20, 2012 as the termination date for the Joint Defense Agreement for the purpose of this order.

In their motion, Yusuf and United argued that they require "certain documents from MRW to support their claims and defenses in this matter" and that "[a] deposition may be later required depending on MRW's production of documents." (Motion, p. 2) Yusuf and United explained that, "[t]he state of Florida has not adopted the Uniform Interstate Depositions and Discovery Act" and thereby, "in order for [Yusuf and United] to serve a valid Florida subpoenas duces tecum on MRW, this Court first must execute a Letter Rogatory requesting the appropriate authority in Broward County, Florida, to issue or permit the issuance of that subpoena." (Id., at pp. 2-3) Yusuf and United pointed out that "[t]his Court is authorized to issue such a Letter Rogatory for a subpoena duces tecum outside the Territory by V.I. Code Ann. tit. 5, §4921(3)." (Id., at p. 3) As such, Yusuf and United requested the Master to issue a Letter Rogatory, attached as Exhibit 1.

In his objection, Hamed made the following argument against the issuance of a Letter Rogatory: (1) Yusuf and United have not specified which claim(s) this discovery relates to, which "makes it impossible for Hamed to adequately respond" (Obj., p. 2); (2) the proposed Letter Rogatory deals with claims involving Yusuf's alleged "special benefits" and is, therefore, stayed pursuant to the Master's May 21, 2018 order (Id., at pp. 2-3); (3) "[i]f Yusuf takes discovery on an issue such as fees that impinges on stayed claims, Hamed is simultaneously stayed from discovery as to the same points on other claims" and this would allow "one party to being conducting discovery while the other cannot" (Id., at p. 4); and (4) "[t]he requested discovery is not limited to avoid violating privilege" because Yusuf seeks information for periods after the termination of the Joint Defense Agreement. (Id.) As such, Hamed objected to Yusuf and United's motion for the issuance of a Letter Rogatory.

In their reply, Yusuf and United made the following arguments in response to Hamed's objection: (1) "Hamed has failed to provide the Master with any authority whatsoever that would require such specification [of the claims the subpoena relates to]" (Reply, p. 5); (2)

Hamed also "fail[ed] to explain the logic behind requiring the specification of any claims to a third party such as MRW, which is wholly unfamiliar with Hamed's and Yusuf's respective accounting claims" (Id.); (3) all six professionals identified in Yusuf and United's notice of intent to serve subpoenas performed services and charged fees in connection with the Criminal Case, thus Hamed "could easily deduce that this discovery relates to the Partners' competing claims relating to the professional fees paid in the Criminal Case" (Id.); (4) On June 19, 2018, Yusuf and United filed a response to Hamed's motion for Court's assistance and directions re Special Master' May 21, 2018 order, whereby they made it clear that "Yusuf does not claim and never has claimed to enjoy any special benefits that are not equally available to Hamed" (Id., at pp. 5-6); (5) "While MRW may or may not have been paid fees after that date [September 20, 2012], it is clear that Hamed Claim Nos. H-17, H-154, H-161 and H-163 include fees that postdate September 20, 2012" thus, "[t]o the extent Hamed seeks these fees to be paid by the Partnership or by Yusuf, he cannot assert an [sic] attorney-client or other privilege that precludes discovery of the invoices, letters, emails, and other information that relates to and underlies these fees" (Id., at pp. 6-7); (6) "Even if Hamed could assert a privilege, and he had identified an applicable privilege in his Objection, if he wants post-September 20, 2012 fees to be paid by the Partnership or Yusuf, the privilege must be waived (Id., at p. 7); and (7) Hamed himself argued that "no privilege precludes discovery of this post-September 20, 2012 information" in his motion for a determination of "no-privilege" or to compel waiver or presumption as to Hamed's second motion regarding claim H-3: Yusuf's payments to the Fuerst Law Firm from the Partnership funds, filed on May 23, 2018. (Id., at p. 7)

**A. Quashing or Modifying a Subpoena**

Rule 45 of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 45") governs subpoenas. Rule 45 provides that "[o]n timely motion, the court for the division where the action is pending **must** quash or modify a subpoena that: (i) fails to allow a reasonable time to

comply; (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c); (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or (iv) subjects a person to undue burden." V.I. R. Civ. P. 45(d)(3)(A)(i)-(iii) (Emphasis added). The Master will address each of Hamed's argument in turn to determine whether Yusuf and United's subpoena duces tecum to MRW must be quashed or modified.

**Hamed's Argument #1: Yusuf and United have not specified which claim(s) this discovery relates to, which "makes it impossible for Hamed to adequately respond." (Obj., p. 2)**

Discovery in the Superior Court of the Virgin Islands is governed by the Virgin Islands Rules of Civil Procedure. Rule 26(b) of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 26(b)") governs the scope and limits of discovery. Rule 26(b)(1) provides that "[u]nless 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" and that "[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable." Rule 26 does not require Yusuf and United's to specify which claim(s) this discovery relates to. As such, the Master does not find this argument persuasive.

**Hamed's Argument #2: The proposed Letter Rogatory deals with claims involving Yusuf's alleged "special benefits" and is, therefore, stayed pursuant to the Master's May 21, 2018 order. (Id., at pp. 2-3)**

As noted above, on June 19, 2018, Yusuf and United filed a response to Hamed's motion for Court's assistance and directions re Special Master' May 21, 2018 order, whereby they made it clear that "Yusuf does not claim and never has claimed to enjoy any special benefits that are not equally available to Hamed" (Reply., pp. 5-6). Thereafter, on July 18, 2018, Parties filed a stipulation with the Court whereby Parties stipulated to the following: "All factual findings of the Master shall be deemed final unless a specific objection is timely raised, in which case, the finding objected to may only be reversed by the Court for clear error." As such, this argument is moot because there is not a stay on any of the claims at this time.

**Hamed's Argument #3: "If Yusuf takes discovery on an issue such as fees that impinges on stayed claims, Hamed is simultaneously stayed from discovery as to the same points on other claims" and this would allow "one party to being conducting discovery while the other cannot." (Id., at p. 4)**

Similarly, this argument is moot because there is not a stay on any of the claims at this time.

**Hamed's Argument #4: "The requested discovery is not limited to avoid violating privilege" because Yusuf seeks information for periods after the termination of the Joint Defense Agreement. (Id.)**

According to Hamed's Notice of No Privilege Assertion, Hamed stated that he "asserts no privilege with regard to the materials for work done during the pendency of the Joint Defense Agreement"—which is from September 17, 2006 to September 20, 2012. Thus, the only issue here is whether privilege exists, or is waived, to preclude Yusuf and United's discovery of post-September 20, 2012 information from MRW.[3]

It is interesting to note that Parties have previously dealt with a similar discovery issue when Hamed sought discovery from, *inter alia*, Fuerst Ittleman David & Joseph PL and Attorney Joseph DiRuzzo for testimony and underlying documents for a period of time after the termination of the Joint Defense Agreement. As Yusuf and United pointed out in their reply, Hamed, in his motion for a determination of "no-privilege" or to compel waiver or presumption as to Hamed's second motion regarding Hamed Claim No. H-3: Yusuf's payments to the Fuerst Law Firm from the Partnership funds, filed on May 23, 2018, indicated that he did not believe privilege existed to preclude discovery of post-September 20, 2012 information. Hamed explained that he did not agree "such a privilege exists based on the opinions/orders of the V.I. Superior Court (Brady, J) that (1) Hamed was, at the time of that work, a partner in the Plaza Extra Partnership (aka Hamed-Yusuf Partnership) and (2) that the funds paid were paid

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[3] While Parties argued generally about post-September 20, 2012 information, this motion only relates to Yusuf and United's letter rogatory for MRW. Furthermore, on August 24, 2018, Yusuf and United served a similar, if not identical, subpoena duces tecum on Randall Andreozzi, Esq., Andreozzi Bluestein, LLP, and Hamed did not file an objection in response. As such, this order is limited to Yusuf and United's discovery as to MRW.

from what has been determined to be a Partnership account."[4] (Hamed's May 23, 2018 Motion, p. 4) Subsequently, because Parties filed a stipulation as to Hamed Claim No. H-3: Yusuf's payments to the Fuerst Law Firm from the Partnership funds, the Master never reached the issue as to whether privilege exists, or is waived, to preclude the discovery of post-September 20, 2012 information.

Here, Hamed asserted that privilege exists to preclude Yusuf and United's discovery for post-September 20, 2012 information from MRW.[5] In their reply, Yusuf and United essentially argued that since Hamed Claim Nos. H-17, H-154, H-161 and H-163 include fees that postdate September 20, 2012, Hamed cannot assert attorney-client privilege or other privilege as to post-September 20, 2012 information, and even if he could, the privilege must be waived. According to Hamed's submission of his suggestions as to the further handling of the remaining claims, filed on October 30, 2017, Hamed Claim No. H-17 relates to "Wally Hamed's personal payment of accounting and attorney's fees in the Criminal Case"; Hamed Claim No. H-154 relates to "Attorney and accounting's fees paid by the Partnership for the Criminal Case"; Hamed Claim No. H-161 relates to "Attorney and accounting's fees paid by the Partnership for the Criminal Case – pro-rated from September 17, 2006 forward"; and

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[4] In Hamed's motion for a determination of "no-privilege" or to compel waiver or presumption as to Hamed's second motion regarding claim H-3: Yusuf's payments to the Fuerst Law Firm from the Partnership funds, filed on May 23, 2018, Hamed stated:

> To arrange the necessary *duces tecum* deposition on the out-of-state deponents, Hamed's counsel first emailed and called Attorney Christopher David, a partner in the Fuerst [Law] Firm and an attorney that appeared in this case. **Exhibit 2**. He responded that he cannot provide necessary materials absent a waiver of attorney-client privilege by Yusuf/United. **Exhibit 3**. As those exhibits demonstrate, counsel for Yusuf/United were copied contemporaneously on all of this correspondence so they could see the issues and respond to the Furest [Law] Firm's perception of the need for waiver.[5] Similarly, Attorney DiRuzzo responded in an email joining in the Fuerst [Law Firm] position, copied to [Dudley Topper, Feuerzeig LLP].
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> [5] Hamed does not agree that such a privilege exists based on the opinions/orders of the V.I. Superior Court (Brady, J) that (1) Hamed was, at the time of that work, a partner in the Plaza Extra Partnership (aka Hamed-Yusuf Partnership) and (2) that the funds paid were paid from what has been determined to be a Partnership account. However he understands the caution of Florida counsel in dealing with [Yusuf and United] and their present counsel. (Hamed's May 23, 2018 Motion, p. 4)

[5] *Supra*, footnote 3.

Hamed Claim No. H-163 relates to "Loss of assets due to wrongful dissolution – attorney's fees." It is conceivable that Hamed, for his own claims and defenses, may similarly need to propound discovery on MRW for post-September 20, 2012 information. Thus, at this time, the Master will order Parties to meet and confer in good faith on discovery as to post-September 20, 2012 information from MRW, and file a joint report thereafter and advise the Master: (1) whether all discovery issues as to post-September 20, 2012 information from MRW have been resolved; and (2) if not, list the remaining discovery issues as to post-September 20, 2012 information from MRW with Parties' arguments included.

## CONCLUSION

Based on the foregoing, the Master will grant Yusuf and United's motion for a letter rogatory as to MRW but only for information during the pendency of the Joint Defense Agreement—from September 17, 2006 to September 20, 2012. The Master will reserve ruling on Yusuf and United's motion for a letter rogatory as to MRW for post-September 20, 2012 information pending receipt of Parties joint report after they meet and confer in good faith. Accordingly, it is hereby:

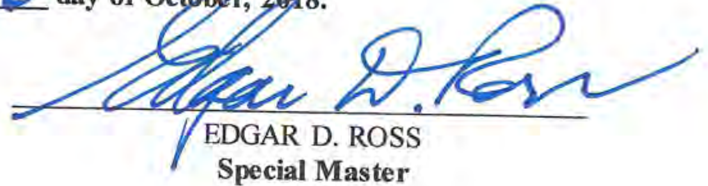
**ORDERED** that Yusuf and United's motion for a letter rogatory as to MRW is **GRANTED IN PART**: granted only for information during the pendency of the Joint Defense Agreement—from September 17, 2006 to September 20, 2012. Yusuf and United shall revise their proposed letter rogatory as to MRW by changing "for the period September 17, 2006 to the present" to "for the period September 17, 2006 to September 20, 2012" and re-file. It is further:

**ORDERED** that Parties shall meet and confer in good faith on discovery as to post-September 20, 2012 information from MRW. **And** it is further:

**ORDERED** that Parties shall file a joint report thereafter and advise the Master: (1) whether all discovery issues as to post-September 20, 2012 information from MRW have been

resolved; and (2) if not, list the remaining discovery issues as to post-September 20, 2012 information from MRW with Parties' arguments included. The Master shall reserve ruling on Yusuf and United's motion for a letter rogatory as to post-September 20, 2012 information from MRW pending receipt of Parties' joint report.

**DONE and so ORDERED this 16th day of October, 2018.**



EDGAR D. ROSS
**Special Master**