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 Yusuf's motion for reconsideration of the Master's September 24, 2018 order granting and striking Hamed's motion to preclude Yusuf's claim for $1,600,000.00 of the $1,778,103.00, filed on October 15, 2018.[1] Hamed filed an opposition thereafter.

BACKGROUND

On September 24, 2018, the Master entered an order whereby the Master, *inter alia*, granted Hamed's motion to preclude Yusuf's claim for $1,600,000.00 of the $1,778,103.00 and struck Yusuf's claim for $1,600,000.00 (hereinafter "September 24, 2018 Order"). The September 24, 2018 Order provided, in relevant part:[2]

> **A. $1,600,000.00**
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> Here, Yusuf admitted that the debt of $1,600,000.00 owed by Hamed to Yusuf was tabulated in 2001. The Court clearly ordered in its Limitation Order that only claims "based upon transactions that occurred on or after September 17, 2006" will be considered, regardless of whether it is disputed or undisputed since "it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed" and "even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006". *Hamed*, 2017 V.I. LEXIS 114 at *44. Thus, this portion—$1,600,000.00—of Yusuf's claim for $1,778,103.00 is a pre-September 17, 2006 since it was tabulated in 2001.
>
> Yusuf argued that because Waleed Hamed acknowledged this debt in 2012, it should not be stricken pursuant to the Court's April 27, 2015 order re payment of rent (hereinafter "Rent Order") because "Judge Brady has already found in a prior ruling that an oral acknowledgement of a debt tolls the 6-year statute of limitation for contract

[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 Yusuf's instant motion for reconsideration of the Master's September 24, 2018 order granting and striking Hamed's motion to preclude Yusuf's claim for $1,600,000.00 of the $1,778,103.00 falls within the scope of the Master's report and recommendation given that Yusuf's claim is an alleged debt owed by Hamed to the Partnership (or in other words, potential Partnership Assets).

[2] Since Yusuf's motion for reconsideration of the Master's September 24, 2018 Order only requested the Master to reconsider the part of the September 24, 2018 Order related to Yusuf's claim for $1,600,000.00 of the $1,778,103.00, this order is limited to the reconsideration of the September 24, 2018 Order granting and striking Yusuf's claim for $1,600,000.00.

claims, so that the debt is deemed to have accrued on the date it was acknowledged – rather than the date the debt originally arose." (Opp., at p. 4) The Master finds Yusuf's argument unpersuasive. First, when the Court ruled on the issue of payment of rent, the Court cited specifically to Hamed's own admission at Hamed's deposition that the Partnership owes United rent. (Rent Order, p. 4) Here, Yusuf merely submitted a copy of Bakir Hussein's Affidavit, dated August 10, 2014, whereby Bikir Hussein declared that he heard Waleed Hamed admitting to this debt;[2] Yusuf did not provide any evidence of Waleed Hamed personally admitting to this debt. Additionally, this alleged admission is disputed by Waleed Hamed. Second, this is exactly the type of claims the Court ordered to bar by its Limitation Order—claims based upon transactions that occurred before September 17, 2006. Finally, in its Limitation Order, the Court "conclude[d] that consideration of the principles underlying the doctrine of laches strongly supports the imposition of an equitable limitation on the submission of § 71(a) claims in the accounting and distribution phase of the Wind Up Plan" and explained that "the Court exercise[d] the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint." *Hamed*, 2017 V.I. LEXIS 114 at *41, 44. Thus, because the Court's ruling was based on the doctrine of laches, regardless of whether the applicable statute of limitations has or has not expired, Yusuf's claim for $1,600,000.00 is barred by laches. *See In re the Suspension of Joseph*, 60 V.I. 540, 558-59 (V.I., 2014) (citations omitted) ("[l]aches … may be found even if the applicable statute of limitations has not yet run"). As such, the Master will grant Hamed's motion as to $1,600,000.00 of Yusuf's claim for $1,778,103.00.

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[2] Bakir Hussein's Affidavit provided, in relevant part:

9. In several open meetings, Mr. Yusuf said that the Hameds took $1.6 million more than the Yusufs. Waleed Hamed admitted that he took the excess $1.6 million dollars, which is the difference between the $2.9 Million taken by the Hameds and the $1.3 Million taken by the Yusufs. In addition to the $1.6 million dollars which I heard Waleed Hamed admit to, both Waleed Hamed and Fathi Yusuf both agreed to additional withdrawals by the Yusufs provided that the Yusufs produced receipts to show proof of the additional withdrawals.

10. I personally heard Waleed Hamed admission to owing $1.6 million dollars to the Yusufs as a result of excess withdrawals by the Hameds, and that the receipts for that amount were not available because they were destroyed prior to the raid by the U.S. Government.

DISCUSSION

In his motion, Yusuf argued that "[t]he 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'" and that "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.'" (Motion, p. 2) Yusuf pointed out that "[i]n

so distinguishing Judge Brady's rent ruling, the Master overlooked Walleed [sic] Hamed's sworn interrogatory answers that are tantamount to an admission by Waleed Hamed that the $1.6 million dollar [sic] debt to Mr. Yusuf was a real one (albeit one that Hamed contends is unenforceable)." (Id.) Yusuf further pointed out that "[s]pecifically, in a May 15, 2018 answer to an interrogatory, Waleed Hamed stated that 'it is true that in 1999 Mafi Hamed and Maher Ysuuf 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 Yusufs to 'true up' the differences in the 50/50 profit withdrawals at that time for that store…'"[3] (Id., pp. 2-3) Yusuf concluded that, "Waleed Hamed's interrogatory answer is every bit as much an acknowledgment of a debt as was Mohammed Hamed's deposition testimony an acknowledgment of the rent debt in the motion for summary judgment on United's rent claim." (Id., p. 3) Yusuf also argued that the Master's September 24, 2018 Order failed to recognize "that it is only '[i]n very rare cases' that 'the doctrine of laches may be applied when the statute of limitations has not run'"[4] and that "regardless of whether a court decides a statute of limitations defense or a laches defense, it necessarily must determine when the claim in question accrued."[5] (Id.) Yusuf pointed out that "[i]f the accrual date of a debt claim for statute of limitations purposes is the date the debt was acknowledged, as Judge Brady held, then the accrual date for laches purposes on a debt claim should be no different" and that "[t]here is no

[3] In support of his argument, Yusuf attached as Exhibit A to his motion, pages 31 and 32 of Waleed Hamed's responses to Yusuf's Interrogatories 1-33, dated May 15, 2018.

[4] In support of his argument, Yusuf cited to the following non-U.S. Virgin Islands cases: *Bouman v. Block*, 940 F.2d 1211, 1227 (9th Cir. 1991); and *Federal Express Corporation v. United Staets Postal Service*, 75 F. Supp.2d 807, 811 ("In very rare cases…the doctrine of laches may be applied when the statute of limitations has not run") (citations omitted).

[5] In support of his argument, Yusuf cited to the following non-U.S. Virgin Islands cases: *Cooper v. Diamond M. Company*, 799 F.2d 176, 179 (5th Cir. 1993) (district court erred in finding that laches barred plaintiff's claim for "maintenance and cure" because it mistakenly found that her claim "accrued on the date that [Plaintiff] slipped and fell: April 4, 1979," rather than "April 27, 1983, when she became incapacitated to do a seaman's work"); and *Weber v. Weinberger*, 651 F.Supp. 1379, 1382 (W.D. Mich. 1987) (determining when a claim accrued in order to decide whether it is barred by laches).

principled reason to have one accrual date for statute of limitations purposes and another for laches." (Id., at pp. 3-4) Yusuf concluded out that "the accrual date for laches purposes should be the date Waleed Hamed acknowledged the $1.6 million dollar debt" and "[w]hether that date is in 2012, when Bakir Hussein swore in his affidavit that he heard Waleed Hamed acknowledge the debt, or in 2013, when Waleed Hamed first acknowledged it in an interrogatory answer, or earlier this year, when he reaffirmed that acknowledgment in other interrogatory answers, the date of accrual is well after the September 17, 2006 date set by Judge Brady's laches-based limitation on the accounting claim." (Id., at p. 4) Thus, Yusuf requested the Master to grant his motion for reconsideration and deny Hamed's motion to preclude Yusuf's claim for $1,600,000.00 of the $1,778,103.00.

In his opposition, Hamed argued that Yusuf mis-stated Waleed Hamed's May 15, 2018 interrogatory response because Yusuf omitted Waleed Hamed's full response, and instead, Yusuf "quote[d] one phrase of and [sic] interrogatory answer out of context, intentionally changing the meaning of the answer." (Opp., p. 2) (emphasis omitted) Hamed pointed out that Waleed Hamed's May 15, 2018 answer to an interrogatory "never used the term 'debt' and not only does not acknowledge a debt, but repeatedly and specifically denied one existed!" (Id.) (emphasis omitted) Hamed argued that, in "[c]ontrast that with what Waleed Hamed actually did say about that $1.6 million – which directly proves the Special Master's point in the [September 24, 2018] Order – that these are much disputed factual claims whose truth in the undocumented past can never really unraveled because the Partner who was 'in charge' and 'kept the books' has no records and a selective memory."[6] (Id., at p. 3) Hamed also argued that "Yusuf's 'laches' argument is directly contrary to what Judge Brady held, and mischaracterizes

[6] In support of his argument, Hamed attached as Exhibit A to his opposition, pages 1, 31, and 32 of Waleed Hamed's responses to Yusuf's Interrogatories 1-33, dated May 15, 2018.

what the Special Master held." (Id., at p. 5) Hamed pointed out that "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." (Id.) (emphasis omitted) As such, Hamed requested the Master to deny Yusuf's motion for reconsideration and allows costs for the opposition. (Id.)

Motions for reconsiderations in the Superior Court of the Virgin Islands are governed by the Virgin Islands Rule of Civil Procedure 6-4 (hereinafter "Rule 6-4"). A motion for reconsideration "is not a vehicle for registering disagreement with the court's initial decision, for rearguing matters already addressed by the court, or for raising arguments that could have been raised before but were not." *Worldwide Flight Services v. Govt of the V.I.*, 51 V.I. 105, 110 (V.I. 2009) (internal citation omitted); *see also, In re Infant Sherman*, 49 V.I. 452, 457 (V.I. 2008) ("A motion for reconsideration is not a second bite of the apple…. [Instead, it serves] to focus the parties on the original pleadings as the 'main event' and to prevent parties from filing a second motion with the hindsight of the court's analysis covering issues that should have been raised in the first set of motions."). As such, "when determining whether to grant or deny such a motion, the Court operates with 'the common understanding that reconsideration is an 'extraordinary' remedy not to be sought reflexively or used as a substitute for appeal.'" *Smith v. Law Offices of Karin A. Bentz, P.C.*, 2018 V.I. LEXIS 13, 14-15 (V.I. Super. Ct. Jan. 29, 2018) (quoting *In re Infant Sherman*, 49 V.I. at 458). Thus, to successfully move for reconsideration under Rule 6-4, a party must meet both the procedural requirements as set forth in Rule 6-4(a) and the substantive requirement as set forth in Rule 6-4(b).

1. The Procedural Requirement

Rule 6-4(a) provides that "[e]xcept as provided in Rules 59 and 60 relating to final orders or judgments, a party may file a motion asking the court to reconsider its order or

decision within 14 days after the entry of the ruling, unless the time is extended by the court" and that "[e]xtensions will only be granted for good cause shown." V.I. R. CIV. P. 6-4(a). Here, Yusuf filed this instant motion on October 15, 2018—more than 14 days after the entry of the September 24, 2018 Order, and has not shown good cause for an extension. Thus, Yusuf's motion was untimely and did not meet the procedural requirement of Rule 6-4.[7] Assuming, *arguendo*, that Yusuf's motion was timely filed, the Master will address whether Yusuf's motion met the substantive requirement.

2. The Substantive Requirement

Rule 6-4(b) provides that "[a] motion to reconsider must be based on: (1) intervening change in controlling law; (2) availability of new evidence; (3) the need to correct clear error of law; or (4) failure of the court to address an issue specifically raised prior to the court's ruling." V.I. R. CIV. P. 6-4(b)(1)-(4). Additionally, "[w]here ground (4) is relied upon, a party must specifically point out in the motion for reconsideration where in the record of the proceedings the particular issue was actually raised before the court." Id. Here, as a preliminary matter, Yusuf did not explicitly ground his motion for reconsideration on any of the bases enumerated in Rule 6-4(b). He did, however, contend that: (A) "the Master overlooked Walleed [sic] Hamed's sworn interrogatory answers [dated May 15, 2018] that are tantamount to an admission by Waleed Hamed that the $1.6 million dollar [sic] debt to Mr. Yusuf was a real one (albeit one that Hamed contends is unenforceable)" and; (B) that the September 24, 2018 Order failed to recognize "that it is only '[i]n very rare cases' that 'the doctrine of laches may be applied when the statute of limitations has not run'" and that "regardless of whether a court decides a statute of limitations defense or a laches defense, it

[7] Rule 6-4 applies in this instance instead of Virgin Islands Rules of Civil Procedure 59 and 60 because the September 24, 2018 Order was not a final judgment or order. As noted above, the Master was appointed to "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)

necessarily must determine when the claim in question accrued." (Motion, pp. 2-3) In doing so, Yusuf indicated an intent to ground his motion for reconsideration in Rule 6-4(b)'s second and third bases, respectively, and the Master will address Yusuf's motion accordingly. V.I. R. CIV. P. 6-4(b)(2)-(3).

A. Waleed Hamed's May 15, 2018 Interrogatory Response

In his motion, Yusuf claimed that Waleed Hamed's May 15, 2018 interrogatory response[8] (hereinafter "Waleed Hamed's May 15, 2018 Interrogatory Response") is "tantamount to an admission by Waleed Hamed that the $1.6 million dollar [sic] debt to Mr. Yusuf was a real one." (Motion, p. 2) Hamed filed his motion to preclude Yusuf's for $1,600,000.00 of the $1,778,103.00 on December 27, 2017, Yusuf filed his opposition January 19, 2018, and Hamed filed his reply on January 22, 2018. Although Waleed Hamed's May 15, 2018 Interrogatory Response was submitted after parties already filed their respective briefs, as of the date Waleed Hamed submitted his May 15, 2018 interrogatory response, the Master had yet to rule on Hamed's motion. Thus, while Waleed Hamed's May 15, 2018 Interrogatory Response was "new evidence" after Yusuf filed his opposition, it is not "new evidence" at the time the Master ruled on Hamed's motion in September 2018; Yusuf had ample opportunity to supplement his opposition with Waleed Hamed's May 15, 2018 Interrogatory Response prior to the Master's ruling. Nevertheless, at this time, the Master will treat Yusuf's motion for reconsideration based on new evidence—Waleed Hamed's May 15, 2018 Interrogatory Response.

Upon review of Waleed Hamed's May 15, 2018 Interrogatory Response, the Master finds Yusuf's argument unpersuasive. First, in Waleed Hamed's May 15, 2018 Interrogatory

[8] Exhibit A of Yusuf's motion; Exhibit A of Hamed's opposition.

Response, Waleed Hamed clearly disputed the existence of the $1,600,000.00 debt.[9] Second, in Waleed Hamed's May 15, 2018 Interrogatory Response, Waleed Hamed pointed out that while parties previously did a calculation that showed that "$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…[f]or example, there were amounts to 'true up' from the other stores as well."[10] As such, unlike what Yusuf claimed, Waleed Hamed did not admit to the

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[9] Waleed Hamed's May 15, 2018 Interrogatory Response provides in relevant part:

> "In any event, Hamed does not owe the $1.6 or $1.77 million." (Waleed Hamed's May 15, 2018 Interrogatory Response, p. 31); and
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> "Thus, Hamed objects to this amount because 1) it is outside 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." (Id., at p. 32)

[10] Waleed Hamed's May 15, 2018 Interrogatory Response provides in relevant part:

> 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:
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> > 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 omitted).
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> …
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> 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 no 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 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. (Waleed Hamed's May 15, 2018 Interrogatory Response, pp. 31-32) (emphasis in original)

$1,600,000.00 debt; instead, Waleed Hamed admitted that $1,600,000.00 was part of the calculation but not the final calculation of all the "true ups." Thus, the Master cannot conclude that Waleed Hamed admitted to the $1,600,000.00 debt in his May 15, 2018 Interrogatory Response and therefore, the Master will deny Yusuf's motion for reconsideration based on new evidence.

B. The Doctrine of Laches

In his motion, Yusuf claimed that the September 24, 2018 Order failed to recognize "that it is only '[i]n very rare cases' that 'the doctrine of laches may be applied when the statute of limitations has not run'" and that "regardless of whether a court decides a statute of limitations defense or a laches defense, it necessarily must determine when the claim in question accrued." (Motion, pp. 2-3) Thus, the Master will treat Yusuf's motion for reconsideration based on the need to correct clear error of law.

When assessing a motion for reconsideration on the ground based on 'the need to correct clear error of law,' the court may grant such a motion when the prior decision involved the incorrect application of law or incorrect analysis to a proper application of law." *Daybreak, Inc. v. Freidberg*, 2018 V.I. LEXIS 84, *5 (V.I. Super. Ct. Aug. 21, 2018); *see also, Smith,* 2018 V.I. LEXIS at *15. Additionally, when assessing these types of motions for reconsideration, courts have "required the moving party to provide 'the specific legal authority it claims the [c]ourt either failed to apply correctly or failed to apply in totum in its original decision." *Daybreak*, 2018 V.I. LEXIS 84 at *5 (quoting *Smith,* 2018 V.I. LEXIS at *15-16). Here, Yusuf essentially argued that the Master's application and analysis as to the legal principle of laches were both incorrect—to wit, (1) that laches should not have applied when the statute of limitations has not run; (2) that the Master should have determined the accrual date of the $1,600,000.00 debt before determining whether laches applied; and (3) that the

Master should have concluded that Yusuf's claim for $1,600,000.00 accrued when Waleed Hamed acknowledged the debt or when Bakir Hussein swore in his affidavit that he heard Waleed Hamed acknowledge the debt, with both accrual dates being after the September 17, 2006 date set by the Court's laches-based limitation on the accounting claim.[11] The Master finds Yusuf's argument unpersuasive. First, Yusuf failed to provide "the specific legal authority [he] claims the [Master] either failed to apply correctly or failed to apply in totum in its original decision." *See Daybreak*, 2018 V.I. LEXIS 84 at *5; *Smith,* 2018 V.I. LEXIS at *15-16. Yusuf cited to several non-U.S. Virgin Islands cases to support his argument, but he failed to explain why these cases are binding in the Superior Court of the U.S. Virgin Islands.[12] Second, as the Master stated in his September 24, 2018 Order, "Yusuf admitted that the debt of $1,600,000.00 owed by Hamed to Yusuf was tabulated in 2001" and thus determined that Yusuf's claim for $1,600,000.00 was barred by the Court's Limitation Order.[13] Unlike what Yusuf claimed, there is no acknowledgement of the $1,600,000.00 debt by Hamed—to wit, (1) as the Master found above, Waleed Hamed did not admit to the $1,600,000.00 debt in his May

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[11] *See infra*, footnote 13.

[12] In *In re the Suspension of Joseph*, 60 V.I. 540, 558-59 (V.I. 2014), The Supreme Court of the U.S. Virgin Islands explained that:

> "Laches, an equitable defense, is distinct from the statute of limitations, a creature of law," and precludes an action if "an omission to assert a right for an unreasonable and unexplained length of time and under circumstances prejudicial to the adverse party." Thus, "[l]aches … may be found even if the applicable statute of limitations has not yet run."

[13] In a memorandum opinion and order dated July 21, 2017, the Court ordered, *inter alia*, that "the accounting in this matter, to which each partner is entitled under 26 V.I.C. § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. § 71(a), based upon transactions that occurred on or after September 17, 2006. *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *44-45 (V.I. Super. Ct., July 21, 2017) (hereinafter, "Limitation Order"). The Court noted that:

> Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that "if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary." First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006. *Id*., 2017 V.I. LEXIS 114 at *44, fn. 35.

15, 2018 Interrogatory Responses; and (2) as the Master found in his September 24, 2018 Order, Bakir Hussein's Affidavit, dated August 10, 2014, did not provide evidence that Waleed Hamed personally admitted to the $1,600,000.00 debt. As such, there is no new accrual date based on the acknowledgment of the $1,600,000.00 debt, and Yusuf's claim for $1,600,000.00 remains barred by the Court's Limitation Order. Finally, the Master has already addressed in his September 24, 2018 Order the applicability of the Court's Limitation Order to bar Yusuf's claim for $1,600,000.00. A motion for reconsideration "is not a vehicle for registering disagreement with the [Master's] initial decision,[or] for rearguing matters already addressed by the court." *Worldwide Flight Services*, 51 V.I. at 110 (internal citation omitted); *see also, In re Infant Sherman*, 49 V.I. at 457. Based on the foregoing, the Master will deny Yusuf's motion for reconsideration based on the need to correct clear error of law.

CONCLUSION

For the reasons stated above, the Master will deny Yusuf's motion for reconsideration of the Master's September 24, 2018 Order granting and striking Hamed's motion to preclude Yusuf's claim for $1,600,000.00 of the $1,778,103.00. Accordingly, it is hereby:

ORDERED that Yusuf's motion for reconsideration of the Master's September 24, 2018 Order granting and striking Hamed's motion to preclude Yusuf's claim for $1,600,000.00 of the $1,778,103.00 is **DENIED**. **And** it is further:

ORDERED that Hamed's request for costs for his opposition is **DENIED**.

DONE and so ORDERED this 30th **day of October, 2018.**

EDGAR D. ROSS
Special Master