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 November 14, 2018 order granting Hamed's motion to strike Yusuf Claim No. Y-13: loss of "going concern" value of Plaza Extra-West[1] and striking Yusuf Claim No. Y-13, filed on December 6, 2018.[2] Hamed filed an opposition and Yusuf filed a reply thereafter.

BACKGROUND

On November 14, 2018, the Master entered an order whereby the Master found that the Final Wind Up Plan did not bar Yusuf Claim No. Y-13 but that Yusuf had already conceded that Plaza Extra-West cannot be sold as a going concern, and thus, the Master granted Hamed's motion to strike Yusuf Claim No. Y-13: loss of "going concern" value of Plaza Extra-West and

[1] In Yusuf's Amended Accounting Claims, Yusuf asserted, *inter alia*, Yusuf Claim No. Y-13: loss of "going concern" value of Plaza Extra-West and explained:

> As equal Partners, both Hamed and Yusuf had ownership interests in the "going concern" value of Plaza Extra-West. A "going concern" value recognizes the many advantages that an existing business has over a new business, such as avoidance of start-up costs and improved operating efficiency. In this sense, the "going concern" value of a business represents the difference between the value of an established business and the value of a start-up one. "Going concern" value also indicates the value of a business as an operating, active whole, rather than merely as distinct items of property.
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> Both Hamed and Yusuf had fiduciary obligations to each other to maintain the "going concern" value of Plaza Extra-West and to behave in such a way as to promote and not diminish its value as an on-going business. An essential component to Plaza Extra-West's on-going business operations was its ability to continue to operate out of its existing location in Estate Plessen. By orchestrating an April 30, 2014 lease of the premises occupied by Plaza Extra-West to a competing business (wholly owned by Hamed's sons), KAC357, Inc., which then took over the operation of the Plaza Extra-West supermarket formerly owned by the Partnership, Hamed effectively appropriated for the benefit of three of his sons the "going concern" value to the Partnership of the supermarket. Hence, Hamed's actions operated to substantially decrease the value of Partnership Assets. Plaza Extra-West's value as a "going concern" at the time that Hamed took such actions was $8,770,000. *See* Valuation Report of Plaza Extra-West, prepared by Integra Realty Resources, attached as Exhibit P to the Original Claims, at page 55. Hamed's actions thus diminished the value of the Partnership Assets at the time of dissolution by $8,770,000. As half owner of the Partnership, such actions decreased the value of Yusuf's Partnership interests by $4,385,000. As a result, $4,385,000 should be awarded to Yusuf to compensate him for such loss of value. (Yusuf's Amended Accounting Claims, pp. 19-20)

[2] 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 November 14, 2018 order granting Hamed's motion to strike Yusuf Claim No. Y-13: loss of "going concern" value of Plaza Extra-West and striking Yusuf Claim No. Y-13 falls within the scope of the Master's report and recommendation given that Yusuf Claim No. Y-13 is an alleged debt owed by Hamed to the Partnership (or in other words, potential Partnership Assets).

struck Yusuf Claim No. Y-13 (hereinafter "November 14, 2018 Order"). The November 14, 2018 Order provided, in relevant part:[3]

> **2. Integra Report**
>
> Yusuf uses the Integra Report to support Yusuf Claim No. Y-13: loss of "going concern" value of Plaza Extra-West. However, in Yusuf's proposed plan for winding up the Partnership in 2014,[3] Yusuf clearly stated that:
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> > Section 8. PLAN OF LIQUIDATION AND WINDING UP
> > A. Sale of Plaza Extra Stores as Going Concern vs. Liquidation.
> >
> > **The Plaza Extra Stores cannot be sold as a going concern** because of the absence of commercial leases for Plaza Extra - East and Plaza Extra - West and the existence of only a short term (less than 5 years) remaining on the lease between United and Tutu Parle Mall, Ltd. for Plaza Extra - Tutu Park. Hence, liquidation of the Plaza Extra Stores is warranted. (Emphasis added)
>
> Yusuf claimed in his opposition that "he later recognized that this position was incorrect, and instead argued [in his response to Hamed's comments concerning the Court's proposed wind-up plan, dated October 28, 2014] that both stores should be sold in a closed bid between Hamed and Yusuf." (Opp., p. 6) However, Yusuf never stated that he "recognized that this position was incorrect" in the October 28, 2014 document; instead, the October 28, 2014 document shows that Yusuf suggested a close bid sale for Plaza Extra-West without any discussion of his alleged change of position with regards to the "going concern" value of Plaza Extra-West. As such, the Master finds that Yusuf has already conceded that Plaza Extra-West cannot be sold as a going concern.
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> [3] Attached as Exhibit A to Yusuf's memorandum in support of motion to appoint master for judicial supervision of Partnership winding up or, in the alternative, to appoint receiver to wind up Partnership, dated April 7, 2014.

DISCUSSION

In his motion, Yusuf pointed out that the Master granted Hamed's motion to strike Yusuf Claim No. Y-13 based upon the Master's "conclusion that Yusuf 'has already conceded that Plaza Extra-West cannot be sold as a going concern.'" (Motion, p. 1) Yusuf also pointed

[3] Since Yusuf's motion for reconsideration of the Master's November 14, 2018 Order only requested the Master to reconsider the part of the November 14, 2018 Order where the Master found that Yusuf had already conceded that Plaza Extra-West cannot be sold as a going concern and thereby granted Hamed's motion to strike Yusuf Claim No. Y-13 and struck Yusuf Claim No. Y-13, this order for reconsideration need not address the part of the November 14, 2018 Order where the Master found that the Final Wind Up Plan did not bar Yusuf Claim No. Y-13.

out that "[i]t goes without saying that the going concern value of Plaza Extra-West is a hotly contested issue"—"Hamed claims there is no going concern value because of the absence of a lease with the Partnership, whereas Yusuf claims the going concern value is $8,770,000 based on an expert report dated September 26, 2016 supporting his claim Y-13." (Id., at pp. 1-2) Yusuf further pointed out that the Master's November 14, 2018 Order "effectively bars Yusuf from pursuing this claim based on a purported concession contained in Section 8 of Yusuf's first proposed wind up plan, submitted in April 2014, that was never accepted by the Court and was later modified multiple times by Yusuf before the Court entered its Order Adopting Final Wind Up Plan dated January 7, 2015." (Id., at p. 2) Thus, Yusuf argued that "the Master should revisit his decision as it was improvidently granted, represents a 'failure of the [Master] to address an issue specifically raised prior to the [Master's] ruling," and needs revision 'to correct a clear error of law." (Id.) First, Yusuf argued that the fact the Master found Hamed's argument that the Wind Up Order barred Yusuf Claim No. Y-13 unpersuasive shows that Yusuf Claim No. Y-13 "is a viable claim that can be pursued and nothing in the Plan precludes such a claim." (Id., at pp. 2-3) Second, Yusuf argued that the November 14, 2018 Order "effectively holds that Yusuf is judicially estopped from claiming a loss of going concern value because he previously made an argument that all three Plaza Extra Stores could not be sold as a going concern and later (according to the Master) did not sufficiently acknowledge that change in position" but the November 14, 2018 Order "does not mention the judicial estoppel doctrine or apply its elements." (Id., at pp. 3-4). Third, Yusuf argued that "the Master overlooked or misunderstood the arguments Yusuf had made that clearly demonstrate his position that Plaza Extra-West could be sold as a going concern." (Id., at p. 5) In support of his argument, Yusuf cited to his October 21, 2014 filing titled "Fathi Yusuf's Comments, Objections and Recommendations Concerning the Court's Proposed Plan" (hereinafter "October 21, 2014

Filing") and his October 28, 2014 filing titled "Yusuf's Response to Hamed's Comments Concerning the Court's Proposed Wind Up Plan" (hereinafter "October 28, 2014 Filing). (Id.) Yusuf pointed out that, in his October 21, 2014 Filing, he argued that the "Court's [October 7, 2014] proposed plan forecloses Hamed from acquiring the Tutu Park store and Yusuf from acquiring the West store, thus, unfairly excluding one partner from the opportunity of acquiring partnership assets while diminishing the prospect of maximizing the value of all partnership assets." (Id.) Yusuf also pointed out that, in his October 28, 2014 Filing, he argued for "a process which will capture this going concern value, to wit:

> …if the Court is going to deviate from McCormick, it should adopt a plan that maximizes partnership value in a windup and sale. Bidding of the kind Hamed now proposes for Plaza Extra Tutu Park is the best way to accomplish that, but it should be applied to the West store as well, albeit without the Hamed lease that tilts the tables, hands the Hames the right to operate the store without paying up front for that right, and results in far less partnership value being realized upon windup.*"* (Id., at p. 6) (Emphasis omitted)

Yusuf noted this is as evidence that he advocated "for a process that will capture the going concern value of Plaza Extra-West." (Id.) Yusuf further pointed out that he "previously argued in his October 28, 2014 Filing that 'Hamed's suggestion that given the disputed lease, only the inventory and equipment of Plaza Extra-West would be subject to bid plainly will not maximize partnership value'" and instead, Yusuf argued therein that "[r]ather, both the Plaza Extra-West supermarket and the 16 acres on which it sits should be put up for bid by Yusuf and Hamed, so that the value of this partnership asset can be maximized and realized at time of windup." (Id., at p. 7) As such, Yusuf requested the Master to grant his motion for reconsideration and deny Hamed's motion to strike Yusuf Claim No. Y-13.

It his opposition, Hamed argued that the Master should deny Yusuf's motion for reconsideration because "there was no clear error of law in the [November 14, 2018] Order striking [Yusuf Claim No. Y-13] and Yusuf "fail[ed] to raise any issue not previously addressed

by the [Master]." (Opp., p. 2) More specifically, Hamed argued that Yusuf's argument that the Master's "finding that Yusuf was bound by his prior factual admission is based on an improper application of the doctrine of judicial estoppel" is unpersuasive because "the [November 14 2018] Order did not rely upon the doctrine of judicial estopple in reaching its holding" and "[t]o the contrary, the Order explicitly relied upon Yusuf's admission – in this case and on this exact issue – that the store could not be sold as a going concern because it had no lease." (Id., at pp. 4-5) Hamed also argued that Yusuf's argument that the Master overlooked Yusuf's argument is also unpersuasive because: (i) "Yusuf failed to point out any such 'specific' overlooked language in his motion" as required under Virgin Islands Rule of Civil Procedure 6-4; and (ii) the November 14, 2018 Order "did fully address the claim Yusuf raised, as it recognized that Yusuf was trying to argue that he 'changed his mind' in a pleading dated October 12, 2014, allegedly claiming his prior position 'was incorrect'" and the Master acknowledged and rejected said argument. (Id., at pp. 6-7) (Emphasis omitted) As such, Hamed pointed out that "Yusuf's arguments failed to meet the required [Virgin Islands Rule of Civil Procedure] 6-4 standard" and requested the Master to deny Yusuf's motion for consideration of the November 14, 2018 Order. (Id., at p. 3)

In his reply, Yusuf argued that the Master made a total of three errors in his November 14, 2018 Order. Yusuf alleged that the first error was that "[t]he language the Master deem[ed] to be a concession by Yusuf, cannot suffice as a judicial admission or have a judicial estoppel effect (even if it had not been abandoned-which it was) and, therefore, cannot operate to preclude [Yusuf Claim No.] Y-13 for the loss of the going concern value of Plaza Extra-West." (Reply, p. 2) Yusuf claimed that "it was error for [the Master] to find that certain language in a filing made more than 4½ years ago, which cannot constitute an admission by any set of criteria, somehow operates to preclude Yusuf's claim." (Id., at p. 6) Yusuf alleged that the

second error was that "[i]t was error for the Master to have found that Yusuf did not abandon his earlier position that was a going concern value could not be calculated as Yusuf's subsequent filings advocated for a closed-bid auction that was designed to capture the going concern value." (Id.) Yusuf claimed that the November 14, 2018 Order failed to recognize the substance of Yusuf's earlier arguments in his October 21, 2014 Filing and his October 28, 2014 Filing and that "[t]his is clearly a mistake which overlooks the substance of the arguments." (Id., at p. 8) Yusuf alleged that the final error was that that "[i]t was error for the Master to circumvent the merits of Yusuf's claim and, instead, dispose of that claim based upon an alleged concession without any legal basis." (Id., at p. 9) Yusuf claimed that "this jurisdiction has a particularly strong policy against the dismissal of actions prior to a trial on the merits" and here, "the Master avoided any such considerations [on the merits] and struck the claim based upon a perceived, albeit incorrect, concession." (Id., at pp. 9-10) As such, Yusuf requested the Master to grant his motion for reconsideration and deny Hamed's motion to strike Yusuf Claim No. Y-13.

1. Motion for Reconsideration

Motions for reconsideration 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).

A. 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 December 6, 2018—within the deadline to file a motion for reconsideration under Rule 6-4(a).[4] Thus, Yusuf's motion for reconsideration was timely filed and satisfies the procedural requirement of Rule 6-4.

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[4] 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)

Virgin Islands Rule of Civil Procedure 6 provides:

> **Rule 6. Computing and Extending Time**
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> **(a) Computing Time.** The following rules apply in computing any time period specified in these rules, in any court order, or in any statute that does not specify a method of computing time.
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> **(1)** ***Period Stated in Days or a Longer Unit.*** When the period is stated in days or a longer unit of time:
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> (A) exclude the day of the event that triggers the period;
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> (B) when the period is 15 days or more, count every day, including intermediate Saturdays, Sundays, and legal holidays; when the period is 14 days or less, do not count intermediate Saturdays, Sundays, and legal holidays; and
>
> (C) include the last day of the period, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.

B. 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, Yusuf explicitly grounded his motion for reconsideration in Rule 6-4(b)'s third and fourth bases, respectively, and the Master will address Yusuf's motion accordingly. V.I. R. CIV. P. 6-4(b)(3)-(4).

i. Rule 6-4(b)(3): The Need to Correct Clear Error of Law

In Yusuf's motion for reconsideration, the crux of Yusuf's argument that there is a need to correct clear error of law was built around the Master's failure to address judicial estoppel in his November 14, 2018 Order. However, the Master must point out that judicial estoppel is an argument that Yusuf could have raised previously in his opposition to Hamed's motion to strike Yusuf Claim No. Y-13 but Yusuf failed to raise.[5] Additionally, in Yusuf's reply, Yusuf

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[5] The November 14, 2018 Order provided, in relevant part:

> [In his motion,] Hamed pointed out that the Integra Report that Yusuf relied upon is "contingent on one pivotal assumption that is false"—namely, the Integra Report "assumed that the entity operating the business leases the property from a separate entity at market rent" but "this assumption is false, as there was never a lease for the Plaza [Extra-West] store, as Yusuf conceded in his pleadings in this case." (Id.) (Emphasis omitted) **In support of his argument, Hamed referenced to Yusuf and United's memorandum in support of motion to appoint master for judicial supervision of Partnership winding up or, in the alternative, to appoint receiver to wind up Partnership, dated April 7, 2014, whereby Yusuf and United stated that "[t]he Plaza Extra Stores cannot be sold as a going concern because of the absence of commercial leases for Plaza Extra-East and Plaza Extra-West** and the existence of only a short term (less than 5 years) remaining on the lease between United and Tutu Park Mall, Ltd.. for Plaza [Extra-Tutu Park]" and "[h]ence, liquidation of the Plaza Extra Stores is warranted." (Motion, Ex. 4) As such, Hamed argued that the Master should grant his motion and strike Yusuf Claim No. Y-13. (Nov. 14, 2018, p. 5) (Emphasis added)
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> …
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> [In his opposition,] Yusuf argued that "Hamed's second argument, which attacks the validity of the Integra Report, is also devoid of merit." (Id.) Yusuf pointed out that "[t]he Integra Report determines, by methods consistent with common appraisal practice that the market value of the Plaza Extra-West

alleged additional "clear errors" that the Master needed to correct—to wit: (i) the language the Master deemed to be a concession by Yusuf cannot suffice as a judicial admission and cannot operate to preclude Yusuf Claim No. Y-13; (ii) Yusuf did indeed abandon his earlier position that a going concern value could not be calculated for Plaza Extra-West; and (iii) Yusuf Claim No. Y-13 should be resolved on the merits and should not be disposed of based upon an alleged concession without any legal basis. However, the Master must again point out that these are arguments that Yusuf could have raised previously in his opposition to Hamed's motion to strike Yusuf Claim No. Y-13 but Yusuf failed to raise. Yusuf failed to make these arguments in his opposition to Hamed's motion to strike Yusuf Claim No. Y-13 and the Court declines to

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supermarket business was $8,770,000 as of April 30, 2014." (Id., at p. 4) Yusuf further pointed out that the Integra Reports used the "income capitalization approach as one of the methods to determine value" and "[u]nder that method, the annual earnings generated by the business are multiplied by a capitalization rate to determine value…[and] [t]o determine those earnings, Integra made the eminently reasonable and necessary assumption that whoever operated the store would have to pay rent to Plessen (i.e., they would not get to occupy the premises free of charge), thereby reducing the store's annual income." (Id.) Yusuf also pointed out that "despite the absence of a lease, 'common appraisal practice required [Integra] to determine a fair market rental value for the property occupied by Plaza Extra-West and to reflect that as an expense under the income approach that was utilized (along with the asset value approach) to determine the value of the business.'" (Id., at p. 5) Moreover, Yusuf also pointed out that Hamed made "precisely the same attack on the Integra Report" in his previous motion to strike, which the Court denied without prejudice in its July 21, 2017 Order. (Id.) **Lastly, Yusuf noted in a footnote that "[w]hile Yusuf did take that position [that Plaza Extra-West could not be sold as a going concern because of the absence of a commercial lease], he later recognized that his position was incorrect, and instead argued that both stores should be sold in a close bid between Hamed and Yusuf."**[7] (Id.) As such, Yusuf requested the Master to deny Hamed's motion to strike Yusuf Claim No. Y-13.

[7] In support of his argument, Yusuf referenced his response to Hamed's comments concerning the Court's proposed wind-up plan, dated October 28, 2014 (Opp. Ex. D). (Nov. 14, 2018, p. 7)

…

[In his reply] **Hamed argued that "Yusuf has already conceded in pleadings filed in this Court that the Plaza [Extra-]East [sic] could not be sold as a 'going concern,' directly refuting the critical 'extraordinary assumption' that [the Integra Report] relies upon" and Yusuf did not dispute this in his opposition.** (Id., at pp. 2-3) Hamed further noted that, although Yusuf included a footnote indicating that Yusuf realized this position was incorrect, per his response to Hamed's comments concerning the Court's proposed wind-up plan, dated October 28, 2014, "[a] review of the referenced… document shows this representation is false" since Yusuf, in said document, only referenced a 'closed bid sale' for Plaza [Extra-]West, not Plaza [Extra-]East, and was contingent on the Court (1) voiding the already approved [KAC357, Inc.] lease and then (2) forcing the (non-party) owner of that property, Plessen Enterprises, to sell the property at an auction." (Id., at p. 3) (Nov. 14, 2018, p. 8) (Emphasis added)

make them for him.[6] "[I]n general, the Court will not make [a party's] arguments for him when he has failed to do so." *Joseph v. Joseph*, 2015 V.I. LEXIS 43, *5 (V.I. Super. Ct. Apr. 23, 2015); *see also In re Catalyst Litig.*, 2015 V.I. LEXIS 145, *5-6 n. 12 (V.I. Super. Ct. 2015) ("The Supreme Court of the Virgin Islands has established that in order for a motion to be properly before the court, parties must support their arguments by citing the proper legal authority, statute or rule.") (citing *Bernhardt v. Bernhardt*, 51 V.I. 341, 345-346 (V.I. 2009); *Davis v. Varlack Ventures, Inc.*, 59 V.I. 229, 238-239 (V.I. 2013)); *Simpson v. Golden*, 56 V.I. 272, 280 (V.I. 2012) ("The rules that require a litigant to brief and support his arguments … before the Superior Court, are not mere formalistic requirements. They exist to give the Superior Court the opportunity to consider, review, and address an argument…").

As noted above, a motion for reconsideration is not a vehicle "for raising arguments that could have been raised before but were not." *Worldwide Flight Services*, 51 V.I. at 110 (internal citation omitted). Furthermore, "[a] motion for reconsideration is not a second bite of the apple…. 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." *In re Infant Sherman*, 49 V.I. at 457. Thus, in this instance, the Master does not find "the need to correct clear error of law."

ii. Rule 6-4(b)(4): Failure of the Court to Address an Issue Specifically Raised Prior to the Court's Ruling

In his motion for reconsideration, Yusuf did not specifically point out where in his opposition to Hamed's motion to strike Yusuf Claim No. Y-13 the particular issue was actually

[6] Even Hamed, in his reply to Yusuf's opposition to his motion to strike Yusuf Claim No. Y-13, recognized and pointed out that Yusuf, in his opposition, did not directly dispute Hamed's argument that "Yusuf has already conceded in pleadings filed in this Court that the Plaza [Extra-]East [sic] could not be sold as a 'going concern'" and only included a footnote indicating that Yusuf later realized this position was incorrect.

The Master is perplexed as to why Yusuf chose to raise these arguments and discuss them at lengths in his motion for reconsideration and reply thereto rather than in his opposition to Hamed's motion to strike Yusuf Claim No. Y-13.

raised which the Master had failed to address in his November 14, 2018 Order, as required by Rule 6-4 where ground (4) is relied upon. Instead, Yusuf simply argued in his motion for reconsideration and his reply thereto that the November 14, 2018 Order failed to recognize the substance of Yusuf's earlier arguments in his October 21, 2014 Filing and his October 28, 2014 Filing albeit these "earlier arguments" were not made in Yusuf's opposition to Hamed's motion to strike Yusuf Claim No. Y-13.

Upon review of Yusuf's opposition to Hamed's motion to strike Yusuf Claim No. Y-13, Yusuf's arguments were separated into two parts—in part I, Yusuf's argument focused on the Wind Up Order and the language therein did not bar Yusuf Claim No. Y-13, and in part II, Yusuf's argument focused on Hamed's attack on the Integra Report.[7] Since this order for reconsideration need not address the part of the November 14, 2018 Order where the Master found that the Final Wind Up Plan did not bar Yusuf's Claim No. Y-13, the Master need not address part I of Yusuf's argument regarding the Wind Up Order.[8] Unlike what Yusuf claimed in his motion for reconsideration and reply thereto, the Master did not "overlook" or "misunderstand" the substance of the arguments raised by Yusuf in his opposition to Hamed's motion to strike Yusuf Claim No. Y-13. In his opposition to Hamed's motion to strike Yusuf Claim No. Y-13, part II of Yusuf's argument centered around Hamed's attack on the Integra Report and the validity of the Integra Report.[9] The arguments Yusuf made in his motion for reconsideration and reply thereto—to wit, the prior arguments Yusuf made in his October 21, 2014 Filing and October 28, 2014 Filing—were not raised in his opposition to Hamed's motion to strike Yusuf Claim No. Y-13. Again, Yusuf failed to make these arguments in his opposition

[7] Under Yusuf's "Argument" section in his opposition to Hamed's motion to strike Yusuf Claim No. Y-13, part I was titled "I. The Wind Up Order Does Not Bar this Claim" and part II was titled "II. Hamed's Attack on the Integra Report is Without Merit."

[8] *Supra*, fn. 3.

[9] *Supra*, fn. 5.

to Hamed's motion to strike Yusuf Claim No. Y-13 and the Court declines to make it for him.[10] *See Joseph,* 2015 V.I. LEXIS 43 at *5; *In re Catalyst Litig.,* 2015 V.I. LEXIS 145 at *5-6 n. 12; *Davis*, 59 V.I. at 238-39; *Simpson*, 56 V.I. at 280.

As noted above, a motion for reconsideration is not a vehicle "for raising arguments that could have been raised before but were not." *Worldwide Flight Services*, 51 V.I. at 110 (internal citation omitted). Furthermore, "[a] motion for reconsideration is not a second bite of the apple…. 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." *In re Infant Sherman*, 49 V.I. at 457. Thus, in this instance, the Master does not find that he failed "to address an issue specifically raised prior to the court's ruling."

CONCLUSION

Based on the foregoing, Yusuf's motion for reconsideration did not satisfy the substantive requirement of Rule 6-4. Thus, the Master will deny Yusuf's motion for reconsideration of the Master's November 14, 2018 Order granting Hamed's motion to strike Yusuf Claim No. Y-13 and striking Yusuf Claim No. Y-13.[11] Accordingly, it is hereby:

ORDERED that Yusuf's motion for reconsideration of the Master's November 14, 2018 Order granting Hamed's motion to strike Yusuf Claim No. Y-13 and striking Yusuf Claim No. Y-13 is **DENIED**.

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[10] The Master is again perplexed as to why Yusuf chose to raise these arguments and discuss them at lengths in his motion for reconsideration and reply thereto rather than in his opposition to Hamed's motion to strike Yusuf Claim No. Y-13.

[11] Earlier this year, the Master had sent a notice to Parties reminding Parties "to be more diligent with their filings in this matter" in response to Yusuf filing a motion to clarify or reconsider order deeming Hamed's Request to Admit 1 admitted **after** the Master had already entered an order, *inter alia*, deeming Hamed's Request to Admit 1 as admitted. In the notice, the Master pointed out that "Yusuf had ample opportunity to raise his concern as to Hamed's Request to Admit 1—namely, that there is an ambiguity in Hamed's Request to Admit 1 regarding what taxes it is referring to in reference to 'Hamed taxes'—first, in his response to Hamed's Request to Admit 1, and then, in his opposition to Hamed's motion to compel" but "Yusuf chose not to raise it in an appropriate response, and instead, waited until after the Master ruled on Hamed's motion to compel to then raise it in a new motion." As the Master stated and warned in the notice, "[t]his is unacceptable, and a waste of judicial resources, and in the future, may invite serious consequences."

DONE and so ORDERED this 21st day of December, 2018.

EDGAR D. ROSS
Special Master