

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,  
MUFEEED HAMED, HISHAM HAMED,  
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

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**WALEED HAMED, AS EXECUTOR OF THE  
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

**UNITED CORPORATION,**

DEFENDANT.

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**MOHAMMAD HAMED,**

PLAINTIFF,

v.

**FATHI YUSUF,**

DEFENDANT.

Civil No. SX-12-CV-370

**ACTION FOR INJUNCTIVE  
RELIEF, DECLARATORY  
JUDGMENT, PARTNERSHIP  
DISSOLUTION, WIND UP, and  
ACCOUNTING**

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and  
CONVERSION**

**ORDER**

**THIS MATTER** came before the Special Master (hereinafter “Master”) on Hamed’s motion as to Hamed Claim Nos. H-38 and H-123: payments to the law firm of Dudley, Topper and Feuerzeig, LLP. Yusuf filed an opposition and Hamed filed a reply thereafter.

In his motion, Hamed argued that the Partnership should not have paid for the fees charged by the law firm of Dudley, Topper and Feuerzeig, LLP (hereinafter “DTF”) for three reasons.<sup>1</sup> First, Hamed asserted that DTF expressly represented to the Court that it would not seek reimbursement from the Partnership. (Motion, p. 3) Hamed claimed that, “to obtain the [Final Wind Up] Order, DTF *expressly represented* to the Court on October 28, 2014, that it would not seek reimbursement from the Partnership: ‘The Order needs no clarification because it does not proposed that Yusuf’s counsel and accounting experts would be paid with partnership funds.’” (Id.) (Emphasis in original) Second, Hamed asserted that the work was performed primarily for Yusuf’s personal benefit. (Id.) Hamed claimed that “the Liquidating Partner made decisions for the Partnership that were favorable to him personally, but adverse to the interests of the Partnership, all with the help of DTF, who then billed the Partnership for this advocacy work for Yusuf.” (Id.) (Emphasis omitted) Hamed alleged the following examples in support of his claim that the work performed by DTF was primarily for Yusuf’s personal benefit and that Yusuf used the DTF’s bi-monthly reports as “as a tool...to allocate Partnership assets to Yusuf or to approve disputed accounting entries in favor of Yusuf” (Id.): (1) 5<sup>th</sup> Bi-Monthly Report: DTF billed the Partnership for preparing the 5<sup>th</sup> Bi-Monthly Report—which stated that United owned Plot 2-4 Rem. Estate, Charlotte Amalie—and for researching whether United or the Partnership owned Plot 2-4 Rem. Estate, Charlotte Amalie

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<sup>1</sup> 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 Hamed Claim Nos. H-38 and H-123 fall within the scope of the Master’s report and recommendation given that Hamed Claim Nos. H-38 and H-123 are alleged debts owed by Yusuf to the Partnership (or in other words, potential Partnership Assets).

(Id., at p. 4); (2) 6<sup>th</sup> Bi-Monthly Report: DTF approved the payment of \$41,462.28 from the Partnership to the Liquidating Partner in connection with Plaza Extra-Tutu store rent (Id.); (3) 6<sup>th</sup> Bi-Monthly Report: DTF approved the payments of \$89,443.92 and \$46,069.38 from the Partnership to the Liquidating Partner in connection with the 2012-2014 Plaza Extra-Tutu store real estate taxes (Id., at p. 5); and (4) 6<sup>th</sup> Bi-Monthly Report: DTF submitted a balance sheet that indicated that \$186,819.33 was due to Shareholders without any support. (Id.) In short, Hamed argued that these examples are evidence that the legal fees incurred to prepare the bi-monthly reports “only benefited Yusuf, and not the Partnership” and thus, “makes these fees ‘personal expenses’ for Yusuf, not fees for the Partnership.” (Id.) Finally, Hamed asserted that the burden to prove these claims is on Yusuf. (Id.) Hamed claimed that “[i]t is Yusuf’s burden to prove that the work was done for the Partnership and that Yusuf’s work was not charged to the Partnership.” (Id.) (Emphasis omitted) As such, Hamed requested the Master to find that the Partnership should not have paid the fees charged by DTF and to have Yusuf reimburse the Partnership for the fees paid to DTF.

In his opposition, Yusuf responded to each of the reasons given in Hamed’s motion. First, Yusuf argued that Hamed misrepresented DTF’s statement and that DTF and Yusuf never expressly represented to the Court that DTF would not seek reimbursement from the Partnership as Hamed alleged in his motion. (Opp., p. 2) Second, Yusuf argued that Hamed only provided “vague, conclusory assertions that all of the work done by DTF in connection with preparing bi-monthly reports...should not be charged to the Partnership because the Liquidating Partner allegedly used these reports ‘as a tool...to allocate Partnership assets to Yusuf or to approve the disputed accounting entries in favor of Yusuf, to direct, *specific disadvantage* of the Partnership.’” (Id., at p. 3) (Emphasis in original) Yusuf pointed out that

Hamed had previously represented to the Master, in an email dated January 23, 2016,<sup>2</sup> that a “line by line analysis of the [DTF] billing would have to be done if DTF could charge the partnership for such services,” but Hamed has yet to perform this line by line analysis. (Id.) Yusuf argued that the examples provided by Hamed were “vague, conclusory assertions” rather than line by line analyses, which would have shown that Yusuf did not use the bi-monthly reports prepared by DTF “as a tool...to allocate Partnership assets to Yusuf or to approve the disputed accounting entries in favor of Yusuf” as alleged by Hamed (Id.). Yusuf refuted Hamed’s examples with the following responses: (1) 5<sup>th</sup> Bi-Monthly Report: Plot 2-4 Rem. Estate, Charlotte Amalie is owned by United pursuant to a Deed in Lieu of Foreclosure between grantor Plessen Enterprises, Inc. and grantee United, dated October 23, 2008 (Id., at p. 3-4); (2) 6<sup>th</sup> Bi-Monthly Report: the payment of \$41,462.28 from the Partnership to the Liquidating Partner in connection with Plaza Extra-Tutu store rent and the payment of \$89,443.92 and \$46,069.38 from the Partnership to the Liquidating Partner in connection with the 2012-2014 Plaza Extra-Tutu store real estate taxes is “completely consistent with the formula used by the Partners to determine the rent to be paid to United for the Partnership’s use and occupancy of Plaza Extra-East from May 2004 forward”—“[u]nder that formula, total rent payments including the real estate taxes made to the landlord for Plaza Extra-[Tutu] for a given year are divided by sales for that year at that store to determine a percentage,” then “[t]hat percentage is then applied to the sales at Plaza Extra-East to determine the rent to be paid to United for that year,” and thus, “[e]very time the landlord for Plaza Extra-[Tutu] was paid additional amounts for rent, including real estate taxes, this formula needed to be applied to determine the ‘matching’ payment due to United” (Id., at p. 4); and (3) 6<sup>th</sup> Bi-Monthly Report: the balance sheet that indicated \$186,819.33 was due to Shareholders is not without support because, as

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<sup>2</sup> See Exhibit B to Yusuf’s opposition, which is a copy of the January 23, 2016 email that was previously attached as exhibit A to DTF’s brief in opposition to Hamed’s motion to disqualify counsel.

noted by John Gaffney, the senior controller of United, “[t]his entry is a stated liability from [United] to the shareholders on the books of Plaza Extra-[Tutu]” (Id.; Opp., Exhibit 4 – John Gaffney’s Declaration, dated February 16, 2016). Finally, Yusuf pointed out that “Section 5 of the [Final Wind Up] Plan obligated the Liquidating Partner to report on a bi-monthly basis to Hamed and the Master as to the status of all wind up efforts” and “Section 4 of the Plan authorized the Liquidating Partner to ‘engage legal, accounting and other professional services...’” (Id., at p. 5) Yusuf argued that “[n]othing that Hamed has shown the Master establishes that any amount included in the invoices paid by the Liquidating Partner was not properly charged to the Partnership.” (Id.) As such, Yusuf requested the Master to deny Hamed’s motion.

In his reply, Hamed asserted that the “issue comes down to one fact – which DTF and Yusuf dispute: Whether the expressly obtained the terms of the [Final Wind Up] Order on this contested issue by representing that they would not bill the Partnership” and that “[t]hey either did or they did not.” (Reply, p. 2) (Emphasis omitted) Hamed further asserted that “[i]f they did, these funds should be returned to the Partnership” and “[i]f they did not, let them keep the funds.” (Id.) (Emphasis omitted)

### **DISCUSSION**

The Master finds Hamed’s arguments to be unpersuasive. Here, Yusuf, as the Liquidating Partner, approved the Partnership’s payment of the fees charged by DTF. Unlike Hamed’s assertion, the issue before the Master does not come down to one fact: “Whether the expressly obtained the terms of the [Final Wind Up] Order on this contested issue by representing that they would not bill the Partnership.” Section 4 of the Final Wind Up Plan provides that “the Liquidating Partner shall have authority to wind up the Partnership businesses, including full power and authority to sell and transfer Partnership Assets, **engage**

**legal, accounting and other professional services**, sign and submit tax matters, execute and record a statement of dissolution of Partnership, **pay and settle Debts**, and marshal Partnership Assets for equal distribution to the Partners following payment of all Debts and a full accounting by the Partners.” (Jan. 7, 2015 order; Final Wind Up Plan) (Emphasis added) Thus, Yusuf’s decision to engage DTF for professional services to assist in the winding up of the Partnership and therefore, have the Partnership pay for the fees charged by DTF, is within his discretionary authority as the Liquidating Partner. Even if subsequent judicial review concludes that the legal advice and conclusions of the legal professionals were erroneous, it will not affect the conclusion that the Liquidating Partner had the authority to employ and pay for legal services.

Furthermore, as to the specific examples Hamed cited in support of his claim that the work performed by DTF was primarily for Yusuf’s personal benefit and that Yusuf used the DTF’s bi-monthly reports as “as a tool...to allocate Partnership assets to Yusuf or to approve disputed accounting entries in favor of Yusuf,” Hamed never responded in his reply to Yusuf’s responses. As such, the Master cannot conclude that these specific examples support Hamed’s claim. Thus, without more, the Master must deny Hamed’s motion to find that the Partnership should not have paid the fees charged by DTF and to have Yusuf reimburse the Partnership for the fees paid to DTF.

#### **CONCLUSION**

Based on the foregoing, the Master will deny Hamed’s motion. Accordingly, it is hereby:

**ORDERED** that Hamed’s motion to find that the Partnership should not have paid the fees charged by DTF and to have Yusuf reimburse the Partnership for the fees paid to DTF is **DENIED WITH PREJUDICE**.

**DONE and so ORDERED** this 19<sup>th</sup> day of April, 2018.

A handwritten signature in blue ink, appearing to read "Edgar D. Ross", written over a horizontal line.

EDGAR D. ROSS  
Special Master