

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

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

*Plaintiff/Counterclaim Defendant,*

vs.

**FATHI YUSUF** and **UNITED CORPORATION**

*Defendants and Counterclaimants.*

vs.

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

*Counterclaim Defendants,*

---

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

vs.

**UNITED CORPORATION**, *Defendant.*

---

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

vs.

**FATHI YUSUF**, *Defendant.*

---

**FATHI YUSUF**, *Plaintiff,*

vs.

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

*Defendants.*

---

**KAC357 Inc.**, *Plaintiff,*

vs.

**HAMED/YUSUF PARTNERSHIP**,

*Defendant.*

**Case No.: SX-2012-CV-370**

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

**JURY TRIAL DEMANDED**

Consolidated with

**Case No.: SX-2014-CV-287**

Consolidated with

**Case No.: SX-2014-CV-278**

Consolidated with

**Case No.: ST-17-CV-384**

Consolidated with

**Case No.: ST-18-CV-219**

**HAMED MOTION AND MEMORANDUM FOR SUMMARY JUDGEMENT  
RE HAMED REVISED CLAIM H-2 – \$2.78 MILLION UNILATERAL WITHDRAWAL  
FROM THE PARTNERSHIP BANK ACCOUNT**

## I. Introduction

Hamed has raised as one of his claims, designated as H-2, the \$2.78 million unilaterally taken from the Partnership in 2012 by Yusuf. This amount, plus interest, is a valid claim by Hamed.

## II. Applicable Standard of Review

The applicable standard of review for summary judgment is as follows: 1) the movant has the burden to demonstrate there is no genuine issue of material fact; 2) the burden shifts to the non-moving party to present contrary evidence showing a genuine issue for trial and 3) the reviewing court must consider the evidence in a light most favorable to the non-moving party. *Rymer v. Kmart Corp.*, 68 V.I. 571, 575–76, 2018 WL 461388, at \*2 (V.I. Jan. 18, 2018)

## III. Facts<sup>1</sup>

The facts regarding Fathi Yusuf's unilateral withdrawal of \$2,784,706.25 in Partnership funds are as follows: 1) Fathi Yusuf unilaterally withdrew \$2,784,706.25 on August 15<sup>th</sup>, 2012 (SOF ¶¶ 1-2, 26); 2) he did so despite Mohammad Hamed's objection (SOF ¶¶ 3,6); 3) his justification for withdrawing the \$2.78 million was flawed because it was not a full reconciliation of withdrawals between the two families (and is not relevant here because those are separate claims in this process and most have been dismissed) (SOF ¶¶ 3, 6, 21-22, 24); and 4) Yusuf spirited the \$2.78 million out of Hamed's reach by moving it to a bank account Hamed could not access and then further moving the funds by purchasing properties that were not in the Partnership's name. (SOF ¶¶ 12-15, 19-20).

---

<sup>1</sup> Hamed has filed his statement of facts separately. It is incorporated herein and references to it are denoted as "SOF."

#### IV. Argument

A. *Mohammad Hamed's claim is uncontested, thus he is entitled to have his Partnership account credited \$2,784,706.25*

It is undisputed that Fathi Yusuf withdrew \$2,784,706.25 from Partnership funds on August 15<sup>th</sup>, 2012. (SOF ¶¶ 1-2) Accordingly, Mohammad Hamed's estate is entitled to an equal Partnership withdrawal. Other offsets and amounts have been raised here by Yusuf separately, and do not affect this claim.<sup>2</sup>

B. *Hamed is entitled to interest on the \$2,784,706.25 Fathi Yusuf inappropriately withdrew from the Partnership*

The Virgin Islands prejudgment interest statute provides in pertinent part:

(a) The rate of interest shall be nine (9%) per centum per annum on — (1) all monies which have become due; (2) money received to the use of another and retained beyond a reasonable time without the owner's consent, either express or implied; (3) money due upon the settlement of matured accounts from the day the balance is ascertained; and (4) money due or to become due where there is a contract and no rate is specified. Title 11 V.I.C. §951(a).

In this claim, "all monies which have become due" is the appropriate standard. As this Court has previously stated (and thus is the law of the case):

The Master opines that the prejudgment interest should accrue when "all monies which have become due"—which is the date Hamed demanded \$504,591.03 and Yusuf refused to return the money. See *e.g.*, *Bank of N.S. v. Four Winds Plaza Corp.*, 56 V.I. 45, 57-58 (Super. Ct. Feb. 15, 2012) (While the court noted that prejudgment interest should accrue from the date Four Winds refused to turn over the sale proceeds, the court ended up using the date that the Bank demanded the sale proceeds since the record did not reflect the date of Four Winds' refusal.) Order, *Hamed v Yusuf*, SX-12-CV-370 (Jul 12, 2018). (SOF ¶ 25)

---

<sup>2</sup> Yusuf has continuously maintained, without explanation, that this claim must "wait" for the \$1.6 million offsetting claim for the pre-2007 "Black Book." That is not true – and in any case those claims have been heard and denied by the Special Master. See decision dated September 24, 2018.

In this instance, "all monies which have become due" is August 20, 2012, the date the check Yusuf wrote to the United Corporation cleared the Partnership account. (SOF ¶ 4)

As described below, an award of interest to Hamed is appropriate because Yusuf unilaterally withdrew the \$2.78 million, despite Hamed's objection; declined to do a full accounting by refusing to consider Hamed offsets and moved the Partnership funds out of Hamed's reach by first moving them into a United Corporation bank account that Hamed did not have access to and then purchased businesses with the \$2.78 that were not in the Partnership's or United's name. (SOF ¶¶ 1, 3, 6-7, 11-16)

1. Fathi Yusuf unilaterally withdrew Partnership funds, despite prior Partnership practice of reaching mutual agreement

On January 31, 2013, in a hearing before Judge Brady, Waleed Hamed testified under oath that prior to Fathi Yusuf's withdrawal of \$2.78 million, neither the Hameds nor the Yusufs ever withdrew funds from Partnership accounts without prior agreement of both families. (SOF ¶ 16)

2. Fathi Yusuf unilaterally withdrew Partnership funds, despite Hamed's assertion that not all offsets had been included

Fathi Yusuf unilaterally removed the \$2.78 million, despite Waleed Hamed's assertion on August 16<sup>th</sup> and 25<sup>th</sup>, 2012 that the removal was inappropriate because a full accounting had not occurred. (SOF ¶¶ 1, 3, 6) Waleed Hamed noted that the \$802,966 for the Dorothea property owed Hamed had not been included, nor had there been a reconciliation of all the Partnership withdrawals between the two families. (SOF ¶ 3)

3. Fathi Yusuf moved \$2.78 from the Partnership bank account to an account that Hamed could not access

On January 25, 2013, Maher Yusuf testified in a hearing before Judge Brady that he moved the \$2,784,706.25 from a Plaza Extra United bank account to a United Corporation Shopping Center bank account that the Hameds could not access.

A [MAHER YUSUF] It didn't remove from the account. It was removed from one United account and another United account.

Q [JOEL HOLT] And it was removed to an account that the Hamed family does not have access to; isn't that correct?

A Yes. (SOF ¶ 13)

On April 25, 2013, Judge Brady agreed that the funds were moved outside of the Hameds' control and made the following Findings of Fact regarding the Yusuf withdrawal of \$2,784,706.25 from the Plaza Extra Partnership account:

35. On or about August 15, 2012, Yusuf wrote a check signed by himself and his son Mahar Yusuf and made payment to United in the amount of \$2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection of Waleed Hamed on behalf of Plaintiff and the Hamed family. . . Tr. 246:1- 250:14, Jan. 25, 2013; PLGroup Ex. 13. (SOF ¶ 19)

Judge Brady also noted in his April 25, 2013 opinion that, not only was the \$2.78 million outside of the reach of Hamed, but "a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence. . . As such, the amount of any monetary loss suffered by Plaintiff may not be capable of ascertainment." (SOF ¶ 20)

4. Maher Yusuf changed his testimony about what the \$2.78 million was used to purchase after being confronted with documents in sworn testimony before Judge Brady

On January 25, 2013, Maher Yusuf testified under oath in a hearing before Judge Brady that he used the \$2,784,706.25 from a Plaza Extra United bank account to purchase three properties, one in Frederiksted, West Airport Road and LaGrange. (SOF ¶ 14) On January 31, 2013, when presented with the three deeds, he admitted that he didn't purchase the three properties with the \$2.78 million because two of the three properties were purchased *before* the \$2.78 million was withdrawn from the Partnership account. (SOF ¶ 15) When confronted with the evidence, Maher Yusuf changed his story

and admitted that he bought one property, a mattress company and other businesses with the \$2.78 million. (SOF ¶ 15)

5. Eventually Maher Yusuf admitted the \$2.78 million was used to purchase businesses wholly separate from the Partnership

Instead of purchasing three properties, Maher Yusuf subsequently admitted in his sworn testimony before Judge Brady on January 31, 2013 that he purchased one property, a mattress company and other businesses with the Partnership funds. (SOF ¶ 15) Maher Yusuf admitted that purchase of the mattress company and other businesses was not in United Corporation d/b/a Plaza Extra's name. (SOF ¶ 15) These other entities, then, were outside of the control of the Hameds.

On April 25, 2013, Judge Brady agreed in his Findings of Fact that Maher Yusuf reversed his testimony regarding what Maher Yusuf actually did with the \$2.78 million in Partnership funds.

36. On the first hearing day, Mahar Yusuf, President of United Corporation testified under oath that he used the \$2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, Mahar Yusuf contradicted his prior testimony and admitted that those withdrawn funds had actually been used to invest in businesses not owned by United, including a mattress business. . . Tr. 250:2-251:15, Jan. 25, 2013; Tr. 118:12-120: 2, Jan. 31, 2013. (SOF ¶ 19)

- C. *Issues raised previously by the Master: Fathi Yusuf's unilateral \$2,784,606.25 withdrawal was not a proper Partnership distribution; the withdrawal was of consequence to Hamed and the withdrawal was not a correct calculation of the Partnership distribution*

This Court on September 24, 2018 raised the following issues with respect to the \$2,784,606.25 withdrawal by Fathi Yusuf: 1) whether it was a proper Partnership distribution to Yusuf; 2) whether what Yusuf spent the \$2.78 million on was of any consequence to Hamed and 3) whether the \$2.78 million was the correct calculation of Partnership contribution to Yusuf. See, Order on Hamed's motion for reconsideration of

the Special Master's September 14, 2018 Order as to Hamed Claim No. H-2, *Hamed v Yusuf*, SX-12-CV-370 (Sept. 14, 2018).

1. The \$2.78 million withdrawal by Fathi Yusuf was not a proper Partnership distribution

It is undisputed that the \$2.78 million was not a proper Partnership distribution to Yusuf because the underlying justification for withdrawing the funds was faulty (SOF ¶¶ 3, 6, 22, 24). In his August 15, 2012 letter, Yusuf asserted three justifications for withdrawing the \$2.78 million: 1) the \$1.6 million was a confirmed withdrawal; 2) additional receipts substantiated an additional \$1,095,381.75 withdrawal by Hamed and 3) Hamed had funds from two foreign bank accounts in the amount of \$89,051.50. (SOF ¶ 2)

- i. The \$1.6 million "past confirmed withdrawal" has been denied

On September 24, 2018, the Special Master granted Hamed's motion to preclude Yusuf's claims prior to September 17, 2006 in the amount of \$1,600,000. Order, *Hamed v Yusuf*, SX-12-CV-370 (Sept. 24, 2018). On October 30, 2018, the Special Master denied Yusuf's motion for reconsideration regarding the \$1.6 million. Order, *Hamed v Yusuf*, SX-12-CV-370 (Oct. 30, 2018).

- ii. The \$1 million in additional withdrawals are subject of an independent Yusuf claim

The alleged \$1,095,381.75 in withdrawals by Hamed are the subject of an independent claim here, Yusuf's Past Partnership Withdrawals claim (Y-10). They do not constitute some sort of magical offset. Judge Brady put a fine point on it when he stated:

the partners and their sons had both unfettered access to large amounts of cash, deliberately kept off company books, and ample opportunity to secretly remove that cash, secure in the knowledge that no partner, accountant, or investigator would be able, after the fact, to ascertain the amount taken, as the total amount of cash kept in store safes was intentionally omitted from any record keeping. (SOF ¶ 23)

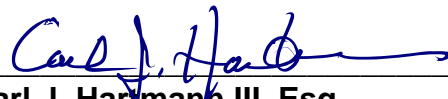
- iii. The \$89,051.50 in foreign accounts are the subject of a separate Yusuf claim

The \$89,051.50 in foreign accounts are also subject to a separate claim here, Yusuf's Foreign Accounts and Jordanian Properties claim (Y-12) and are not an offset.

## V. Conclusion

It is undisputed that Yusuf unilaterally withdrew \$2,784,706.25 in Partnership funds. Yusuf then moved these Partnership funds beyond the reach of Hamed by first depositing them into a United account Hamed did not have access to and then further moving the funds by purchasing businesses not in the Partnership or United Corporation's name. Yusuf's alleged offsets to the \$2.78 million withdrawal are not relevant because 1) they don't represent a full Partnership accounting, 2) \$1.6 million of the offset has already been denied and 3) the remaining offsets are handled as separate independent claims. Accordingly, Hamed is entitled to an equal Partnership withdrawal plus prejudgment interest credited to his Partnership account.

**Dated:** February 25, 2019



**Carl J. Hartmann III, Esq.**

*Co-Counsel for Plaintiff*

5000 Estate Coakley Bay, L6

Christiansted, VI 00820

Email: carl@carlhartmann.com

Tele: (340) 719-8941

**Joel H. Holt, Esq.**

*Counsel for Plaintiff*

Law Offices of Joel H. Holt

2132 Company Street,

Christiansted, VI 00820

Email: holtvi@aol.com

Tele: (340) 773-8709

Fax: (340) 773-867



### CERTIFICATE OF SERVICE

I hereby certify that on this 25<sup>th</sup> day of February, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
% edgarrossjudge@hotmail.com

**Gregory H. Hodges**  
**Charlotte Perrell**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
ghodges@dtflaw.com

**Mark W. Eckard**  
Hamm, Eckard, LLP  
5030 Anchor Way  
Christiansted, VI 00820  
mark@markeckard.com

**Jeffrey B. C. Moorhead**  
CRT Brow Building  
1132 King Street, Suite 3  
Christiansted, VI 00820  
jeffreymlaw@yahoo.com



Carl J. Hamed

### CERTIFICATE OF WORD/PAGE COUNT

This document complies with the page or word limitation set forth in Rule 6-1 (e).



Carl J. Hamed