

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'S REPLY TO YUSUF'S OPPOSITION TO HAMED'S MOTION FOR
SUMMARY JUDGEMENT RE HAMED REVISED CLAIM H-2 – \$2.78 MILLION
UNILATERAL WITHDRAWAL FROM THE PARTNERSHIP BANK ACCOUNT**

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. Oddly, Yusuf does not actually dispute the claim. Instead, Yusuf opposes Hamed's summary judgment motion because 1) "the relief sought by Hamed for a corresponding "credit" is improper, when the full balance of the claims have not been resolved" and 2) the claim is an "accounting claim" and not a "claim for damages." See *e.g.*, Yusuf Opposition at pp. 3-4 and 6-7.

I. Regardless of what it is called, Hamed's claim is clear – it is a claim for an equal amount of \$2.78 million that was taken unilaterally by Yusuf from the Partnership

While Yusuf seems to want to continue to delay the Special Master's recognition that Hamed's Partnership account should be credited with \$2,784,706.25 to equal the unilateral withdrawal Yusuf made from the Partnership account in 2012, the time to decide this has arrived.

The time for determining the various accounting claims is now. The January 7, 2015 Wind-Up Order dictated that the settling of the accounting claims begins within 45 days after the Liquidating Partner completes the liquidation of the Partnership assets. Wind Up Order at pp. 8-9. The liquidation of Partnership assets was completed. Hamed is not asking for money now, nor is he asking for anything other than that Yusuf's taking of the \$2.78 million be recognized – and added to the list of accounting amounts that will be finally reconciled.

In this regard, on January 29, 2018, Special Master Ross initiated the start of the claims process by issuing the claims process scheduling order. That scheduling order was revised on August 6, 2018 and then again on December 2, 2018. It is clear that the

claims process as part of the Wind-Up plan is in full swing and the time to determine claims has arrived

There is no logical reason for Yusuf's assertion that his claim Y-10 has to be, for some vague reason, determined before Hamed's claim can be determined. Each claim can be evaluated in isolation and then a final truing up of the accounting can be accomplished at the end of the process. Hamed is not asking for a check to be cut as each claim is decided. Hamed fully expects that the "Master shall make a report and recommendation for distribution to the Court for its final determination" before any funds are dispersed. Wind-Up Order at p. 9.

It is undisputed that Fathi Yusuf withdrew \$2,784,706.25 from Partnership funds on August 15th, 2012. (SOF ¶¶ 1-2) Yusuf admits the same in his Opposition at p. 3: "Yusuf does not dispute that the \$2.78 million dollar check was removed. . . ." Accordingly, Mohammad Hamed's estate is entitled to a decision that when the "Master [makes] a report and recommendation for distribution to the Court for its final determination," it will include the \$2.78 million on Hamed's side of the ledger.

II. Hamed is entitled to Interest on the \$2.78 million

A. 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

The real issue here is interest. On September 24, 2018, the Special Master 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 definitely was not a proper Partnership distribution because it was contested, not done in the same cooperative manner as other withdrawals and not an accurate determination of what was owed to each Partner

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 unilaterally stated he would take the funds, asserting three justifications for withdrawing the \$2.78 million: 1) \$1.6 million claimed by him against Hamed for matters in the 1990s and early-2000's 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)

- a. The \$1.6 million "past confirmed withdrawal" was not subject to a full reconciliation in 2012

Yusuf neglects to state that the \$1.6 million **was a reconciliation for one store only**, Plaza Extra-East. (SOF ¶ 24) This point has been made over-and-over again and was explicitly conceded by Mike Yusuf. The records show, and Mike Yusuf admitted that the numbers Yusuf was trying to use were not the result of a global reconciliation from the three stores as to all items owing between the two families. It was just the number from one store.

Q.[Mr. Hartmann]. . . So let me just see if I'm clear. The two of you collected the receipts from everywhere?

A. [MAHER YUSUF] No. You're -- I told you, from Plaza Extra East.

Q. Oh, just from Plaza Extra East?

* * * *

Q. Okay. And -- and do you know if the same thing

was done at Plaza Extra West and at --
A. Plaza Extra West, it was not done.

* * * *

Q. And how about St. Thomas?

A. I don't -- St. Thomas didn't do anything. (Exhibit 17, 65:19-22-66:1-3, 13-14)

Again, Mike Yusuf made this very clear – and the written discovery confirms this. (SOF ¶ 24) There simply was no contemporaneous reconciliation of the other two stores, nor was there a reconciliation of other outstanding Yusuf debts, such as the Dorothea property. (SOF ¶ 3, 6) Thus, Yusuf just unilaterally decided to take money he needed for other business deals totally unrelated to either the Partnership or United because he needed to do so. That money didn't belong to him and it was taken over the repeated, strenuous objections of Hamed – something that had NEVER occurred in the more than 25 years of the Partnership.

b. The \$1 million in additional withdrawals were not part of a full reconciliation in 2012

The additional \$1,095,381.75 in Hamed withdrawals that suddenly appeared when Yusuf needed funds in 2012, also were not subject to any real, full reconciliation. None of the alleged \$1,095,381.75 in withdrawals by Hamed were reconciled with Yusuf withdrawals during the same time period either (1997-2001, SOF ¶ 2, Exhibit 2). It is telling that the only receipts Yusuf provided in Yusuf's 2012 "notice letter" to "prove" Hamed owed \$1 million were Hamed receipts. (SOF ¶ 2, Exhibit 2) None of the Yusuf receipts were counted against that amount. As Maher Yusuf testified in his April 3, 2014 deposition, "some receipts were destroyed by me. . ." (SOF ¶ 22)

Again, Yusuf unilaterally took money from the Partnership that was not substantiated by a full reconciliation and the funds were taken over the objections of Hamed. He did so

in a manner that had never occurred before. He took the funds against his Partner's repeated protests – again, something that had never happened before.

- c. The \$89,051.50 in foreign accounts were not substantiated and was not subject to a full reconciliation in 2012

The \$89,051.50 in foreign accounts Hamed allegedly owed Hamed were not backed up with any bank statements or withdrawal slips in Yusuf's August 15, 2012 letter justifying his unilateral withdrawal. (SOF ¶ 2) Further, Yusuf did not provide any information regarding foreign accounts in *his* name that were funded by the Partnership. (SOF ¶ 2) This is another example of Yusuf improperly taking Partnership funds without a full reconciliation.

2. Yusuf's removal was not a proper Partnership distribution and how the money was spent was of consequence to Hamed because there was a fear that the funds could not be traced and returned to the Partnership
 - a. Yusuf removed funds over the objections of Hamed

Yusuf removed the \$2.78 million over the timely objections of Hamed, without consensus, as was the usual and normal means by which decisions were made. In fact, **the funds were withdrawn prior to Hamed even receiving the August 15, 2012 letter identifying the reasons for Yusuf's withdrawal.** (SOF ¶ 26) Wally Hamed testified before Judge Brady on January 31, 2013 that neither the Hameds nor the Yusufs ever withdrew funds from Partnership accounts without the prior agreement of both families. (SOF ¶ 16) This fact, coupled with the faulty reasoning for withdrawing the money in the first place, made the removal an improper Partnership distribution.

- b. Yusuf took the funds for another business, moving the funds out of United's and Hamed's reach -- and Judge Brady noted the funds could not be tracked, nor could it be assured other funds were not being similarly removed without Hamed's knowledge

It is of consequence why Yusuf took the funds in such an extraordinary manner and how Yusuf spent them. Yusuf violated his fiduciary responsibilities to the Partnership when he unilaterally 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 he purchased businesses with the \$2.78 million that were not in the Partnership's or United's name. (SOF ¶¶ 1, 3, 6-7, 11-16) Additionally, after Yusuf moved the \$2.78 million out of Hamed's reach, he froze Hamed out the Partnership bank accounts, making it impossible for Hamed to know whether other funds were being taken unilaterally. (SOF ¶ 17)

Judge Brady's observation in his July 21, 2017 Limitations on Accounting Order summed up Hamed's fears:

With regard to the August 2012 **diversion** of more than \$2.7 million by Mahar Yusuf, president of United, **to accounts inaccessible to Plaintiff**, 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 and, to date accounting for the businesses is not completed beyond June 2012. (SOF ¶ 20) (Emphasis added.)

B. Hamed is entitled to interest on the \$2.78 million

Thus, Hamed is entitled to interest pursuant to Title 11 V.I.C. §951(a)(2): "the rate of interest shall be nine (9%) per centum per annum on (1) all monies which have become due. . ." As demonstrated above, Yusuf improperly and unilaterally withdrew funds from the Partnership and over the objections of Hamed. These are not past amounts or claims that laid undisputed until this action occurred. This was the basis for this action – it was the use of Partnership funds for an interest free business loan. Accordingly, Hamed should be paid interest on that illegitimate withdrawal.

III. 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. He used the funds as an interest-free business loans and thus saved himself interest at the Partnership's expense. 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: April 24, 2019



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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of April, 2018, I served a copy of the foregoing by email, as agreed by the parties, on:

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