

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

WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.	)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING
v.	)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,	)	
	)	
Additional Counterclaim Defendants.	)	Consolidated With
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-287
v.	)	ACTION FOR DAMAGES AND DECLARATORY JUDGMENT
UNITED CORPORATION,	)	
	)	
Defendant.	)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-278
v.	)	ACTION FOR DEBT AND CONVERSION
FATHI YUSUF,	)	
	)	
Defendant.	)	

**UNITED'S REPLY TO HAMED'S OPPOSITION TO UNITED'S MOTION FOR  
SUMMARY JUDGMENT AS TO Y-3 (INTEREST ON RENT FOR BAY 1  
PREVIOUSLY AWARDED TO UNITED) AND  
Y-4 (INTEREST ON RENT FOR BAYS 5 AND 8)**

United Corporation (“United”) through its undersigned attorneys, respectfully submits this Reply Brief to Hamed’s Opposition to United’s Motion for Summary Judgment as to Y-3 (Interest on Rent previously awarded for Bay 1) and Y-4 (Interest on Rent for Bays 5 and 8).

**I. Interest as to Rent Previously Awarded as to Bay 1**

**A. Interest Allowed on Past Due Amounts at Statutory Rate**

Pursuant to 11 V.I.C. § 951(a) “[t]he rate of interest *shall be* nine (9%) per centum per annum on...all monies which have become due.” (emphasis added). In *Addie v. Kjaer*, the Third Circuit held that 11 V.I.C. § 951 applies to “*all monies which have become due*” whether the debt is the result of contractual obligations or otherwise. *Addie v. Kjaer*, 836 F.3d 251, 254, 65 V.I. 445, 450 (C.A.3 (Virgin Islands), 2016). The Third Circuit also held that under Virgin Islands law, “that prejudgment interest at 9 percent is *mandatory*...under the Virgin Islands prejudgment interest statute.” *Id.*, see also, *Tutu Park, Limited v. Harthman Leasing I, LLLP*, 2016 WL 5853346, at \*7 (V.I.Super., 2016)(denying plaintiff-tenant’s motion to dismiss defendant-landlord’s counterclaims for prejudgment interest upon tenant’s default where lease was silent on issue of interest, citing *Addie v. Kjaer* that prejudgment interest is mandatory for all monies that have become due). The Third Circuit explained:

The statute is worded in mandatory terms. It is a simple command: the rate of interest ‘shall be’ 9 percent. Where the Legislature of the Virgin Islands intended to give courts discretion, it did so explicitly. *E.g.*, V.I. Code tit. 5, § 541(b) (“[T]here shall be allowed to the prevailing party in the judgment such sums as the court in its discretion may fix by way of indemnity for his attorney’s fees....”). The prejudgment interest statute affords no such discretion.

*Addie v. Kjaer*, 836 F.3d 251, 255, 65 V.I. 445, 451 (C.A.3 (Virgin Islands), 2016).

United did not require the rent to be paid on a monthly or even yearly basis. Hence, rent was allowed to accumulate for years and United did not charge the Yusuf-Hamed partnership

(“Partnership”) interest as the rent was not considered due. As a result, the Partnership benefited from this relationship as rent was not due for years at a time allowing the business to maintain greater liquidity and the rent accumulated without interest.<sup>1</sup> However, when demand was made for rent, prejudgment interest began to accrue from the time of the demand until payment.

**B. Period of the Interest is Correct (from Demand Date 5/13 to Payment 5/15).**

Hamed argues that if interest is due, it must run from either: a) the point in time in which the decision was made awarding the rent, or b) when demand was made for prejudgment interest. Neither position is correct. Rather, prejudgment interest accrues when the monies sought have become due. 11 V.I.C. § 951(a)(1).

Hamed admitted the debt for rent was due, he disputed some of the calculations. However, just because Hamed disputed the amount of debt does not mean that prejudgment interest would not accrue. Rather, prejudgment interest is awarded to a litigant who is forced to litigate to recover their claim from the date they claim the loss until the money is paid. *See Hartford Acc. & Indem. Co. v. Sharp*, 87 F.3d 89, 91, 34 V.I. 383, 384 (C.A.3 (Virgin Islands), 1996)(awarding the plaintiff-insured as a beneficiary who was forced to litigate to recover the proceeds of a life insurance policy, prejudgment interest *from the date when insurance proceeds became payable*—the date beneficiary filed a notice of claim with insurer, *running until the date the money was paid*—the date insurer deposited the funds into the district court's registry). Here, United was forced to sue to recover the past due rent for Bay 1 and thus, is entitled to receive prejudgment interest from the date of the demand, when rent became payable and due, until the point payment

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<sup>1</sup> As described in United’s Motion, United was prohibited from collecting rent after the FBI raid in 2001 during the pendency of the criminal case for multiple reasons including the fact that accounts were frozen and the Partnership was counseled not to make a payment to United while the criminal case remained open. *See* United’s Motion at p.8, 11-12 and **United Exhibit 3**-August 12, 2014 Motion at p.8 and fn.3.

was received. Moreover, “prejudgment interest...is due from the date the debt was due, even though there may exist a bona fide dispute as to how much is owed.” *Bellino v. W & W Lumber and Bldg. Supplies, Inc.*, 902 So.2d 829, 832 (Fla.App. 4 Dist., 2005). Hence, even if Hamed was successful in securing a lower award for rent, United would still be entitled to prejudgment interest for the same period (from the date of demand to the date of payment) on the lower amount.

The purpose of the prejudgment interest is to make the aggrieved party whole. “As a general rule, prejudgment interest is to be awarded when the amount of the underlying liability is reasonably capable of ascertainment and the relief granted would otherwise fall short of making the claimant whole because he or she has been denied the use of money which is legally due. Awarding judgment interest is intended to serve at least two purposes: to compensate prevailing parties for the true costs of money damages incurred, and, where liability and the amount of damages are fairly certain, to promote settlement and deter attempts to benefit from the inherent delays of litigation. Thus, prejudgment interest should ordinarily be granted unless exceptional or unusual circumstances exist making the award of interest inequitable.” *Skretvedt v. E.I. Dupont de Nemours*, 372 F.3d 193, 208 (3d Cir. 2004)(quotation marks and citation omitted); *see also*, *Booker v. Taylor Milk, Co.*, 64 F.3d 860, 868 (3d Cir. 1995)(“To fulfill this make-whole purpose, prejudgment interest should be given in response to considerations of fairness and denied when its exaction would be inequitable.”) (internal quotation marks and citation omitted); *Elbrecht v. Carambola Partners, LLC*, 2010 U.S. Dist. LEXIS 72158, \*19 (D.V.I. July 16, 2010) (same).

Here, there are no exceptional or unusual circumstances that would make it unfair for United to recover prejudgment interest as to the unpaid rent. To the contrary, it would be entirely unfair to United if the Partnership is allowed to have the uncompensated use of United’s money after it made demand for payment in May of 2013. United was already prohibited from recovering

rent during the pendency of the criminal case and allowed the rent to accumulate for years without interest. However, to deny United prejudgment interest, when demand was made, penalizes United, who had already afforded the Partnership substantial benefit by not demanding rent to be due for years at a time.

**C. United Has Properly Sought Prejudgment Interest as to Prior Award of Unpaid Rent for Bay 1 in this Motion Before the Master.**

Hamed repeatedly argues<sup>2</sup> that United did not seek interest in its original motion for rent submitted to Judge Brady and the failure to do so precludes United from doing so now—characterizing United’s arguments as an effort to “sneak in” a motion for reconsideration. Hamed is incorrect. First, United *did* make an argument for the award of prejudgment interest as to the Rent sought for Bay 1 in its earlier motion in August of 2014. *See United Exhibit 3*—August 12, 2014 Motion<sup>3</sup> and Memo to Withdraw Rent, p. 8.<sup>4</sup> At the time that the Court issued its ruling awarding United Rent as to Bay 1 on April 27, 2015, Judge specifically indicated:

This inquiry is limited to the issue of rent and does not extend to other relief sought by Defendants Counterclaim or to other aspects of Plaintiff’s Motion for Partial Summary Judgment beyond the issue of past due rents.

*See United Exhibit 10*—April 27, 2015 – Judge Brady’s Rent Order for Bay 1, p. 5. Furthermore, at the time Rent Order was issued, the Order to proceed with the Wind Up of the Partnership

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<sup>2</sup> Hamed claims that “September 30, 2016, was the *very first time* United requested or even discussed interest on the Partnership’s payment of back rent for Bay 1 when it filed a claim for interest on the back rent the Partnership paid for Bay 1 during the claims portion of the Wind Up of the Partnership.” Hamed Brief, p. 3 (emphasis added). Again, Hamed is incorrect. United raised the issue in his August 12, 2014 Motion which is incorporated into this motion. *See United Exhibit 3*—August 12, 2014 Motion and Memo to Withdraw Rent, p. 8.

<sup>3</sup> Recall that there were overlapping motions relating to the rent. The April 27, 2015 Rent Order did not address the August 12, 2014 United Motion and thus, the issue of prejudgment interest as to rent due for Bay 1, has not been addressed.

<sup>4</sup> Hamed is also in error when he states that he would have contested the issue of prejudgment interest if had been raised. Hamed had the opportunity and, in fact, did address the issue in his Opposition to the Motion for Summary Judgment filed on August 25, 2014 at page 16-17, Part IV. Again, that issue has not been ruled upon and is ripe for adjudication here.

appointing Master Ross was already in place. All claims, thereafter, were required to be submitted to the Master for his review and report. The Rent Order even contemplates the possibility of further actions by the Master as to issues relating to rent due to United. *See United Exhibit 10*—April 27, 2015 – Judge Brady’s Rent Order for Bay 1, p. 3, fn. 2. Furthermore, the Master has considered various claims by United for rent in his decision denying United’s claim for increased rent on March 15, 2018. Hence, this Motion is the proper procedural mechanism to seek an award of prejudgment interest for the rent due to United as to Bay 1 and there is no merit to Hamed’s argument that this is not the proper forum or should have taken the form of an ill-timed motion for reconsideration.

## **II. Interest as to Rent for Bays 5 and 8**

### **A. Interest Allowed on Past Due Amounts at Statutory Rate**

For the same reasons that prejudgment interest is due as to the award of Rent for Bay 1, it is due as to an award of rent for Bays 5 and 8, upon the finding of such an award. Moreover, the fact that Hamed has disputed that rent is due for Bays 5 and 8 does not preclude the award of prejudgment interest, if rent is awarded. A party forced to litigate to recover amounts claimed due remains entitled to collect prejudgment interest. *Hartford Acc. & Indem. Co. v. Sharp*, 87 F.3d 89, 91, 34 V.I. 383, 384 (C.A.3 (Virgin Islands),1996)(awarding the plaintiff-insured as a beneficiary who was forced to litigate to recover the proceeds of a life insurance policy, prejudgment interest *from the date of the proof of loss* to the date the money was paid).

### **B. Period of Interest is Correct (from Demand Date 5/13 to Present)**

The period for interest on Bays 5 and 8 is also correct. The same time that demand was made for rent as to Bay 1, demand was made for rent as to Bays 5 and 8. This is the point the rent became due. For the reasons set forth in United’s Motion as to Y-2, United is entitled to an award

of rent for Bays 5 and 8 for the periods of usage. Consistent with the parties' dealings, rent was allowed to accumulate and was not required to be paid until demand was made. The Partnership benefited from this arrangement. All parties acknowledge and admit that Yusuf was in charge of the rent. He allowed this accumulation to occur which inured to the benefit of the Partnership. United did not profit from the delay in rent payments or the time that it was allowed to accumulate. Moreover, circumstances including the pendency of the criminal case involving United and members of the Yusuf and Hamed families, further delayed any efforts that United may have undertaken to collect rent, but no interest was sought from the Partnership for those circumstances, despite the fact that United was deprived of the use of those funds during that extended period of time. Rather, United sought to recover the rent for the Partnership's use of space at the United Shopping Center in May of 2013 and wrote a formal letter demanding the rent, making it due. Waleed Hamed refused to pay, although he admitted that the Partnership used the space and benefitted from the use. At best, Hamed's testimony is inconclusive, stating that he does not remember conversations with Yusuf on the issue of rent as to Bays 5 and 8 and that he would have to defer to Yusuf's recollection. Upon an award of rent for Bays 5 and 8, United is also entitled to an award of prejudgment interest for the loss of use of the funds due for the rent and to make United whole for those damages.

### **III. Conclusion**

Pursuant to 11 V.I.C. § 951, prejudgment interest is allowed as to "*all monies which have become due*" whether the debt is the result of contractual obligations or otherwise. Construing the statute, the Third Circuit held that the language is mandatory and constitutes a simple command to award prejudgment interest. Other Superior Court Judges have followed the Third Circuit's interpretation that the prejudgment interest statute is mandatory and requires an award

prejudgment interest on all monies due. Prejudgment interest runs from the point in which the debt became due. Here, the debt became due when demand was made in May of 2013. Hence, United is entitled to an award of prejudgment interest on the rent actually awarded by the Rent Order for \$881,995, which is interest from the time that rent became due upon demand in May of 2013 to May 11, 2015, when the rent was paid to United. Likewise, United is entitled to an award of prejudgment interest on the outstanding Bay 5 and 8 rents from the date demand for rent was made on May 17, 2013 to the date the Master renders his determination at a rate of \$195.78 per day.

Respectfully submitted,

**DUDLEY NEWMAN FEUERZEIG LLP**

**DATED:** April 24, 2019

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 24<sup>th</sup> day of April, 2019, I caused the foregoing **UNITED'S REPLY TO HAMED'S OPPOSITION TO UNITED'S MOTION FOR SUMMARY JUDGMENT AS TO Y-3 (INTEREST FOR RENT AWARDED FOR BAY 1) AND Y-4 (INTEREST FOR RENT FOR BAYS 5 AND 8)**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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