

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

**YUSUF'S OPPOSITION TO
HAMED'S MOTION AND MEMORDANUM FOR SUMMARY JUDGMENT RE
HAMED REVISED CLAIM H-1 –FATHI YUSUF'S FAILURE TO PAY FUNDS RE
SALE OF THE Y&S STOCK RESULTING IN THE SALE OF THE DORTHEA
CONDOS AND LAND**

Fathi Yusuf through his undersigned attorneys, respectfully submits this Opposition to Hamed's Motion and Memorandum for Summary Judgment Re Hamed Revised Claim H-1—Fathi Yusuf's Failure to Pay Funds Re Sale of the Y&S Stock Resulting in the Sale of the Dorothea Condo and Land as follows:

I. Summary

Hamed's Claim No. H-1 relates to a transaction that resulted from a sale of stock pursuant to a written agreement in 2000 requiring all payments to be made before the middle of 2004. Therefore, the transaction giving rise to Hamed Claim No. H-1 occurred prior to September 17, 2006—the claims cut-off date imposed by the Court in its Order issued July 21, 2017, wherein the Court, exercising its equitable powers to achieve the orderly administration of the wind up of the partnership, limited any and all accounting claims between the partners to only those that occurred on or after September 17, 2006. This limitation has been imposed on Yusuf to limit claims he sought to pursue, even for transactions begun *before* the bar date but not completed until *after* the bar date. Likewise, Hamed's Claim No. H-1 is barred. It is undisputed that the transaction occurred before the bar date, but there exists questions of fact as to when payments for the transaction were received. Most appear to have occurred prior to 2006. Regardless, similar transactions (those that straddle the bar date) have already been deemed pre-September 17, 2006 by this Court and have been barred and, therefore, Hamed's Claim No. H-1, also should be barred. If not barred, the amount due is subject to a downward revision as a result of other off-sets.

II. Facts

It is undisputed that the transaction was initiated and was to be completed prior to the September 17, 2006 cut-off date. The *Agreement of Sale of Stock*, which defines the transaction was dated June 15, 2000 and required the buyer to make four \$225,000 installment payments, which were due on January 15, 2001, January 15, 2002, January 15, 2003 and January 15, 2004—all of which were to occur before the September 17, 2006 cut-off date. See Hamed Statement of Facts (“SOF”), ¶7 and Exhibit 6 thereto, at p.1 and p. 2, ¶3.

As to the timing of the payments for this transaction, Mr. Yusuf has testified:

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest.

See **Exhibit A**-Yusuf's Supplemental Discovery Responses dated December 18, 2018.

Subsequently, Mr. Yusuf clarified to state:

Dorthea Condo transaction. Mr. Yusuf confirms the following:

1. I was to receive the proceeds under the sales contract for the sale of the Dorthea Condo.
2. The full amount of \$1.5 million for the sale was received.
3. I am currently in possession of \$1,350,000 of the total amount of those proceeds in the form of another asset. The remaining \$150,000, I directed the purchaser to pay directly to the Batch Plant to make up for what Hamed had received 10 years earlier but had failed to deliver to the Batch Plant. Attached is the document that reflects that payment (FY015136). The breakdown is: \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (total due \$750,000 (his ½ of the 1,500,000) minus \$150,000 paid to the Batch Plant from Hamed's portion).
4. I believe that I provided the handwritten “Dorothia” document to Willy but I do not recall when.

5. It is my belief that the principle payments were received prior to 2006. However, I cannot say this for sure.

See **Exhibit B**-Yusuf's Supplemental Discovery Responses dated January 18, 2019. The payment of the \$150,000 to the Concrete Batch Plant was to pay a debt owed by Hamed as a result of his failure to make the payment some 10 years earlier. *Id.* The timing set forth by Yusuf in these Supplemental Discovery Responses is consistent with Yusuf's prior testimony in 2014, wherein he testified:

Question: Okay. When did you get that money?

Yusuf Ans.: I get that money, I don't have a date. But I get that money maybe, I can guarantee you, it's not 3 years. It's less than 3 years. I sold this property many, many years ago.

See **Exhibit C**-Yusuf Depo. dated April 4, 2014,105:8-12. Hence, while Yusuf may not have the specific dates that he received the payments, he has confirmed that payments were received within a few years (“it’s not three years”, “[I]t’s less than 3 years”) *of the sale*, which occurred in 2000 (“many, many years ago”). *Id.* This is also consistent with the stated terms of the *Agreement* that payments were to be received within a few years *of the sale*.

In his most recent deposition, Yusuf was asked questions about the Dorthea transaction and when he had Hisham Hamed and Najeh Yusuf sign a release. Yusuf explained “I want them to give the release, because the people ask for the release. They already paid the money long time, and they requested the release, and I told Shawn to sign the release.” See **Exhibit D**, Yusuf Depo. dated January 21, 2019, 25:1-4. Yusuf further testified that he does not recall when he received \$1.3 million of the \$1.5 million. *Id.* at 28:1-2.

There are no records as to the payments or when they were received. *See* Exhibit A-Yusuf's Supplemental Discovery Responses dated December 18, 2018. The only payment for which there is any documentation is a payment in 2011 in which a \$150,000 payment was made directly to a concrete batch plant in Jordan at Mr. Yusuf's direction to satisfy a joint obligation of the partners, which Hamed failed to pay his portion of the obligation some ten (10) years earlier. *See* Exhibit D, Yusuf Depo. dated January 21, 2019; 22:3-1; 43:5-49:12. However, this single payment (to satisfy an outstanding obligation of Hamed) does not demonstrate when the other \$1,350,000 value had been received.

III. Argument

A. The Transaction Giving Rise to Hamed Claim H-1 Occurred Prior to the Limitation Order and is Barred.¹

In the Limitation Order, Judge Brady specifically addressed the claim, which is now Hamed Claim No. H-1 and found that:

Plaintiff's Complaint in SX-14-CV-278 nominally presents a claim for damages for debt, or alternatively conversion, in the amount of \$802,955, which Plaintiff alleges he is owed in connection with the sale of certain real property originally purchased with partnership funds. However, in their Stipulation Re: Consolidation, filed March 21, 2016, the parties jointly stipulated to the substantive consolidation of SX-14-CV-278 with SX-12-CV-370 on the basis of their agreement that 'the claims in the more recently filed case SX-14-CV-278...may be treated as claims for resolution in the liquidation process of the older case SX-12-CV-370.' Thus, on the basis of Plaintiff's own representations, the Court finds that Plaintiff's Complaint in SX-14-CV-278, as a result of the consolidation of these matters, presents no additional claims or prayers for relief, and remains operative only in so far as it contains factual allegations supplementing those already contained in Plaintiff's Complaint in SX-12-CV-370.¹

¹ The Memorandum Opinion and Order dated July 21, 2017, in which the Court ordered, *inter alia*, that "the accounting in this matter...shall be limited in scope to consider only those claimed credits and charges to partner accounts...based upon transactions that occurred on or after September 17, 2006" (hereinafter "Limitation Order"). *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *44-45 (V.I. Super. Ct., July 21, 2017).

Hamed v. Yusuf, 2017 WL 3168458, at *7 (V.I. Super., 2017). Hence, to the extent that Hamed tries to allege that Yusuf's actions constitute a claim for damages, a continuing breach or partial performance of a contract, such arguments are misplaced as this is simply an equitable accounting claim, like all the other equitable accounting claims between the partners. As such, it is subject to the Limitation Order imposed by the Court based, in large measure, upon the equitable doctrine of laches and consideration of Hamed's efforts to impose a bar to claims, which occurred prior to a six-year statute of limitations.²

The Master has already addressed certain aspects relating to Hamed Claim No. H-1 in his Order dated January 7, 2019 and held that “[w]hat is disputed, however, is whether Hamed's claim for his 50% interest in the sales proceeds of Estate Dorthea-Hamed Claim No. H-1- is barred by the Limitation Order.” See **Exhibit E**-January 7, 2019 Order of Master.

The Limitation Order provides:

the accounting in this matter, to which each partner is entitled under 26 V.I.C. § 177(b), conducted pursuant to the Final Wind Up Plan adopted by this Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, 2017 V.I. LEXIS 114, *44-45 (V.I. Super. Ct., July 21, 2017). The Master has addressed the Limitation Order and its application to claims that straddle the cut-off deadline of September 17, 2006, finding that:

² Although the Court did not impose the statute of limitations to the accounting claims, it considered the timeframe of the statute and exercised its equitable powers to impose a limitation based upon the doctrine of laches for the same time period. The irony is the fact that the Limitation Order (which Hamed sought, albeit in a different form and which has limited claims Yusuf sought to pursue) should be applied with equal measure to Hamed Claim No. H-1, which occurred prior to September 17, 2006.

The Court clearly ordered in its Limitation Order that only claims ‘based upon transactions that occurred on or after September 17, 2006’ will be considered, regardless of whether it is *disputed or undisputed* since ‘it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed’ and ‘even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006’.

See Exhibit F-September 24, 2018 Order of Master. In that September 24, 2018 Order, the Master struck \$1.6 million of Yusuf’s claims for Hamed’s earlier partnership withdrawals because the \$1.6 million “was tabulated in 2001,” although not reconciled and a matching distribution not made until August 15, 2012. The Master determined the claim was based on a transaction that occurred pre-September 17, 2006 and thus, was barred by the Limitation Order. *See Exhibit F*-September 24, 2018 Order of Master, p.5.

The same is true as to Hamed Claim No. H-1. The undisputed facts demonstrate the transaction was initiated and was to be completed prior to the September 17, 2006 cut-off date. The *Agreement of Sale of Stock*, which defines the transaction was dated June 15, 2000 and required the buyer to make annual installment payments with the final payment due on January 15, 2004—all of which were to occur before the September 17, 2006 cut-off date. Hence, just as the tabulation for Yusuf’s claim to reconcile \$1.6 million occurred in 2001, the transaction giving rise to Hamed Claim No. H-1 occurred in 2000, and, by its own terms, was to be completed prior to the September 17, 2006 cut-off date, it should also be considered a pre-September 17, 2006 claim and thus, barred by the Limitation Order.

Hamed attempts to argue that because, at least, one payment occurred after September 17, 2006, the transaction is transformed into a viable claim. However, the Master rejected a similar argument when Yusuf's claim to the \$1.6 million partial reconciliation was barred. In that claim, the amount was tabulated in 2001, but payment to true-up the amount did not occur until 2012, when Yusuf issued a check in the amount of \$2.7 million to reconcile certain withdrawals, a portion of which comprised a true-up of the \$1.6 million withdrawals taken by Hamed prior to the FBI raid that the parties tabulated in October of 2001. The transaction straddled the cut-off date—tabulated *before*, but paid *after* the September 17, 2006 deadline. The Master deemed the claim barred.

Here, the transaction was initiated and scheduled to be completed *before* the cut-off date and there is evidence that the majority of the payments were made prior to 2006, with only one payment (used to satisfy an outstanding obligation of Hamed) was made in 2011, *after* the cut-off date. Thus, the transaction straddled the cut-off date—initiated *before*, but a partial payment made *after* the deadline—and thus, should be deemed as barred. The logic holds even if there is more than one of the installment payments after the cut-off. If some or all of the payments were made after 2006, it is still a transaction that straddles the cut-off date, just as the \$1.6 million dollar transaction concerning Yusuf's claim did. If the Limitation Order is applied to this transaction in the same manner it was applied against Yusuf, than it too is barred.

Unfortunately, there are no records as to the payments or when they were received. *See* Exhibit A-Yusuf's Supplemental Discovery Responses dated December 18, 2018. However, the partners' acquiescence to informal recordkeeping has been an issue in the case, served as a significant concern for the Court and was a primary factor in the Court's rationale for issuing the

Limitation Order. In making its ruling in the Limitation Order, the Court has found that “Hamed is no less to blame for this state of affairs and no less at fault for failing to seek any formal accounting of his interest until this late hour.” *Hamed v. Yusuf*, 2017 WL 3168458, at *26 (V.I. Super., 2017). The Court further held that “the fact that the partners waited approximately seven years—since the founding of the partnership in 1986—to conduct the first and only complete reconciliation of the accounts between them demonstrates that Hamed was equally content with this practice of informal and sporadic accounting. *Id.*”

The only payment for which there is any documentation is a payment in 2011 in which \$150,000 was made directly to a concrete batch plant in Jordan at Yusuf’s direction so as to satisfy a joint obligation of the partners, because Hamed failed to pay his portion of the obligation some ten (10) years earlier. *See* Exhibit D-Yusuf Depo. dated January 21, 2019; 22:3-1; 43:5-49:12. However, this single payment does not demonstrate when the other \$1,350,000 value had been received.

The records, which do exist, demonstrate a transaction initiated and which was to have been completed before the cut-off date. To the extent that any payments were received after the cut-off date, the transaction is one that, at best, may be considered to straddle the bar date. In such circumstances, the Master has already found:

Finally, in its Limitation Order, the Court ‘conclude[d] that consideration of the principles underlying the doctrine of laches strongly supports the imposition of an equitable limitation on the submission of § 71(a) claims in the accounting and distribution phase of the Wind Up Plan’ and explained that ‘the Court exercise[d] the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed’s Complaint. *Hamed*, 2017 V.I. LEXIS 114 at *41,44. Thus, because the Court’s ruling was based on the doctrine of

laches, regardless of whether the applicable statute of limitations has or has not expired, Yusuf's claim for \$1,600,000.00 is barred by laches. *See In re the Suspension of Joseph*, 60 V.I. 540, 559-59 (V.I. 2014)(citations omitted) ('[l]aches...may be found even if the applicable statute of limitations has not yet run'). As such, the Master will grant Hamed's motion as to \$1,600,000.00 of Yusuf's claim for \$1,778,103.00.

See Exhibit F-September 24, 2018 Order of Master, p. 6-7. Yusuf submits that the Limitation Order should be applied, with equal measure to Hamed's Claim H-1, as it has been applied to bar Yusuf's claims.

B. No Ability to Argue Continuing Violation or Partial Performance as to an Accounting Claim

Hamed argues that each and every time that Yusuf received a payment, his actions constituted a continuing violation of his duties "(as an escrow agent)...to either 1) distribute funds each time a partial payment was made by the purchaser (which occurred at least one in 2011) or 2) distribute all of the funds when requesting the release of the stock from the seller..." *See* Hamed Brief, p. 11. Hamed also argues "multiple contractual breaches occurred...when he received such a payment, and when he was contractually required to make a payment to the Hameds and...when he received the full amount and thus requested the release of the stock to the seller, and was required to pay the full amount." *Id.* at 11-12. Hamed advances these arguments to contend that these breaches reset the statute of limitations. Hamed argues that "[Yusuf] either 1) rebreached the contract and reset the limitations period or 2) committed an act of tortious conversion which started a new limitations period." *Id.* at 12. Hamed also argues that partial performance occurred after the bar date which resets the limitation period.

As set forth above, the Court in the Limitation Order specifically noted that Hamed Claim No. H-1, by virtue of its consolidation into this case is simply an accounting claim—no

different than the other accounting claims between the partners seeking credits as opposed to a separate cause of action. Hamed Claim No. H-1 is simply an *accounting claim* which seeks a credit for a certain amount against his partner's claims and credits. It is not a separate and independent *cause of action* or claims for damages for which there can be continuing violations, which allegedly operate to reset the ability to pursue the claim. As the Court explained in the Limitation Order, the nature of the "claims" are not claims for damages but rather "claims" for debits and credits in an equitable accounting between partners. "Hamed has not presented any claim for "damages," but rather an equitable action for accounting." *Hamed v. Yusuf*, 2017 WL 3168458, at *5 (V.I. Super., 2017). The Court further explained:

As it is often used in legal parlance, the term 'claim' is essentially synonymous with 'cause of action.' Used in this sense, Hamed and Yusuf have each, in their respective pleadings, presented only a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. § 75(b)(2)(iii). However, as used by both the Court and the parties in the context of this litigation, *the term 'claims' has also taken on an entirely different, and more specific meaning, by which the term 'claims' refers not to the parties' respective causes of action for accounting, but rather to the numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery, will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan.*

Id. at *17 (V.I. Super., 2017) (emphasis added). The Court also held:

Pursuant to 26 V.I.C. § 71(a), '[e]ach partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.' Thus, under the RUPA framework, *the 'claims' to which the parties refer are, in fact, nothing more than the parties' respective assertions of credits and charges*

to be applied in ascertaining the balance of each partner's individual partnership account.

Hamed v. Yusuf, 2017 WL 3168458, at *18 (V.I. Super., 2017) (emphasis added). However, Hamed's characterization of Hamed Claim No. H-1 is an attempt to morph it into a separate and stand-alone *cause of action* or *claim for damages* to circumvent the imposition of the bar date imposed by the Limitation Order. The Court has already ordered by virtue of the parties' stipulation that this claim, in particular, is not a separate cause of action, but rather, will be treated as an accounting claim for which Hamed seeks a credit against Yusuf. Hence, Hamed's arguments that Yusuf's actions constitute continuing violation does not remove the accounting claim from the laches deadline imposed by the Court in the Limitation Order. Likewise, as an accounting claim, interest is improper and should not be awarded. Therefore, Hamed arguments and analysis along the lines of a continuing violation or partial performance so as to circumvent the application of the Limitation Order are misplaced.

When considering how to uniformly apply a laches bar to claims, the Virgin Islands Supreme Court considered a trial court's fragmented application of the laches doctrine with regard to challenges made to election results (having it apply to one issue but not another, even though both issues arose out of a single set of facts). The Virgin Islands Supreme Court explained:

Federal courts, however, have ruled that such a fragmented treatment of laches is inappropriate in a continuing tort context. In *A.C. Aukerman Co. v. R.L. Chaides Const. Co.*, 960 F.2d 1020, 1031 (Fed.Cir.1992), the court recognized that '[l]aches is viewed as a single defense to a continuing tort up to the time of suit, not a series of individual defenses which must be proved as to each act of infringement, at least with respect to infringing acts of the same nature. To that extent, continuing tortious acts may be deemed to constitute a unitary claim.' (citations omitted).

St. Thomas-St. John Board of Elections v. Daniel, 49 V.I. 322, 338–39, 2007 WL 4901116, at *10 (V.I., 2007). Although not deciding whether laches may bar continuous tort claims in the Virgin Islands, the Virgin Islands Supreme Court did agree with the rationale finding:

we believe the rationale underlying the application of laches in such cases is particularly relevant here. As the court pointed out in *Hot Wax, Inc. v. Turtle Wax, Inc.*, 191 F.3d 813, 821 (7th Cir.1999), '[w]ithout the availability of the application of laches to a claim arising from a continuing wrong, a party could, theoretically, delay filing suit indefinitely. It would certainly be inequitable to reward this type of dilatory conduct and such conduct would necessarily warrant application of laches in appropriate circumstances.' In like manner, if we were to affirm the trial court's analysis of Daniel's certification challenge in this case, future candidates could simply delay instituting an election contest until the election results are certified, even if they knew about the irregularity well before the election. Equity does not countenance such a result.

St. Thomas-St. John Board of Elections v. Daniel, 49 V.I. 322, 338–39, 2007 WL 4901116, at *10 (V.I., 2007).

Here, Hamed's attempts to characterize the actions of Yusuf as "continuing violations" to repeatedly reset the limitations date are the very issues a laches-based bar seeks to eliminate. As the Limitation Order was based upon the equitable principles of laches, the bar date should effect the claim as defined therein—"based upon transactions that occurred on or after September 17, 2006." The claim is not a separate and independent cause of action, but rather merely accounting claim for credit against the partner's claims for credits, all of which are subject to the Limitation Order. This claim in particular, was highlighted by the Court in the Limitation Order following its consolidation into this case as simply another accounting claim providing additional factual assertions, as opposed to a stand-alone claim for which issues of continuing violation or partial performance arguments may attach.

Further, Hamed's efforts to argue that each time that Yusuf received a partial payment, that he was obligated to transfer funds to Hamed and that a failure to do so each time, constitutes a continuing violation of his obligations, thereby, tolling or resetting any limitations or laches bar runs completely contrary to the historical dealings of the parties. If there is one immutable fact as to the partners' dealings with each other—it is that they would allow long periods of time to pass between transactions and reconciliations and were tolerant of verbal promises in the absence of written documentation. Unfortunately, the lack of documentation has complicated the wind up of their long-standing and intertwined partner relationship, which is also not documented and only oral. To argue that a failure to pay immediately when interim installments were received, imposes obligations upon Yusuf that the parties did not assume. If such a standard were to apply, Hamed should have paid the \$1.6 partial reconciliation to Yusuf in October of 2001, among all of the other unmatched partnership withdrawals between the partners and the members of their family. Hence, as much as Yusuf would have preferred the reconciliation process in this case to stretch back to 2001 (and beyond), Yusuf has been subjected to the deadline imposed by the Court in its effort to limit the number of transactions in play to only those occurring after September 17, 2006. The imposition of that deadline has already limited the amounts claimed by Yusuf. It is only equitable that the deadline be equally applied to Hamed's claims that reach back prior to the cut-off deadline. Imposing the alleged continuing violation doctrine to circumvent the Limitation Order, which is contrary to the historical dealings between the parties would be inequitable.

C. No Acknowledgement of a Debt Doctrine

Hamed attempts to invoke the “acknowledgment of a debt doctrine” to avoid the equal application of the Limitation Order to his claims for the proceeds from the sale of stock. While Yusuf made similar arguments, the Master has already determined that “[e]ven if some claims were, in fact, undisputed” the Limitation Order indicates that “only claims ‘based upon transactions that occurred on or after September 17, 2006’ will be considered, regardless of whether it is disputed or undisputed” and found such arguments “unpersuasive.” *See* Exhibit F-September 24, 2018 Order of Master, p. 5.

D. No Evidence that Funds were Collected in 2012

Hamed attempts to make the unsupported factual leap that Yusuf’s testimony from his 2014 deposition, describing the payment date, relates to a few years before the *deposition*, as opposed to a few years from the date of the *Agreement*. However, Yusuf’s testimony appears to indicate that he is discussing that payment was made within a few years of the transaction, which is consistent with the payment terms in the *Agreement*. Mr. Yusuf is unable to confirm exactly when the payments were received. There is no basis for Hamed to claim that it is undisputed that funds were received in 2012 and, at best, it is a disputed fact. However, as set forth above, the receipt of payments after the cut-off date does not transform the transaction or immunize it from the reach of the Limitation Order.

E. If Not Barred, the Amount to be Credited to Hamed is \$600,000 not \$802,000.

Mr. Yusuf testified that of the total \$1.5 million received, that \$150,000 of Hamed’s share was directed to a concrete batch plant to cover a payment that Hamed had failed to make to the batch plant some 10 years earlier (i.e. a Hamed obligation). *See* Exhibit D-Yusuf Depo.

dated January 21, 2019,49:2-50:10. In calculating what was due, then it would be \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (total due \$750,000 (his ½ of the 1,500,000) minus \$150,000 paid to the batch plant from Hamed's portion). *Id.* and Exhibit B-Yusuf's Supplemental Discovery Responses dated January 18, 2019.

CONCLUSION

Hamed is precluded from summary judgment as to Hamed Claim No. H-1 as it involves a transaction that occurred prior to the cut-off date imposed on partner transactions by the Limitation Order. Hamed, who advocated strongly for the imposition of a limited timeframe as to the claims between the partners, should be required to adhere to the limitations imposed. Yusuf has received adverse rulings barring certain of his claims, which were deemed to be pre-September 17, 2006, where the transaction straddled the cut-off date. The Limitation Order and its bar to partnership claims should be applied with equal measure to Hamed's Claim No. H-1. If not, it would arbitrarily allow Hamed to use the Limitation Order as a sword against Yusuf's claims that begin before the cut-off date but are not completed until after, while not suffering the same fate for his claims. Hence, Hamed's Motion for Summary Judgment as to Hamed Claim No. H-1 must be denied as the claim is barred by the Limitation Order.

Hamed's arguments that attempt to characterize the actions of Yusuf as an independent cause of action are misplaced. The Limitation Order addressed this claim specifically upon its consolidation with this case and the parties' agreement that it would be treated simply as another accounting claim for which Hamed can seek a credit against his partner, Yusuf, but not an independent cause of action. Hence, Hamed's arguments relating to continuing violations and

partial performance for the purpose of arguing that the statute of limitations is reset are in error and do not eliminate the impact of the Limitation Order, which bars this claim.

If Hamed Claim No. H-1 is allowed to survive, the credit sought should be limited to only \$600,000.00 as \$150,000 was paid on Hamed's behalf to a third party to satisfy an earlier obligation of Hamed.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: May 28, 2019

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2019, I caused the foregoing **Yusuf's Opposition to Hamed's Motion and Memorandum for Summary Judgment Re Hamed Revised Claim H-1—Fathi Yusuf's Failure to Pay Funds Re Sale of the Y&S Stock Resulting in the Sale of the Dorothea Condo and Land** which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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and via U.S. Mail to:

The Honorable Edgar D. Ross
Master
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Kingshill, St. Croix
U.S. Virgin Islands 00851

Alice Kuo
5000 Estate Southgate
Christiansted, St. Croix
U.S. Virgin Islands 00820

s/Charlotte K. Perrell

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

**YUSUF'S OPPOSITION TO
HAMED'S STATEMENT OF FACTS AND YUSUF'S COUNTER STATEMENT
OF FACTS RE HAMED REVISED CLAIM H-1 –FATHI YUSUF'S FAILURE TO PAY
FUNDS RE SALE OF THE Y&S STOCK RESULTING IN THE SALE OF THE
DORTHEA CONDOS AND LAND**

Fathi Yusuf through his undersigned attorneys, respectfully submits this Opposition to Hamed's Statement of Facts and Yusuf's Counter Statement of Facts Re Hamed Revised Claim H-1—Fathi Yusuf's Failure to Pay Funds Re Sale of the Y&S Stock Resulting in the Sale of the Dorothea Condo and Land as follows:

On May 13, 2019, the Master issued an Order allowing Yusuf the opportunity to file¹ his factual contentions in response to Hamed's Motion for Summary Judgment Re Hamed Revised Claim No. H-1. These are attached. For clarity, Yusuf re-files his Opposition briefs as well.

I. Opposition to Hamed's Statement of Facts

As a general matter, Yusuf disputes that any amounts are due to Hamed relating to his claims H-1 because it relates to a transaction that is barred by the July 21, 2017 Order limiting all claims to those which occurred after September 17, 2006. If the Master disagrees, Yusuf submits that if any amount is due, then it is less than \$806,966 claimed by Hamed. Further, Hamed's statement of facts relating to alleged independent acts in furtherance of the contract, which are an attempt to portray the transaction as giving rise to an independent cause of action, with continuing violations or partial performance are misplaced because the claims are simply accounting claims between partners and are subject to the Limitation Order's bar date. As to Hamed's individual statement of facts, Yusuf states as follows:

1. Yusuf does not dispute the statements in Paragraph 1 and submits that the attached documents speak for themselves.

¹ Yusuf notes that the changes to the Virgin Islands Rules of Civil Procedure did not occur until March 1, 2019 and were not effective until March 31, 2019. Hamed's Motion (as well as the Yusuf's motions for summary judgment) were filed on February 25, 2019, before the Order changing the rules was even published and a month before it became effective. Hence, the failure to include the statement of facts or counter statements as separate documents was not an attempt to ignore the requirements of the rule, rather, the rule had not been enacted and was not effective at the time of the initial filings.

2. Yusuf does not dispute the statements in Paragraph 2 and submits that the attached documents speak for themselves.

3. Yusuf does not dispute the statements in Paragraph 3 and submits that the attached documents speak for themselves.

4. Undisputed.

5. Undisputed.

6. Undisputed.

7. Undisputed and Yusuf submits that the attached documents speak for themselves.

8. **Disputed** as written. However, Yusuf admits that he became the nominee to receive the funds from the Buyer. Yusuf submits that the attached documents attached speak for themselves.

9. Undisputed.

10. Yusuf does not dispute that funds were paid as reflected in the document Group Exhibit 14.

11. Undisputed.

12. **Disputed** as written since this conclusion mischaracterizes Yusuf's actual testimony ascribing to Yusuf.

13. **Disputed.** Hamed attempts to mischaracterize Yusuf's testimony as meaning within *a few years* of the *deposition date* wherein he testified:

Question: Okay. When did you get that money?

Yusuf Ans.: I get that money, I don't have a date. But I get that money maybe, I can guarantee you, it's not 3 years. It's less than 3 years. I sold this property many, many years ago.

See **Yusuf Exhibit C**-Yusuf Depo. dated April 4, 2014,105:8-12. Hence, while Yusuf may not have the specific dates that he received the payments, he has confirmed that payments were received within a few years (“it’s not three years”, “[I]t’s less than 3 years”) *of the sale*, which occurred in 2000 (“many, many years ago”). *Id.* This is also consistent with the stated terms of the *Agreement* that payments were to be received within a few years *of the sale* in 2000.

14. This is an extended “statement” which requires clarification. Yusuf does not dispute that he showed Hamed Exhibit 8 either to Hisham or Waheed Hamed. Yusuf does not dispute that Exhibit 8 reflects his handwriting and was an *initial* calculation that he prepared. Yusuf does **dispute** that the \$802,966 is a correct calculation as he testified in his deposition and discovery responses. See Exhibit D-Yusuf Depo. dated January 21, 2019,49:2-50:10. In calculating what was due then it would be \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (\$750,000 (his ½ of the 1,500,000) minus \$150,000 paid to the batch plant from Hamed’s portion). *Id.* and Exhibit B-Yusuf’s Supplemental Discovery Responses dated January 18, 2019.

15. Undisputed.

16. **Disputed.** Yusuf submits that this is actually a conclusion of law rather than a statement of fact. However, to the extent that it is a statement of fact, it attempts to allege independent acts in furtherance of the contract so as to portray the transaction as giving rise to an independent cause of action, with continuing violations or partial performance so as to refute a possible statute of limitations bar. Yusuf submits that such statements and efforts are misplaced as the claims are simply accounting claims between partners and are subject to the Limitation Order’s bar date.

17. Undisputed.

18. **Disputed** as written. Yusuf does not dispute that the documents were delivered to Attorney King. Yusuf does dispute the statement that this was an act under the contract.

19. **Disputed** as written. Yusuf does not dispute that the Complaint in this action was filed. Yusuf is without information to know the motivations behind Hamed's decision to file the suit.

20. **Undisputed.** Yusuf submits that this procedural event is irrelevant to the issues relating to this accounting claim.

21. **Disputed** as written. Yusuf does not dispute that the efforts to remove were unsuccessful. Yusuf further submits that this procedural event is irrelevant to the issues relating to this accounting claim.

22. **Undisputed.** Further responding, Yusuf submits that he did account for the funds in his submissions supporting his claims/accountings. When the Limitation Order was issued and all parties were directed to re-submit their proposed accountings, it was removed as Yusuf deemed it to be barred by the Limitation Order.

23. **Undisputed.**

24. **Undisputed.** Further responding, Yusuf shows that this was prior to the Limitation Order of July 21, 2017.

25. **Undisputed.** Further responding, Yusuf shows that this was prior to the Limitation Order of July 21, 2017.

26. **Disputed.** Following the entry of the Limitation Order, on October 30, 2018, Yusuf filed his Amended Accounting Claims Limited to Transaction Occurring on or After September 17, 2006 ("Yusuf's Amended Accounting Claims") and specifically noted that since the Limitation Order "limits the claims Partners can make to transaction

occurring on or before September 17, 2006, any claims Hamed has regarding the sale of the stock of Y&S and R&F are barred by the [Limitation] Order.” See Yusuf’s Amended Accounting Claims, p. 4, 14-15.

27. Undisputed.

28. **Disputed.** Hamed misstates the import of Yusuf’s notation in footnote 17 of Yusuf’s Amended Accounting Claims. Yusuf’s position is that the entire transaction relating to the sale of the stock of Y&S and R&F are barred by the Limitation Order. See Yusuf’s Amended Accounting Claims, p. 4, 14-15. To the extent that the Court disagrees, Hamed is only entitled to \$600,000, because he already received the benefit of \$150,000 due to him in the form of the payment that was made on his behalf to satisfy a long-standing debt of his due to the concrete batch plant. Yusuf testified that of the total \$1.5 million received, that \$150,000 of Hamed’s share was directed to be paid a concrete batch plant to cover a payment that Hamed had failed to make to the batch plant some 10 years earlier(i.e. an earlier debt of Hamed’s), well before the 2006 bar date. See Yusuf Exhibit D-Yusuf Depo. dated January 21, 2019,49:2-50:10. In calculating what was due then it would be \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (total due \$750,000 (his ½ of the 1,500,000) minus \$150,000 paid to the Batch Plant from Hamed’s portion). *Id.* and Yusuf Exhibit B-Yusuf’s Supplemental Discovery Responses dated January 18, 2019.

29. **Disputed.** The document reflects that after the Limitation Order, Yusuf amended his Accounting Claims to reflect that the \$802,966 was barred by the Limitation Order.

30. **Disputed** as written. Yusuf acknowledges his supplemental discovery responses but when asked to further clarify, Yusuf stated that “[i]t is my belief that the principle

payments were received prior to 2006. However, I cannot say this for sure.” *See* Yusuf Exhibit B-Yusuf's Supplemental Discovery Responses dated January 18, 2019.

31. Undisputed. Further responding, Yusuf submits that the Master has already addressed certain aspects relating to Hamed Claim No. H-1 in his Order dated January 7, 2019 and held that “[w]hat is disputed, however, is whether Hamed's claim for his 50% interest in the sales proceeds of Estate Dorothea-Hamed Claim No. H-1- is barred by the Limitation Order.” *See* Yusuf Exhibit E-January 7, 2019 Order of Master.

32. Undisputed.

II. Yusuf's Counter Statement of Facts

1. The Court issued its July 21, 2017 Order (the “Limitation Order”), which limited the transactions upon which the partnership could include in their accounting claims to only those that occurred after September 17, 2006. *See* July 21, 2017 Limitation Order. The Limitation Order provides:

the accounting in this matter, to which each partner is entitled under 26 V.I.C. § 177(b), conducted pursuant to the Final Wind Up Plan adopted by this Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. § 71(a), based upon transactions that occurred on or after September 17, 2006.

Hamed v. Yusuf, 2017 V.I. LEXIS 114, *44-45 (V.I. Super. Ct., July 21, 2017).

2. In the Limitation Order, Judge Brady also specifically addressed the claim, which is now Hamed Claim No. H-1 and found that:

Plaintiff's Complaint in SX-14-CV-278 nominally presents a claim for damages for debt, or alternatively conversion, in the amount of \$802,955, which Plaintiff alleges he is owed in connection with the sale of certain real property originally purchased with partnership funds. However, in their Stipulation Re: Consolidation, filed March 21, 2016, the parties jointly stipulated to the substantive consolidation of SX-14-CV-278 with SX-12-

CV-370 on the basis of their agreement that ‘the claims in the more recently filed case SX-14-CV-278...may be treated as claims for resolution in the liquidation process of the older case SX-12-CV-370.’ Thus, on the basis of Plaintiff's own representations, the Court finds that Plaintiff's Complaint in SX-14-CV-278, as a result of the consolidation of these matters, presents no additional claims or prayers for relief, and remains operative only in so far as it contains factual allegations supplementing those already contained in Plaintiff's Complaint in SX-12-CV-370.

Hamed v. Yusuf, 2017 WL 3168458, at *7 (V.I. Super., 2017).

3. It is undisputed that the transaction giving rise to this claim was initiated and was to be completed prior to the September 17, 2006 cut-off date. The *Agreement of Sale of Stock*, which defines the transaction was dated June 15, 2000 and required the buyer to make four \$225,000 installment payments, which were due on January 15, 2001, January 15, 2002, January 15, 2003 and January 15, 2004—all of which were to occur before the September 17, 2006 cut-off date. See Hamed Statement of Facts (“SOF”), ¶7 and Exhibit 6 thereto, at p.1 and p. 2, ¶3. See Notice referenced in Hamed SOF ¶17 stating payments were made “on a timely basis.”

4. As to the timing of the payments for this transaction, Mr. Yusuf has testified:

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest.

See **Exhibit A**-Yusuf's Supplemental Discovery Responses dated December 18, 2018.

5. Subsequently, Mr. Yusuf clarified to state:

Dorthea Condo transaction. Mr. Yusuf confirms the following:

1. I was to receive the proceeds under the sales contract for the sale of the Dorthea Condo.
2. The full amount of \$1.5 million for the sale was received.
3. I am currently in possession of \$1,350,000 of the total amount of those proceeds in the form of another asset. The remaining \$150,000, I directed the purchaser to pay directly to the Batch Plant to make up for what Hamed had received 10 years earlier but had failed to deliver to the Batch Plant. Attached

is the document that reflects that payment (FY015136). The breakdown is: \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (total due \$750,000 (his ½ of the 1,500,000) minus \$150,000 paid to the Batch Plant from Hamed's portion).

4. I believe that I provided the handwritten "Dorothea" document to Willy but I do not recall when.

5. It is my belief that the principle payments were received prior to 2006. However, I cannot say this for sure.

See **Exhibit B**-Yusuf's Supplemental Discovery Responses dated January 18, 2019.

6. This is consistent with Yusuf's prior testimony in 2014, wherein he testified:

Question: Okay. When did you get that money?

Yusuf Ans.: I get that money, I don't have a date. But I get that money maybe, I can guarantee you, it's not 3 years. It's less than 3 years. I sold this property many, many years ago.

See **Exhibit C**-Yusuf Depo. dated April 4, 2014,105:8-12.

7. Hence, while Yusuf may not have the specific dates that he received the payments, he has confirmed that payments were received within a few years ("it's not three years", "[I]t's less than 3 years") of the sale, which occurred in 2000 ("many, many years ago"). *Id.* This is also consistent with the stated terms of the *Agreement* that payments were to be received within a few years of the sale. See Hamed Statement of Facts ("SOF"), ¶7 and Exhibit 6 thereto, at p.1 and p. 2, ¶3 and the Notice (Ex. 7).

8. In his most recent deposition, Yusuf was asked questions about the Dorothea transaction and when he had Hisham Hamed and Najeh Yusuf sign a release. Yusuf explained "I want them to give the release, because the people ask for the release. They already paid the money long time, and they requested the release, and I told Shawn to sign the release." See **Exhibit D**, Yusuf Depo. dated January 21, 2019, 25:1-4. Yusuf further testified that he does not recall when he received \$1.3 million of the \$1.5 million. *Id.* at 28:1-2.

9. There are no records as to the payments or when they were received. *See* Exhibit A-Yusuf's Supplemental Discovery Responses dated December 18, 2018.

10. The only payment for which there is any documentation is a payment in 2011 in which a \$150,000 was paid directly to a concrete batch plant in Jordan at Yusuf's direction to satisfy a joint obligation of the partners, Hamed's portion of which Hamed failed to pay some ten (10) years earlier. *See* Exhibit D, Yusuf Depo. dated January 21, 2019; 22:3-1; 43:5-49:12. However, this single payment does not demonstrate when the other \$1,350,000 value had been received.

11. Yusuf testified that of the total \$1.5 million received, that \$150,000 of Hamed's share was paid directly to a concrete batch plant to cover a payment that Hamed had failed to make to the batch plant some 10 years earlier (i.e. an earlier obligation of Hamed's), well before the 2006 bar date. *See* Exhibit D-Yusuf Depo. dated January 21, 2019, 49:2-50:10. In calculating what was due then it would be \$750,000 for Yusuf (1/2 of the \$1,500,000) and \$600,000 for Hamed (\$750,000 (his 1/2 of the 1,500,000) minus \$150,000 paid to the batch plant from Hamed's portion). *Id.* and Exhibit B-Yusuf's Supplemental Discovery Responses dated January 18, 2019.

12. The Master has already addressed certain aspects relating to Hamed Claim No. H-1 in his Order dated January 7, 2019 and held that "[w]hat is disputed, however, is whether Hamed's claim for his 50% interest in the sales proceeds of Estate Dorothea-Hamed Claim No. H-1- is barred by the Limitation Order." *See* **Exhibit E**-January 7, 2019 Order of Master.

13. The Master has addressed the Limitation Order and its application to claims that straddle the cut-off deadline of September 17, 2006, finding that:

The Court clearly ordered in its Limitation Order that only claims 'based upon transactions that occurred on or after September 17, 2006' will be considered, regardless of whether it is *disputed or undisputed* since 'it

appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed' and 'even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006'.

See **Exhibit F**-September 24, 2018 Order of Master.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: May 28, 2019

By: s/Charlotte K. Perrell
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Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of May, 2019, I caused the foregoing **Yusuf's Opposition to Hamed's Statement of Facts and Counter Statement of Facts Re Hamed Revised Claim H-1—Fathi Yusuf's Failure to Pay Funds Re Sale of the Y&S Stock Resulting in the Sale of the Dorothea Condo and Land** which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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U.S. Virgin Islands 00820

s/Charlotte K. Perrell

Index of Exhibits

- Exhibit A** Yusuf's Supplemental Discovery Responses dated December 18, 2018
- Exhibit B** Yusuf's Supplemental Discovery Responses dated January 18, 2019
- Exhibit C** Yusuf Deposition dated April 2, 2014
- Exhibit D** Yusuf Deposition dated January 21, 2019
- Exhibit E** January 7, 2019 Order of Master
- Exhibit F** September 24, 2018 Order of Master

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- Exhibit E** January 7, 2019 Order of Master
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EXHIBIT A

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., <u>Additional Counterclaim Defendants.</u>	)	Consolidated With
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
Defendant.)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND CONVERSION
v.)	
FATHI YUSUF,)	
)	
Defendant.)	
FATHI YUSUF and UNITED CORPORATION,)	
	)	CIVIL NO. ST-17-CV-384
Plaintiffs,)	
v.	)	ACTION TO SET ASIDE FRAUDULENT TRANSFERS
THE ESTATE OF MOHAMMAD HAMED, Waleed Hamed as Executor of the Estate of Mohammad Hamed, and THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
Defendants.)	
)	

**SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Supplemental Responses¹ to Hamed's Discovery pursuant to discussion and various letters alleging deficiencies, as follows:

1. Yusuf Claim Y-2 (for Rent for Bay 5&8), Hamed RTP 21, 34, Interrog. 29:

There are no additional documents responsive to this request beyond the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendant's Motion for Partial Summary Judgment on Counts IV, IX and XII Regarding Rent.

2. Yusuf Claim Y-14 (Half of the value of the containers at Plaza Extra-Tutu Park), Hamed RFPD 27:

Yusuf has prepared a detailed analysis of the value of the containers attached hereto as Exhibit 1. To support the calculations as to the value of the items stored in the containers, Yusuf submits various invoices for the types of items stored therein at Bate Numbers FY 015045 – 015134 attached hereto.

3. Hamed Claim H-1 (Reimbursement for sale of Dorthea Condo), Hamed Interrog. 3:

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest.

¹ Yusuf provides these supplemental responses relating to the claims, which remain in the Part B claim schedule. Yusuf will further supplement any other responses as to claims, which were shifted to the Part A schedule.

Consequently, Yusuf reaffirms that this claim is barred by the Limitations Order of Judge Brady.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: December 18, 2018

By:



CHARLOTTE K. PERRELL

(V.I. Bar #1281)

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*Attorneys for Fathi Yusuf and United
Corporation*

CERTIFICATE OF SERVICE

It is hereby certified that on this 18th day of December, 2018, I caused the foregoing a true and exact copy of the foregoing **SUPPLEMENTAL RESPONSES TO HAMED'S DISCOVERY** to be served upon the following via Case Anywhere docketing system:

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EXHIBIT B

**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.)	
	)	ACTION FOR INJUNCTIVE
FATHI YUSUF and UNITED CORPORATION,	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC.,)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,)	
	)	CIVIL NO. SX-14-CV-287
Plaintiff,)	
v.	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
UNITED CORPORATION,)	
)	
<u>Defendant.</u>)	
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
)	
FATHI YUSUF,)	
<u>Defendant.</u>)	
FATHI YUSUF and UNITED CORPORATION,)	
	)	CIVIL NO. ST-17-CV-384
Plaintiffs,)	
v.	)	ACTION TO SET ASIDE
	)	FRAUDULENT TRANSFERS
)	
THE ESTATE OF MOHAMMAD HAMED, Waleed Hamed as Executor of the Estate of Mohammad Hamed, and THE MOHAMMAD A. HAMED LIVING TRUST,)	
)	
Defendants.)	
)	

**CORRECTED SUPPLEMENTAL RESPONSES
TO HAMED'S DISCOVERY**

Defendant/Counterclaimants Fathi Yusuf ("Yusuf") and United Corporation ("United")(collectively, the "Defendants") through their attorneys, Dudley, Topper and Feuerzeig, LLP, hereby provide their Supplemental Responses to Hamed's as follows:

1. Interrogatory No. 30 – Relating to Y-12 Jordanian Property and Accounts

Yusuf makes a single typographical correction to the bates designation as set forth below and provides the accompanying documents. No other changes are made to the Supplemental Response.

1. Account Arab Bank 9020-415410-510
FY 003016-3089.

Hamed testified that the sole source of his income has been from his interest in the Partnership. Waleed Hamed has advised that this account was an account for Mohammed Hamed. It appears that over \$4,149,947.19 has gone through the account over a period of years with significant deposits and corresponding withdraws of similar amounts indicating the partners used it for partnership purposes. This account appears to be open and is subject to equitable division between the partners. As of 11/25/2009, there appears to be no funds in the account but it remains open. Yusuf makes a claim as to any amount that has been deposited to that account between September 17, 2006 and the present time.

All of these Bates documents have been previously produced. Yusuf has sought discovery from Hamed relating to these accounts at Interrogatories 31-34 and will supplement his response should the depositions of the Hameds reveal additional information in support of Yusuf's claims.

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: January 18, 2019

By: s/Charlotte K. Perrell
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*Attorneys for Fathi Yusuf and United
Corporation*

CERTIFICATE OF SERVICE

It is hereby certified that on this 18th day of January, 2019, I caused the foregoing a true and exact copy of the foregoing **CORRECTED SUPPLEMENTAL RESPONSES TO HAMED'S DISCOVERY** to be served upon the following via Case Anywhere docketing system:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
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Email: joelholtpc@gmail.com

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s/Charlotte K. Perrell

EXHIBIT C

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

MOHAMMED HAMED by His Authorized)
Agent WALEED HAMED,)
)
Plaintiff/Counterclaim Defendant,)
)
vs.) Case No. SX-12-CV-370
)
FATHI YUSUF and UNITED CORPORATION,)
)
Defendants/Counterclaimants,)
)
vs.)
)
WALEED HAMED, WAHEED HAMED, MUFEED)
HAMED, HISHAM HAMED, and PLESSEN)
ENTERPRISES, INC.,)
)
Additional Counterclaim Defendants.)

THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF

was taken on the 2nd day of April, 2014, at the Law Offices
of Adam Hoover, 2006 Eastern Suburb, Christiansted,
St. Croix, U.S. Virgin Islands, between the hours of
9:17 a.m. and 4:16 p.m., pursuant to Notice and Federal
Rules of Civil Procedure.

Reported by:

Cheryl L. Haase
Registered Professional Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix U.S.V.I.
(340) 773-8161

FATHI YUSUF -- DIRECT

1 Q. Which is another -- another item.

2 A. Definitely this was an expense. I brought that
3 money out.

4 Q. Okay. So you start with the 1.5 million, which is
5 50/50, and then you start adding --

6 A. One million and a half is absolutely 50/50. I'm
7 not hiding anything.

8 Q. Okay. And when did you get that money?

9 A. I get that money, I don't have a date. But I get
10 that money maybe, I can guarantee you, it's not three years.
11 It's less than three years. I sold this property many, many
12 years ago.

13 Q. Okay. So you got this money, would it be fair to
14 say you got it in 2012?

15 A. I don't know when.

16 Q. Okay.

17 A. I don't remember.

18 Q. Well, this lawsuit was filed in August of 2012.

19 Did you get the money before this lawsuit was filed?

20 **MR. HODGES:** September 2012.

21 A. Maybe. Look at the date. Go to the owner and
22 look at the date, or go to the public recorder office.
23 That's something that can be resolved.

24 Q. (Mr. Holt) Okay.

25 A. I don't remember.

EXHIBIT D

**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 Deft.,)
)
vs.) Case No. SX-2012-CV-370
)
FATHI YUSUF and UNITED)
CORPORATION,)
)
Defendants/Counterclaimants,)
)
vs.)
)
WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)
)
Counterclaim Defendants.)
WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff,)
)
vs.) Consolidated with
) Case No. SX-2014-CV-287
)
UNITED CORPORATION,)
)
Defendant.)
WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff,)
)
vs.) Consolidated with
) Case No. SX-2014-CV-278
)
FATHI YUSUF,)
)
Defendant.)

**VIDEOTAPED ORAL DEPOSITION OF
FATHI YUSUF**

THE VIDEOTAPED ORAL DEPOSITION OF FATHI YUSUF

was taken on the 21st day of January, 2019, at the Offices of Joel H. Holt, 2132 Company Street, Downstairs Conference Room, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 12:22 p.m. and 2:41 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Susan C. Nissman RPR-RMR
Registered Merit Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8161

FATHI YUSUF -- DIRECT

1 partner his half.

2 Q. Okay.

3 A. So we're back to square one. A million and a
4 half. I will never deny that, the million and a half being
5 collected.

6 Q. And when did you collect the million and a half?

7 A. I collect by the way, one million three fifty.
8 The other one hundred and fifty, I told the Salem family to
9 transfer it into a concrete batch plant, because 10 years
10 earlier, Mohammad Hamed received that money to deliver it to
11 the batch plant and he never did deliver it, so --

12 Q. Okay. Just so -- just so -- just so I'm clear,
13 you received money from Mr. Salem?

14 A. Yes.

15 Q. And when you received that money from him --

16 A. Yes.

17 Q. -- you sent that for the batch plant?

18 A. I did not receive the one hundred and fifty.

19 Q. You had him send it?

20 A. I direct them --

21 Q. Okay.

22 A. -- to take it off of the bill and send it.

23 Q. So that -- just so I'm clear.

24 A. Yeah.

25 Q. That one fifty was part of the 1.5 million?

FATHI YUSUF -- DIRECT

1 **A.** I want them to give the release, because the
2 people ask for the release. They already paid the money
3 long time, and they requested the release, and I told Shawn
4 to sign the release.

5 **Q.** Okay.

6 **A.** Before he signed the release, he called his
7 brother, Wally.

8 **Q.** Okay. So --

9 **A.** And he tell him go ahead and sign the release.

10 **Q.** Okay. But you said, I need you to sign this
11 release and then I'm going to give you the money, was
12 that --

13 **A.** What's that? No, no, no, no, no, no. Arab
14 normally trust each other for years and years and years. We
15 don't have to sign for each other.

16 **Q.** Okay. But, coincidentally --

17 **A.** Not but, please.

18 **Q.** Okay.

19 **A.** They give each other for 20 years. They never
20 have to have signature. You owe me, you owe me.

21 **Q.** But you had to get this signed for Mr. Salem,
22 right?

23 **A.** Mr. Salem needed for some reason. He have all the
24 right to get it. Whether -- he already pays me, right? I
25 ask Hisham to go ahead and sign the release, because we

FATHI YUSUF -- DIRECT

1 **Q.** Okay. They signed it and dated it.

2 **MS. PERRELL:** Object. Can you let him finish
3 his answer? Go ahead.

4 **MR. HARTMANN:** He says he doesn't need to
5 look at it.

6 **A.** We bought a property from the bank for a million
7 dollar, 51 acre and about 22 or 23 condo. And some reason,
8 we decided to split it into two company.

9 **Q.** **(Mr. Hartmann)** Um-hum.

10 **A.** And I notice in here, the 600 and 900. I seen
11 600. I don't know what is this 600 for. And that's the
12 overall value of our purchase from Barclays Bank.

13 **Q.** Okay.

14 **A.** I end up selling our half that cost us half a
15 million dollar. I end up selling it for a million and a
16 half to my partner.

17 **Q.** What I'm asking is, this is Exhibit 7 that you
18 looked at before, which is the document you got from Neje
19 and from Shawn.

20 **A.** I didn't know.

21 **Q.** No, I understand that.

22 But you notice where they signed it?

23 **A.** Yeah, I --

24 **Q.** You see where they signed it?

25 **A.** I see somebody sign on top, Hisham here on 2012.

FATHI YUSUF -- CROSS

1 And my son, Negeh, February 19, 2012.

2 Q. Okay. Do you have any reason to believe that this
3 wasn't signed in February of -- in February 19th of 2012?

4 A. What do you mean, reason to believe? If the date
5 is there, it's there.

6 Q. Okay. And -- and if the date is there, is it
7 right?

8 A. Yeah, it's right.

9 Q. Okay. That's good. I have no further questions
10 on Dorthea.

11 Do you want to run your cross on Dorthea
12 first, or do you want to wait?

13 MS. PERRELL: That would be fine. I think it
14 would be more logical, but I don't want to mess you up.

15 MR. HARTMANN: No, no, wouldn't mess me up.

CROSS-EXAMINATION

17 BY MS. PERRELL:

18 Q. Okay. So Mr. Yusuf, in regard to the Dorthea
19 property.

20 A. Yeah.

21 Q. Did you take --

22 MR. HARTMANN: This is my exhibits.

23 MS. PERRELL: Oh, oh, okay. I thought he
24 handed it to you.

25 MR. HARTMANN: His copy have the stickers on

FATHI YUSUF -- CROSS

1 them, in addition to.

2 **MS. PERRELL:** See? It's magically
3 disappeared.

4 **MS. JAPINGA:** That was quick.

5 **MS. PERRELL:** This is no original sticker,
6 because --

7 **MR. HARTMANN:** Here it is. Here it is.

8 **Q. (Ms. Perrell)** All right. So Mr. Yusuf, with
9 regard to Exhibit 7, which was this one here, --

10 **A.** Yes.

11 **Q.** -- which is in regard to the lease, the release,
12 do you have any recollection as to -- I know you don't
13 remember when all of the value was received, but do you have
14 any recollection whether it was many years before or shortly
15 before this was signed, or you don't know?

16 **A.** I honestly don't remember.

17 **Q.** You don't know?

18 **A.** Honestly.

19 **Q.** Okay.

20 **A.** Honestly, I don't remember.

21 **Q.** Okay. All right.

22 **A.** This was very, very minor things for me to
23 remember.

24 **Q.** Okay. Do -- the original contract indicates that
25 the payments were supposed to be made in 2001, 2002, 2003,

FATHI YUSUF -- CROSS

1 and 2004.

2 Do you -- does that help refresh any
3 recollection?

4 **A.** It could be, it could be not. I'm not sure.

5 **Q.** Okay. All right. With regard to the amount, to
6 the extent there would be any amount due to the Hameds on
7 this amount, what amount are you contending would be due?

8 **A.** No more than 600 in particular for -- for Dorthea.

9 **Q.** Okay. And the 600 is because it's the eight -0-
10 two minus --

11 **A.** Their share is seven fifty. The eighty-two --
12 eight-two nine thirty-two was giving it to them back. I
13 mean, not eighty-two, fifty-two.

14 **Q.** Well, let's --

15 **A.** Fifty-two, I think. Half of the one -0- two.
16 Whatever it is. His share, whatever it is amount money, he
17 gets it back in his house, in his own house in the city
18 where he live and in front of his wife. The man pass away,
19 God bless him. His wife still alive. She can be asked. I
20 took that money.

21 **Q.** Okay.

22 **A.** And I check with Wally, and there's money -- his
23 brother have two account in Amman, Jordan.

24 **Q.** Okay.

25 **A.** And we came up with it, calculation, and he end

FATHI YUSUF -- CROSS

1 up -- I end up own him 18,361. I told his father to go
2 ahead and draw 18,361. Excuse me, U.S. currency. He went
3 ahead and draw Jordanian currency, which is one dollar only
4 worth 70 percent of the Jordanian currency.

5 **Q.** Okay. Let me just --

6 **A.** It's clear I told Mr. Hamed, 18,361, you can go
7 ahead and draw. He use it, but he draw U.S. -- Jordanian
8 currency. Seventy percent, 30 percent more. It hurts me
9 when I see these thing from an old man. God bless him.
10 He's -- he's someplace else now.

11 **Q.** All right. I just want to get back to these
12 numbers.

13 So just so that we're clear, we're looking at
14 Exhibit Number 8, which is the handwritten document --

15 **A.** Yes.

16 **Q.** -- that you -- your internal calculations?

17 **A.** Yes.

18 **Q.** Okay. So the first number is 1,500,000. That's
19 for the sale of the Dorthea property?

20 **A.** That's the value of -- the full value of the
21 Dorthea property.

22 **Q.** Okay. And then the next number, which is the
23 one --

24 **A.** This is a loan was given to a friend of mine. I
25 asked Mr. Mohammad Hamed at that time to go ahead and give

FATHI YUSUF -- CROSS

1 him 75,000 dinar. The dinar equal to hundred and five nine
2 thirty-two U.S. currency. I add them together, and I end up
3 owing this.

4 But after I give them this paper, I went to
5 Jordan and I give him his money right in front of his own
6 wife. Whatever, it's 52,000 and change.

7 **Q.** Okay. So what you're saying is, is that this
8 number that's in the calculation here was addressed
9 subsequent to this --

10 **A.** Way before I make this 52, whatever his share is
11 from the loan.

12 **Q.** Okay. Just let me finish, 'cause she's going to
13 get upset.

14 **A.** Yeah.

15 **Q.** She won't be able to take us down.

16 **A.** No, no.

17 **Q.** So what I want to understand is that the
18 handwritten document, the second number, which is the
19 105,000 and change, and then it comes again three
20 sentences -- three lines later, hundred and five. Your
21 point is that that is taken off the table. It shouldn't be
22 as part of the calculation for what's owed on Dortehea?

23 **A.** Exactly.

24 **Q.** That's one thing. So now we're back to the one
25 million five.

FATHI YUSUF -- CROSS

1 **A.** Exactly.

2 **Q.** Okay. Now, the next question is, of the one
3 million five that was overall value received, a hundred and
4 fifty thousand was transferred to the batch plan. And your
5 position is that that was coming out of Mr. Hamed's share?

6 **A.** Share, because it's to pay back the money we give
7 him 10 years earlier to give him.

8 **Q.** Right.

9 **A.** To deliver it.

10 **Q.** So -- so he would be owed originally half of
11 the -- of the one million five hundred?

12 **A.** I owe him 600 out of the one million five hundred.

13 **Q.** Okay. Because he would normally be owed seven
14 fifty?

15 **A.** He's entitled to seven fifty, but he owes one
16 fifty. I -- we pay him. His son even -- I told his son to
17 go ahead and deposit one fifty. He decide to deposit to his
18 father over \$40,000 too much and I asked him for it and he's
19 absolutely deny it, he ever make deposit in his father name.

20 **Q.** Okay. But you took care of that because --

21 **A.** I took care of it because it's clear.

22 **Q.** Okay.

23 **A.** Mohammad Hamed account is in St. Croix and the
24 fund was deposited from St. Thomas. And it says deposit in
25 St. Thomas to Mohammad Hamed in St. Croix. He was

EXHIBIT E

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.

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

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

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 expedited motion to compel responses to discovery served in connection with Yusuf Claim No. Y-2:¹ past rent due to United for Bay Nos. 5 and Bay 8 of the United Shopping Plaza and Yusuf Claim No. Y-4:² interest for the past rent due to United for Bay Nos. 5 and Bay 8 of the United Shopping Plaza.³ Yusuf did not file an opposition.

In his motion, Hamed stated that he served, *inter alia*, one interrogatory—Interrogatory 29—and two requests for production of documents—RFPD 21 and RFPD 34—in connection with Yusuf Claim Nos. Y-2 and Y-4. (Motion, p. 1) Hamed also stated that because Yusuf’s responses thereto did not provide “any information or documents, two Rule 37 letters were sent” and “Yusuf agreed to supplement the responses.” (Id., at p. 2) (Emphasis omitted) Hamed further stated that “[a]fter two requests for extensions of time in which to answer, on December 18, 2018 (two days before this motion to compel was due) Yusuf responded only with this: “There are no additional documents responsive to this request beyond the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendant’s Motion for Partial Summary Judgment on Counts IV, IX and XII Regarding Rent.” (Id.) Hamed explained that, as a result, another Rule 37 conference was set but “Yusuf’s counsel did not appear and did not provide any prior written or other notice of non-appearance (but did send an email more than an hour later requesting a change of date...)” (Id., at p. 5) Hamed argued that he “cannot

¹ Yusuf Claim No. Y-2: The amount of outstanding rent due to United for Bay Nos. 5 and 8 was “not adjudicated in the Rent Order¹ and they remain an outstanding rent claim against the Partnership.” Yusuf claimed that the “total amount due to United for unpaid rent for [Bay Nos.] 5 and 8 is \$793,984.34. See the Yusuf Declaration at ¶¶ 21-25.” (Yusuf’s Amended Accounting Claims, filed Oct. 30, 2017, p. 9)

² Yusuf Claim No. Y-4: “The interest due for the unpaid rent on [Bay Nos.] 5 and 8 is also claimed by United. The total interest calculated at 9% per annum for the period from May 17, 2013 through September 30, 2016 is \$241,005.18. Such interest continues to accrue at the daily rate of \$195.78 until paid. See calculations of interest on Bay [Nos.] 5 and 8 rent attached as Exhibit E to the Original Claims.” (Yusuf’s Amended Accounting Claims, filed Oct. 30, 2017, pp. 9-10)

³ 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’s instant motion to compel falls within the scope of the Master’s report and recommendation given that Yusuf Claim Nos. Y-2 and Y-4 are alleged debt owed by the Partnership to United.

defend against [Yusuf Claim Nos. Y-2 and Y-4] without information” and thus, requested the Master to compel Yusuf to respond to discovery served in connection with Yusuf Claims No. Y-2 and Y-4 (*Id.*, at p. 9).

DISCUSSION

1. Motion to Compel

Rule 37 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 37”) governs the scope and procedure of motion for an order compelling disclosure or discovery. Rule 37 provides that “[a] party seeking discovery may move for an order compelling an answer, designation, production, or inspection...if (iii) a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails to produce documents or fails to respond that inspection will be permitted – or fails to permit inspection – as requested under Rule 34. V.I. R. CIV. P. 37(a)(3)(B)(iii)-(iv). Rule 37 also provides that “[f]or purposes of this subpart (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.” V.I. R. CIV. P. 37(a)(4).

A. Hamed’s Interrogatory

Hamed’s Interrogatory 29, relates to Yusuf Claim No. Y-2:

Please describe all facts related to this claim with reference to dates, documents, witnesses and **what facts, conversations, writings, communications or other information or documents that leads United to believe and assert that it had an agreement with Hamed to pay rent for Bays 5 and 8**. Include in your description the dates of the conversations, writings, communication or other documents, the place where these discussions or meetings took place and identify the participants to the discussions or meetings. Include in your response, but not limit to what facts, conversations, writings, communications or other information or documents that leads Yusuf to believe and assert that any consent for such an arrangement survived the bringing of a suit in September of 2012. (Motion, p. 3) (Emphasis added.)

Yusuf’s Response:⁴

⁴ On December 18, 2018, Yusuf supplemented his response to Interrogatory 29, Requests for Production of Documents 21 and 34 with the following: “There are no additional documents responsive to this request beyond the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendant’s Motion for Partial Summary Judgment on Counts IV, IX and XII Regarding Rent.” (Motion, p. 4)

Defendants object to this Interrogatory because it is compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions. Without waiving any objection to this Interrogatory, Defendants incorporate the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendants' Motion for Partial Summary Judgment on Counts IV, IX, and XII Regarding Rent, particularly paragraphs 21-25 thereof, as their response to this Interrogatory. (Motion, p. 3)

Upon review of the Declaration of Fathi Yusuf, dated August 12, 2014,⁵ the Master finds that Yusuf's response to Interrogatory 29 is deficient. Under Rule 37(a)(4), "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond." V.I. R. CIV. P. 37(a)(4) Thus, the Master will grant Hamed's motion to compel as to Interrogatory 29.

B. Hamed's Requests for Production of Documents

Hamed's RFPD 21, relates to Yusuf Claim No. Y-2:

With respect to Y-2, please provide all documents demonstrating a written agreement that Hamed or the Partnership agreed to pay rent for Bays 5 & 8, including any documents establishing the amount of rent, a signed lease agreement and any prior payments of rent on Bays 5 & 8, include but do not limit this to any writings after Hamed brought suit in September of 2012, that would show any such consent or agreement continued after that suit. (Motion, p. 3)

⁵ The Declaration of Fathi Yusuf, dated August 12, 2014 provides in relevant part:

21. At periodic points in time, additional space was used by Plaza Extra -East for extra storage and staging of inventory. United has made demand for the rent covering the additional space actually occupied by Plaza Extra -East, but no payment has been received to date.

22. For the period from May 1, 1994 through July 31, 2001, Plaza Extra-East has occupied and owes rent for Bay 5 ("Bay 5 Rent"). The Bay 5 Rent is calculated by multiplying the square feet actually occupied (3,125) by \$12.00 for 7.25 years. The total due for Bay 5 Rent is \$271,875.00.

23. For the period from May 1, 1994 through September 30, 2002, Plaza Extra -East has occupied and owes rent for Bay 8 ("First Bay 8 Rent"). The First Bay 8 Rent is calculated by multiplying the square feet actually occupied (6,250) by \$6.15 for 8 years, 5 months. The total due for First Bay 8 Rent is \$323,515.63.

24. For the period from April 1, 2008 through May 30, 2013, Plaza Extra -East has occupied and owes rent for Bay 8 ("Second Bay 8 Rent"). The Second Bay 8 Rent is calculated by multiplying the square feet actually occupied (6,250) by \$6.15 for 5 years, 2 months. The total due for Second Bay 8 Rent is \$198,593.75.

25. The total amount due for Bay 5 Rent, First Bay 8 Rent, and Second Bay 8 Rent is \$793,984.38.

Yusuf's Response:⁶

Defendants submit that information responsive to this Request for Production is set forth in Fathi Yusuf's earlier declaration he explained that "[u]nder the business agreement between Hamed and me that I now describe as a partnership, profits would be divided 50-50 after deduction for rent owed to United, among other expenses" and that "[u]nder our agreement, I was the person responsible for making all decisions regarding when the reconciliation would take place" and that Yusuf had the discretion to determine when the reconciliation would take place. See August 12, 2014 Yusuf Declaration, p. 2. (Motion, p. 4)

Hamed's RFPD 34, relates to Yusuf Claim No. Y-2: SUBSTANTIALLY THE SAME AS YUSUF RFPD 9. Please produce all documents relating to your claim that rent is due from the Partnership to occupying Bay 5 and Bay 8. (Motion, p. 4)

Yusuf's Response:⁷

See Exhibit D - Declaration of Fathi Yusuf, attached to Yusuf's original Accounting Claims and Proposed Distribution previously served upon counsel for Hamed on September 30, 2016. (Motion, p. 4)

The Master finds that Yusuf's responses to Hamed's Requests for Production of Documents 21 and 34 are deficient and that Yusuf failed to produce the requested documents. Under Rule 37(a)(4), "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond." V.I. R. CIV. P. 37(a)(4) Thus, the Master will grant Hamed's motion to compel as to Hamed's Requests for Production of Documents 21 and 34.

CONCLUSION

Based on the foregoing, the Master will grant Hamed's motion to compel. Accordingly, it is hereby:

ORDERED that Hamed's motion to compel is **GRANTED**. It is further:

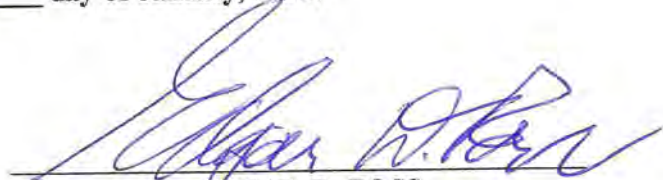
ORDERED that, **within seven (7) days from the date of entry of this order**, Yusuf shall file supplemental responses to Hamed's Interrogatory 29 and Hamed's Requests for Production of Documents 21 and 34. **And** it is further:

⁶ See *supra* footnote 4.

⁷ *Id.*

ORDERED that Yusuf's supplemental responses shall be in compliance with Rules 33 and 34 of the Virgin Islands Rule of Civil Procedure.

DONE and so ORDERED this 7th day of January, 2019.



EDGAR D. ROSS
Special Master

EXHIBIT F

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.

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

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

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 to preclude Yusuf’s claims prior to September 17, 2006.¹ Yusuf filed an opposition and Hamed filed a reply thereafter.

BACKGROUND

In a memorandum opinion and order dated July 21, 2017, the Court ordered, *inter alia*, that “the accounting in this matter, to which each partner is entitled under 26 V.I.C. § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. § 71(a), based upon transactions that occurred on or after September 17, 2006. *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *44-45 (V.I. Super. Ct., July 21, 2017) (hereinafter, “Limitation Order”). The Court noted that:

Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that “if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary.” First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006. *Id.*, 2017 V.I. LEXIS 114 at *44, fn. 35.

DISCUSSION

In his motion, Hamed pointed out that despite the Court’s “clear directive, Yusuf repeatedly and improperly still attempts to reintroduce such claims using carious ‘tricks’ to avoid that date.” (Motion, p. 2) As an example, Hamed pointed out that “Yusuf had [Fernando

¹ 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’s instant motion to preclude Yusuf’s claims prior to September 17, 2006 falls within the scope of the Master’s report and recommendation given that Yusuf claims are alleged debt owed by Yusuf to the Partnership (or in other words, potential Partnership Assets).

Scherrer of BDO Puerto Rico, P.S.C] include a claim that admittedly pre-dated 2001 as part of the revised [Fernando Scherrer of BDO Puerto Rico, P.S.C] report” (Id.)—more specifically, “\$1,778,103.00: Account owed by Hamed family to Yusuf as per agreement before raid Sept. 2001. As per Mike’s testimony these tickets were burned. (Refer to Letter dated August 15, 2012).” (Id., Exhibit 2) Thus, Hamed argued that “this claim should be stricken” and that “Yusuf should be instructed (again) not to re-assert any such pre-September 17, 2006 claims.” (Id., at p. 3)

In his opposition, Yusuf claimed that \$1,778,103.00 has three components: (1) “the amount taken by Waleed Hamed from a partnership account at a St. Martin Bank when he closed it in 2011 or 2012 (i.e., \$88,711.00)”; (2) “the amount taken by Waleed Hamed from a partnership account at a Jordanian Bank when he closed it in 2011 or 2012 (i.e., \$89,392.00)”; and (3) “a debt of \$1.6 million owed to Yusuf by Hamed that was tabulated in October 2001 but acknowledged by Waleed Hamed to be owed in 2012.” (Opp., p. 2) Yusuf argued that “[t]he portion of the \$1,778,103.00 represented by the two bank account withdrawals by Hamed – namely, \$178,103.00 – is plainly a debt that arose after September 17, 2006, and therefore one that falls within the scope of Judge Brady’s limitation on the accounting claim” and “[a]s for the \$1,600,000 portion that was acknowledged to be owed by Hamed as late as 2012, the legal analysis in Judge Brady’s order limitation the parties’ accounting claims, together with a prior ruling by him recognizing oral acknowledgement of a debt as basis for equitable tolling, bring that debt within the scope of the limitation on the accounting claim too.” (Id., at p. 3) Yusuf further argued that “Judge Brady has already found in a prior ruling that an oral acknowledgement of a debt tolls the 6-year statute of limitation for contract claims, so that the debt is deemed to have accrued on the date it was acknowledged – rather than the date the debt originally arose.” (Id., at p. 4) In support of his argument, Yusuf attached, *inter*

alia, a copy of Bakir Hussein's Affidavit, dated August 10, 2014, and a copy of the Court's order re payment of rent, dated April 27, 2015. (*Id.*, Exhibits A and C) Thus, Yusuf concluded that Hamed's motion should be denied. (*Id.*, at p. 5)

In his reply, Hamed reiterated his argument that pursuant to the Court's July 21, 2017 order, "claims prior to September 17, 2006, are barred regardless of whether the claims are described as 'disputed' or 'undisputed' by Yusuf." (Reply, p. 2) (Emphasis omitted) Hamed pointed out that "Yusuf's attempt to use an affidavit of a close friend of his clients to describe a conversation in a mediation to reach a global settlement (an alleged admission Hamed denies) is exactly the type of evidence that Judge Brady sought to avoid." (*Id.*) (Emphasis omitted) Hamed also pointed out that "Yusuf's reference to a prior Brady opinion on the SOL is off-base, as Brady's July 24th opinion is based on laches, not the SOL." (*Id.*)

The Master must note at the outset that while Hamed's motion is titled "motion to preclude Yusuf's claims prior to September 17, 2006," the motion only addressed Yusuf's claim for \$1,778,103.00. Hamed's motion moved to have the Master: (1) strike Yusuf's claim for \$1,778,103.00; and (2) instruct Yusuf to not re-assert any such pre-September 17, 2006 claims. The Master will certainly instruct Parties to comply with the Court's Limitation Order. However, at this juncture, the Master cannot make a general, sweeping determination as to which claims are pre-September 17, 2006 claims. If Parties wishes to argue that a specific claim is a pre-September 17, 2006 claim and therefore should be stricken, Parties should file a separate motion specific to that claim. This order will only address whether the claim raised in Hamed's motion—Yusuf's claim for \$1,778,103.00—is a pre-September 17, 2006 claim.

Yusuf claimed that \$1,778,103.00 has three components: (1) \$88,711.00, the amount Waleed Hamed withdrew from a partnership account at a St. Martin Bank in 2011 or 2012; (2) \$89,392.00, the amount Waleed Hamed withdrew from a partnership account at a Jordanian

Bank in 2011 or 2012; and (3) \$1,600,000.00, the amount of debt owed by Hamed to Yusuf tabulated in October 2001. The Master will address each component in turn, with the first two components—totaling \$178,103.00—addressed jointly.

A. \$178,103.00

Hamed did not dispute that Yusuf’s claim for \$1,778,103.00 has three components. Hamed also did not dispute that two of the components—totaling \$178,103.00—is based on Waleed Hamed’s withdrawals from partnership accounts in a St. Martin Bank and a Jordanian Bank in 2011 or 2012. As such, this portion—\$178,103.00—of Yusuf’s claim for \$1,778,103.00 is not a pre-September 17, 2006 claim because it was based upon transactions that occurred after September 17, 2006. As such, the Master will deny Hamed’s motion as to \$178,103.00 of Yusuf’s claim for \$1,778,103.00.

B. \$1,600,000.00

Here, Yusuf admitted that the debt of \$1,600,000.00 owed by Hamed to Yusuf was tabulated in 2001. The Court clearly ordered in its Limitation Order that only claims “based upon transactions that occurred on or after September 17, 2006” will be considered, regardless of whether it is disputed or undisputed since “it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed” and “even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006”. *Hamed*, 2017 V.I. LEXIS 114 at *44. Thus, this portion—\$1,600,000.00—of Yusuf’s claim for \$1,778,103.00 is a pre-September 17, 2006 since it was tabulated in 2001.

Yusuf argued that because Waleed Hamed acknowledged this debt in 2012, it should not be stricken pursuant to the Court’s April 27, 2015 order re payment of rent (hereinafter “Rent Order”) because “Judge Brady has already found in a prior ruling that an oral acknowledgement of a debt tolls the 6-year statute of limitation for contract claims, so that the debt is deemed to have accrued on the date it was acknowledged – rather than the date the debt originally arose.” (Opp., at p. 4) The Master finds Yusuf’s argument unpersuasive. First, when the Court ruled on the issue of payment of rent, the Court cited specifically to Hamed’s own admission at Hamed’s deposition that the Partnership owes United rent. (Rent Order, p. 4) Here, Yusuf merely submitted a copy of Bakir Hussein’s Affidavit, dated August 10, 2014, whereby Bakir Hussein declared that he heard Waleed Hamed admitting to this debt;² Yusuf did not provide any evidence of Waleed Hamed personally admitting to this debt. Additionally, this alleged admission is disputed by Waleed Hamed. Second, this is exactly the type of claims the Court ordered to bar by its Limitation Order—claims based upon transactions that occurred before September 17, 2006. Finally, in its Limitation Order, the Court “conclude[d] that consideration of the principles underlying the doctrine of laches strongly supports the imposition of an equitable limitation on the submission of § 71(a) claims in the accounting and distribution phase of the Wind Up Plan” and explained that “the Court exercise[d] the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions

² Bakir Hussein’s Affidavit provided, in relevant part:

9. In several open meetings, Mr. Yusuf said that the Hameds took \$1.6 million more than the Yusufs. Waleed Hamed admitted that he took the excess \$1.6 million dollars, which is the difference between the \$2.9 Million taken by the Hameds and the \$1.3 Million taken by the Yusufs. In addition to the \$1.6 million dollars which I heard Waleed Hamed admit to, both Waleed Hamed and Fathi Yusuf both agreed to additional withdrawals by the Yusufs provided that the Yusufs produced receipts to show proof of the additional withdrawals.

10. I personally heard Waleed Hamed admission to owing \$1.6 million dollars to the Yusufs as a result of excess withdrawals by the Hameds, and that the receipts for that amount were not available because they were destroyed prior to the raid by the U.S. Government.

occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint." *Hamed*, 2017 V.I. LEXIS 114 at *41, 44. Thus, because the Court's ruling was based on the doctrine of laches, regardless of whether the applicable statute of limitations has or has not expired, Yusuf's claim for \$1,600,000.00 is barred by laches. *See In re the Suspension of Joseph*, 60 V.I. 540, 558-59 (V.I., 2014) (citations omitted) ("[l]aches ... may be found even if the applicable statute of limitations has not yet run"). As such, the Master will grant Hamed's motion as to \$1,600,000.00 of Yusuf's claim for \$1,778,103.00.

CONCLUSION

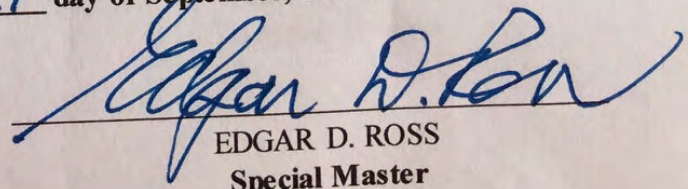
Based on the foregoing, the Master will grant in part and deny in part Hamed's motion to preclude Yusuf's claims prior to September 17, 2006—Yusuf's claim for \$1,778,103.00. Accordingly, it is hereby:

ORDERED that Hamed's motion to preclude Yusuf's claims prior to September 17, 2006—Yusuf's claim for \$1,778,103.00—shall be **DENIED** as to \$178,103.00 (\$88,711.00, the amount Waleed Hamed withdrew from a partnership account at a St. Martin Bank in 2011 or 2012; plus \$89,392.00, the amount Waleed Hamed withdrew from a partnership account at a Jordanian Bank in 2011 or 2012). It is further:

ORDERED that Hamed's motion to preclude Yusuf's claims prior to September 17, 2006—Yusuf's claim for \$1,778,103.00—shall be **GRANTED** as to \$1,600,000.00. Yusuf's claim for \$1,600,000.00 of the \$1,778,103.00 shall be and is hereby **STRICKEN**. And it is further:

ORDERED that Parties shall comply with the Court's Limitation Order.

DONE and so **ORDERED** this 24th day of September, 2018.


EDGAR D. ROSS
Special Master