

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

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

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,
Defendant.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

Consolidated with

Case No.: ST-18-CV-219

JOINT DISCOVERY AND SCHEDULING PLAN

THE PARTIES to the above-captioned civil action, in accordance with Virgin Islands Rules of Civil Procedure 16 and 26, and the instructions of the Honorable Edgar D. Ross (the “Master”) agree and stipulate to the following discovery and scheduling plan for incorporation into a Case Management Order.

I. Current Status

On December 1, 2018, the Special Master entered an Order (the “December 1, 2018 Order”) following a telephonic conference with counsel as to the status of the claims. *See Exhibit A – December 1, 2018 Order.* The December 1, 2018 Order amended the discovery plan agreed to by the Parties and entered by the Master on January 29, 2018, as modified by Order dated August 6, 2018.

After lengthy discussions as to how to best proceed through the remaining claims so as to remain efficient, the parties believe the claims and their processing should be addressed as set forth herein.

II. Remaining “Part B”¹ Claims:

The sixteen (16) remaining Part B Claims will be addressed in two phases.

A. Part B(1) Claims

These claims consist of the following:

- Y-05 Reimburse United for Gross Receipt Taxes (B-1)
- Y-07 Ledger Balance Owed to United (B-1)

¹ The parties divided the claims into two tracks—Part A and Part B. The Part A claims were those claims that John Gaffney was needed to provide an accounting explanation and originally were identified as claims H-41 thru H-141. An additional 30 claims were moved to the Part A track, for a total of 131 claims. The Part B claims are the remaining claims that do not require Gaffney input or explanation. Summary judgment motions concerning 5 Part B claims have been submitted to the Master. Of the remaining Part B claims, 8 Part B(1) claims do not require expert testimony and will be addressed next. The final 8 Part B(2) claims may require expert testimony and will be addressed last.

Y-08 Water Revenue Owed United (B-1)
Y-09 Unreimbursed Transfers to United (B-1)
H-142 Half Acre in Estate Tutu (B-1)
H-150 United Shopping Center's Gross Receipt Taxes (B-1)
H-160 United Shopping Centers gross receipt taxes (B-1)
H-165 Outstanding debts identified by Yusuf (B-1)

1. Schedule for remaining discovery as to the Part B(1) Claims:

All written interrogatories, requests for production of documents, and requests for admissions have been exchanged between the parties as to these claims. Any motions to compel will be filed by October 15, 2019. Remaining fact witness depositions, including depositions of non-parties, taken for purposes of discovery and/or to preserve testimony for trial, shall be completed on a per-claim basis as agreed between the parties before February 15, 2020.

2. Schedule for Disposition of Part B(1) Claims:

The parties will each file motions for summary judgment on their affirmative remaining Part B(1) Claims by April 1, 2020. Claims for which the Master feels an evidentiary hearing is deemed necessary will be scheduled to occur promptly after denial of a summary judgment motion as the Master, the parties and counsel will be familiar and well versed on the issues, rather than waiting until a later date.

B. Part B(2) Claims

These claims consist of the following:

Y-10 Past Partnership Withdrawals (B-2)
Y-11 Lifestyle Analysis (B-2)
Y-12 Foreign Accounts and Jordanian Property (B-2)
H-33 Merrill Lynch Accounts (B-2)
H-146 Imbalance in Credit Card Points (B-2)
H-151 Checks written to Fathi Yusuf for personal use (B-2)
H-162 Claims based on monitoring reports/accounting 2007-2012 (B-2)
H-163 Loss of Assets as a result of Wrongful Dissolution

1. Schedule for Remaining Discovery As to the Part B(2) Claims:

All written interrogatories, requests for production of documents, and requests for admissions have been exchanged between the parties as to these claims. Any motions to compel will be filed by July 1, 2020. Remaining fact witness depositions, including depositions of non-parties, taken for purposes of discovery and/or to preserve testimony for trial, shall be completed on a per-claim basis as agreed between the parties before February 15, 2021.

2. Schedule for Disposition of Part B(2) Claims:

The parties will each file motions for summary judgment on their affirmative remaining Part B(1) Claims by April 1, 2021. Claims for which the Master feels an evidentiary hearing is deemed necessary will be scheduled to occur promptly after denial of a summary judgment motion as the Master, the parties and counsel will be familiar and well versed on the issues, rather than waiting until a later date.

a. Expert Discovery and Disposition of remaining Part B(2) Claims:

The parties anticipate that following the close of the fact discovery of the Part B(2) claims, that many will require expert testimony and thus, expert discovery will be necessary.

The party asserting the claim(s) shall serve notices identifying all of his expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than April 15, 2021

The party defending the claim(s) shall serve notices identifying all of their expert witnesses, and said expert witnesses' curriculum vitae and written reports, not later than May 15, 2021.

All expert witness depositions, for purposes of discovery and to preserve testimony for trial, shall be completed not later than June 15, 2021.

All motions to compel, for sanctions, or for protective orders with respect to expert discovery, shall be filed and served not later than July 15, 2021.

The parties shall jointly contact the Master to attempt an informal resolution of any discovery disputes prior to filing expert discovery motions.

Daubert/Kuhmo motions shall be filed and served not later than August 15, 2021.

b. Disposition of Claims After Expert Testimony:

As to the remaining claims that exist following the close of the expert discovery phase and *Daubert/Kuhmo* motions, to the extent any remaining claims may be disposed of through a summary judgment process, the parties will each file motions for summary judgment on their affirmative remaining Part B(2) claims by September 1, 2021. Claims for which the Master feels an evidentiary hearing is deemed necessary will be scheduled to occur promptly after any denial of a summary judgment motion as the Master, the parties and counsel will be familiar and well versed in the topic, rather than waiting until a later date.

III. Interlocutory Hearings

To be efficient with the Master's and parties' time and resources, in the event that certain matters require an evidentiary hearing for the Part B(1) and (2) claims, the parties will attempt to group the claims to be heard at any single hearing with overlapping issues, documents and witnesses. No later than 10 days prior to any scheduled Interlocutory Hearing, all motions in limine and V.I. Rule of Evidence 104 motions shall be filed and served.

IV. Remaining Part A Claims:

A. Claims to John Gaffney. With regard to the Part A Claims:

It should be noted that the Gaffney (Part A) process involved the Court less than the full-briefing (Part B) process – and thus 30 claims were added to the original 101 Part A claims. Thus, the “starting figure” for Part A claims was actually 131.

1. 101 original claims were designated as Part A Claims requiring a report from John Gaffney.
2. 30 Part B claims were moved to Gaffney / Part A.
3. Thus, **a total of 131 claims** are being submitted to Gaffney.
4. To date Gaffney has completed 30 claims.
5. To date, Hamed has conceded approximately \$536,556, and Yusuf \$44,619.28.
6. 101 claims remain to be submitted to Gaffney.

While the process is slow, it has already diverted 30 of the original Part B claims from the need for full consideration by the Court. Therefore, the parties request that the Master allow it to continue at the current pace and to provide a status report every ninety (90) days to alert the Master if there have been any unforeseen delays.

If it appears after the submission of any particular report by Gaffney that the claim to which it pertains remains an open issue and is not resolved, the parties will confer to determine if any further discovery, including possible expert discovery, is needed and if not, then the claim will be briefed via a motion for summary judgment within 90 days of completion of the 131 Gaffney claims – and if the Master feels an evidentiary hearing is deemed necessary it will be scheduled to occur thereafter.

V. Final Accounting Report and Ultimate Distribution Recommendation

The parties are undertaking to develop a comprehensive template for a Final Accounting Report and Ultimate Distribution Recommendation based upon the various interim rulings made by the Master. The parties anticipate they will stipulate to the format of the template and such template can be used by the Master to reflect the accounting allocations between the parties as determined by his various interlocutory Orders with his Final Accounting Report and Ultimate Distribution Recommendation submitted to Judge Brady.

Respectfully submitted,

LAW OFFICES OF JOEL H. HOLT

DATED: September 18, 2019

By: /s/ Carl J. Hartmann
Joel H. Holt by Carl J. Hartmann
2132 Company Street
Christiansted, VI 00820
Telephone: (340) 773-8709
Facsimile: (340) 773-8677
Email: holtvi.plaza@gmail.com

Attorneys for Plaintiff/Counterclaim Defendant

DUDLEY NEWMAN FEUERZEIG LLP

DATED: September 18, 2019

By: /s/Charlotte K. Perrell
GREGORY H. HODGES (V.I. Bar No. 174)
CHARLOTTE K. PERRELL (V.I. Bar No. 1281)
P.O. Box 756-0756
St. Thomas, VI 00804
Telephone: (340) 715-7750
Facsimile: (340) 715-4400
E-Mail: ghodges@dnfvi.com
cperrell@dnfvi.com

Attorneys for Fathi Yusuf and United Corporation

Hamed v. Yusuf, et al.
Civil No. SX-12-cv-370
Page 8

The foregoing Amended Joint Discovery and Scheduling Plan is **APPROVED** and is made the Case Management Order in this case.

Dated: September ____, 2019

Hon. Edgar D. Ross
Master

CERTIFICATE OF SERVICE

It is hereby certified that on this 18th day of September, 2019, I served a true and correct copy of the foregoing **Joint Discovery and Scheduling Plan**, which complies with the page and word limitations set forth in Rule 6-1(e), via e-mail addressed to:

Carl J. Hartmann, III, Esq.
5000 Estate Coakley Bay – Unit L-6
Christiansted, St. Croix
U.S. Virgin Islands 00820
E-Mail: carl@carlhartmann.com

Mark W. Eckard, Esq.
ECKARD, P.C.
P.O. Box 24849
Christiansted, St. Croix
U.S. Virgin Islands 00824
E-Mail: mark@markeckard.com

Jeffrey B.C. Moorhead, Esq.
JEFFREY B.C. MOORHEAD, P.C.
C.R.T. Brow Building – Suite 3
1132 King Street
Christiansted, St. Croix
U.S. Virgin Islands 00820
E-Mail: jeffreymlaw@yahoo.com

/s/Charlotte K. Perrell

Exhibit A

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

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

vs.

UNITED CORPORATION, *Defendant.*

Consolidated with

Case No.: SX-2014-CV-287

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

vs.

FATHI YUSUF, *Defendant.*

Consolidated with

Case No.: SX-2014-CV-278

FATHI YUSUF, *Plaintiff,*

vs.

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

Consolidated with

Case No.: ST-17-CV-384

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,
Defendant.

Consolidated with

Case No.: ST-18-CV-219

ORDER

THIS MATTER, having come on before the Special Master in a telephonic conference on November 29, 2018, on the joint motion of the parties. It is hereby

ORDERED:

1. Due to the progress being made with regard to the Part A claims (Gaffney review) and the Special Master having allowed the movement of Part B claims to the Part A process, adjustments to the original Scheduling Order are necessary.
2. The Scheduling Order agreed to by the parties and entered by the Special Master on January 29, 2018, as modified by Order dated August 6, 2018, is hereby amended.
3. The parties will work together and with John Gaffney to complete Gaffney's review of and reporting on the Part A claims by Thursday, August 29, 2019.
4. A telephonic status conference is hereby scheduled for 10:00 a.m. on Friday, August 30, 2019 to review that progress and discuss further amending the Scheduling Order to provide for the completion of the then outstanding Part A and Part B claims, which will include the discovery and briefing schedule for any of those claims that remain.
5. The following Part B claims requiring expert discovery will be moved to the Part A *schedule* in that they will be dealt with after completion of the Part A process provided above:

- | | |
|------|--|
| Y-05 | Reimburse United for Gross Receipt Taxes |
| Y-06 | Black Book Balance Owed United |
| Y-07 | Ledger Balance Owed United |
| Y-08 | Water Revenue Owed United |
| Y-09 | Unreimbursed Transfers from United |
| Y-10 | Past Partnership Withdrawals - Receipts |
| Y-11 | Lifestyle Analysis |

- H-33 Merrill Lynch Accounts
- H-142 Half acre in Estate Tutu
- H-146 Imbalance in credit card points
- H-150 United Shopping Center's gross receipt taxes
- H-151 Checks written to Fathi Yusuf for personal use
- H-160 United Shopping Center's gross receipt taxes
- H-162 Claims based on monitoring reports/accounting 2007-2012
- H-165 In Yusuf's Accounting and Proposed Distribution Plan filing on September 30, 2016, Yusuf stated that "[t]here are Debts totaling \$176,267.97, which must be paid prior to any distribution of the remaining Partnership Assets to the Partners." (Footnote omitted)
This is an unclear accounting entry.

Dated: Dec. 1, 2018


Hon. Edgar D. Ross, Special Master

Distribution:

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

Carl J. Hartmann III, Esq
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L-6
Christiansted, VI 00820
Email: carl@carlhartmann.com T: (340)
642-4422/F: (212) 202-3733

Joel H. Holt, Esq. (Bar #6)
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com

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

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