

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

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

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,
Defendant.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

Consolidated with

Case No.: ST-18-CV-219

**HAMED REPLY TO YUSUF'S OPPOSITION TO HAMED'S MOTION TO COMPEL --
RE REVISED CLAIM H-142 – HALF ACRE IN ESTATE TUTU**

I. Introduction

On November 4, 2019, United filed its *Opposition to Hamed's Motion to Compel Re Revised Claim H-142 – Regarding Half Acre in Estate Tutu*. Hamed respectfully requests the Master grant the relief requested in the motion and further detailed in this reply by ordering a response to this outstanding discovery.

II. A Very Brief Summary of the Procedural Process

The parties exchanged discovery pursuant to the August 4, 2018 Scheduling Order. After the majority of the discovery was produced on May 15, 2018, the parties entered into a series of letters and Rule 37 conferences to resolve their differences. Some issues were resolved, but a number of issues remain outstanding. Consequently, on October 2, 2019, Hamed filed his *Motion to Compel No. 3 of 5 with Regard to the "B(1)" Claims Re Revised Claim H-142 – Half Acre in Estate Tutu*. On November 4, 2019, United filed its *Opposition to Hamed's Motion to Compel as to Hamed Claim H-142 – Regarding Half Acre in Estate Tutu*.

III. Facts

A. United and Yusuf's Deficient Interrogatory Response

1. *Hamed's Interrogatory 21 of 50 – Revised Claim No. H-142 – Half Acre in Estate Tutu*

On February 21, 2018, Hamed propounded the following interrogatory:

Interrogatory 21 of 50: Interrogatory 21 of 50 relates to Claim No. H-142 (old Claim No. 490): "Half acre in Estate Tutu," as described in Hamed's November 16, 2017 Motion for a Hearing Before Special Master, Exhibit 3 and the September 28, 2016 JVZ Engagement Report and Exhibits.

With respect to Claim No. H-142, state in detail how this half acre in Estate Tutu was purchased and what funds were used, the source of those funds

and any discussions or agreements about the funds or the purchase, with reference to all applicable documents, communications and witnesses.

2. Yusuf and United Refused to Respond to Interrogatory 21 of 50

On May 15, 2018, United and Yusuf refused to respond to interrogatory 21 – stating that there would be no response because (1) United had filed a pending motion to strike, and (2) it was United's unilateral view that this claim was outside of Judge Brady's Limitation Order.

United Response to Interrogatory 21 of 50:

Defendants object to this Interrogatory because it involves a potential claim that is barred by the Court's Memorandum Opinion and Order Re Limitation on Accounting ("Limitation Order"), which limits the scope of the accounting to only those transactions that occurred on or after September 17, 2006. Pursuant to a deed dated July 26, 2006 and recorded on August 24, 2006, this property was titled in the name of Plessen Enterprises, Inc. and was not an asset of the Partnership as of September 17, 2006. Accordingly, any claims by Hamed relating to this property are clearly barred by the Limitation Order and Defendants have no obligation to provide discovery concerning a barred claim because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

Moreover, this claim is the subject of Defendants' Motion to Strike Hamed's Amended Claim Nos. 142 and 143 ("Motion to Strike") seeking to strike Hamed Claim 142 on the grounds that the property was titled in the name of Plessen, was not an asset of the Partnership and is barred by the Limitation Order. Defendants incorporate by reference their Motion to Strike as if fully set forth herein verbatim and submit that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution. **(Exhibit 4)**

3. Yusuf and United further refuse to respond fully in their supplemental response

On July 11, 2018, in response to United's motion to strike H-142, **the Master denied the motion to strike and ordered “[d]iscovery in connection with Hamed Claim No. H-142 shall be completed no later than August 10, 2018.” (Exhibit 1 at 11) (Emphasis added).** On July 19, 2018, United propounded supplemental discovery *non*-responses,

including a total non-response to Interrogatory 21 of 50 that *casually* violates the Master's direct, specific order:

Supplemental Response

Defendants show that all documents relating to the purchase of the half acre in Estate Tutu are those documents, which have already been provided in this case including the Warranty Deed and the First Priority Mortgage. Further responding, Defendants show that **Mr. Yusuf is out of the country until August 18, 2018 and to the extent that any additional information is required of him, Defendants are unable to provide that information at this time, but will readily supplement as soon as he is available.** (Exhibit 8) (Emphasis added).

Didn't happen.

B. Similarly, Yusuf and United failed to answer Hamed's RFPDs No. 13 of 50

1. Hamed's RFPDs 13 of 50 – Revised Claim No. H-142 – Half Acre in Estate Tutu

RFPDs 13 of 50: Request for the Production of Documents, 13 of 50, relates to H-142 (old Claim No. 490): "Half acre in Estate Tutu."

With respect to H-142, please provide all documents which relate to this entry -- particularly (but not limited to) all underlying documents relating to the source of funds for the purchase of this property if it was other than income from the stores. (Exhibit 13)

2. Yusuf and United refuse to respond to RFPDs 13 of 50

United and Yusuf Response to RFPDs 13 of 50: Defendants object to this Request for Production because it involves a potential claim that is barred by the Court's Memorandum Opinion and Order Re Limitation on Accounting ("Limitation Order"), which limits the scope of the accounting to only those transactions that occurred on or after September 17, 2006. Pursuant to a deed dated July 26, 2006 and recorded on August 24, 2006, this property was titled in the name of Plessen Enterprises, Inc. and was not an asset of the Partnership as of September 17, 2006. Accordingly, any claims by Hamed relating to this property are clearly barred by the Limitation Order and Defendants have no obligation to provide discovery concerning a barred claim because "the proposed discovery is not relevant to any party's claim or defense." V.I. R. Civ. P. 26(b)(2)(C)(iii).

Moreover, this claim is the subject of Defendants' Motion to Strike Hamed's Amended Claim Nos. 142 and 143 ("Motion to Strike") seeking to strike Hamed Claim 142 on the grounds that the property was titled in the name of Plessen, was not an asset of the Partnership and is barred by the Limitation Order. Defendants incorporate by reference their Motion to Strike as if fully set forth herein verbatim and submit that because there is a pending Motion to Strike, the requirement for a response should be stayed pending the resolution. (**Exhibit 14**)

3. Yusuf and United still refuse to respond fully in their supplemental response

As noted above, on July 11, 2018, in response to United's motion to strike H-142, the Master denied the motion to strike and ordered "[d]iscovery in connection with Hamed Claim No. H-142 shall be completed no later than August 10, 2018." (**Exhibit 1** at 11) On July 19, 2018, Yusuf and United propounded supplemental discovery response to RFPDs 13 of 50. With respect to RFPDs 13, Yusuf and United stated:

Supplemental Response

Defendants show that all documents in their possession, custody or control have already been produced (warranty deed, first priority mortgage, and deed in lieu of foreclosure with accompanying tax clearance letter from Mohammad Hamed. Further responding, Defendants show that there are no documents responsive to this request to the extent it seeks documents reflecting sources of funds for the purchase other than income from the stores. (**Exhibit 15**)

IV. Argument

Yusuf and United filed an Opposition to this Motion to Compel and a supplemental response.¹

A. Yusuf and United's Newest Response to Interrogatory 21 of 50 is Still Deficient

In Yusuf and United's Opposition, the two parties claim that their previously denied *Motion to Strike* is fully incorporated into their response to Interrogatory 21. Within the *Motion to Strike*, Yusuf and United then direct the Master to pages 5-6 of the Liquidating Partner's Eighth Bi-Monthly report for more information regarding the claim.

Hamed's interrogatory requests an explanation of "**how** this half acre in Estate Tutu was purchased and what funds were used, the source of those funds and **any discussions or agreements about the funds or the purchase**, with reference to all applicable documents, **communications and witnesses**." (Emphasis added). The response deals only with documents.

The *Motion to Strike* and the *Liquidating Partner's Eighth Bi-Monthly Report* still do not respond to the interrogatory. Those references provided the following for the half acre in Estate Tutu: a copy of the warranty deed, the mortgage, and the deed in lieu of foreclosure. Their *Motion to Strike* also expresses surprise that Hamed characterizes the parcel as adjacent to and providing access to a larger parcel jointly owned by Plessen

¹ Yusuf claims Hamed's Rule 37 letter "reflects [on the part of Yusuf and United] some type of deliberate attempt to ignore or evade communication with counsel for Hamed." (Yusuf/United Opposition at 8) The documents speak for themselves – a response was required on May 15, 2018 and Yusuf and United did not supplement its responses until July 19, 2018. Those were also deficient for the reasons set forth within. Thus, Hamed is still waiting for responses to his discovery.

Enterprises, Inc. (Motion to Strike at 3) Additionally, Yusuf admits unilaterally changing the financials of the Partnership in the Eighth Bi-Monthly Report because “the Land was erroneously carried on the balance sheet of the Partnership.” (Yusuf/United Opposition at 4).

What United and Yusuf **fail** to do is give a description of how the half acre came to be purchased, why the half acre came to be purchased, any discussions surrounding those two questions, with reference to documents, communications and witnesses. This is the “why”.

Further, United and Yusuf do not explain anything about the mortgage AND NOTE, which certainly are encompassed in the “how” of this half acre being purchased. Were documents sent to and received from counsel? Others?

Yusuf and United are playing cute with this interrogatory by not discussing the particulars around the purchase transactions—as well and any other purchases of the parcel not discussed by them in response. Hamed respectfully requests that the Master order Yusuf and United to fully respond to the interrogatory:

- Discuss the decision regarding all purchases and funding of this property. This would include
 - Why did the parties decide to purchase the parcel? (Relates to the purchase)
 - Please identify any witnesses and documents related to the purchase and mortgage. (Relates to funds and purchase)
 - Which Partner or Partners decided to use the Partnership funds for the mortgage to Plessen Enterprises, Inc.? (Relates to funds)
 - What bank account did the funds for the mortgage come from? (Relates to funds)
 - Most importantly, describe the discussions and decisions to provide a mortgage to Plessen, including who was participating in the discussions, what activities needed to take place to effectuate the mortgage, how and why the decision was made, who made the decision to give the

- mortgage, etc. (Relates to funds and purchase.) Who arranged for the note and mortgage?
- Explain *why* as Yusuf admitted, the half-acre was not carried on the Partnership books when the parcel was purchased with Partnership funds. (Relates to funds) It was not on Plessen's books....after 2008 it was not on Plessen's book, it was on the Partnership's.
- What parties were involved in the decisions as to any purchases of the parcel? (Relates to the purchase)

B. Yusuf and United's Response to RFPDs 13 of 50 is Still Deficient

Yusuf is stubbornly misstating Hamed's document request:

Although Yusuf and United have admitted that the source of the funds for the initial purchase was Partnership funds, Hamed continues to insist that documents that do not exist ("documents reflecting source of funds for the purchase other than income from the stores") be produced. (Yusuf/United Opposition at 5)

Hamed's request states "[w]ith respect to H-142, please provide all documents which relate to this entry. . . ." (Emphasis added). Those documents, *at a minimum*, would include such items as general ledgers, tax documents and bank records related to the purchase, the mortgage, the foreclosure in 2008, and any other documents generated or maintained from the initial discussions regarding the property to the present. This must include any correspondence, letters, faxes or other communications related to the half acre parcel, whether it relates to the initial purchase, sale, foreclosure, subsequent transfer, rationale for acquiring the property, reason for the mortgage, the transfer into United's name and communications generated from the Partner's discussions regarding the property to the present should would also be included in under this request. Basically, this request is asking for all documents in Yusuf and United's possession that relates in any way to the half acre property in Estate Tutu, more formally known as 2-4 Rem. Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, USVI.

C. Yusuf and United Incorrectly Assert that Hamed Expanded Discovery

Yusuf alleges that “[i]n each of Hamed’s Rule 37 Letters, he seeks to expand and elaborate on his initial requests.” (Yusuf/United Opposition at 5) Nothing could be further from the truth. In his Rule 37 letters, Hamed is giving Yusuf and United examples of the types of documents and information that would be responsive to the discovery requests, not new requests. Instead, Yusuf and United intentionally “misunderstand” these so that they can mulishly refuse to answer this very basic discovery.

For example, Yusuf states “Yusuf and United properly provided the documents relating to this property and further confirmed that there were no documents responsive to this request **to the extent** that it seeks documents relating to **the source of funds** for the purchase other than income from the stores.” (Yusuf/United Opposition at 7) (Emphasis added). Here, Yusuf and United have narrowed down the document request to funding for the **initial** purchase only. They did not produce documents related to the funding of the mortgage or any of the decisional documents surrounding that or later purchases, mortgages, foreclosures, deeds or other documents relating to the property. As described above, the request for documents relates to **all** aspects of the H-142 claim, not just the source of funding for the initial purchase.

D. Yusuf and United Incorrectly Assert Hamed Has to Get Answers to His Discovery in Deposition

In complete violation of the rules and their underlying intent, after avoiding responding for years, Yusuf and United now state in their Opposition at 8, “[i]f Hamed seeks to ask follow-up questions or further inquire beyond the information originally requested, then Hamed can depose Mr. Yusuf. However, United has properly and adequately responded

to this discovery and properly supplemented their responses.” **This is absurd.** The entire purpose of the written portion of discovery is to provide the initial information so that depositions can be informed and useful—and perhaps even substitute for live testimony at trials. *V.I. R. CIV. P. 33(a)(3)* expressly states “[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.” **There is absolutely no exception to the rule that requires Hamed to wait until depositions to get responses to his requests that comport with the applicable discovery rules.** To allow this sort of evasion in the “paper” portion of the discovery would make depositions a total farce. That is particularly true with these defendants.

If time were not so short, given the long and frustrating delays in responding, Hamed would seek sanctions for such an obstructionist objection to a response. But time is short now because a year has been wasted with these sorts of denials.

V. Conclusion

Hamed respectfully requests that the Master order Yusuf and United to fully answer the discovery, using the following examples of the type of information required:

Interrogatory 21

- Discuss the decision regarding the purchase and funding of this property. This would include
 - Why did the parties decide to purchase the parcel? (Relates to the purchase)
 - Please identify any witnesses and documents related to the purchase and mortgage. (Relates to funds and purchase)
 - Which Partner or Partners decided to use the Partnership funds for the mortgage to Plessen Enterprises, Inc.? (Relates to funds)
 - What bank account did the funds for the mortgage come from? (Relates to funds)
 - Describe the discussions and decision to provide a mortgage to Plessen, including who was participating in the discussions, what activities needed

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- to take place to effectuate the mortgage, how and why the decision was made, who made the decision to give the mortgage, etc. (Relates to funds and purchase)
- Explain why Yusuf believes the half-acre was not carried on the Partnership books when the parcel was purchased with Partnership funds. (Relates to funds)
- What parties were involved in the decision to purchase the parcel? (Relates to the purchase)

RFPDs 13

- All document relating to the half acre property, including, but not limited to
 - General ledgers, tax documents and bank records related to the purchase, the mortgage, the foreclosure in 2008, and any other documents generated or maintained from the initial discussions regarding the property to the present.
 - Any correspondence, letters, faxes or other communications related to the half acre parcel, whether it relates to the initial purchase, sale, rationale for acquiring the property, reason for the mortgage, the transfer into United's name, subsequent or later purchases/transfers and communications—generated from the initial discussions regarding the property to the present.
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Considering how far into this case we are, this information should be readily at hand, and these responses should take not more than a day of concerted effort—a day that should have been spent a year ago.

Dated: November 9, 2019



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CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of November 2019, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

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