

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 MOTION TO COMPEL NO. 4 OF 5
WITH REGARD TO THE "B(1)" CLAIMS—
AS TO: REVISED CLAIMS H-150, H-160 – UNITED SHOPPING CENTER'S GROSS
RECEIPT TAXES ("GRT") AND Y-5 – REIMBURSE UNITED FOR GRTS**

I. Introduction

On November 4, 2019, Yusuf filed an Opposition to Hamed's *Motion to Compel* as to Hamed Claims – H-150 and 160 – United Shopping Center's Gross Receipt Taxes ("GRT") and Y-5 – Reimburse United for GRT. Hamed respectfully requests the Master grant the relief requested in the motion and further detailed in this reply by ordering a response to this discovery.

II. Brief Summary of the Procedural Process

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. To ensure there was no question regarding Hamed's compliance with Rule 37's requirement to confer and to provide Yusuf with one more chance to respond, Hamed requested a final meet and confer on October 3, 2019. Following that meeting, Yusuf did not supplement these claims. Consequently, on October 14, 2019, Hamed filed a Motion to Compel No. 4 of 5 with Regard to the "B(1)" Claims—as to: Revised Claims H-150 and H-160 – United Shopping Center's Gross Receipt Taxes ("GRT") and Y-5 – Reimburse United for GRTs. On November 4, 2019, Yusuf filed an Opposition to Hamed's Motion to Compel as to Hamed Claim – H-150 and 160 – United Shopping Center's Gross Receipt Taxes and Y-5 – Reimburse United for Gross Receipt Taxes.

III. Facts

A. Yusuf's Incomplete Answer to Hamed's Interrogatory 16 of 50 – Claim Nos. H-150 and H-160 – Reimburse United Shopping Center's Gross Receipt Taxes and Y-5 – Reimburse United for Gross Receipt Taxes

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

Interrogatory 16 of 50: Interrogatory 16 of 50 relates to Y-5: "Reimburse United for Gross Receipt Taxes," H-150 (old Claim No. 3002a) and H-160 (old Claim No. Exhibit A-H): "United Shopping Center's gross receipts taxes," H-152 (old Claim No. 3008a): "United's corporate franchise taxes and annual franchise fees," and H-153 (old Claim No. 3009a): "Partnership funds used to pay United Shopping Center's property insurance."

State with specificity why, assuming that Yusuf is correct that Hamed had agreed that the Partnership would pay the separate (non-partnership-related) United Corporation costs for such things as GRT taxes, franchise taxes and fees, property insurance, etc., -- what facts, conversations, writings, communications or other information or documents leads Yusuf to believe and assert that he *continued* to have Hamed's consent as to such payments after September 17, 2012, despite a lawsuit filed by Hamed seeking to stop Yusuf's involvement in the Partnership, with a claim of outright theft by Hamed, as well as Yusuf's denial of the existence of a partnership, attempted removal of the Hameds from the stores by Yusuf and letters from Hamed and his counsel stating that various of the unilateral uses of funds, payments and actions were henceforth denied and actionable? (**Exhibit 1**)

On May 15, 2018, Yusuf's response did not explain "what facts, conversations, writings, communications or other information or documents leads Yusuf to believe and assert that he *continued* to have Hamed's consent as to such payments after September 17, 2012":

Yusuf Response to Interrogatory 16 of 50: Defendants object to this interrogatory as vague, ambiguous, and 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.

Further responding, Yusuf submits that in his 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. There is no reason for

Yusuf to believe that this discretion, consistent with the manner in which the partnership operated from its inception, would not continue in the same manner until its dissolution. This belief and understanding has been further confirmed with Yusuf's designation as the Liquidating Partner under the Final Wind Up Plan of the Plaza Extra Partnership adopted by the Court by Order dated January 7, 2015. Finally, the filing of Hamed's lawsuit on September 17, 2012 did not enable him to continue receiving the benefits of the partnership without the burdens he agreed to from the outset. (**Exhibit 2**)

B. Hamed's Interrogatory 41 of 50 – Claim No. Y-5 – Reimburse United for Gross Receipt Taxes

On March 24, 2018, Hamed propounded another interrogatory on this subject:

Interrogatory 41 of 50: Substantially the Same as Yusuf ROG 19: Identify all facts and circumstances relating to Yusuf Claims No. 2-5 and 10-12, and identify, all documents relating to each claim.

* * * *

Y-05 Reimburse United for Gross Receipt Taxes. . . .

As with Yusuf's prior responses, he refused to answer the interrogatory on May 15, 2018 and did not identify "all facts and circumstances" relating to Yusuf claim Y-5, which requests repayment of the United Shopping Center's gross receipt taxes from 1993-2001.

Yusuf's Response to Interrogatory 41 of 50: Defendants object to this Interrogatory as vague, ambiguous, and 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 objections, Defendants further respond as follows:

Y-05 Reimburse United for Gross Receipt Taxes: See Response to Interrogatory # 16

Interrogatory 16, which Yusuf's response references, relates to Hamed's request that the Partnership should be reimbursed for paying the gross receipt taxes of the United Shopping Center from 2012 forward – a completely different time period.

IV. Argument

Yusuf filed an Opposition to this Motion to Compel.¹

A. Yusuf's Response to Interrogatory 16 of 50 is Still Deficient

Yusuf did not supplement his response to Interrogatory 16. Instead, in the body of the opposition, counsel states several "new facts" without underlying, supporting discovery responses. This is not the first time this has occurred by any means, it is not an oversight, it is a tactical decision that has been complained about throughout this case. Apparently unable to get their client to truthfully respond or afraid of a sworn response, counsel now testifies as the witness here. If the Master allows this response to stand, Hamed asks that he be allowed to depose counsel.

This is just a completely unusable "new explanation" from counsel as to why Yusuf somehow thought the payment the United Shopping Center GRTs should continue after Hamed filed the current lawsuit in 2012. It is a total fabrication that relies on a "status quo" that clearly does not even exist. It is clear why Yusuf will not sign a verification of discovery responses here.

First, what counsel HAS testified to should be put into the form of a verified response, Second, it remains jarringly deficient. Counsel testifies:

The dissolution process requires the maintenance of the *status quo* while the winding up of the Partnership proceeds. Maintenance of the *status quo* requires the payment of expenses and debts of the Partnership. The agreement between the Partners was for them to split the net profits from the grocery store business after paying various expenses including rent to United and other expenses including United's gross receipts. The dissolution process did not change the expenses the Partnership agreed to incur. Recall, the Partnership benefited from a reduced rental rate and flexibility as to when to pay rent so as to preserve

¹ In his Opposition, Yusuf states "that there has been no lingering attempt to ignore any specific deficiency or unilateral attempt to avoid response." (Yusuf Opposition at 4) The documents speak for themselves – responses were required on May 15, 2018 and were deficient. Yusuf has avoided supplementing his responses, so Hamed is still waiting for full and complete responses to his discovery.

liquidity. Payment of United's gross receipt taxes and other expenses, coupled with a reduced rental rate is not unusual and similar to expenses incurred in a triple net lease, whereby the tenant or lessee promises to pay all the expenses of the property including real estate taxes, building insurance, and maintenance which are in addition to the fees for rent and utilities. Hence, Yusuf's response that there is no reason for him to believe that the terms of the Partnership agreement would not continue through the litigation and during wind up process. Therefore, Yusuf has fully responded to this Interrogatory and there is nothing further to be compelled to state. (Yusuf Opposition at 3)

Thus, counsel is trying to convince the Master that making payments that have ABSOLUTELY NO HISTORICAL BASIS somehow preserves the "status quo" because the payments should have been made starting in the 1990's. This is nonsense. Counsel is well aware that there simply is no status quo to be maintained. **Yusuf** (himself) has previously admitted that the United Shopping Center's GRTs **were not paid** by the Partnership from 1993-2001, and has filed a claim, Y-5, to recover those "missing" payments. Thus, despite counsel's testimony, there is no status quo for the years 1993-2001. Moreover, as counsel also knows well, from the time period of 2002 through 2011, United negotiated a global settlement of all its taxes in the criminal case, *USA v United Corp., et. al.*, V.I. D. Ct. 2005-CR-015. This settlement included the taxes. While the settlement was paid for en masse with Partnership funds, these were not Partnership expenses. Therefore, there is no status quo for those years either.

It wasn't until 2012 that Yusuf unilaterally took funds from the Partnership for the payment of United Shopping Center's GRTs—after he had illegally thrown Hamed out.

In order to have a complete response to Hamed interrogatory 16 request "what facts, conversations, writings, communications or other information or documents leads Yusuf to believe and assert that he *continued* to have Hamed's consent as to such payments after September 17, 2012," Hamed requests that **Yusuf (not his counsel):**

- Supplement his interrogatory response with the new information in Yusuf's Opposition and verify it or state that this information is not a response to the Interrogatory.
- Further supplement his response with reference to facts, communications or other information or documents that led Yusuf to believe he continued to have Hamed's consent to the GRT payments after September 2012. For example:
 - When was the alleged agreement to pay United's Shopping Center GRTs made and who were the parties to the agreement? Were there any witnesses besides the parties themselves to the original agreement?
 - Was the initial agreement made in writing? If so, does that document exist?
 - Why does Yusuf think this preserves the status quo when the Partnership did not make the United Shopping Center's GRT payments until Yusuf started taking the payments in 2012?

B. Yusuf Ignored Interrogatory 41 of 50

Yusuf's Opposition did not address Interrogatory 41 of 50. His initial May 15, 2018 answer did not address Yusuf's claim Y-5 – Yusuf's request for reimbursement of the United Shopping Center's GRTs for the years 1993 to 2001 – either. Hamed's request was simple – identify all facts, circumstances and documents pertaining to Yusuf claim Y-5.

Hamed needs this information to formulate his depositions as to this claim. It is unclear why Yusuf still thinks this is a viable claim, as it is well after September 17, 2006, the time period set by Judge Brady's July 21, 2017 Limitation Order. However, Hamed still has to defend it. Hamed requests that Yusuf respond to the interrogatory, identifying all the facts, circumstances and documents pertaining to the claim.

C. Once again, Yusuf and United seemingly Assert Hamed Has to Get Answers to His Discovery in Deposition

In the opposition to Hamed's Motion to Compel as to H-142 (Tutu half-acre) United and Yusuf, in complete violation of the rules and their underlying intent, and after avoiding responding for years, stated 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."

That is what seems to be going on here, albeit, more covertly. **The Master cannot allow this to continue. 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 hearings and 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.

V. Conclusion

Hamed's interrogatories discussed above fall within V.I. R. CIV. P. 26(b)(1) scope of allowing discovery regarding "any nonprivileged matter that is relevant to any party's claim or defense." Hamed respectfully requests that the Master compel Yusuf to answer and produce the following:

Interrogatory 16 of 50

- Supplement Yusuf's interrogatory response with the new information in Yusuf's Opposition and verify it or state that this information is not a response to the Interrogatory.
- Further supplement his response with reference to facts, communications or other information or documents that led Yusuf to believe he continued to have Hamed's consent to the GRT payments after September 2012. For example:
 - When was the alleged agreement to pay United's Shopping Center GRTs made and who were the parties to the agreement? Were there any witnesses besides the parties themselves to the original agreement?
 - Was the initial agreement made in writing? If so, does that document exist?
 - Why does Yusuf think this preserves the status quo when the Partnership did not make the United Shopping Center's GRT payments until Yusuf started taking the payments in 2012?

Interrogatory 41 of 50

- Describe all facts, circumstances and documents pertaining to Yusuf's claim that the Partnership should pay United Shopping Center's GRTs from 1993 to 2001.

Dated: November 12, 2019



Carl J. Hartmann III, Esq.

Co-Counsel for Plaintiff

5000 Estate Coakley Bay, L6

Christiansted, VI 00820

Email: carl@carlhartmann.com

Tele: (340) 719-8941

Joel H. Holt, Esq.

Counsel for Plaintiff

Law Offices of Joel H. Holt

2132 Company Street,

Christiansted, VI 00820

Email: holtvi@aol.com

Tele: (340) 773-8709

Fax: (340) 773-867

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November 2019, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross
Special Master
% edgarrossjudge@hotmail.com

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

Mark W. Eckard
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



CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).

