

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 compel responses to discovery served in connection with Hamed Claim No. H-142: Parcel No. 2-4 Rem Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, U.S. Virgin Islands, consisting of 0.536 acre, more or less (hereinafter “Half Acre in Estate Tutu”).¹ United and Yusuf filed an opposition and Hamed filed a reply thereafter.

BACKGROUND

In 2016, per the Master’s orders, Parties filed their respective accounting claims. Hamed, in his accounting claims filed on October 17, 2016, included Hamed’s claim that the Half Acre in Estate Tutu belongs to the Partnership and was incorrectly titled in United Corporation and thus, Hamed claims a total of \$500,000.00 is due to the Partnership. (Hamed’s accounting claims, Exhibit B-1, p. 12) Subsequently, the Court entered a memorandum opinion and order dated July 21, 2017 whereby 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” (hereinafter “Limitations Order”). (Limitations Order, pp. 33-34) In light of the Limitations Order, the Master ordered Parties to file their amended accounting claims. Hamed’s claim that Half Acre in Estate Tutu belongs to the Partnership and was incorrectly titled in United Corporation was again included in Hamed’s amended accounting claims, filed on filed on October 30, 2017. (Hamed’s amended accounting claims, Exhibit A, p. 12)

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 [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 Hamed Claim No. H-142 is an alleged asset of the Partnership.

On February 21, 2018, Hamed propounded his “fourth interrogatories per the claims discovery plan of 1/29/2018, Nos. 16-28 of 50” (hereinafter “Hamed’s Fourth Interrogatories”) on United and Yusuf—which included Interrogatory 21 of 50 (hereinafter “Hamed’s Interrogatory 21”) On that same date, Hamed also propounded his “third requests for the production of documents per the claims discovery plan of 1/29/2018, Nos. 8-18 of 50” (hereinafter “Hamed’s Third RFPD”) on United and Yusuf—which included RFPD 13 of 50 (hereinafter “Hamed’s RFPD 13”). Hamed’s Interrogatory 21 and Hamed’s RFPD 13 both sought information in connection with Hamed’s Claim No. H-142. On February 26, 2018, United and Yusuf filed a motion to strike Hamed Claim Nos. H-142 and H-143. In response, Hamed filed an opposition and United and Yusuf filed a reply thereafter. On May 15, 2018, United and Yusuf filed a response to Hamed’s Fourth Interrogatories and Hamed’s Third RFPD.

On July 12, 2018, the Master entered an order whereby the Master ordered, *inter alia*, that United and Yusuf’s motion to strike as to Hamed Claim No. H-142 is denied and permitted discovery in connection with Hamed Claim No. H-142. On July 19, 2018, United and Yusuf provided supplemental responses to, *inter alia*, Hamed’s Interrogatory 21 and Hamed’s RFPD 13 (hereinafter “United and Yusuf’s Supplemental Responses”). After subsequent correspondences and meet and confers between Hamed and United and Yusuf, Hamed filed this instant motion to compel on October 2, 2019.

STANDARD OF REVIEW

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). Rule 37 further provides that “[i]f a party fails to provide information or identify a witness as required by Rule 26(a) or (e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. In addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard: (A) may order payment of the reasonable expenses, including attorney's fees, caused by the failure; (B) may inform the jury of the party's failure; and (C) may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).” V.I. R. CIV. P. 37(c). Rule 37 requires the motion to “include a certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.” V.I. R. CIV. P. 37(a)(1); *see also* V.I. R. CIV. P. 37-1(a) (“Prior to filing any motion relating to discovery pursuant to Rules 26 through 37, other than a motion relating to depositions under Rule 30, counsel for the parties and any self-represented parties shall confer in a good faith effort to eliminate the necessity for the motion – or to eliminate as many of the disputes as possible.”). If the motion to compel is granted, “the court must, after giving an opportunity to be heard, require the party or deponent whose conduct necessitated the motion, the party or attorney advising that conduct, or both to pay the movant's reasonable expenses incurred in making the motion, including attorney's fees. But the court must not order this payment if: (i) the movant filed the motion before attempting in good faith to obtain the disclosure or discovery without court action; (ii) the opposing party's nondisclosure, response,

or objection was substantially justified; or (iii) other circumstances make an award of expenses unjust.” V.I. R. CIV. P. 37(a)(5)(A). If the motion to compel is denied, “the court may issue any protective order authorized under Rule 26(c) and must, after giving an opportunity to be heard, require the movant, the attorney filing the motion, or both to pay the party or deponent who opposed the motion its reasonable expenses incurred in opposing the motion, including attorney’s fees. But the court must not order this payment if the motion was substantially justified or other circumstances make an award of expenses unjust. V.I. R. CIV. P. 37(a)(5)(B). And if the motion to compel is granted in part and denied in part, “the court may issue any protective order authorized under Rule 26(c) and may, after giving an opportunity to be heard, apportion the reasonable expenses for the motion.” V.I. R. CIV. P. 37(a)(5)(C).

DISCUSSION

In his motion,² Hamed argued that “discovery is necessary because the Hamed/United Partnership provided \$330,000 to Plessen Enterprises, Inc. (“Plessen,” a Hamed/United 50/50 corporation) – from the D/B/A Plaza Extra Supermarket account – to purchase [Half Acre in Estate Tutu],” that “[t]his amount from the Partnership account was 100% of the purchase price,” and that “[n]ot a single cent for this land came from Yusuf personally or from the separate United Corporate (Tenant) Account.” (Motion, p. 2) Thus, Hamed concluded that “pursuant to RUPA, that this is partnership property.” (Id.) Hamed explained that Half Acre in Estate Tutu “is adjacent to and provides access to a larger, 9.438 acre, parcel that the Partners owned, and intended to use to build a Plaza Extra Supermarket in Tutu – so that Plaza would not have to rent the present Tutu premises.” (Id.) Hamed further explained that “United obtained this title after the bar date in this action,” that “[b]oth Fathi United and the Hameds

² Hamed’s motion to compel included a “certification that the movant has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discover in an effort to obtain it without court action” in compliant with the requirements of Rule 37(a)(1).

have recently admitted that neither Plessen nor United provided a single cent in consideration for this land – it was 100% Partnership funds” and that “[t]hus, the United ‘explanations’ as to the factual landscape of what was happening around the time of the original purchase and at the time of the post-bar foreclosure are critical.” (Id., at p. 3) As to Hamed’s Interrogatory 21, Hamed pointed out that United and Yusuf “has completely refused to respond to this interrogatory” despite several meet and confers between Parties and thus, Hamed requested that United be required to respond to the following: “Discuss how the half-acre in Estate Tutu was purchased, for example, why the parcel was purchased, what the benefits from the purchase were; Identify the source of funds used to purchase the half-acre in Estate Tutu; Identify any funds ever paid for the parcel, at the time of purchase or any other time, including the time of the ‘foreclosure’ by United AFTER Judge Brady’s SOL/laches date in 2006; Provide information regarding any discussions or agreements about the funds or the purchase, including a detailed list of the documents and witnesses to the discussions or agreements with regard to the initial purchase or eventual foreclosure. Additionally, describe any communications about the funds or purchase of the land or eventual foreclosure.” (Id., at p. 10) As to Hamed’s RFPD 13, Hamed pointed out that United “has refused to identify the documents in his control regarding RFPDs 13” despite several meet and confers between Parties and thus, Hamed requested that United be required to produce the following: “Bates numbers referencing the documents United states have already been produced: a warranty deed, first priority mortgage, and deed in lieu of foreclosure with accompanying tax clearance letter from Mohammad Hamed; All financial documents relating to this claim, such as general ledgers, tax documents and bank records related to the purchase, the mortgage and the transfer into United’s name in 2008; and Any correspondence, letters, faxes or other communications related to the half acre

parcel, whether it relates to the purchase, sale, rationale for acquiring the property, reason for the mortgage or transfer into United's name." (Id., at pp. 11-12)

In their opposition, United and Yusuf argued that their responses and supplemental responses to Hamed's Interrogatory 21 and Hamed's RFPD 13 were proper and that "[i]n each of Hamed's Rule 37 Letters, he seeks to expand and elaborate on his initial requests." (Opp., p. 5) United and Yusuf further argued that "[s]hould Hamed wish to expand his inquiry based upon these responses, Hamed may do so through deposition inquiry...as written discovery is closed" and that "asking multiple additional questions beyond the already compound questions when detailed and sufficient responses have already been provided and then attempting to seek to compel is improper." (Id., at pp. 8-9) In support of their argument, United and Yusuf pointed out that: (i) their initial response to Hamed's Interrogatory 21 and Hamed's RFPD 13 "specifically incorporated by reference as if fully set forth therein verbatim their motion to strike Hamed Claim No. H-142, which further elaborated upon the documentation relating to this parcel" (Id., at pp. 3-4); (ii) more specifically, their motion to strike also "referenced the [Liquidating Partner's] 8th Bi-Monthly Report" which provided, *inter alia*,

Yusuf submits that [Half Acre in Estate Tutu] has been erroneously carried on the balance sheet of the Partnership, because the record owner of [Half Acre in Estate Tutu], pursuant to a Warranty Deed dated July 26, 2006 and recorded August 24, 2006, was Plessen Enterprises, Inc. ("Plessen"), a corporation, jointly owned by the Hamed and Yusuf families. [Half Acre in Estate Tutu] was encumbered by a mortgage dated August 24, 2006 from Plessen to United in the face amount of \$330,000. Pursuant to a Deed In Lieu of Foreclosure dated October 23, 2008 and recorded on March 24, 2009, Plessen conveyed [Half Acre in Estate Tutu] to United. Pursuant to a Release of Mortgage dated October 23, 2008 and recorded on March 24, 2009, United released its mortgage covering [Half Acre in Estate Tutu]. Copies of the Deed In Lieu of Foreclosure and Release of Mortgage have been provided to the Master and Hamed. Accordingly, the Liquidating Partner does not intend to pursue liquidation of [Half Acre in Estate Tutu] dor the mortgage since the Partnership has no continuing interest in either." (Opp., p. 4);

(iii) they have "demonstrated that the funds used to initially purchase the property came from Partnership funds but that the partners elected to title the property in the name of Plessen – an

entity jointly owned by the partners” and “[a]lthough 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” (Id., at p. 5); and (iv) additionally, they “provided all information responsive to the request as to the source of the funds for the purchase and documentation relating to the parcel” (Id.). Thus, United and Yusuf concluded that they “supplemented their initial response and confirmed that all of the documents relating to the purchase of the parcel had previously been produced”—to wit, “they have provided detailed responses to this inquiry, acknowledged that the source of the funds for the initial purchase was income from the stores, provided the documentation reflecting the title to the property in the name of Plessen and subsequent notes and transfers thereafter (which is beyond the scope of the inquiry)” and that they “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.” (Id., at pp. 4, 6-7) As such, United and Yusuf requested the Master to denied Hamed’s motion to compel.

In his reply, Hamed reiterated the arguments from his motion. Additionally, as to Hamed’s Interrogatory 21, Hamed pointed out that: (i) United and Yusuf’s Supplemental Responses deals only with documents” (Reply, p. 6); (ii) that the motion to strike and the Liquidating Partners’ 8th Bi-Monthly Report “still do not respond to the interrogatory” (Id.); (iii) “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’” (Id., at p. 7) (Emphasis omitted); and (iv) “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” (Id.) (Emphasis omitted). And as to Hamed’s RFPD 13, Hamed pointed out that: (i) United and Yusuf incorrectly asserted that Hamed expanded discovery since “the request for documents relates to all aspects of the H-142 claim, not just the source of funding for the initial purchase (Id., at p. 9) (Emphasis omitted); and (ii) United and Yusuf incorrectly asserted that Hamed has to get answers to his discovery in deposition because “[t]he entire purpose of the written portion of discovery is to provide the initial information so that depositions can be informed and useful.” (Id., at pp. 9-10) As such, Hamed requested that the Master to order United and Yusuf to provide a response to the list of questions/requests similar to the list of questions/requests included in Hamed’s motion and to produce documents in response to a list of document requests similar to the list of document requests included in Hamed’s motion.

A. Discovery

Rule 26 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 26”) provides that “[u]nless otherwise limited by court order, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense” and that “[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable.” V.I. R. CIV. P. 26(b)(1). Rule 26 also provides that “[a] party who has made a disclosure under Rule 26(a) — or who has responded to an interrogatory, request for production, or request for admission — must supplement or correct its disclosure or response: (A) in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or (B) as ordered by the court. V.I. R. CIV. P. 26(e)(1).

The Master must note that United and Yusuf did not dispute the scope of Hamed's Interrogatory 21 and Hamed's RFPD 13. Rather, United and Yusuf's argued that their responses and supplemental responses thereto are sufficient. The Master will discuss United and Yusuf's responses to Hamed's Interrogatory 21 and Hamed's RFPD 13 in turn.

1. Interrogatory

Rule 33 of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 33") governs interrogatories to the parties. Rule 33 provides that in answering each interrogatory, "[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath." V.I. R. CIV. P. 33(b)(3). Rule 33 also provides that in objecting to an interrogatory, "[t]he grounds for objecting to an interrogatory must be stated with specificity" and that "[a]ny ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure." V.I. R. CIV. P. 33(b)(4). Rule 33 further provides that "[a]n answer must be given to each interrogatory as provided in subpart (b) of this Rule unless the responding party represents in good faith in its response that it cannot — in the exercise of reasonable efforts — prepare an answer from information in its possession or reasonably available to the party" and "[i]n that instance, and if the answer to an interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing a party's business records (including electronically stored information) — and if the burden of deriving or ascertaining the answer will be substantially the same for either party — the responding party may answer by: (1) specifying the records that must be reviewed, providing sufficient detail and explanation to enable the interrogating party to identify and understand the records as readily as the responding party could; and (2) producing copies of the records, compilations, abstracts, or summaries with the answer to the interrogatory, unless duplicating such materials would be unduly burdensome. V.I. R. CIV. P. 33(d).

Hamed's Interrogatory 21:

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. (Hamed's Fourth Interrogatories Per the Claims Discovery Plan of 1/29/2018, Nos. 16-28 of 50, dated February 21, 2018)

United's and Yusuf's Response to Hamed's Interrogatory 21:

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. (United and Yusuf's response to Hamed's Fourth Interrogatories)

United and Yusuf's Supplemental Response to Hamed's Interrogatory 21:

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. (United and Yusuf's Supplemental Responses)

The Master finds United and Yusuf's responses to Hamed's Interrogatory 21 deficient.

Rule 33 requires that "[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath." V.I. R. Civ. P. 33(b)(3). Here, United and Yusuf did not object to Hamed's Interrogatory 21 but at the same time, they also did not answer

Hamed’s Interrogatory 21 separately and fully in writing under oath. United and Yusuf’s initial response thereto incorporated by reference their motion to strike which fully referenced the Liquidating Partner’s 8th Bi-Monthly Report³ and United and Yusuf’s Supplemental Responses thereto stated, *inter alia*: “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.” Neither United and Yusuf’s initial responses (including the motion to strike and the Liquidating Partner’s 8th Bi-Monthly Report) nor United and Yusuf’s Supplemental Responses responded to Hamed’s Interrogatory 21 fully—they did not “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.” 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). As such, the Master will grant Hamed’s motion to compel and order United and Yusuf to provide supplemental responses to Hamed’s Interrogatory 21 in compliance with the Virgin Islands Rules of Civil Procedure. To clarify, the Master is not ordering United and Yusuf to specifically respond to the list of questions/requests Hamed included in his motion and reply; the Master is simply ordering United and Yusuf to provide supplemental responses to Hamed’s Interrogatory 21 in compliance with the Virgin Islands Rules of Civil Procedure, which may require United and Yusuf to respond to some or all of the questions/requests on the list Hamed included in his motion and reply.

³ Yusuf is the Liquidating Partner and preparing the bi-monthly reports is part of his duties as the Liquidating Partner. (Jan. 7, 2015 order: Final Wind Up Plan)

2. Request for Production of Documents

Rule 34 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 34”) governs the production of documents, electronically stored information, and tangible things, or entering onto land, for inspection and other purposes. Rule 34 provides that the request “must describe with reasonable particularity each item or category of items to be inspected.” V.I. R. CIV. P. 34(b)(1)(A). Rule 34 also provides that in responding to each request, “[f]or each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons,” that “[t]he responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection,” and that “[t]he production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.” V.I. R. CIV. P. 34(b)(2)(B). Rule 34 further provides that in objecting to a request, “[a]n objection must state whether any responsive materials are being withheld on the basis of that objection with sufficient particularity to identify what has been withheld” and that “[a]n objection to part of a request must specify the part and permit inspection of the rest.” V.I. R. CIV. P. 34(b)(2)(C). Additionally, Rule 34 provides that when producing the documents or electronically stored information, “[u]nless otherwise stipulated or ordered by the court, these procedures apply to producing documents or electronically stored information: (i) A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request; (ii) If a request does not specify a form for producing electronically stored information, a party must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms; and (iii) A party need not produce the same electronically stored information in more than one form.” V.I. R. CIV. P. 34(b)(2)(E).

Hamed's RFPD 13:

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.

United's and Yusuf's Response to Hamed's RFPD 13:

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. (United and Yusuf's response to Hamed's Third RFPD)

United and Yusuf's Supplemental Response to Hamed's RFPD 13:

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. [sic] 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. (United and Yusuf's Supplemental Responses)

The Master finds United and Yusuf's responses to Hamed's RFPD 13 deficient. Rule 34 provides that "[u]nless otherwise stipulated or ordered by the court, [a] party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request." V.I. R. CIV. P. 34(b)(2)(E)(i). Here, United and Yusuf did not object to Hamed's RFPD 13, instead, they responded 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. [sic]” and 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.” (Id.) In light of the qualifier included in United and Yusuf’s Supplemental Responses—“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,” their response is incomplete. Hamed’s RFPD 13 requested “[w]ith 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.” (Emphasis added) Thus, United and Yusuf still needs to respond to the remainder of Hamed’s RFPD that requested “all documents which relate to this entry [Hamed Claim No. H-142].” 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). As such, the Master will grant Hamed’s motion to compel and order United and Yusuf to produce supplemental documents to Hamed’s RFPD 13 in compliance with the Virgin Islands Rules of Civil Procedure. To clarify, the Master is not ordering United and Yusuf to specifically produce documents in response to the list of document requests Hamed included in his motion and reply; the Master is simply ordering United and Yusuf to produce supplemental documents to Hamed’s RFPD 13 in compliance with the Virgin Islands Rules of Civil Procedure, which may require United and Yusuf to produce some or all of the documents requested on the list Hamed included in his motion and reply.

CONCLUSION

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

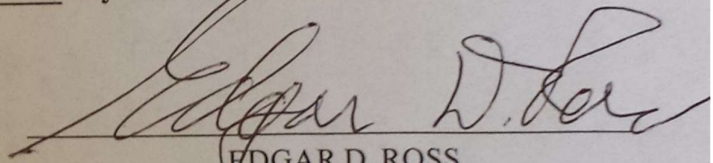
ORDERED that Hamed’s motion to compel is **GRANTED**. It is further:

ORDERED that, **within seven (7) days from the date of entry of this order**, United and Yusuf shall provide supplemental responses to Hamed's Interrogatory 21 in compliance with the Virgin Islands Rules of Civil Procedure. It is further:

ORDERED that, **within seven (7) days from the date of entry of this order**, United and Yusuf shall produce supplemental documents to Hamed's RFPD 13 in compliance with the Virgin Islands Rules of Civil Procedure. **And** it is further:

ORDERED that, pursuant to Rule 37(a)(5)(A), a separate order scheduling a hearing on the reasonable expenses incurred in making the motion, including attorney's fees, shall be forthcoming.

DONE and so ORDERED this 19th day of December, 2019.


EDGAR D. ROSS
Special Master