

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/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

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

Defendant.

Consolidated with

Case No.: ST-18-CV-219

FATHI YUSUF, *Plaintiff,*

vs.

ESTATE OF MOHAMMAD A. HAMED,

Defendant.

Consolidated with

Case No.: ST-17-CV-384

**HAMED'S REPLY AS TO HIS MOTION IN LIMINE
RE CLAIM H-142: HALF-ACRE ACCESS PARCEL AT TUTU**

I. Hamed's Reply

Yusuf's *Opposition* was filed on March 10, 2020. It can be disposed of quickly—in two very basic steps.

1. Yusuf did not (and cannot) oppose exclusion based on Rule 408

First, and controlling, the *Opposition* dealt only with the issue of the settlement negotiations being excludable as mediations—the rule discussed in *Webster v. FirstBank P.R.*, 66 V.I. 514, 520 (VI Supreme, 2017). Although nothing Yusuf argues obviates the applicability of the *Webster* holding and the motion should be granted on that basis, there is absolutely no mention of, and no response to the fact that regardless of how these settlement negotiations were characterized, they were settlement negotiations. In fact, Rule 408 is not even mentioned in the *Opposition*.

Yusuf does not dispute that Wally Hamed was called into specific meetings whose sole stated purpose when he was called up and asked to attend was settlement of very specific disputed claims.¹ This wasn't a family dinner. It wasn't a bunch of guys getting together at a diner to shoot the breeze. They were settlement negotiations.

Nor does the *Opposition* dispute that “statements made during compromise negotiations of private matters are not admissible, if offered to prove liability.” *People v. Brewley*, No. ST-06-CR-402, 2007 V.I. LEXIS 24, at *16-17 (Super. Ct. Nov. 16, 2007). Yusuf does not address *Brewley*, or in fact ANY law. Yusuf does not (and cannot) respond to the citations to *Equinor* and *Statoil* cited in the motion for the black letter proposition that the informality or the

¹ Yusuf's proposed new “exception” to Rule 408 would leave parties free to sandbag opponents with settlement negotiations by simply having family members or community poo-bahs in the room—which was obviously Yusuf's intent in the first place.

continuous, ongoing nature of such negotiations is totally irrelevant to Rule 408. The Rule is simple, direct and clear:

(a) Evidence of the following is not admissible—on behalf of any party—either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or by contradiction:

(1) furnishing, promising, or offering—or accepting, promising to accept, or offering to accept—a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim.

Both subsection one and subsection two apply here. The fact that other persons were present does not obviate the Rule. The fact that the others present were trying to assist the parties doesn't obviate the Rule. The fact that one party wants to characterize these as informal or ongoing is irrelevant. As the cited cases (and a thousand others) demonstrate, this is often the case. That is largely why Rule 408 exists—so such settlement negotiations can take place in whatever manner suits the parties and might work, but are still protected. Yusuf offers absolutely no opposition as to the Rule—and no legal arguments as to the Rule, the cited USVI case or the other cases cited as accordant. It is thus conceded.

2. **YUSUF**, not Hamed introduced the subject testimony and witnesses into the record, discussed them and relied on them—**NOT HAMED**. Hamed merely responded, and will obviously remove any such reference if this motion is granted.

Second, Yusuf makes much of the fact that Hamed's simultaneous summary judgment motion mentions the testimony at issue. Obviously if this motion is granted, that reference will be removed. But that is not really the issue. **YUSUF put these documents into the record—Hamed merely responds while asking that they be struck. YUSUF did more than merely place them in the record—he argued about their meaning and went into the specifics. And he did so instantly on revealing them.....after hiding them for years.**

To suggest that Hamed could not respond to those arguments while making this motion again turns Rule 408 on its head. Under this argument, every party would hide critical documents, ambush their opponent at the last second, and then complain when the ambushed party responded.

Hamed not only did not disclose them, rely on them or place them in the record, **he could not have done so as he didn't know they existed.** It was Yusuf that placed them in the record—instantly after revealing them on December 30th.² Yusuf's next act was to attach all three affidavits to his January 6, 2020 *Motion For Leave To File Surreponse To Hamed's Reply Regarding Claim H-14*—and immediately make an argument about them. It is an argument intended to get the information and arguments into the record before Hamed could respond.

Not only did he attach them, but he argued that they supported his position and went into their contents and effect *at length. Id.* at 6:

6. Affidavit of Bakkir Hussein filed in December 2017 also confirms Agreement
In addition to the positions taken by Yusuf, the Affidavit of Bakkir Hussein previously produced on December 13, 2017 as Exhibit 1 to Yusufs Bench Memorandum for Status Conference, Bates Number FY015024-26, reflects the Partners' agreement for Hamed to relinquish two properties to Yusuf in exchange for the misappropriations of which Yusuf was then aware.⁶

In fact, footnote 6 to that statement goes on to (falsely) allege:

6. Likewise, **others present for the negotiations were aware of the agreement between Hamed and Yusuf relating to the transfer of the two properties** for those misappropriations by Hamed that Yusuf had discovered at that point....(Emphasis added.)

² See Yusuf's Second Supplemental Discovery Response re H-142 (Tutu Half-Acre.) A look at the calendar reveals that they were served at 4:27 p.m. on the night before New Year's Eve, and that the next workday would be Monday, January 6th, which, coincidentally, was when they were placed in the record by Yusuf.

So it was a complete sandbagging. Moreover, it is a lie to suggest what these people “knew.” The only thing that “others present” at those settlement discussions were “aware of” was **the HEARSAY from Fathi Yusuf. They were already at these meetings and talking to Fathi when Wally was then called in to apply the pressure.** Fathi told them about his “deal” with Mohammad. He told them that Hamed had already transferred Tutu parcels to him...also a lie.

CONCLUSION

As stated in the motion, Hamed seeks to exclude testimony from persons present at settlement negotiations and statements made there on two bases—they were mediations, and under Rule 408, they were settlement discussions. Yusuf has not opposed with regard to Rule 408 because that is impossible—this is a textbook definition of a Rule 408 violation. The fact that Hamed was forced to **respond** to this material having been placed in the record and relied on by Yusuf does not obviate moving to have it removed from evidentiary consideration by the Master.

Once those statements and witnesses are excluded, it is clear that all of the necessary testimony has been repeatedly taken, and there is no need for further delay or hearings—as the total video record and transcripts will be appended to Hamed’s reply. The veracity of the facts and the demeanor of the witnesses is apparent.

II. Conclusion

There are no disputes as to any of the material facts here. There is no dispositive fact which requires testimony. As a matter of law, there is no contract and no transfer of the parcel.

Dated: March 10, 2020



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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of March, 2020, I served a copy of the foregoing by email, as agreed by the parties, on:

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