

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 Nos. H-150 and H-160: United Shopping Center’s Gross Receipt Taxes and Yusuf Claim No. Y-5: Reimbursement for Gross Receipts Taxes Paid by United.¹ Yusuf filed an opposition in response and Hamed filed a reply thereafter.

BACKGROUND

In 2016, per the Master’s orders, Parties filed their respective accounting claims. Yusuf, in his accounting claims filed on September 30, 2016, included the following entry under “Section III. Outstanding Debts of the Partnership”:

C. Reimbursement For Gross Receipts Taxes Paid by United

As Yusuf has testified without contradiction (see transcript of Yusuf’s deposition of April 2, 2014 at pages 53-4), the Partners originally agreed that the Plaza Extra Stores would pay all gross receipts taxes and insurance relating to United’s Shopping Center. The Partners acted on this agreement for the life of the Partnership, as reflected in the actual payment of these expenses with funds from the Plaza Extra Stores for more than 28 years. The Partnership owes United for certain gross receipts taxes United paid on behalf of the Partnership totaling \$60,586.96, which were never reimbursed. See Exhibit F, Summary and Evidence of United Payment of Gross Receipts Taxes. (Yusuf’s accounting claims, p. 8)

Exhibit F of Yusuf’s accounting claims listed the gross receipts taxes for each year from 1993 through 2001. Hamed, in his accounting claims filed on October 17, 2016, included the following entry under “Section III. Statement of the Factual Nature of Each of the Individual Claims”:

H. Plaza Extra funds were used to pay the United Shopping Center’s gross receipt taxes (Spreadsheet Items 003, 004, 005, 010, 019, 022, 033, 043, 060, 063, 066, 069, 072, 076, 093, 091)

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 for distribution [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 Nos. H-150 and H-160 and Yusuf Claim No. Y-5 involve alleged debts/liabilities of the Partnership.

It is undisputed that from 2001 through 2011, Plaza Extra partnership funds were used to pay the United Shopping Center's gross receipt taxes on the non-grocery (solely Yusuf owned) portions of the property. This can be seen in documents 3002a thru 3002j - United's tax returns. Despite repeated requests in discovery for additional detail and records, none had been produced. (Hamed's accounting claims, Exhibit A, p. 9)

Exhibit B-1 of Hamed's accounting claims listed the total claim amount as \$70,193.20 for Hamed Claim No. H-3002a. (Hamed's accounting claims, Exhibit B-1)

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. Yusuf, in his amended accounting claims filed on October 30, 2017, again included United's claim for "Reimbursement For Gross Receipts Taxes Paid by United" in the total amount of \$60,586.96² and noted that: "this debt is disputed," "[t]he Master will need to need to determine whether United's gross receipts taxes and insurance were treated as part of the expenses of the Partnership," and "[a]dditional discovery is needed on this issue." (Yusuf's amended accounting claims, p. 10) Hamed, in his amended accounting claims, filed on October 30, 2017, again listed the total claim amount as \$70,193.20 for Hamed Claim No. H-150 (former Hamed Claim No. H-3002a) and an undetermined amount pending discovery for Hamed Claim No. H-160 (former Exhibit A-H). (Hamed's amended accounting claims, Exhibit A, pp. 13-14)

² Yusuf's amended accounting claims included the same paragraph previously included in Yusuf's accounting claims.

Thereafter, Hamed propounded, *inter alia*, discovery in connection with Hamed Claim Nos. H-150 and H-160 and Yusuf Claim No. Y-5—interrogatory 16 of 50 (hereinafter “Interrogatory 16”) and interrogatory 41 of 50 (hereinafter “Interrogatory 41”). On May 15, 2018, United and Yusuf filed their initial response. On December 18, 2018, United and Yusuf filed their supplemental responses. Rule 37 letters were sent thereafter; Parties met and conferred in an attempt to resolve various discovery disputes. On October 15, 2019, Hamed filed this instant motion to compel.³

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

³ The Master must note at the outset that Parties seem to treat United and Yusuf as the same entity in connection with Hamed Claim Nos. H-150 and H-160 and Yusuf Claim No. Y-5 and thus, “United” and “Yusuf” are often used interchangeably. As such, whenever Yusuf or United is referred to by himself or itself, and where the context so permits, he or it will be deemed to include the other.

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,⁴ Hamed argued that Interrogatories 16 and 41 “clearly fall within Rule 26 [of the Virgin Islands Rules of Civil Procedure]’s scope allowing discovery regarding ‘any nonprivileged matter that is relevant to any party’s claim or defense.’” (Motion, p. 8) (Emphasis omitted) Hamed pointed out that: (1) “Yusuf refused to respond to interrogatories 16 and 41 and did not state with specificity his objection”—to wit, Yusuf “simply said the interrogatories were ‘vague, ambiguous and compound’ in the number of requests and cross-referred his other, totally useless non-answers” (Id., at p. 7); and (2) “[t]hese interrogatories directly relate to Hamed’s defense of Yusuf’s claim Y-5 and Hamed’s claims H-150 and H-160 and are relevant in scope under Rule 26.” (Id.) As such, Hamed requested the Master to grant his motion and compel Yusuf to respond to a specific list of questions included in his motion.⁵ (Id., at pp. 7-8)

In his opposition, Yusuf argued that he “has fully responded to [Interrogatory 16] and there is nothing further to be compelled to state” and maintained “his objection to [Interrogatory 16] as vague, ambiguous, and compound in violation of the total number of interrogatories allowable.” (Opp., p. 3) Yusuf also raised the issue of whether Hamed complied with Rule 37(a)(1) and Rule 37-1(a). More specifically, Yusuf pointed out: (1) “[t]here is

⁴ Hamed’s motion to compel included a certificate of compliance with Rule 37(a)(1).

⁵ In his motion, Hamed requested the Master to compel Yusuf to respond to the following:

Interrogatory 16

- 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., this would continue after Hamed’s September 2012 lawsuit.
- Identify 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 filing Hamed’s September 2012 lawsuit.

Interrogatory 41

- Identify all facts and circumstances relating to Yusuf claim - Y-5 – Partnership to reimburse the United Shopping Center for the Shopping Center’s gross receipt taxes from 1993 through 2001. (Motion, pp. 8-9)

absolutely nothing anywhere in Hamed’s Exhibits 3, 4, 5, 6, 7, or 8 that even reference Interrogatory No. 16 or some deficiency by Yusuf” (Id.); (2) “the first substantive time that there was any issue raised as to any alleged deficiency as to Interrogatory No. 16 was on October 3, 2019” and “Hamed had failed to submit his Rule 37 letter within sufficient time to provide Yusuf with 14 days to respond under the rules but requested a truncated time to review and discuss” (Id., at p. 4) (Emphasis omitted”); (3) “[Interrogatory 41] likewise does not appear to be the subject of a Rule 37 letter” and that “[a]t best, Hamed simply states in his Exhibit 6 – that Interrogatory 41 is ready for a motion” (Id.); and (4) “there appears to be no Rule 37 letter setting for alleged deficiency attached to the Motion to Compel.” (Id.) As such, Yusuf concluded that his response “to Interrogatory 16 was proper” and requested the Master to deny Hamed’s motion. (Id., at p. 4)

In his reply, Hamed argued: (1) “[t]o 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” and “[f]ollowing that meeting, Yusuf did not supplement these claims” (Reply, p. 2); (2) “Yusuf did not supplement his response to Interrogatory 16” and “[i]nstead, in the body of the opposition, counsel states several “new facts” without underlying, supporting discovery responses” (Id., at p. 5); (3) “Yusuf’s Opposition did not address Interrogatory 41...” (Id., at p. 7); and (4) “Hamed needs this information to formulate his depositions as to [Yusuf Claim No. Y-5]” and “[i]t is unclear why Yusuf still thinks this is a viable claim, as it is well after September 17, 2006.” (Id.) As such, Hamed requested the Master to grant his motion and compel Yusuf to respond to a specific list of questions included in his reply.⁶

⁶ In his reply, Hamed requested the Master to compel Yusuf to respond to the following:

Interrogatory 16

- 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.

The Master will address the issue of the meet and confer requirement under Rule 37 and Rule 37-1 before discussing the specifics of Interrogatories 16 and 41. Here, although Hamed stated in his motion that “[a] series of letters and meet confers happened” and included several instances where Hamed sent letters requesting a meet and confer before the October 3, 2019 letter—to wit, letters dated October 15, 2018, October 31, 2018, November 20, 2018, November 28, 2018, and December 20, 2018 (Motion, Exhibits 3-8), none of these letters referenced Interrogatory 16. Nevertheless, based on Yusuf’s argument in his opposition that his responses “to Interrogatory 16 was proper,” it is clear that this discovery dispute would not be resolved at a meet and confer. Thus, in the interest of judicial efficiency, the Master will not order Parties to meet and confer as to Interrogatory 16.

As for Interrogatory 41, it was referenced in Hamed’s November 28, 2018 letter whereby Hamed noted that it was ready for him to file his motion as to Interrogatory 41. While it could be inferred that, based on Yusuf’s opposition pointing out that Interrogatory 41 was not the subject of a Rule 37 letter, Yusuf believed a meet and confer would have resolved the discovery dispute thereto, the Master disagrees. Hamed did not file this instant motion to compel until October 15, 2019, almost a year after the November 28, 2018, and the discovery disputes have remained. Thus, in the interest of judicial efficiency, the Master will not order Parties to meet and confer as to Interrogatory 41.

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- 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:
 - o 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?
 - o Was the initial agreement made in writing? If so, does that document exist?
 - o 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

- 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. (Reply, pp. 8-9)

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). However, under Rule 26, “[a] party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost” but “[o]n motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost.” V.I. R. CIV. P. 26(b)(2)(B). Nevertheless, even “[i]f that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C).” *Id.* Furthermore, “[d]uplicative disclosure is not required, and if all information and materials responsive to a request for disclosure has already been made available to the discovery party, the responding party may, for its response, state specifically how and in what form such prior disclosure has been made” but “[w]here only part of the information has previously been provided to the discovering party, the response may so state and must then further make available the remaining discoverable information or materials.” V.I. R. CIV. P. 26(b)(2)(D).

The Master must note that Yusuf did not dispute the scope of Hamed’s Interrogatories 16 and 41. Rather, Yusuf objected on other grounds and Yusuf argued in his opposition that Yusuf’s responses thereto are sufficient and proper.

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 16:

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 AH): “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?

United and Yusuf's initial response to Hamed's Interrogatory 16, dated May 15, 2018:
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.

United and Yusuf's supplemental response to Hamed's Interrogatory 16, dated December 18, 2018:

...

Yusuf provides these supplemental responses relating to the claims, which remain in the Part B claim schedule. Yusuf will further supplement any other responses as to claims, which were shifted to the Part A schedule.

The Master will address the objections United and Yusuf asserted against Hamed's Interrogatory 16. First, Yusuf objected that it was vague and ambiguous.⁷ In Hamed's Interrogatory 16, Hamed asked Yusuf to "[s]tate with specificity...what information or documents leads Yusuf to believe and assert that he continued to have Hamed's consent as to such payments [by the Partnership for the separate (non-Partnership-related) United's costs, such as gross receipt taxes] after September 17, 2012..." The Master finds nothing vague or ambiguous about such an inquiry. Second, Yusuf objected to this interrogatory as "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." The Master disagrees. Hamed's Interrogatory 16 sought information in connection with Yusuf's assertion that Hamed agreed that the Partnership would for the separate (non-Partnership-related) United's costs, such as gross receipt taxes, after September 17, 2012, including "what facts, conversations, writings, communications or other information or documents"; it did not introduce any discrete separate subjects. Thus, Interrogatory 16 will be considered as a single interrogatory. *Davis v. Hovensa, L.L.C.*, No. SX-02-CV-333, 2011 V.I. LEXIS 91, at *7 (Super. Ct. Jan. 31, 2011) ("For Interrogatories No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17, the Court finds that the subparts of each Interrogatory involve the same line of inquiry and did not introduce any discrete separate subjects. Accordingly, Interrogatory No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17 will each be considered as a single interrogatory.")

While United and Yusuf provided some information as requested, their response is incomplete as to "what facts, conversations, writings, communications or other information or

⁷ Yusuf did not expressly identify the language in Interrogatory 16 that he finds vague and ambiguous. Rule 33 provides that in objecting to an interrogatory, "[t]he grounds for objecting to an interrogatory must be stated with specificity." V.I. R. CIV. P. 33(b)(4). Parties are reminded to propound and respond to discovery in compliance with the Virgin Islands Rules of Civil Procedure.

documents” led Yusuf to believe and assert that Hamed agreed that the Partnership would for the separate (non-Partnership-related) United’s costs, such as gross receipt taxes, after September 17, 2012. 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 as to Hamed’s Interrogatory 16 and order United and Yusuf to provide supplemental responses to Hamed’s Interrogatory 16 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 16 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.

Hamed’s Interrogatory 41:

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-02 Unpaid rent for Plaza Extra-East Bays 5 & 8
- Y-03 9% interest on rent claims for Bay 1
- Y-04 9% interest on rent claims for Bays 5 & 8
- Y-05 Reimburse United for Gross Receipt Taxes
- * * * *
- Y-10 Past Partnership Withdrawals - Receipts
- Y-11 Lifestyle Analysis
- Y-12 Foreign Accts and Jordanian Properties

United and Yusuf’s initial response to Hamed’s Interrogatory 41, dated May 15, 2018:

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

United and Yusuf’s supplemental response to Hamed’s Interrogatory 16, dated December 18, 2018:

...

Yusuf provides these supplemental responses relating to the claims, which remain in the Part B claim schedule. Yusuf will further supplement any other responses as to claims, which were shifted to the Part A schedule.

The Master will address the objections United and Yusuf asserted against Hamed's Interrogatory 41. First, Yusuf objected that it was vague and ambiguous.⁸ In Hamed's Interrogatory 41, Hamed asked Yusuf to "[i]dentify all facts and circumstances relating to Yusuf [Claim No. Y-5], and identify, all documents relating to each claim." The Master finds nothing vague or ambiguous about such an inquiry. Second, Yusuf objected to this interrogatory as "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." The Master agrees. Hamed's Interrogatory 41 sought information in connection with seven separate, independent claims of Yusuf—Yusuf Claim Nos. Y-2 to Y-5 and Y-10 to Y-12—and introduced discrete separate subjects. Thus, Interrogatory 41 will not be considered as a single interrogatory. *Davis*, 2011 V.I. LEXIS 91, at *7 (Super. Ct. Jan. 31, 2011) ("For Interrogatories No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17, the Court finds that the subparts of each Interrogatory involve the same line of inquiry and did not introduce any discrete separate subjects. Accordingly, Interrogatory No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17 will each be considered as a single interrogatory.") As such, Interrogatory 41 will be considered as seven separate interrogatories.

Here, United and Yusuf's response to Interrogatory 41 simply stated, "See Response to Interrogatory # 16." However, Interrogatory 16 and Interrogatory 41 did not request identical information. Thus, United and Yusuf's response to Interrogatory 41 is incomplete. Under Rule

⁸ Yusuf did not expressly identify the language in Interrogatory 41 that he finds vague and ambiguous. Rule 33 provides that in objecting to an interrogatory, "[t]he grounds for objecting to an interrogatory must be stated with specificity." V.I. R. CIV. P. 33(b)(4). Parties are reminded to propound and respond to discovery in compliance with the Virgin Islands Rules of Civil Procedure.

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, to the extent that it does not exceed the agreed-upon limit of 50 interrogatories in their Joint Discovery and Scheduling Plan, dated January 29, 2018,⁹ the Master will grant Hamed’s motion as to Interrogatory 41 and order United and Yusuf to provide supplemental responses thereto in connection with Yusuf Claim No. Y-5 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 41 in connection with Yusuf Claim No. Y-5 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.

CONCLUSION

Based on the foregoing, the Master will grant Hamed’s motion to compel responses to discovery served in connection with Hamed Claim Nos. H-150 and H-160: United Shopping Center’s Gross Receipt Taxes and Yusuf Claim No. Y-5: Reimbursement for Gross Receipts Taxes Paid by United subject to the limitations discussed above. Accordingly, it is hereby:

ORDERED that Hamed’s motion to compel is **GRANTED** as to Interrogatory 16. It is further:

⁹ The January 29, 2018 Joint Discovery and Scheduling Plan provided:

B. Remaining Claims of Both Parties

7. Written interrogatories, requests for production of documents, and requests for admissions shall be propounded no later than March 31, 2018, and all responses thereto, including objections, shall be served not later than May 31, 2018.

8. As to these remaining claims, no party shall propound more than 50 interrogatories, 50 requests for production of documents, and 50 requests for admissions, including all discrete subparts thereof, unless otherwise stipulated by the parties or ordered by the Master

ORDERED that, **within thirty (30) days from the date of entry of this order**, Yusuf shall provide supplemental responses to Hamed's Interrogatory 16 in compliance with the Virgin Islands Rules of Civil Procedure. It is further:

ORDERED that, to the extent that it does not exceed the agreed-upon limit of 50 interrogatories in their Joint Discovery and Scheduling Plan, dated January 29, 2018, Hamed's motion to compel is **GRANTED** as to Interrogatory 41. It is further:

ORDERED that, to the extent that it does not exceed the agreed-upon limit of 50 interrogatories in their Joint Discovery and Scheduling Plan, dated January 29, 2018, **within thirty (30) days from the date of entry of this order**, Yusuf shall provide supplemental responses to Hamed's Interrogatory 41 in connection with Yusuf Claim No. Y-5 in compliance with the Virgin Islands Rules of Civil Procedure. 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 March, 2020.


EDGAR D. ROSS
Special Master