

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 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'S OPPOSITION TO YUSUF'S PARTIAL SUMMARY JUDGMENT
RE "WATER CLAIM" Y-8
AND CROSS-MOTION FOR SUMMARY JUDGMENT**

Yusuf has moved for partial summary judgment on his "water claim" ("Y-8"). Hamed opposes that motion and moves for cross-summary judgment on this issue.

The Master's review of one threshold issue is requested before addressing this claim. Yusuf admits that this claim is being asserted by United Corporation. However, United did not assert such a claim prior to the cut-off for filing claims: Yusuf filed this claim as being his personal claim as a Partner.¹ Thus, since Yusuf concedes this alleged claim belongs to United, not Yusuf, this claim can be summarily rejected as being untimely.

To the extent the Special Master still decides to address this claim, it is respectfully submitted that Yusuf's motion should still be denied for the reasons set forth herein, with summary judgment being granted to Hamed on its cross-motion for summary judgment.

I. Overview

It is undisputed that the Plaza East Supermarket owned by the Hamed-Yusuf Partnership ("Plaza East Partnership") burned down in 1992, but was rebuilt and re-opened in 1994. It is also undisputed that two new cisterns were also added, with the roof area vastly enlarged, allowing for the collection of much more rainwater than before the fire. A standpipe was also built at this time to sell water to water delivery trucks.

¹ Only Yusuf filed any claims in this action. United did not file within the requisite period mandated by the Court and Special Master. (See page 2 of Yusuf's original 2016 claims submission dated September 30, 2016. It reads: "**defendant/counterclaimant Fathi Yusuf** ('Yusuf') respectfully submits **his** *Accounting Claims and Proposed Distribution Plan* (the "Claim") as follows:

F. Water Revenue Re Plaza Extra-East

Beginning in 1994, Plaza Extra-East began selling United's water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 (\$52,000) and 1998 (\$75,000) as \$5,291.66 per month. . . .

This claim arises solely because Yusuf contends the revenues from these sales after 2004 belong to the separate Yusuf-United entity rather than the Partnership. In this regard, Yusuf claims he made an agreement with Hamed to split these revenues 50/50 *between United and Hamed* and that United and Hamed would send 100% of these "split" revenues to relatives in the Middle East in need of financial assistance.² Of course, there is no evidence of this new, second "partnership" in 1994 other than Yusuf's self-serving

² In deposition, the sons on both sides stated that they knew only that it was to be split 50/50 for charity and that was what was always done—no Hamed or other Yusuf family member ever heard of this 10-year, single purpose "United/Hamed" partnership. See **Group Exhibit 2**. See e.g., Deposition of Wally Hamed at page 48, **Exhibit 2a** ("A. As far as the 10-year period, anything like that, no."), Deposition of Mike Yusuf at 109-110, **Exhibit 2b**:

Q. That it was supposed to go from 1994 to only 2004. Do you have any information about that, other than what you hear today? Did you know about that before or did you not know about that before?

A. No, there was an agreement between my dad and Mr. Mohammad -

Q. Okay.

A. -- about, you know, whatever proceeds, the water, **and they'd give it to charity.**

Q. Okay.

A. And what the details were, I was just doing what I was told to do.

Q. Okay. All right. So other than that, you don't have any other information about it?

A. **No.**

Same as to Deposition of Mafi Hamed at 134-135, **Exhibit 2c**:

A. The discussions were, the revenues generated from the water sales was going to go as to the family members, or the -- or to the unfortunate family members that are abroad.

Q. Okay.

A. And there was no time limit, as he's saying.

Q. Okay. And that was because -- you know this because of the conversations you had with your father?

A. This is direct knowledge from my father, yes.

Q. Okay.

A. Because my father talks to us.

statements made for the first time after the Plaza Extra Partnership was dissolved and this claim was filed.³

When pressed on details, Yusuf simply says he believes he heard Wally Hamed reference water revenues for 1997 being \$52,000 and for 1998 being \$75,000, although there is no evidence of these sales either other than Yusuf's memory. Likewise, no one ever heard of a claim by United that it was entitled to all such water revenues after this "United/Hamed" 10-year, single purpose partnership ended.

To the contrary, it is undisputed that the Plaza East operated the pipestand, maintained the pipestand, paid the utility bills to run the pumps, repaired the pipestand (such as replacing pumps), repaired the cisterns when needed, handled the transfer of water into the water delivery trucks, collected the funds (some of which were collected at the warehouse and some collected by the cashiers in the store), accounted for the funds collected (which accounting was sent to Yusuf), deposited the funds into its Supermarket account, paid the gross receipts on the sales, paid the income taxes on whatever profits

³ Of course, Yusuf has no documentation of any water sales other than this one "memory," which is why this motion is only a partial summary judgment motion, as Yusuf has NO evidence of the amount of any of these water sales---ever---whether annual sales or monthly sales. As he stated in part in his November 19, 2019, supplemental interrogatory responses on these damages (submitted over three years after this claim was first filed):

As far as receipts go, Yusuf shows that he derived the value of his calculations from a sheet bearing Waleed's handwriting which reflected the values in 1997 and 1998. **At present, Yusuf is unable to locate that document** but is continuing to make a diligent search for same.

And of course, he still has not found that alleged handwritten document, which Waleed Hamed does not recall ever composing (See **Exhibit 1**), or anything else to identify anything about the water sales. If United really believed it was entitled to such a substantial sum of money, it would have regularly kept these records. Likewise, if it always believed it was entitled to such funds, it would have filed suit in 2010 before the six year statute of limitations expired in the 2004 sales, or in 2011 before the SOL expire on the 2005 sales, or in 2012 before the SOL expired in the 2006 sales, etc.

may have been made, disbursed whatever the balance may have been left to the Partners and otherwise had its salaried store managers (Mike Yusuf, Mafi Hamed and Yusuf Yusuf) oversee the entire operation between 2004-2015. In short, all actions for the entire period from the beginning to date are consistent with a 50/50 split.

None of this is in dispute. Indeed, it is undisputed that all of this was done with Yusuf's full knowledge and blessing since 2004 without him ever mentioning that United was entitled to receive these revenues. Thus, it is clear that Yusuf's belated efforts beginning only in 2016, after becoming the Liquidating Partner, to now claim United is entitled to 100% of these revenues from 2004 to 2015 is the same despicable conduct that the Special Master described in a prior opinion on March 13, 2018, as being "**tainted by a conflict of interest and self-dealing,**" holding in part as follows:

Here, Yusuf dealt with the Partnership on behalf of a party— namely, United— having an interest adverse to the Partnership, in violation of Title 26 V.I.C. § 74(b)(2). Additionally, **Yusuf did not act consistently with the obligation of good faith and fair dealing,** in violation of Title 26 V.I.C. § 74(d). (Emphasis added).

Moreover, to make matters worse, Yusuf even alleges as one of his bases for recovery that the Plaza East Partnership, of which he is a 50/50 member, actually engaged in the tort of conversion in wrongfully taking this water!

II. Statement of Facts/Counterstatement of Facts

A. Yusuf's Rule 56 Statement of Fact ("YSOF")

Yusuf submitted its Rule 56 Statement of Undisputed Facts (YSOF) in Section II of its motion. Pursuant to V.I.R. Civ. P. 56 (c)(2)(B), Hamed admits "Facts" # 1, 2, 3, 8, 9, 10, 14, 15, 16 and 18 asserted in Section II for the limited purposes of this motion. The following YSOF are disputed for the following reasons:

#4-It is disputed that the adjacent piece of property was purchased by United, as the funds used to purchase the property were funds from the Partnership. See **Exhibit 1**.

#5-It is disputed that United supplied the water to the partnership store, Plaza East, as the Partnership supplied this water to itself. See **Exhibit 1**.

#6-It is disputed that United owned or sold water to third parties. See **Exhibit 1**.

#7-It is disputed that United installed a pipestand. See **Exhibit 1**.

#11-It is disputed that the water or the revenues from any sales belonged to United or that Yusuf "gifted" half of these revenues to Hamed from 1994 to 2004 so long as the funds would be "re-gifted" to relatives in the Middle East. See **Exhibit 1**.

#12-13-It is denied that any modification of the lease payments was made that included a new agreement that the Partnership would now be charged for water by United. See **Exhibit 1**. **It is also irrelevant to this "water claim" whether United supplied water to the Plaza East Supermarket for use, as this "Y-8" claim seeks damages for all water sales, not water usage by the Plaza East Supermarket.**

#17-While Yusuf claims he found these handwritten records, he concedes he cannot find that document now. Moreover, Wally Hamed has no recollection of ever creating such a document.

B. Hamed's Counterstatement of Undisputed Facts ("HSOF")

Hamed's Counterstatement of Undisputed Facts pursuant to Rule 56(c)(2)(C):

1. The Plaza East Supermarket has leased the premises where its store is located from United Corporation since 1986. See **Exhibit 1**.
2. The Plaza East Supermarket burned down in 1992. See **Exhibit 1**.
3. The building loss was insured against fire by an insurance policy obtained by the Plaza Extra Partnership, paying all premiums on the policy. See **Exhibit 1**.

4. The proceeds from the fire insurance policy were used to rebuild the building leased by the Plaza Extra Partnership. See **Exhibit 1**.
5. When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, two new cisterns were constructed for the new store. See **Exhibit 1**.
6. When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, there was an expanded new roof over the leased premises that collected the rain water that went into the two new cisterns. See **Exhibit 1**.
7. When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, a pipestand for distributing water from these cisterns was built as well, as depicted in this photograph (See **Exhibit 1**):

Plaza Extra Supermarket Store Warehouse

Water Pipe



8.

1.

9. By 2004, a switch has been installed inside the receiving door of the Plaza Extra Supermarket warehouse that had to be turned on before water could be distributed to a water truck. See **Exhibit 1**.
10. Employees of the Plaza East Partnership operated this switch for the pipestand, allowing water to be loaded from this pipestand into these water delivery trucks. See **Exhibit 1**.
11. Employees of the Plaza East Partnership maintained the pipestand. See **Exhibit 1**.
12. The Plaza East Partnership paid all expenses associated with the maintenance of the pipestand. See **Exhibit 1**.
13. The Plaza East Partnership paid the utility bills to run the pumps. See **Exhibit 1**.
14. Employees of the Plaza East Partnership repaired the pipestand (such as replacing pumps). See **Exhibit 1**.
15. The Plaza East Partnership paid all expenses associated with the needed repairs. See **Exhibit 1**.
16. Employees of the Plaza East Partnership repaired the two new cisterns when needed. See **Exhibit 1**.
17. Employees of the Plaza East Partnership collected the payments made by the water trucks, some of which were collected at the warehouse and some of which were collected by the cashiers in the store. See **Exhibit 1**.
18. Accounting employees of the Plaza East Partnership handled any funds collected by the warehouse personnel or cashiers from the water sales, as they would do for all store receipts on any given day. See **Exhibit 1**.

19. Accounting employees of the Plaza East Partnership deposited the funds received from the water sales into the Plaza East Partnership Supermarket account, as was done with all receipts. See **Exhibit 1**.
20. The salaried store managers of the Plaza East Partnership (Mike Yusuf, Mafi Hamed and Yusuf Yusuf) oversaw the entire operation of the pipestand and water sales, including the handling of all funds and all deposits made into the Plaza East Partnership accounts. See **Exhibit 1**. The Yusuf sons testified that they completely understood that when they were working on this "water," they were doing so as employees of the Partnership, not United as a separate entity. See, e.g., **Exhibit 3**, Deposition of Yusuf Yusuf at 148-149.
- Q. But sometimes you did work on the water stuff, generally?
A. Well, if you want to say "work on." Pump goes down, yes, I catered to it.
Q. Okay. And -- and when you did that, whenever you were doing that, who was paying you?
A. Plaza Extra was paying me.
Q. The supermarket?
A. I was an employee, yeah.
21. As part of the normal operations of the Plaza Extra Supermarket, all revenues from the water sales would be co-mingled with the daily proceeds from the store sales. See **Exhibit 1**.
22. Each month from 2004 until the partnership dissolution in 2015, the Plaza East Partnership paid the gross receipts on the total monthly sales of the Plaza East Supermarket, which would include the co-mingled funds from the water sales. See **Exhibit 1**.
23. Each year from 2004 until the partnership dissolution in 2015, the Plaza East Partnership paid the income taxes each year on the total annual income of the

Plaza East Partnership, which would include the profit, if any, made from the water sales. See **Exhibit 1**.

24. Between 2004 and 2012, no profits were distributed due to the FBI raid. Thereafter, the Partnership disbursed millions of dollars in accrued profits on a 50/50 basis equally to Hamed and Yusuf, which would have included whatever co-mingled profits, if any, that may have been made on the water sales (after operating expenses, overhead and taxes). See **Exhibit 1**.

25. United never sought recovery for any water revenues until 2015, after the Partnership was dissolved and Yusuf had been appointed the Liquidating Partner by Judge Brady. See **Exhibit 1**.

III. Summary Judgment Standard

A movant is entitled to summary judgment if there is no triable issue of material fact. *Rymer v. Kmart Corp.*, 68 V.I. 571, 575 (V.I. 2018). Summary judgment is allowed where the moving party shows that the “pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.” *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008). When the moving party meets its initial burden of showing the absence of genuine, disputed fact, “the burden shifts to the non-moving party to present affirmative evidence from which a jury might reasonably return a verdict in [its] favor.” *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013) (citations and internal quotation marks omitted). “Affirmative evidence” means “actual evidence” and “not mere allegations.” *Williams*, 50 V.I. at 194.

IV. Argument

United/Yusuf has raised three separate legal theories (the shotgun approach) in support of this claim, two of which are equitable claims (unjust enrichment and restitution) and one of which is a common law tort (conversion).

By asserting the equitable claims, Yusuf concedes that United did not have a contract with the Plaza East Partnership, as equitable claims only are barred where there is an express contract. See, e.g., *Cacciamani & Rover Corp. v. Banco Popular De Puerto Rico*, No. S.CT.CIV. 2013-0063, 2014 WL 4262098, at *3 (V.I. Aug. 29, 2014) (It is clearly the sounder rule to hold the parties to a contract to the terms of their agreement and the legal remedies provided for a breach of those terms, and to reserve quasi-contract claims and other equitable remedies—such as unjust enrichment—for those instances where there is no contract and other legal remedies are unavailable).

With this comment in mind, each of United/Yusuf's three theories, which will be addressed separately, have no merit, so United/Yusuf's summary judgment motion should be denied, while Hamed's cross-motion for summary judgment should be granted.

A. The Equitable Claims

At the outset, both equitable claims can be dismissed without even addressing the specific elements of each one because of Yusuf's conduct in attempting to steal more funds from his own partnership with Hamed by once again putting on his "United" hat. As noted in *Hamed v. Yusuf*, No. SX-12-CV-370, 2017 WL 3168458, at *27 (V.I. Super. July 21, 2017):

If a party seeks relief in equity, he must be able to show that on his part there has been honesty and fair dealing." *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 205–06, (V.I. Super. Ct. 2015) (quoting *Sunshine Shopping Ctr., Inc. v. KMart Corp.*, 85 F. Supp. 2d 537, 544 (D.V.I. 2000)).

In *Hamed, supra*, Judge Brady found that both partners were guilty of recalcitrant conduct, warranting the application of the equitable doctrine of laches, stating in part:

Additionally, by his acquiescence to such inadequate record keeping and his inexcusable delay in seeking to enforce his rights under 26 V.I.C. §§ 71(a) and 75(b), each partner has irrevocably prejudiced the ability of the other to respond to the various allegations against him.

Here, *the doctrine of laches applies with even more force to United.*

First, it is seeking to belatedly collect funds from the Plaza East Partnership without any records! Second, it is doing so for the first time after the Plaza East Partnership was dissolved without any justifiable excuse for the delay in seeking such relief. As also noted in *Hamed, supra*:

In addition to laches, consideration of the equitable doctrine of unclean hands also supports the impositions of an equitable limitation on the partners' § 71(a) claims. "It is an ancient and established maxim of equity jurisprudence that he who comes into equity must come with clean hands. If a party seeks relief in equity, he must be able to show that on his part there has been honesty and fair dealing." *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 205–06, (V.I. Super. Ct. 2015) (quoting *Sunshine Shopping Ctr., Inc. v. KMart Corp.*, 85 F. Supp. 2d 537, 544 (D.V.I. 2000)).

As previously noted, the Special Master has already found in a prior opinion on March 13, 2018, that when the Liquidating Partner, Yusuf, asserts a claim against his Partnership, such conduct is "**tainted by a conflict of interest and self-dealing.**" This analysis is particularly apt here, as Yusuf never raised this claim until the dissolution of the Partnership commenced, with Yusuf being the Liquidating Partner. As the Special Master held:

Here, Yusuf dealt with the Partnership on behalf of a party— namely, United— having an interest adverse to the Partnership, in violation of Title 26 V.I.C. § 74(b)(2). Additionally, **Yusuf did not act consistently with the obligation of good faith and fair dealing**, in violation of Title 26 V.I.C. § 74(d). (Emphasis added).

Thus, this finding should be applied with equal force here, barring United (through Yusuf) from asserting these equitable claims because it has "unclean hands" in doing so.

As such, the two equitable claims raised in Y-8 should be dismissed with prejudice pursuant to the application of either or both of the equitable doctrines of unclean hands as well as laches.

1. Unjust Enrichment

United/Yusuf has correctly identified the four elements needed to prove a claim for unjust enrichment, as set forth by the V.I. Supreme Court in *Walters v. Walters*, 60 V.I. 768, 779-780 (V.I. 2014):

- (1) that the defendant was enriched,
- (2) that such enrichment was at the plaintiff's expense,
- (3) that the defendant had appreciation or knowledge of the benefit, and
- (4) that the circumstances were such that in equity or good conscience the defendant should return the money or property to the plaintiff.

Yusuf/United cannot establish any of these elements.

First, United/Yusuf candidly admits that they cannot offer any facts that support a finding that the Plaza East Partnership was "enriched" by the water sales, the first element of this claim. At best, United/Yusuf can only suggest that some type of profit was made, but that is only speculation based on this record. To establish this element, Yusuf must show that the Plaza Extra Partnership (and Hamed) were enriched by the water business, not simply that sales took place.

Second, United/Yusuf cannot show that if there was any such enrichment, that it was at United/Yusuf's expense. At best, United/Yusuf's *Statement of Facts* only shows that rainwater collected off the Plaza Extra roof into the cisterns at Plaza Extra Supermarket was sold to third parties **at no expense to Yusuf.**

Third, it is clear that neither the Yusuf managers nor the Hamed managers, much less Hamed, had any "appreciation or knowledge" that United/Yusuf was allegedly providing it some benefit for which it/they expected to be paid. As noted in *Walters v. Walter, supra* at 779, this "knowledge" factor is critical in ascertaining whether there has been an unjust enrichment, stating in part:

The purpose of the knowledge element should be clear—the unjust enrichment tort, as its name implies, is concerned with preventing an *unjust* conferral of a benefit onto the defendant at the expense of the plaintiff. See *Morris Pumps v. Centerline Piping, Inc.*, 729 N.W.2d 898, 904 (Mich. Ct. App. 2006) (“**[N]ot all enrichment is necessarily unjust in nature.**”). In the absence of a knowledge element, an individual could simply provide services for another, without their knowledge or consent, and then seek compensation for the value of the benefit conferred. *Id.* (Emphasis added).

In *Walters*, the Supreme Court affirmed a summary judgment order against the person seeking recovery for unjust enrichment, as the record was clear that the plaintiff had not been asked to provide any services (even though he did do so) and that the plaintiff *never broached the question of “compensation or reimbursement” during the pertinent time period*. As such, based on those facts, there was no evidence to support “an expectation of payment.”

Likewise, there is no evidence in this record the Plaza East Partnership thought that United/Yusuf would expect the Plaza East Partnership to reimburse him for the total amount of all water sales after over 10 years of total silence. Indeed, why would the Plaza East Partnership spend so much the time and money if it knew it would simply have to turn over all sales proceeds to United/Yusuf? There is no evidence to support this element either.

Finally, United/Yusuf has not presented any credible evidence to support a finding that the circumstances in question are such “that in equity or good conscience” the Plaza Extra Partnership “should return the money” to it/them. Indeed, not only did the Plaza

East Partnership do **all** the work in question at its expense, it paid all expenses, salaries and repairs. Thus, to the extent there were any profits, Yusuf has already received 50% of them. (United is suing not Hamed, but the Partnership.) Thus, it is clear summary judgment should be entered in favor of Hamed on his cross motion for summary judgment on this first legal theory and that United/Yusuf's motion in this "unjust enrichment" theory should be denied.

2. Restitution

United/Yusuf did not do a *Banks* analysis on the elements of restitution. However, as noted in *Walters v Walters, supra*, the plaintiff there sought "restitution," which lead to the "unjust enrichment" analysis. Indeed, as noted in that opinion, restitution is the remedy for unjust enrichment under §1 of Restatement (Third) of Restitution and Unjust Enrichment § 1 (2011), which states:

A person who is unjustly enriched at the expense of another is subject to liability in restitution.

Indeed, the elements of restitution set forth in *Native Son, Inc. v. OME Sales, LLC*, 2016 WL 1048960, *5 (D. V.I. 2016) cited by Yusuf are as follows:

- (1) a party must confer benefits on another party;
- (2) there must be an appreciation of the benefits by the recipient; and
- (3) there must be an acceptance and retention of these benefits in such circumstances that it would be inequitable for the recipient to retain the benefits without payment of value.

However, these elements are the exact same as the elements for unjust enrichment set forth by the V.I. Supreme Court in *Walters, supra*, except the elements one and two in *Walters*. "(1) that the defendant was enriched and (2) that such enrichment was at the plaintiff's expense," are combined into element one of *Native Son, supra*, "a party must confer benefits on another party." The remaining elements are the same.

In conclusion, the elements for unjust enrichment and restitution are the same, with restitution being the remedy for an unjust enrichment claim. Thus, the same analysis set forth in the “unjust enrichment” section above applies here as well, warranting a denial of United/Yusuf's summary judgment motion and the granting of Hamed's cross-motion for summary judgment.

B. The Tort Claim-Conversion

In a clear act of desperation, Yusuf then finishes his shotgun approach to liability by advancing a third theory of recovery—conversion. Yusuf claims that his own partnership, the Plaza East Partnership, converted property from his other company United Corporation when he was “in charge” of the office—as found by Judge Brady. Can a person in charge of a business really steal from himself as a partner? This is doubletalk. Of course not, and only a desperate person would try to make such an absurd claim.

In any event, as noted by the Virgin Islands Supreme Court in *Penn v. Mosley*, 67 V.I. 869, 898 n.8 (V.I. 2017):

Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.’ ” (citing its prior opinion in *Ross v. Hodge*, 58 V.I. 292, 308 (V.I. 2013)).

As *Ross*, *supra* at 308-309, explained:

“Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel.” Restatement (Second) of Torts § 222A(1) (1965). Conversion may be committed by intentionally engaging in several types of acts, one of which is obtaining possession of a chattel from another by fraud. See *id.* §§ 221(b), 223. Here, the evidence demonstrates that Ross and Bracy intentionally exercised control of the proceeds from the sale of No. 25 Mahogany Welcome and that interference, if wrongful, would certainly require them to pay Hodge the full value of the chattel. Therefore, the critical question is whether Ross and Bracy had a right to control those proceeds at the time of the conversion. See *Grand Pac. Fin. Corp. v. Brauer*, 783 N.E.2d 849, 857 (Mass.App.Ct.2003) (“The elements of conversion require that a defendant be proved to have ‘intentionally or wrongfully exercise[d] acts of ownership, control or

dominion over personal property to which he has no right of possession at the time' " (citation omitted)). . . .

In short, United/Yusuf's efforts on this third try at liability must fail as well, as there was no wrongful act, no fraud and no intentional taking.

To the contrary, the Plaza East Partnership conducted the water sales operation with United/Yusuf's full knowledge and blessing, spending Yusuf's 50% share (as well as Hamed's 50% share) of the Partnership funds to sell water, account for it, pay the taxes due and then splitting the profits, if any, with Yusuf himself. Clearly there was no conversion.

Thus, summary judgment on this theory should be granted to Hamed, not Yusuf.

C. Summary

In summary, Yusuf's legal arguments have no merit based on the facts in this summary judgment record. Several brief additional comments are in order.

First, Yusuf's comments about additional rent allegedly being owed by the Plaza East Partnership for water usage is not only incorrect, but it is totally irrelevant to this water claim for 100% of the water sales. Thus, those allegations can be ignored in addressing this motion.

Second, Yusuf's "damages" are totally speculative, as Yusuf actually concedes in his motion! Moreover, proving damages here has an even higher burden under RUPA. Under RUPA, where a partner commingles partnership assets with his own assets, the entire commingled mass is presumed to be partnership property except so far as the court, recognizing it is that partner's burden of proof, may be able to distinguish what is separately his.

Where a fiduciary commingles partnership assets with personal assets, the entire commingled mass is treated as partnership property except so far as the fiduciary may be able to distinguish what is separately his. *Hurst*, 1 Ariz.

App. at 607, 405 P.2d at 917. . . .and the commingling of partnership property with a partner's own property **gives rise to a presumption that the entire commingled mass is partnership property**. *Ohaco Sheep Co., Inc. v. Heirs of Ohaco*, 713 P.2d 343, 346 (1986); *Hurst*, 1 Ariz. App. at 606-07, 405 P.2d at 916-17. (Emphasis added.)

Shepard v. Patel, 2012 U.S. Dist. LEXIS 168102, at *11-12 (D. Ariz. Nov. 26, 2012). That task is impossible here, as not only would Yusuf have to prove the gross amount of the total water sales, but he would then have to prove the net amount remaining after all expenses, overhead and gross receipt/income taxes were accounted for. Finally, he would then have to reduce this number by the 50% of the disbursed profits already received by him.

Third, any claim beyond six years would be barred. See, e.g.,. *Chase Manhattan Bank, N.A. v. Power Products, Inc.*, 27 V.I. 126 (V.I. Terr. Ct. 1992)(An action for conversion is subject to a six-year statute of limitations). *Frank v. Gov't of Virgin Islands*, No. CIVIL 2009-66, 2012 WL 611373, at *8 (D.V.I. Feb. 23, 2012)(noting there is a six-year SOL for an unjust enrichment claim). Of course the six years period in question (2010 to 2015) was when Yusuf was in charge of all aspects of the Plaza Extra Partnership's financial dealings!

V. Conclusion

As set forth herein, none of the undisputed facts support Yusuf's belatedly created (and self serving) claim, as all of the acts show there was always a 50/50 split of the water expenses and revenues. Thus, it is respectfully submitted that Yusuf is not entitled to partial summary judgment on the "water claim" asserted in Y-8, while Hamed is entitled to summary judgment on his Rule 56 cross-motion for summary judgment.

Dated: May 1, 2020



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CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 6-1(e)

This document complies with the limitations set forth in Rule 6-1(e). I hereby certify that on this 1st day of May, 2020, I served a copy of the foregoing by email, as agreed by the parties, on:

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

Gregory H. Hodges
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A handwritten signature in blue ink, appearing to read "Carl J. Haddad", with a long horizontal flourish extending to the right.

Exhibit 1

**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 and 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

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

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.*

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

FATHI YUSUF, *Plaintiff,*

vs.

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

Consolidated with

Case No.: ST-18-CV-219

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,
Defendant.

DECLARATION OF WALEED “WALLY” HAMED

I, Waleed “Wally” Hamed, declare, pursuant to V.I. R. CIV. P. 84, as follows:

1. I am an adult over the age of 18 and am personally familiar with the facts set forth herein.
2. The Plaza East Supermarket has leased the premises where its store is located from United Corporation since 1986.
3. The Plaza East Supermarket burned down in 1992.
4. The building loss was insured against fire by an insurance policy obtained by the Plaza Extra Partnership, paying all premiums on the policy.
5. The proceeds from the fire insurance policy were used to rebuild the building leased by the Plaza Extra Partnership.
6. When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, two new cisterns were constructed for the new store.
7. When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, there was an expanded new roof over the leased premises that collected the rain water that went into the two new cisterns.
8. When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, a pipestand for distributing water from these cisterns was also built as well, as depicted in this photograph:

Plaza Extra Supermarket Store Warehouse

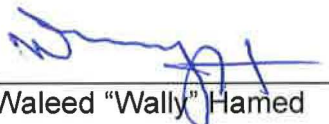


9. All water trucks reached the pipestand by using the same driveway used by the trailers delivering inventory to the Plaza Extra East loading dock.
10. By 2004, a switch has been installed inside the receiving door of the Plaza Extra Supermarket warehouse that had to be turned on before water could be distributed to a water truck.
11. Employees of the Plaza East Partnership operated this switch for the pipestand, allowing water to be loaded from this pipestand into these water delivery trucks.
12. Employees of the Plaza East Partnership maintained the pipestand.
13. The Plaza East Partnership paid all expenses associated with the maintenance of the pipestand.
14. The Plaza East Partnership paid the utility bills to run the pumps.
15. Employees of the Plaza East Partnership repaired the pipestand (such as replacing pumps).
16. The Plaza East Partnership paid all expenses associated with the needed repairs.
17. Employees of the Plaza East Partnership repaired the two new cisterns when needed.
18. Employees of the Plaza East Partnership collected the payments (some of which were collected at the warehouse and some of which were collected by the cashiers in the store).
19. Accounting employees of the Plaza East Partnership then handled any funds collected by the warehouse personnel or cashiers from the water sales, as they would do for all store receipts on any given day.

20. Accounting employees of the Plaza East Partnership deposited the funds received from the water sales into the Plaza East Partnership Supermarket account, as was done from with all store receipts.
21. The salaried store managers of the Plaza East Partnership (Mike Yusuf, Mafi Hamed and Yusuf Yusuf) oversaw the entire operation of the pipestand and water sales at different times between 1994 and 2015, including the handling of all funds and all deposits made into the Plaza East Partnership accounts.
22. As part of the normal operations of the Plaza Extra Supermarket, all revenues from the water sales would be co-mingled with the daily proceeds from the store sales.
23. Each month from 2004 until the partnership dissolution in 2015, the Plaza East Partnership paid the gross receipts on the total monthly sales of the Plaza East Supermarket, which would include the co-mingled funds from the water sales.
24. Each year from 2004 until the partnership dissolution in 2015, the Plaza East Partnership paid the income taxes each year on the total annual income of the Plaza East Partnership, which would include the profit, if any, made from the water sales.
25. Between 2004 and 2012, no profits were distributed due to the FBI raid. Thereafter, the partnership disbursed millions of dollars in accrued profits on a 50/50 basis equally to Hamed and Yusuf, which would have included whatever co-mingled profits, if any, that may have been made on the water sales (after operating expenses, overhead and taxes).
26. United never sought recovery for any water revenues until 2015, after the partnership was dissolved and Yusuf had been appointed the Liquidating Partner by Judge Brady.

27. I do not recall ever composing the handwritten note referenced by Fathi Yusuf as having the annual water sales for 1997 and 1998.
28. The piece of property next to the Plaza Extra Store was purchased after the fire with funds from the Plaza East Partnership.
29. United did not supply water to the partnership store, Plaza East, as the Plaza East Partnership supplied this water to itself.
30. United never sold water to third party water delivery trucks between 1992 and 1994, nor did it own the water sold by the Plaza East Partnership.
31. United did not install a pipestand, as it was installed by the Plaza East Partnership, who operated and maintained it from 1994 until 2015.
32. Neither the water or the revenues from any sales belonged to United.
33. Yusuf's claim that United "gifted" half of these revenues to Hamed from 1994 to 2004 so long as the funds would be "re-gifted" to relatives in the Middle East is untrue, as all funds sent to the Middle East came from the Plaza Extra Partnership.
34. There was never any modification of the lease terms between the Plaza East Partnership and its landlord, United, in 2004 or any other time requiring the Partnership to pay for water usage to United.

I declare under penalty of perjury that the foregoing is true and correct, executed on this 29th day of April, 2020.


Waleed "Wally" Hamed

Group Exhibit 2

**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 Deft.,)
)
vs.) Case No. SX-2012-CV-370
)
FATHI YUSUF and UNITED)
CORPORATION,)
Defendants/Counterclaimants,)
)
vs.) **DEPOSITIONS TAKEN:**
) **JANUARY 21, 2020**
)
WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)
Counterclaim Defendants.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
Plaintiff,)
)
vs.) Consolidated with
) Case No. SX-2014-CV-287
)
UNITED CORPORATION, Defendant.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
Plaintiff,)
)
vs.) Consolidated with
) Case No. SX-2014-CV-278
)
FATHI YUSUF, Defendant.)

FATHI YUSUF, Plaintiff,)
)
vs.) Consolidated with
) Case No. ST-17-CV-384
)
MOHAMMAD A. HAMD TRUST, et al.,)
Defendants.)

KAC357 Inc., Plaintiff,)
)
vs.) Consolidated with
) Case No. ST-18-CV-219
)
HAMED/YUSUF PARTNERSHIP,)

Defendant.)

**THE VIDEOTAPED ORAL DEPOSITIONS OF FATHI YUSUF,
MAHER "MIKE" YUSUF, WALEED "WALLY" HAMED, NEJEH YUSUF,
MAFEED "MAFI" HAMED, AND JOHN GAFFNEY**

was taken on the 21st day of January, 2020, at the Law Offices of Joel H. Holt, 2132 Company Street, The Alcove Room, Christiansted, St. Croix, U.S. Virgin Islands, between the hours of 10:00 a.m. and 5:09 p.m., pursuant to Notice and Federal Rules of Civil Procedure.

Reported by:

Susan C. Nissman RPR-RMR
Registered Merit Reporter
Caribbean Scribes, Inc.
2132 Company Street, Suite 3
Christiansted, St. Croix
U.S. Virgin Islands 00820
(340) 773-8161

WALEED "WALLY" HAMED -- DIRECT

1 Do you recall, during a meeting with
2 Mr. Yusuf and Mr. Hamed, where they discussed that that
3 would be an arrangement for 10 years to do -- to do water
4 sales; and in order to do it, there would be -- to give to
5 charitable family members or charitable donations, is just
6 what I'm going to call it, for 10 years?

7 **A.** There was an agreement to go ahead and give the
8 proceeds for charitable --

9 **Q.** Okay.

10 **A.** -- donations.

11 **Q.** Okay.

12 **A.** As far as the 10-year period, anything like that,
13 no.

14 Remember talking about building the cistern
15 after the fire, buying the property after the fire, to do
16 that sort of stuff.

17 **Q.** Okay. So is it possible that Mr. Yusuf and
18 Mr. Mohammad Hamed, your father, agreed to the 10 years, and
19 you're just not aware of it?

20 **A.** I doubt that very much, 'cause if there's
21 anything, my dad would tell us.

22 **Q.** Okay. So -- but you don't know that for sure,
23 correct?

24 **A.** I'm pretty certain if it is, yes, because we know
25 that the monies are supposed to go to charitable

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)
vs.) **DEPOSITIONS TAKEN:**
) **JANUARY 21, 2020**
)
WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)
Counterclaim Defendants.)

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FATHI YUSUF, Plaintiff,)
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vs.) Consolidated with
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)
MOHAMMAD A. HAMD TRUST, et al.,)
Defendants.)

KAC357 Inc., Plaintiff,)
)
vs.) Consolidated with
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)
HAMED/YUSUF PARTNERSHIP,)

Defendant.)

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(340) 773-8161

MAHER "MIKE" YUSUF -- DIRECT

1 **Q.** And so did Wally ever say something to you like,
2 This whole water sales thing is really dropping and it's not
3 worth our time, or anything like that?

4 **A.** No.

5 **Q.** Okay. Are you familiar with the agreement that
6 was in place for the water sales to be split from 1994
7 through 2004, and then not after that?

8 **MR. HARTMANN:** Object. Assumes evidence not
9 in the record.

10 **Q.** **(Ms. Perrell)** You can still answer.

11 **A.** I don't -- I don't remember what inspired back
12 then. How -- how they used to handle it.

13 **Q.** Okay.

14 **A.** I was -- I was too busy in the West store.

15 **Q.** Okay. What I'm asking is, is do you know --
16 Mr. Yusuf testified earlier about the arrangement for the
17 splitting between the families of the -- of the water, which
18 you said that you helped coordinate.

19 **A.** Yeah.

20 **Q.** That it was supposed to go from 1994 to only 2004.

21 Do you have any information about that, other
22 than what you hear today? Did you know about that before or
23 did you not know about that before?

24 **A.** No, there was an agreement between my dad and
25 Mr. Mohammad --

MAHER "MIKE" YUSUF -- DIRECT

1 Q. Okay.

2 A. -- about, you know, whatever proceeds, the water,
3 and they'd give it to charity.

4 Q. Okay.

5 A. And what the details were, I was just doing what I
6 was told to do.

7 Q. Okay. All right. So other than that, you don't
8 have any other information about it?

9 A. No.

10 Q. Okay. All right.

11 A. But I want to mention something.

12 When I heard Wally's deposition, he was
13 saying about Plaza employees was maintaining and --

14 Q. Right.

15 A. -- taking care of all this --

16 Q. The cisterns?

17 A. -- the cistern and this and that, there was
18 nothing to take care of.

19 Q. Okay.

20 A. The well pumps in the thing and it pumps out.

21 Q. Okay. And you were the one that was involved with
22 the coordinating for the installation of the -- the
23 standpipe or --

24 A. Yes.

25 Q. -- or whatever; is that correct?

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
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vs.) Case No. SX-2012-CV-370
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FATHI YUSUF and UNITED)
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Defendants/Counterclaimants,)
)
vs.) **DEPOSITIONS TAKEN:**
) **JANUARY 21, 2020**
)
WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)
Counterclaim Defendants.)

WALEED HAMED, as Executor of the)
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)
vs.) Consolidated with
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UNITED CORPORATION, Defendant.)

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
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MAFEED "MAFI" HAMED -- DIRECT

1 **A.** Yes.

2 **Q.** Okay. And you know that for the same reason that
3 you believe that's just something common knowledge when you
4 came back --

5 **A.** Yes.

6 **Q.** -- to visit?

7 **A.** Yes.

8 **Q.** Okay. All right. With regard to providing any of
9 the monies that was part of the water revenues to any of the
10 family members, were you involved with distributing any of
11 the monies to either your father or to Mr. Yusuf?

12 **A.** No.

13 **Q.** Okay. Did you have any conversations with -- do
14 you know as to whether any of the water revenue was
15 distributed to Mr. -- your father, Mohammad Hamed, and
16 Mr. Yusuf?

17 **A.** No, I don't know.

18 **Q.** You don't know? Okay.

19 Did you have any discussions with your father
20 about the water revenue and how that was supposed to be
21 handled, and for how long?

22 **A.** We had discussions, yes.

23 **Q.** Okay. And what were those discussions?

24 **A.** The discussions were, the revenues generated from
25 the water sales was going to go as to the family members, or

MAFEED "MAFI" HAMED -- DIRECT

1 the -- or to the unfortunate family members that are abroad.

2 Q. Okay.

3 A. And there was no time limit, as he's saying.

4 Q. Okay. And that was because -- you know this
5 because of the conversations you had with your father?

6 A. This is direct knowledge from my father, yes.

7 Q. Okay.

8 A. Because my father talks to us.

9 Q. Okay.

10 A. We have conversations. He lets us know what's --
11 what's the right way to do things and what's the proper way.

12 Q. All right.

13 A. And what's owed and what's -- what's owed to us.

14 Q. Okay. And your father was gone and no longer on
15 St. Croix after 1996; isn't that right?

16 A. My father was going back and forth. I think in
17 1996, that's when he went and did the pilgrimage in Mecca
18 with my mother, --

19 Q. Okay.

20 A. -- yes.

21 Q. I mean, it's been a fact -- so 1996, though, he
22 was no longer at the store on a daily basis?

23 A. Right.

24 Q. A hundred percent?

25 A. Yes.

Exhibit 3

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

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)	Case No. SX-2014-CV-278
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YUSUF YUSUF -- CROSS

CROSS-EXAMINATION

BY MR. HARTMANN:

Q. I'm sorry, I got lost.

Have you -- you started -- when you first got there, you took over the water fairly quickly, right? And have you been the person sort of coordinating the water the whole time?

A. No, I never took over the -- the water.

Q. No?

A. No.

Q. Who -- who ran the water after Mike and Mafi weren't running it?

A. Well, it was always Wally and Mafi that kind of showed me what is the normal business running for the water.

Q. Oh, okay.

A. Just like anything else in the store.

Q. But sometimes you did work on the water stuff, generally?

A. Well, if you want to say "work on." Pump goes down, yes, I catered to it.

Q. Okay. And -- and when you did that, whenever you were doing that, who was paying you?

A. Plaza Extra was paying me.

Q. The supermarket?

A. I was an employee, yeah.