

**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 REPLY RE PARTIAL SUMMARY JUDGMENT AS TO
CLAIM H-163: LOSS OF ASSETS DUE TO WRONGFUL DISSOCIATION**

Yusuf's April 9, 2020 opposition to Hamed's wrongful dissociation claim (H-163) avoids the main issue—that there was a wrongful dissociation by Yusuf from the partnership. Instead of addressing the facts of his actions, Yusuf resorts to disjointed procedural arguments, none of which are sufficient to defeat partial summary judgment on this issue. Yusuf also confuses the motion for a partial summary judgement as to wrongful dissociation with the eventual issue of damages which will be determined later. Thus, at the outset of this reply, several basic points must be made:

- 1) There is absolutely no factual dispute that Yusuf repeatedly and strenuously denied the existence of the Partnership beginning in August of 2012. He began by wrongfully diverting \$2.7 million in Partnership funds for his personal use and barring the Hameds from participating in the Partnership's business. Yusuf does not deny this in the opposition, Judge Brady has found this, and there are no facts to the contrary. Nor is there any dispute that he also repeatedly denied the existence of the Partnership to the courts, the police and the community.
- 2) Thereafter, when the Hameds filed suit in August of 2012 seeking, *inter alia*, a declaration that there was a partnership, Yusuf first filed a motion to dismiss to the Amended Complaint **denying the existence of the Partnership on the face of the document**. Memorandum in Support of Motion to Dismiss, October 10, 2012, at 1. ("On September 18th, 2012, Plaintiff Mohammed Hamed ("Hamed") filed a civil action against Defendants United Corporation (United) and Fathi Yusuf ("Yusuf") alleging *for the first time in 26 years the existence of a "partnership"*.)

- 3) Even after this Court found, on April 25, 2013 (after a full and lengthy evidentiary hearing), that there was a partnership, Yusuf appealed this finding, again denying that any partnership existed.¹
- 4) After this finding was affirmed by the V.I. Supreme Court—upholding the injunction entered by this Court on September 30, 2013—Yusuf again denied the Partnership had actually existed, opposing the entry of summary judgment again on September 16, 2013. See Yusuf's attached affidavit in support where he states "Until the commencement of this litigation Mohammad Hamed had never held himself out as a partner in the purported 'Fathi Yusuf & Mohammad Hamed partnership.'"
- 5) Incredibly, even after Yusuf conceded, on April 7, 2014, that the Partnership DID exist, so he could try to close the businesses by dissolving it, Yusuf still repeatedly opposed the entry of summary judgment on this issue throughout 2014. Again, he was unsuccessful in light of his own (belated) admissions that there always had been a partnership—as summary judgment was finally entered by Judge Brady on November 7, 2014. Judge Brady stated that there had been a Partnership since the 1980's and noted that Yusuf had testified to this extensively under oath in a prior legal action. He cited Yusuf's sworn statements that:

13.. Yusuf and Hamed have both acknowledged their business relationship as a partnership of an indefinite term. Pl. Ex. 1, p:18: 18 -23 ("I'm obligated to be your partner as long as you want me to be your partner until we lose \$800,000. "); Tr. 210 :44-8, Jan. 25, 2013 (Q: "How long is your partnership with Mr. Yusuf supposed to last?

¹ One need only read Judge Brady's April 25, 2013, findings in his opinion to see Judge Brady's repeated references to Yusuf's repeated improper and wrongful acts—all in derogation of the Partnership---which are a prima facie description of wrongful dissociation.

When does it end ?" A`"Forever. We start With Mr. Yusuf with the supermarket we cake money. He make money and I make money, we stay together forever.")

14. Yusuf testified.in the Idheileh case that it was general public knowledge that Yusuf was a business partner with Hamed even before the Plaza Extra supermarket opened. Pl. Ex. I, p. 20:10-12.

These facts are all undisputed as they are contained in the pleadings and court orders filed in this case between 2012 and 2014. There is no factual dispute as these undisputed facts support the entry of partial summary judgment on the finding of wrongful disassociation. It is critical that Yusuf does not oppose these **facts** in his filing.

Several additional preliminary points are also appropriate at this juncture:

- 1) Contrary to Yusuf's misstatements, Hamed is definitely NOT trying to circumvent Judge Brady's July 21, 2017 order. While Hamed's initial motion listed several potential items of relief, that motion made it clear that Hamed is only seeking partial summary judgment that there was a wrongful dissociation at this time, with the issue of what relief might be appropriate reserved for another day. Thus, the issue of what Yusuf tries to characterize as 'damages' is irrelevant to this motion. (However, a brief rebuttal to Yusuf's 'damages' arguments will be made later in this reply.)
- 2) Count II of Hamed's Amended Complaint did mention Yusuf being dissociated from the Partnership as well as seeking all relief this Court deemed appropriate. Moreover, the pleadings in the Amended Complaint are now irrelevant, as this wrongful dissociation claim is now an established claim in the partnership dissolution process, timely filed and completely appropriate for resolution by the Special Master.

- 3) Hamed agrees that Judge Brady stated that the Partnership is an "at will" partnership—but that absolutely does not bar a claim for wrongful dissociation, as will be discussed herein. This RUPA section has two parts, and the second part specifically applies to partnerships for an unlimited duration. That section of RUPA only makes the elements of proof needed to establish the claim somewhat different from a partnership where there are "definite" terms, like time periods for the Partnership to exist and terminate.
- 4) Despite Yusuf's assertions, Hamed has never waived this claim, nor has Judge Brady made any findings dismissing the claim, all of which will be discussed herein as well.

With these comments in mind, Hamed will respond to Yusuf's opposition memorandum in the same outline of the issues as used by Yusuf in his filing.

I. Judge Brady's July 21, 2017, Opinion and Order does not bar this claim

Yusuf argues that Judge Brady's July 21, 2017, opinion somehow bars this claim because (1) Judge Brady allegedly found that the Amended Complaint stated no such claim and (2) even if it did, the Court has already granted the only relief allowed for such a claim by dissolving the Partnership, citing *Hamed v Yusuf*, 69 VI 168, 174 n.2 (Super. Ct. 2017). However, **that opinion (and the referenced footnote) does not do what Yusuf suggests**. In this regard, Judge Brady simply said in the referenced footnote 2:

Count II requests that "Yusuf's partnership interests... be dissociated from the business, allowing Hamed to continue the Partnership's business without him," on the grounds that "it is not practicable to continue the Partnership." Complaint ¶ 42. However, it makes little sense to speak of the "dissociation" of a partner in a partnership consisting of only two people, as any "dissociation" must necessarily result in the dissolution and wind up of the partnership. **Thus, Count II of the Complaint is properly construed, not as a separate cause of action, but as a prayer for relief in the form of the dissolution and wind up of the partnership in the context of Hamed's cause of action under 26 V.I.C. § 75(b)(2)(iii)**. In any event, the Court has already effectively entered judgment on Count II of Plaintiff's

Complaint, by dissolving the partnership and adopting the Final Wind Up Plan on January 7, 2015. Additionally, Count III of the Complaint presents no independent claim nor prayer for relief that is not already included in Count I. Thus, considered altogether, Plaintiff's Complaint presents only a single cause of action under 26 V.I.C. § 75(b)(2)(iii); the nature of which is discussed below. (Emphasis added).

The cited statutory section, 26 V.I.C. §75(b)(2)(iii), specifically refers to "the winding up of the partnership business," which the Court directed be done by the Special Master in order to resolve all claims between the partners. The Special Master then directed each party to submit their respective claims, which Hamed did—including the timely submission of this wrongful dissociation claim.

In fact, Judge Brady's decision confirms that this issue had to be pursued as a claim within this claims process, not as a separate, distinct "damages" claim. Judge Brady explicitly states that this WAS TO BE HANDLED within the present process. How could this be otherwise? If it could not be addressed as a separate and distinct claim, and it was then not allowed here....when and how could the clearly established rights for wrongful dissociation set for in RUPA ever be heard? The applicable section of RUPA would be meaningless under Yusuf's novel "interpretation."

Thus, this claim for wrongful disassociation is just that—a timely RUPA claim filed in a timely RUPA wind-up process. As can be seen from Judge Brady's decision, It did not need to be a specifically claim for damages in the Amended Complaint in order to be a claim within the wind-up process now taking place any more than the other 127 claims (many of which are for what would otherwise be 'damages') were. That would make a mockery of the entire RUPA claims process and obviate the need for a master or even a claims process.

Moreover, even if it were a specifically listed claim in the Complaint, the fact that the Court then ordered an equitable accounting does not mean the Court concluded there

were no “damage claims” in the accounting. Again, that is absurd, as these are all claims for amounts for relief for actions between the Partners. For example, the Amended Complaint certainly alleges that Yusuf improperly removed \$2.7 million and then sought compensatory damages.

Like the Yusuf claims for rent, water costs, and a dozen other things, Judge Brady simply treated this is an accounting claim to be asserted *in the wind-up process*, which are ALL not being determined. However, under Yusuf's tortured logic in his opposition to this motion, he could have argued that Judge Brady found this claim for \$2.7 million to be barred because he found the only remaining relief to be equitable relief. Of course, what Judge Brady really did is send all partner disputes to the equitable accounting that is now being done. And if that was barred, then all of Yusuf's many claims that seek “damages” would also be barred.

In short, this is just another of Yusuf's truly bizarre efforts to twist all things under RUPA. Once again, it arises from his adamant refusal to understand (or at least acknowledge) what RUPA is and what it does. It settles ALL remaining claims and disputes between partners in the form of a final “accounting”—but within that process, many of the things would, in other circumstances, be called damages. To select this one claim out, and try to make such a profoundly erroneous argument out of nothing because it would be “damages” if outside this process (like many of the claims here by both parties) is just the latest example of this.

One other analogy is helpful here. The Amended Complaint does not mention the Hamed Claim for \$504,000 in funds Yusuf took from the Partnership account to pay his lawyer, as those facts occurred after the Amended Complaint was filed. However, even though those facts were not in the Amended Complaint, the claim is a valid accounting

claim that has now been resolved in Hamed's favor. In short, a claim within the equitable wind up process did not have to be alleged first in the Amended Complaint.

Thus, Judge Brady did not hold that the wrongful association claim was now barred, but *simply* that it was subject to the "winding up" claims processing mechanism, **to be decided as part of an equitable accounting conducted by a Special Master, not a jury.**

II. Judge Brady's Prior Rulings do not render this claim "defective"

Yusuf asserts that Judge Brady's prior order render the wrongful dissociation claim defective, raising three arguments in support of this assertion. Each argument will be addressed separately. None have any merit.

A. Yusuf mistakenly argues that wrongful dissolution claims exist in at-will partnerships—a clear error of law

Yusuf mistakenly argues that there cannot be a claim for wrongful dissociation in an at-will partnership.² In this regard, 26 V.I.C. §122(b) states in relevant part:

(b) A partner's dissociation is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement; ***or***

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will . . . (Emphasis added)

Thus, the language in the statute is clear. The conjunction is "or" not "and". These are disjunctive phrases and either can be satisfied—a party need not prove BOTH. Thus, wrongful dissociation clearly is not limited to just partnerships with a definite term. Section

² Hamed concedes the Plaza Extra Partnership was an "at-will" partnership and withdraws any inconsistent or contrary argument in its initial motion.

b(1) has been held by every court considering the issue under RUPA to include at-will partnerships. A party need only prove the statutory requirements of b(1)

First, the defendant's act has to violate an express provision of the partnership agreement. First, Yusuf breached the most central express provision (1) that the Yusuf and Hamed families would jointly own the Partnership Plaza Supermarkets, which he breached when he threw the Hamed family out of the Plaza stores. When doing so he also (2) unilaterally took money and refused them access to accounts and banks—which lasted until Judge Brady issued an injunction. Yusuf also violated express, mandatory provision automatically supplied in the partnership agreement by RUPA: (2) he failed to follow particular requirements when dissociating, (4) he refused to deal with one's partner under the good faith RUPA provisions (which the Master has also found were violated), and (5) he denied Hamed the opportunity to continue the business that was expressly created under the new RUPA—one of the most central and important changes when the old UPA was revised.³ RUPA expressly states:

(7) 'Partnership agreement' means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement. [26 V.I.C. § 2(7).]

and [26 V.I.C. § 4]

Effect of partnership agreement; nonwaivable provisions

(a) Except as otherwise provided in subsection (b) of this section, relations among the partners and between the partners and the partnership are governed by the partnership agreement. **To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.**

³ Although it is unnecessary here, Hamed would also argue that this section encompasses an at-will partnership that has a particular undertaking—the agreement to operate the Plaza Supermarkets until they lost \$800,000 if that event ever occurred, which it did not. Thus, Yusuf violated this section through his “express will” when he locked the Hameds out of the business for the time period before the injunction was entered.

Subchapters VI and VII therefore provide all of the provisions for how and when a partner may dissociate--and under what circumstances:

Subchapter VI. Partner's Dissociation

- § 121 Events Causing Partner's Dissociation
- 122 Partner's Power to Dissociate; Wrongful Dissociation
- 123 Effect of Partner's Dissociation

Subchapter VII. Partner's Dissociation when Business Not Wound up

- 141 Purchase of Dissociated Partner's Interest
- 142 Dissociated Partner's Power to Bind and Liability to Partnership
- 143 Dissociated Partner's Liability to Other Persons
- 144 Statement of Dissociation
- 145 Continued Use of Partnership Name

Thus, all of the provisions that specify when, and HOW a partner can dissociate are express provisions of all RUPA partnership agreement. It defines what is a wrongful dissociation. It defines how a partner can correctly leave a partnership. And it defines both in the text and associated comments discussed below, why Yusuf's breaches are specifically with the control and definition of RUPA.

Thus, **Yusuf's argument that §122(b) only applies to a partnership with "definite" terms is simply wrong**, as §122(b) expressly covers at-will partnerships in this specific situation.

B. Hamed did not waive this claim in 2014 in seeking dissolution

Yusuf argues next that Hamed waived this wrongful disassociation claim based upon the statements made in an April 30, 2014, pleading, attached as Exhibit 6 to his motion. That pleading only confirmed that the issue of dissolution was moot since he had also sent a notice of dissolution to Yusuf. More to the point, **there is no language in that pleading that states, or even suggests, that Hamed was waiving this claim.** Thus, Yusuf's argument can be summarily disposed of and rejected.

C. The Final Wind-Up Order did not reject this claim

Finally, Yusuf argues that Judge Brady “tacitly” rejected this claim by making Yusuf the liquidating partner over Hamed’s objection, as Hamed’s objection asserted that Yusuf could not be the Liquidating Partner due to his “wrongful dissociation” conduct. That is stunningly wrong. There is no language in Judge Brady’s January 9, 2015, Wind Up Order finding that Yusuf did not engage in such conduct, as the Order simply made Yusuf the Liquidating Partner. Indeed, in the Court’s July 21, 2017, opinion that set up the wind-up process, *Hamed v Yusuf*, found in footnote 4:

To the extent it is not already established by admissions of the parties and previous Orders of the Court, the Court now confirms its preliminary factual finding—as detailed at ¶ 19 of the Memorandum Opinion and Order entered April 25, 2013 (58 V.I. 117, 124)—that since the inception of the Partnership, Yusuf acted as the managing partner, such that Hamed was completely removed from the financial aspects of the business.

Thus, this finding explains the sole stated reason why Yusuf was named the Liquidating Partner, because Hamed was not in touch with or familiar with those facets of the business side of the Partnership. This was both because that was how the Partnership ran, AND because Hamed had been removed from and denied access to the financials. In any event, there is no need to explain why the Court selected Yusuf, as the point relevant to this argument is that the January 9, 2015, Wind-Up Order made absolutely no findings one way or the other about Hamed’s assertion of Yusuf’s alleged misconduct, negating Yusuf’s arguments to the contrary in his opposition memorandum.

III. Judge Brady’s “Laches-Based” Limitation Order does not bar Hamed’s “damage” claims.

At the outset, it must be noted that this motion is simple a motion for partial summary judgment on liability, so that any discussion of the relief being sought (or the time period from which such relief stems) is simply irrelevant to the issues raised as to Yusuf’s liability for wrongful dissociation. Yusuf is familiar with this point, as he has filed

a motion for partial summary judgment for “water sales” without addressing the damages should liability be found on the claim. He expressly states there that he seeks only such an initial, partial determination and damages will be determined later—it identical to what Hamed seeks in this motion. Thus, this entire argument is cynical at best and dishonest at worst.

The same is true here. While Hamed included some discussion on several possible damage claims, those are not before the Master in this motion, as those facts discussed were expressly identified as only intended to provide context as to potential relief.⁴ **Nor is all of that relief monetary or in the form of damages at law.** Thus, Yusuf's argument on the potential relief that can and cannot be sought are premature at this time.

In any event, whether and what relief is appropriate for this wrongful dissociation claim is a question for another day, as this motion for partial summary judgment is limited to the liability aspect of this claim—as aspect Yusuf does not factually dispute.

IV. Hamed's Response to Yusuf's Counterstatement of Facts

As Yusuf did not file a Rule 56(c)(2)(C) Counterstatement of Facts in his opposition, there is nothing requiring a response by Hamed. Further, none of Yusuf's comments supposedly “disputing” Hamed's Statement of Undisputed Facts creates a dispute of a material fact. In short, the points raised in this Reply all address Yusuf's opposition arguments, so that Yusuf's responses to Hamed's SOF are actually irrelevant to the issues related to Hamed's partial summary judgment motion.

⁴ Hamed also agrees that any such damages can only include damages September 7, 2006, under Judge Brady's July 21, 2017, opinion and Order.

V. Conclusion

For the reasons set forth herein, it is respectfully submitted that Hamed is entitled to partial summary judgment on the liability aspect of his wrongful dissociation claim, with the relief to be granted to be addressed later.

Dated: May 2, 2020



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CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of May, 2020, I served a copy of the foregoing by email, as agreed by the parties, on:

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