

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-278

**ACTION FOR DEBT and
CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter “Master”) on Hamed’s motion to compel responses to discovery served in connection with Hamed Claim No. H-151:

funds taken from the Partnership by Fathi Yusuf (hereinafter “Fathi Yusuf” or “Fathi” or “Yusuf”) via checks written from the Partnership account(s) to himself or United for personal use, filed on August 8, 2021.¹ In response, Yusuf filed an opposition and Hamed filed a reply thereto.

BACKGROUND

Per the Master’s order, the parties filed their respective accounting claims in 2016 and their respective amended accounting claims in 2017.² On October 17, 2016, Hamed filed his accounting claims and thereafter, on October 30, 2017, Hamed filed his amended accounting claims, whereby both filings included Hamed’s claim for funds taken from the Partnership by Fathi Yusuf via checks written from the Partnership account(s) to himself or United for personal use.³

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.)

In his motion, Hamed indicated that “[t]his claim aims to recover funds from transactions where Fathi Yusuf wrote checks from the Partnership accounts to himself or his family corporation, the United Corporation, without a corresponding withdrawal for Hamed.” (Motion, p. 1.) This implied that Hamed wants a distribution from the Partnership equal to the amount of funds taken from the Partnership by Fathi Yusuf via checks written from the Partnership account(s) to himself or United for personal use. However, according to Hamed’s amended accounting claims, Hamed claimed that Fathi Yusuf owed such an amount to the Partnership, and not that the Partnership owed such an amount to Hamed. (Hamed’s Amended Accounting Claims, Exhibit A.)

Regardless of this nuanced distinction, the Master finds that that Hamed’s motion to compel for Hamed Claim No. H-151 falls within the scope of the Master’s report and recommendation because Hamed Claim No. H-151 involves either an alleged debt Yusuf owes the Partnership or an alleged debt the Partnership owes Hamed.

² On July 25, 2017, the Court entered a memorandum opinion and order limiting accounting (hereinafter “Limitations Order”). In the Limitations Order, the Court “exercise[d] the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter and 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.” (Limitations Order, pp. 32, 34.) In light of the Limitations Order, the Master ordered the parties to file their amended accounting claims.

³ Hamed’s accounting claims, filed on October 17, 2016, included the expert opinion of Jackson Vizcaino Zomerfield, LLP, dated September 28, 2016, which provided in relevant part:

Checks written to Fathi Yusuf

Summary Description of Issue Identified:

Checks written from Partnership to Fathi Yusuf for personal use.

Work performed:

The parties then proceeded with discovery. On January 12, 2018, the parties filed a joint proposed discovery and scheduling plan which was subsequently accepted as the joint discovery and scheduling plan in this matter (hereinafter “JDSP”). In the JDSP, the parties agreed, inter alia, that (i) for Part A Claims (claims between Hamed Claim Nos. H-41 through H-141: John Gaffney will provide a written response for any of the Part A Claims that survive a motion to strike and (ii) for Part B Claims (remaining Hamed claims and Yusuf claims): “no party shall propound more than 50 interrogatories, 50 requests for production of documents, and 50 request for admissions, including all discrete subparts thereof, unless otherwise stipulated by the parties or ordered by the Master.” (JDSP.) On November 27, 2018, the Master entered an order whereby the Master granted the parties’ request to move twenty-three Part B Claims to Part A Claims—to wit, Hamed Claim Nos. H-19-21; H-23-30; H-35; H-37, H-39, H-40, H-144, H-147-149, H-155-157, and H-159 became part of Part A Claims. (Nov. 27, 2018 Order.)

On August 8, 2021, Hamed filed this instant motion to compel responses to discovery served in connection with Hamed Claim No. H-151.

STANDARD OF REVIEW

Motions related to discovery pursuant to Rules 26 through 37 of the Virgin Islands Rules of Civil Procedure are governed by Rule 37 and Rule 37.1 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 37” and “Rule 37.1,” respectively). Rule 37 and Rule 37.1 mandates that the moving party submit a certification with its motion certifying that both

We requested canceled checks from the Plaza Extra bank accounts. John Gaffney informed us that he does not have all the canceled checks for each of the Plaza Extra bank accounts. Attorney Joel Holt issued subpoenas to the Bank of Nova Scotia and Banco Popular on May 31, 2016. As of the date of this report, the banks have not responded fully.

Opinion as to the Issue identified:

The total amount of the claim will be determined after discovery is re-opened and completed.
(Hamed’s Accounting Claims, Exhibit B-2.)

parties engaged in substantive, good faith negotiations before filing a discovery motion. V.I. R. Civ. P. 37(a) and 37.1(a).⁴ Under Rule 37, “[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). “For 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 provides that “[a] failure described in Rule 37(d)(1)(A) is not excused on the ground that the discovery sought was objectionable, unless the party failing to act has a pending motion for a protective order under Rule 26(c).”⁵ V.I. R. Civ. P. 37(d)(2).

⁴ Rule 37 provides:

(a) Motion for an Order Compelling Disclosure or Discovery.

(1) *In General.* On notice to other parties and all affected persons, a party may move for an order compelling disclosure or discovery. The motion must 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).

Rule 37.1 provides:

(a) Good Faith Negotiation Requirement.

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.

V.I. R. Civ. P. 37.1(a).

⁵ Rule 37(d)(1)(A) describes the following failures:

(d) Party’s Failure to Attend Its Own Deposition, Serve Answers to Interrogatories, or Respond to a Request for Inspection.

(1) In general

(A) *Motion; Grounds for Sanctions.* The court may, on motion, order sanctions if:

(i) a party or a party's officer, director, or managing agent -- or a person designated under Rule 30(b)(6) or 31(a)(4) -- fails, after being served with proper notice, to appear for that person's deposition; or

(ii) a party, after being properly served with interrogatories under Rule 33 or a request for inspection under Rule 34, fails to serve its answers, objections, or written response.

V.I. R. Civ. P. 37(d)(1)(A).

DISCUSSION

In his motion, Hamed moved the Master to compel Yusuf to provide responses to the interrogatory and the request for production of documents (hereinafter “RFPD”) served in connection with Hamed Claim No. H-151—to wit, Interrogatory 38, RFPD 4, and RFPD 40. (Motion.) Hamed indicated that: (i) Hamed propounded Interrogatory 38, RFPD 4, and RFPD 40 on March 24, 2018, January 30, 2018, and March 31, 2018, respectively. (*Id.*, at pp. 3-5); (ii) Yusuf and/or United subsequently filed their responses to Interrogatory 38, RFPD 4, and RFPD 40. (*Id.*); (iii) “On October 31, 2018, Hamed sent a letter to Yusuf’s counsel requesting a Rule 37 conference on the outstanding discovery.” (*Id.*, at p. 3; Exhibit 1- Letter from Carl J. Hartmann III, Esq. to Charlotte Perrell, Esq., dated October 31, 2018); (iv) The parties had a Rule 27 conference on November 12, 2018. (Motion, p. 3; Exhibit 2-Letter from Carl J. Hartmann III, Esq. to Charlotte Perrell, Esq., dated November 28, 2018); and (v) “Yusuf refused to provide any responses on this claim. (Motion, p. 2.) Hamed did not seek sanctions or warnings. (Motion, p. 3.)

As a preliminary matter, Master finds that Hamed has in good faith conferred or attempted to confer with Yusuf and United as required under Rule 37 and Rule 37.1. The Master will address Interrogatory 38, RFPD 4, and RFPD 40 in turn.

I. Rules Governing Interrogatories and RFPDs

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. Information within this scope of discovery need not be admissible in evidence to be discoverable.” V.I. R. Civ. P. 26(b)(1). Rule 26 further provides that, “[o]n motion or on its own, the court must limit the ... extent of discovery otherwise allowed by these rules if it

determines that ... the proposed discovery is not relevant to any party's claim or defense.” V.I. R. CIV. P. 26(b)(2)(C)(iii).

Rule 33 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 33”) provides that “[u]nless otherwise stipulated or ordered by the court, a party may serve on any other party no more than 25 written interrogatories, including all discrete subparts” and “[l]eave to serve additional interrogatories may be granted to the extent consistent with Rule 26(b)(1) and (2).” V.I. R. CIV. P. 33(a)(1). Rule 33 further provides that “[a]n interrogatory may relate to any matter that may be inquired into under Rule 26(b)” and that “[a]n interrogatory is not objectionable merely because it asks for an opinion or contention that relates to fact or the application of law to fact, but the court may order that the interrogatory need not be answered until designated discovery is complete, or until a pretrial conference or some other time.” V.I. R. CIV. P. 33(a)(2). Rule 33 requires that “[e]ach interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath.” V.I. R. CIV. P. 33(b)(3). Rule 33 also requires that “[t]he grounds for objecting to an interrogatory must be stated with specificity” and “[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 requires that the interrogatory be answered “by the party to whom they are directed,” V.I. R. CIV. P. 33(b)(1)(A), and that “[t]he person who makes the answers must sign them, and the attorney or self-represented party who objects must sign any objections,” V.I. R. CIV. P. 33(b)(5).

Rule 34 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 34”) permits a party to serve on any other party requests for production of documents or tangible things to inspect and requests for entry within the scope of Rule 26(b). V.I. R. CIV. P. 34(a). Rule 34 requires that “[t]he request: (A) must describe with reasonable particularity each item or category of items to be inspected; (B) must specify a reasonable time, place, and manner for the inspection and for performing the related acts; and (C) may specify the form or forms in

which electronically stored information is to be produced.” V.I. R. CIV. P. 34(b)(1). Rule 34 also requires that “[f]or each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons” and “the responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection [with] [t]he production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.” V.I. R. CIV. P. 34(b)(2)(B). Untimely objections to requests for production are deemed waived. *See Klotzbach v. V.I. Water & Power Auth.*, 74 V.I. 381, 390 (V.I. Super. Ct. June 14, 2021) (“The Court agrees if WAPA did not make a timely objection stating the requested customer information was ‘private or confidential,’ then WAPA waives that objection.”). Rule 34 further requires that “[a]n objection must state whether any responsive materials are being withheld on the basis of that objection with sufficient particularity to identify what has been withheld” and “[a]n objection to part of a request must specify the part and permit inspection of the rest.” V.I. R. CIV. P. 34(b)(2)(C).

A. Interrogatory 38

In his motion, Hamed argued that the Master should compel Yusuf to respond to Interrogatory 38. Hamed made the following assertions in support of his argument: (i) “Interrogatory 38 is integral to Hamed’s claim.” (Motion, p. 7); (ii) “Hamed needs to understand how the Partnership money traveled between Yusuf and his family corporation, United.” (Id.); (iii) Hamed does not have access to United’s books. (Id.); (iv) “Hamed’s first step in tracing Partnership funds and assets is to identify large sums of money or assets (in excess of \$10,000) being transferred to or from Fathi Yusuf and/or coming into or coming out of the United Corporation, determine the value of the assets upon transfer, then determine whether those were Partnership funds/assets or not and for the Partnership funds/assets,

determine whether there was an equal draw of those funds between Yusuf and Hamed.” (Id.); and (v) “This inquiry shouldn’t be overly burdensome, as it has already been limited to large sums of money and has been further limited to just the period from September 17, 2012 to the split of the stores.”⁶ (Id.)

In his opposition, Yusuf argued that the Master should deny Hamed’s motion. Yusuf made the following assertions in support of his argument: (i) Interrogatory 38 should be consistent with the September 5, 2021 order entered in connection with Hamed’s motion to compel responses to discovery served in connection with Yusuf Claim No. Y-12—to wit, “the discovery should be limited “to information in which the Partnership fund was the source of the income for the acquisition of assets.” (Opp., p. 2); (ii) “This interrogatory seeks information relating to income sources that are unrelated to the Partnership fund and thus, are also irrelevant.” (Id.); (iii) “[A]ll partnership distributions to Fathi Yusuf (i.e. income from the Partnership) have been identified and thus, there is no need to further compel discovery as to this Interrogatory.” (Id.); (iv) “[A]ll of the financial information relating to the United Corporation (for the Partnership) have been provided to Hamed contemporaneously through the Sage 50 Accounting software.” (Id.); (v) “Hamed has had access to all accounting records of United reflecting any checks or transfers made during the timeframe in question.” (Id., at pp. 2-3); (vi) “[D]uring this phase, the parties had a dual signature requirement on all checks (one Yusuf and one Hamed) so that Hamed is fully aware of any and all checks written from United.” (Id., at p. 3); (vii) “[A]s to cancelled checks, Gaffney has explained that the banks do not provide copies of cancelled checks.” (Id.); and (viii) “As all of the financial information

⁶ The Master notes that March 9, 2015 is the date of the split of Plaza Extra-East and Plaza Extra-West. See April 21, 2022 order regarding Hamed’s motion to compel responses to discovery served in connection with Hamed Claim No. H-146.

relating to United has been provided to Hamed simultaneously, said information has already been produced and there is no need to compel further information.” (Id.)

In his reply, Hamed made the following assertions in response to Yusuf’s opposition:

(i) “Yusuf has not provided a verified interrogatory response listing any assets or amounts in excess of \$10,000 that have been transferred to Yusuf [and United] or from Yusuf [and United] that originated from Partnership funds.” (Reply, pp. 2-3); (ii) “Hamed needs to know for his defense what the universe of Partnership assets and dollars Yusuf claims that were transferred to or from him [and] [t]hat information should simply be listed in a verified statement to provide an estoppel on any other amounts being added or subtracted prior to a hearing on this claim.”⁷ (Id., at p. 2); (iii) “Sage 50 [accounting system] is not going to contain amounts or assets that Fathi Yusuf transferred on that originated from Partnership funds – that is the entire basis of this case, not all funds ran through proper accounting.” (Id., at pp. 2-3); (iv) “Yusuf has not made any verified statement that all assets were listed in the Sage 50 [accounting] system”— “[f]or example, ...properties purchased with Partnership funds [are not] listed in Sage 50.” (Id., at p. 3); (v) Rule 33 “does not have an exception for responding to interrogatories where the parties had a dual signatures ‘rule.’” (Id.); and (vi) “This is an interrogatory, so a production of cancelled checks is not required for a response to Interrogatory 38.” (Id.)

1. Analysis

Hamed’s Interrogatory 38 of 50: Like Yusuf ROG 14. Identify all assets or amounts in excess of \$10,000 that were transferred to or from Fathi Yusuf or United Corporation from September 17, 2012 to date and what was the value of said assets upon transfer?

Yusuf and United’s Response:

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.

⁷ The Master must point out that Hamed Claim No. H-151 is Hamed’s claim, not Yusuf or United’s claim, and thus, Hamed is prosecuting and not defending Hamed Claim No. H-151.

Defendants further object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense. If Hamed seeks to revisit these issues, Hamed should bear the cost.

Without waiving any objections, all transfers from United Corporation d/b/a Plaza Extra Stores and accounting information reflecting any transactions have been provided to the Hamed's contemporaneously through the Sage 50 Accounting software. In addition, Hamed has had access to all accounting records for United reflecting any checks or transfers made during the timeframe in question. Hence, the information has been provided to Hamed and the burden of reproducing same would be equal for Hamed to gather.

First, Yusuf and United objected to this interrogatory as vague and ambiguous. However, Yusuf and United did not expressly identify the language in Interrogatory 38 that they find vague or ambiguous. *See Innovative Communications Corp. v. Sheraw*, 2007 V.I. LEXIS 77, *9 (V.I. Super. Ct. Feb. 5, 2007) (“The party objecting to discovery as vague or ambiguous has the burden to show such vagueness or ambiguity. Vagueness or ambiguity is when the definition of the terms or the wording of the request is unclear.”) (citations omitted). Here, Yusuf and United failed to demonstrate that Interrogatory 38 is vague or ambiguous. Second, Yusuf and United 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.” Here, the Master does not find Interrogatory 38 to be compounded questions—to wit, Interrogatory 38 sought

information in connection with “all assets or amounts in excess of \$10,000 that were transferred to or from Fathi Yusuf or United Corporation,” which involves the same line of inquiry and did not introduce any discrete separate subjects. *See e.g., Davis v. Hovensha, L.L.C.*, 2011 V.I. LEXIS 91, *7 (V.I. 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, Interrogatories No. 2, 3, 5, 8, 11, 13, 14, 15, 16 and 17 will each be considered as a single interrogatory.”). Third, Yusuf and United objected to this interrogatory because “the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers.” However, Interrogatory 38 was not directed at the Partnership or John Gaffney. Instead, Interrogatory 38 was directed at Fathi Yusuf and United and under Rule 33, “[t]he interrogatories must be answered by the party to whom they are directed.” V.I. R. CIV. P. 33(b)(1)(A). Furthermore, under Rule 33, “[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). Here, no such good faith representations were made by Yusuf and United, and no such specification of records or productions of records were made by Yusuf and United. Moreover, according to the accounting report of the Partnership prepared by Yusuf's accounting expert BDO Puerto Rico, P.S.C., dated August 31, 2016 (hereinafter "BDO Report"), Yusuf's accounting expert BDO Puerto Rico, P.S.C. (hereinafter "BDO") "reviewed the available information and identified...[f]unds withdrawn from Partnership through checks of the business," "[f]unds withdrawn evidenced through a signed cash tickets/receipts, "[f]unds withdrawn related to tickets already settled by the Partners," and "[f]unds withdrawn by cashier's checks."⁸ (The BDO Report, Section 4.1.1 "Known or Documented Withdrawal from

⁸ The BDO Report provided:

4.1.1 Known or Documented Withdrawals from Partnership

It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for personal reasons, using either checks or cash tickets/receipts. The partnership category relates to all activity recorded and/or transacted through the Partnership. Our examination and analysis included the review of the available supermarkets' bank statements, bank reconciliations, checks, cash tickets/receipts and, cash receipt ledgers.

We reviewed the available information and identified those funds withdrawn from the Partnership as follows:

1. Funds withdrawn from Partnership through checks of the business
2. Funds withdrawn evidenced through a signed cash tickets/receipts
3. Funds withdrawn related to tickets already settled by the Partners
4. Payments to third parties on behalf of a partner through tickets or checks
5. Payments to attorneys with partnership's funds
6. Funds withdrawn by cashier's checks

Funds withdrawn from Partnership through checks of the business

In order to identify all monies withdrawn from the Partnership through checks we identified available checks, other than those related to salaries and wages made to the order of the Partners, family members and/or their agents through the Partnership. Our examination included available Partnership bank accounts, related to Plaza Extra-East, Plaza Extra-West and Plaza Extra-Tutu Park.

Funds withdrawn evidenced through a signed cash ticket/receipt

It should also be mentioned that the Yusuf and Hamed families periodically reconciled and evened their cash withdrawals through the use of the "black book" (cash tickets/receipts ledger). The cash ticket receipts ledger was deemed to represent direct evidence of the money directly withdrawn by each individual. Therefore, these cash receipts (withdrawals) were considered a direct acceptance of money that was withdrawn by each family member.

Furthermore, our analysis was aimed to identify all withdrawals made through the Supermarkets by the Partners, family members and/or their agents which could be construed to be partnership distributions. In order to identify all monies withdrawn from the Partnership through cash withdrawals, we reviewed and analyzed available cash tickets/receipts and cash ticket/receipts ledgers from Partnership which included Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park. The cash receipts provided

Partnership.”) More specifically, the BDO examined, inter alia, “[m]onthly bank statements of the Supermarkets’ bank accounts,” “[m]onthly bank statements of each Partner’s bank accounts,” “[m]onthly bank statements of each of the Partner’s agents’ bank accounts,” “[m]onthly brokerage/investment statements of each Partner’s investment accounts,” “[i]ncome tax return of each Partner,” and “[i]ncome tax return of each Partner’s agents.” (Id., at Section 4.4 “Documents Examined.”) “All information, documents, evidence examined and used by BDO was provided by Dudley [Newman Feuerzeig, LLP].” (Id.) This demonstrated that, unlike what Yusuf and United claimed in their objection, the responsive information—to wit, assets or funds in excess of \$10,000 transferred to or from Yusuf or United—could be readily obtained and were in fact obtained by Yusuf and/or Yusuf’s counsel Dudley Newman Feuerzeig, LLP and transferred to the BDO for examination. Thus, Yusuf, United, and/or their agents—Dudley Newman Feuerzeig, LLP and the BDO—already have some or all of the responsive information in their possession for Yusuf and United to retrieve to respond to

were identified and assigned accordingly by the signature or name of the Partner, family member and/or the name of the agent.

Our analysis included the examination of the cash ticket/receipts ledger (“black book”) to identify any cash withdrawals made by the Partners, family members and/or their agents. As part of our procedures, when analyzing the deposits of each individual we identified and traced any cash withdrawals to deposits made within the same day or up to three business days from the withdrawal date in order to avoid double counting.

Funds withdrawn related to cash receipts or tickets already settled by the Partners

In accordance with “Notice of Withdrawal” letter dated August 15, 2012, signed by Mr. Yusuf, partnership withdrawals made by the Hamed family totaled \$2,784,706.25 and withdrawn from United’s operating account.²³ Composed of \$1,600,000 of cash receipts/tickets that had been destroyed, but agreed by the Partners, family members and/or their agents; \$1,095,381.75 in cash receipts tickets; and \$178,103 (\$89,392 and \$88,711) received after closing two (2) bank accounts. For purposes of our analysis, the documents provided with the Notice of Withdrawal were evaluated and the amounts considered as partnership distributions.

...

Funds withdrawn by cashier’s checks

In order to identify any additional monies withdrawn, not directly identifiable through the Partnership or directly linked to the Partnership which could be construed to be partnership distributions, we examined available cashier’s checks issued to either Partners, family members and/or their agents. Furthermore, we also reviewed any available supporting documentation related to such disbursements in order to determine whether such withdrawals/disbursements constituted partnership distributions.

(The BDO Report, Section 4.1.1 “Known or Documented Withdrawal from Partnership.”)

Interrogatory 38. Fourth, Yusuf and United objected to this interrogatory because “these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place.” However, as noted above, Interrogatory 38 was directed at Fathi Yusuf and United, not at the Partnership or John Gaffney, and thus, Fathi Yusuf and United must answer Interrogatory 38. V.I. R. CIV. P. 33(b)(1)(A). In their response to Interrogatory 38, Yusuf and United did not indicate that Interrogatory 38 was duplicative of questions Yusuf and United previously answered. As such, the Master does not find Interrogatory 38 duplicative. Finally, Yusuf and United indicated in his response that Hamed has had access to United’s accounting information and United’s accounting records⁹ and “the burden of reproducing same would be equal for Hamed to gather.” However, Interrogatory 38 is an interrogatory asking for information and not a production of documents. Moreover, even assuming arguendo that the burden of gathering responsive information is equal for Hamed and Yusuf and United, Yusuf and United failed to cite to any proper legal authority, statute, or rule that they are excused from responding to Interrogatory 38 on that basis. In fact, as noted above, even under the circumstances described in Rule 33, the responding party must still answer but may answer by the specification of records and productions of such records. V.I. R. CIV. P. 33(d). Based on the foregoing, the Master finds that Yusuf and United were not excused from responding to Interrogatory 38.

With that said, the Master finds that not all of the information sought in Interrogatory 38 are relevant to Hamed’s ability to prosecute Hamed Claim No. H-151.¹⁰ V.I. R. CIV. P. 26(b)(2)(C)(iii) (“On motion or on its own, the court must limit the ... extent of discovery otherwise allowed by these rules if it determines that ... the proposed discovery is not relevant

⁹ In his opposition, Yusuf further indicated that “Hamed is fully aware of any and all checks written from United” due to the dual signature requirement.” (Opp., at p. 3.)

¹⁰ It is unclear whether Interrogatory 38 was served in connection with any other claims aside from Hamed Claim No. H-151.

to any party's claim or defense.”). In Hamed Claim No. H-151, Hamed essentially claimed that Yusuf took funds from the Partnership via checks written from the Partnership account(s) to himself or United for personal use. Thus, the following information sought in Interrogatory 38 are irrelevant in the context of Hamed Claim No. H-151: (i) information regarding assets, (ii) information regarding funds in excess of \$10,000 that were transferred from Fathi Yusuf’s accounts or United’s accounts, (iii) information regarding funds in excess of \$10,000 that were transferred from non-Partnership account(s) to Fathi Yusuf and United, and (iv) information regarding funds in excess of \$10,000 that were transferred from Partnership account(s) to Fathi Yusuf and United via methods other than checks. Only information regarding funds in excess of \$10,000 that were transferred from the Partnership account(s) to Fathi Yusuf and United via checks are relevant to Hamed’s ability to prosecute Hamed Claim No. H-151. Accordingly, the Master will grant Hamed’s motion to compel as to Interrogatory 38 on the condition that Interrogatory 38 is limited in the context of Hamed Claim No. H-151, and per Hamed’s indication, further limited in the period inquired as follows: “Identify all amounts in excess of \$10,000 that were transferred from the Partnership account(s) to Fathi Yusuf or United Corporation via checks from September 17, 2012 through March 9, 2015.”¹¹ The Master will order Yusuf and United to respond to Interrogatory 38 “fully in writing under oath” in compliance with Rule 33. V.I. R. CIV. P. 33(b)(3).

B. RFPD 4

In his motion, Hamed argued that the Master should compel Yusuf to respond to Interrogatory 38. Hamed made the following assertions in support of his argument: (i) “Hamed

¹¹ While the Partnership, via John Gaffney as the former Partnership accountant or Yusuf as the former managing partner of the Partnership and as the current liquidating partner under the Final Wind Up Plan, is certainly capable of responding to Interrogatory 38 since it sought information regarding funds transferred from the Partnership account(s), Yusuf and United are similarly capable of responding to Interrogatory 38 since it sought information regarding such funds received by Yusuf and United.

needs the information requested to prosecute his claim.” (Motion, p. 7); (ii) These [bank statements and cancelled checks] should be documents that are kept in the ordinary course of business.” (Id.); (iii) “United’s comptroller, John Gaffney, indicated that online statements were used instead” since “Partnership bank statements were not always provided by the banks.”¹² (Id.); and (iv) “To further reduce the burden and tighten up this request, Hamed will now limit this request to January 2012 to the present and limit it to the following bank accounts and cancelled checks: Banco 6269 West operating account,¹³ Banco 8830 East operating account,¹⁴ Scotia 2010 STT operating account, Banco 9091 Partnership Claims account,¹⁵ Banco 9075 Partnership Liquid Expense account,¹⁶ and [a]ny other Partnership operating account that Hamed did not list above[, and] [a]ny other United or Tenant Account not listed above.” (Id., at p. 8.)

In his opposition, Yusuf argued that the Master should deny Hamed’s motion. Yusuf made the following assertions in support of his argument: (i) Yusuf “fully responded in his original response [to RFPD 4] dated March 1, 2018.” (Opp., p. 3); (ii) “Contrary to Hamed’s assertions, these tables and the supporting documentation, produced years ago is detailed and

¹² Hamed referenced: Exhibit 9-Hamed’s questions to John Gaffney and John Gaffney’s response thereto concerning Hamed Claim No. H-146.

¹³ In his motion, Hamed noted that he has the following bank statements and therefore, they do not need to be produced: bank statements from January 2015-June 2015, all of 2014 and 2013, and January 2012. However, “Hamed does not have any cancelled checks for this account [and] Gaffney indicated that cancelled checks were provided for 2012 and from January 2013-July 2013,” so “[t]hose should be produced.” (Motion, p. 8.) Hamed referenced: Exhibit 9.

¹⁴ In his motion, Hamed noted that he has the following bank statements and therefore, they do not need to be produced: bank statements from January 2015-June 2015, all of 2014 and 2013, and January 2012. However, “Hamed does not have any cancelled checks for this account [and] Gaffney indicated that cancelled checks were provided for 2012 and from January 2013-July 2013,” so “[t]hose should be produced.” (Motion, p. 8.) Hamed referenced: Exhibit 9.

¹⁵ In his motion, Hamed noted that he has the following bank statements cancelled checks and therefore, they do not need to be produced: bank statements and cancelled checks for all of 2015 and January-May, July and October 2016.

¹⁶ In this motion, Hamed noted that he has the following bank statements cancelled checks and therefore, they do not need to be produced: bank statements and cancelled checks for October, January-August 2016, and February-December 2015.

organized.” (Id., at p. 4); (iii) “To the extent that there are limited distributions after September 17, 2006, that is consistent as to all of the parties[, e]ven the Hamed parties’ distributions appear to decline during that timeframe” because “after the FBI raid in October of 2001, Federal Monitors were in place monitoring the financial operations of the Plaza Extra stores and any withdrawal had to be approved by the monitors.” (Id.); and (iv) “Further, the Hamed and Yusuf family employees had increased their salaries, which eliminated much of the need to remove funds from the store on a regular basis, as had been the practice previously when the salaries were extremely low.” (Id.)

In his reply, Hamed made the following assertions in response to Yusuf’s opposition:

(i) “Yusuf cannot unilaterally change that agreement [as to which claims John Gaffney would answer (Part A Claims) and which claims Yusuf and Hamed would cover (Part B Claims)] by evading a response to this document request.”¹⁷ (Reply, p. 4); (ii) Based on John Gaffney’s response to Hamed’s questions concerning Hamed Claim No. H-146 and another Hamed’s claim, “there are documents responsive to [RFPD 4] that Yusuf has and is not producing.”¹⁸ (Id., at p. 5); (iii) “Just because Yusuf does not have all of the requested documents, he is not excused from producing those documents he does have that are responsive to the request.” (Id.); (iv) “Rule 34 does not require the party doing discovery to guess at what the other party is holding in terms of documents and then make a list requesting those documents.” (Id., at p. 6); (iv) “While it is an interesting note that cash Partnership withdrawals fell after the government sent in monitors and Partnership salaries were increased, it still is an unresponsive answer to Hamed’s RFPDs 4” and “Yusuf has a duty to produce any cancelled Partnership

¹⁷ Hamed noted that “[t]he parties in early 2018 came to an agreement as to which claims John Gaffney would answer (Part A claims) and which claims Yusuf and Hamed would cover (Part B claims),” that “[t]he Special Master allowed the parties to move claims between the two categories by joint agreement in 2018,” and that “Hamed objects, as the Part A and Part B claims have been settled since 2018.” (Reply, p. 4.)

¹⁸ Hamed referenced: Exhibit 10-John Gaffney’s response to Hamed’s questions to him concerning Hamed Claim No. H-146 and another Hamed’s claim.

checks and bank statements that are in his control.” (Id.); and (v) “Yusuf has not provided any bank statements or cancelled checks that show amounts written to Yusuf’s United Corporation.” (Id.)

1. Analysis

Request for the Production of Documents, 4 of 50, relates to Claim H-151 (previously identified as 3004a)—described in the claims list as “Checks written to Fathi Yusuf for personal use.”

For all of the Partnership bank accounts, please provide all bank statements reflecting checks written to Fathi Yusuf, the United Corporation, as well as the cancelled checks, from 9/17/2006 to present.

Yusuf’s Response:

Yusuf objects to this Request for Production as is unclear as to checks written to United Corporation.

Further responding, Yusuf shows that this request is properly directed to John Gaffney. Yusuf shows that this Request along with other discovery recently submitted should be directed John Gaffney and maintain that these items were not included in the original list Gaffney Items 41 through 141 in what appears to be an attempt to circumvent the agreement for John Gaffney to respond to discovery and that payment for his time to be at the expense of the Hamed pursuant the Joint Discovery and Scheduling Plan. According the request, it appears that John Gaffney has already advised that he does not have all of the cancelled checks as to the various bank accounts.

Further responding, Yusuf directs Hamed's attention to Table 35(b) of the BDO Report chronicles those checks written [sic] Yusuf from 2001 to 2012. Supporting documentation for the allocation was also previously provided Hamed with the original submission of the Yusuf Accounting Claims on September 30, 2016. To the extent that there are additional checks to which Hamed seeks clarification not otherwise listed in Table 35(b), please identify the same and this response be supplemented.

First, Yusuf objected to RFPD 4 as unclear. However, Yusuf did not expressly identify the language in RFPD 4 that he finds unclear. *Cf. Innovative Communications Corp.*, 2007 V.I. LEXIS 77, *9 (“The party objecting to discovery as vague or ambiguous has the burden to show such vagueness or ambiguity. Vagueness or ambiguity is when the definition of the terms or the wording of the request is unclear.”) (citations omitted). Here, Yusuf failed to demonstrate that RFPD 4 is unclear. Second, Yusuf objected to RFPD 4 because he believes that it should be directed to John Gaffney. However, Yusuf failed to cite to any proper legal authority, statute,

or rule that excuses him from responding to RFPD 4 on that basis. In fact, Hamed is permitted to serve RFPD 4 on Yusuf under Rule 34¹⁹ and under the JDSP and the subsequent amendment thereto, Hamed Claim No. H-151 was not a Part A Claim to be responded by John Gaffney.²⁰ Furthermore, the Master finds that Yusuf, as the former managing partner of the Partnership and as the current liquidating partner under the Final Wind Up Plan, is qualified to produce documents on behalf of the Partnership in response to RFPD 4—to wit, Yusuf has knowledge and access to Partnership documents that are responsive to RFPD 4. Moreover, as noted above, in preparing the BDO Report, the BDO reviewed the available information and identified known or documented withdrawal from the Partnership²¹ and examined checks, bank statements, and tax returns, all of which were provided by Yusuf’s counsel Dudley Newman Feuerzeig, LLP. (The BDO Report, Section 4.1.1 “Known or Documented Withdrawal from Partnership” and Section 4.4 “Documents Examined.”) This demonstrated that Yusuf and/or his agents—Dudley Newman Feuerzeig, LLP and the BDO—already have some or all of the responsive information in their possession for Yusuf to retrieve to respond to RFPD 4. Third, Yusuf noted in his response that “Table 35(b) of the BDO Report chronicles those checks written [sic] Yusuf from 2001 to 2012” and “[s]upporting documentation for the allocation was

¹⁹ Rule 34(a)(1) provides that “[a] party may serve on any other party a request within the scope of Rule 26(b): (1) to produce and permit the requesting party or its representative to inspect, copy, test, or sample the following items in the responding party’s possession, custody, or control: (A) any designated documents or electronically stored information -- including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations -- stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form; or (B) any designated tangible things.” V.I. R. CIV. P. 34(a)(1).

²⁰ Yusuf indicated that “this [request] appears to be an attempt to circumvent the agreement for John Gaffney to respond to discovery and that payment for his time to be at the expense of the Hamed pursuant to the [JPSD].” However, the JDSP clearly divided the claims into Part A Claims, which included Hamed Claim Nos. H-41 through H-141 and were to be responded by John Gaffney, and Part B Claims, which included the remaining Hamed claims and Yusuf claims and were to be responded by the parties; under the JDSP, Hamed Claim No. H-151 was included in the Part B Claims. The subsequent amendment to move twenty-three Part B Claims to Part A Claims did not include Hamed Claim No. H-151 and no such amendment to move Hamed Claim No. H-151 from a Part B Claims to Part A Claims was ever ordered.

²¹ *See supra*, footnote 8.

also previously provided Hamed with the original submission of the Yusuf Accounting Claims on September 30, 2016.” However, such reference to the BDO Report and Yusuf’s accounting claim is not a proper response under Rule 34. *See* V.I. R. CIV. P. 34(b)(2)(B) (“For each item or category, the response must either state that inspection and related activities will be permitted as requested or state with specificity the grounds for objecting to the request, including the reasons. The responding party may state that it will produce copies of documents or of electronically stored information instead of permitting inspection.”); V.I. R. CIV. P. 34(b)(2)(C) (“An objection must state whether any responsive materials are being withheld on the basis of that objection with sufficient particularity to identify what has been withheld. An objection to part of a request must specify the part and permit inspection of the rest.”). Lastly, Yusuf noted in his response that “[t]o the extent that there are additional checks to which Hamed seeks clarification not otherwise listed in Table 35(b), please identify the same and this response be supplemented.” However, again, Yusuf failed to cite to any proper legal authority, statute, or rule that excuses him from responding to RFPD 4 on that basis. The Master finds that RFPD 4 described with reasonable particularity the category of items to be inspected—to wit, Hamed requested bank statements and cancelled checks for all the Partnership bank accounts that reflect checks written to Fathi Yusuf and United. V.I. R. CIV. P. 34(b)(1)(A) (“The request: ...must describe with reasonable particularity each item or category of items to be inspected.”). Based on the foregoing, the Master finds that Yusuf was not excused from responding to RFPD 4.

Accordingly, the Master finds the documents requested by RFPD 4 are relevant to Hamed’s ability to prosecute Hamed Claim No. H-151 and will grant Hamed’s motion to compel as to RFPD 4 in the entirety and per Hamed’s indication, limit the period inquired in RFPD 4 as follows: “For all of the Partnership bank accounts, please provide all bank statements reflecting checks written to Fathi Yusuf, the United Corporation, as well as the

cancelled checks, from January 2012 to the present.” For the specific bank accounts referenced in Hamed’s motion, Yusuf will not be required to produce bank statements and cancelled checks that Hamed already has in his possession.²² The Master will order Yusuf to respond to RFPD 4 in compliance with Rule 34. V.I. R. CIV. P. 34.

C. RFPD 40

While Hamed initially moved to compel responses to RFPD 40,²³ Hamed subsequently withdrew RFPD 40 in his reply. (Reply, p. 6.)

CONCLUSION

Based on the foregoing, the Master will grant Hamed’s motion to compel responses to discovery served in connection with Hamed Claim No. H-151 as specified in this Order. Accordingly, it is hereby:

ORDERED that Hamed’s motion to compel as to Interrogatory 38 is **GRANTED** in the context of Hamed Claim No. H-151. Interrogatory 38 shall be revised as follows:

“Identify all amounts in excess of \$10,000 that were transferred from the Partnership account(s) to Fathi Yusuf or United Corporation via checks from September 17, 2012 through March 9, 2015.”

It is further:

ORDERED that, **within thirty (30) days from the date of entry of this Order**, Fathi Yusuf and United shall file a supplemental response to Interrogatory 38 and respond to Interrogatory 38 “fully in writing under oath” in compliance with Rule 33. It is further:

²² See *supra*, footnotes 12-15.

²³ Request for the Production of Documents, 40 of 50. Please produce any and all documents relating to gifts given by United Corporation to Mafi Hamed and Shawn Hamed and/or their spouses at the time of their weddings to Yusuf daughters.

Yusuf’s Response: Yusuf objects as to this Request on the grounds that “the proposed discovery is not relevant to any party’s claim or defense.” V.I. R. Civ. P. 26(b)(2)(C)(iii).

ORDERED that Hamed's motion to compel as to RFPD 4 is **GRANTED** in the context of Hamed Claim No. H-151. RFPD 4 shall be revised as follows:

"For all of the Partnership bank accounts, please provide all bank statements reflecting checks written to Fathi Yusuf, the United Corporation, as well as the cancelled checks, from January 2012 to the present."

It is further:

ORDERED that, **within thirty (30) days from the date of entry of this Order**, Fathi Yusuf, as the former managing partner of the Partnership and as the current liquidating partner under the Final Wind Up Plan, shall **PRODUCE** documents on behalf of the Partnership in response to RFPD 4. For the specific bank accounts referenced in Hamed's motion, Yusuf will not be required to produce bank statements and cancelled checks that Hamed already has in his possession.²⁴ **And** it is further:

ORDERED that Fathi Yusuf and/or United **MUST RESPOND** to Interrogatory 38 and RFPD 4 in compliance with the Virgin Islands Rules of Civil Procedure; Fathi Yusuf and/or United **CANNOT** answer by reference.

DONE and so ORDERED this 10th day of May, 2022.


EDGAR D. ROSS
Special Master

²⁴ See *supra*, footnotes 12-15.