

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,
MUFEED HAMED, HISHAM HAMED,
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

**WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

**ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, PARTNERSHIP
DISSOLUTION, WIND UP, and
ACCOUNTING**

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter “Master”) on Hamed’s motion for partial summary judgment for Hamed Claim No. H-33: Merrill Lynch investment accounts financed with Partnership funds (ML-XXX-XX722, ML-XXX-XX884, and ML-XXX-XX951), filed on November 26, 2019.¹ Thereafter, Yusuf filed his opposition and Hamed filed his reply thereto.

BACKGROUND

In 2016, per the Master’s order, Parties filed their respective accounting claims. Hamed, in his accounting claims filed on October 17, 2016 (hereinafter “Hamed’s Accounting Claims”), included Hamed’s claim for Merrill Lynch investment accounts financed with Partnership funds (ML-XXX-XX722, ML-XXX-XX884, and ML-XXX-XX951).² (Hamed’s Accounting Claims, Exhibit B-1, p. 3) Subsequently, 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.” (Id., at pp. 32, 34) The Court noted that:

Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that “if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary.” First, it

¹ The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed’s motion for partial summary judgment falls within the scope of the Master’s report and recommendation given that Hamed Claim No. H-33 is an alleged asset of the Partnership.

² Hamed’s Accounting Claims provided:

<u>Item No.</u>	<u>Description</u>	<u>Total Claim Amount</u>	<u>...</u>	<u>...</u>
338	Merrill Lynch accounts (ML-XXX-XX722, ML-XXX-XX884, and ML-XXX-XX951) financed with Partnership funds	Pending discovery		

appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006. *Id.*, 2017 V.I. LEXIS 114 at *44, fn. 35.

In light of the Limitations Order, the Master ordered Parties to file their amended accounting claims. Hamed’s claim for Merrill Lynch investment accounts financed with Partnership funds (ML-XXX-XX722, ML-XXX-XX884, and ML-XXX-XX951) was again included in Hamed’s amended accounting claims, filed on filed on October 30, 2017 (hereinafter “Hamed’s Amended Accounting Claims”).³ (Hamed’s Amended Accounting Claims, Exhibit A, p. 14) On November 26, 2019, Hamed filed this instant motion.

STANDARD OF REVIEW

Rule 56 of Virgin Islands Rules of Civil Procedure (hereinafter “Rule 56”) provides that “[a] party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought” and “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. CIV. P. 56; *see also Rymer v. Kmart Corp.*, 68 V.I. 571, 575 (V.I. 2018) (“A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record.”). “A factual dispute is deemed genuine if ‘the evidence is such that a reasonable jury

³ Hamed’s Amended Accounting Claims provided:

New Claim No.	Previous Item No.	Description	...	Amount Due to Partnership From Yusuf
33	338	Merrill Lynch accounts that still existed in 2012 (ML-XXX-XX722, ML-XXX-XX884, and ML-XXX-XX951) financed with Partnership funds	...	Pending discovery

could return a verdict for the nonmoving party[.]’ ” and a fact is material only where it “might affect the outcome of the suit under the governing law[.]” *Todman*, 70 V.I. at 436 (citations omitted) “Once the moving party has identified the portions of the record that demonstrate no issue of material fact, “the burden shifts to the non-moving party to present affirmative evidence from which a jury might reasonably return a verdict in his favor.” *Rymer*, 68 V.I. at 576 (citing *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013) (internal citations and quotation marks omitted). The non-moving party “may not rest upon mere allegations, [but] must present actual evidence showing a genuine issue for trial.” *Rymer*, 68 V.I. at 576 (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)).

Rule 56 provides that “[e]ach summary judgment motion shall include a statement of undisputed facts in a separate section within the motion” and that “[e]ach paragraph stating an undisputed fact shall be serially numbered and each shall be supported by affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon regarding such fact.” V.I. R. CIV. P. 56(c)(1). Additionally, Rule 56(e) states that “[i]f a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or (4) issue any other appropriate order.” V.I. R. CIV. P. 56(e)(1)-(4). The reviewing court must view all inferences from the evidence in the light most favorable to the nonmoving party, and take the nonmoving party's conflicting allegations as true if properly supported. *Williams*, 50 V.I. at 194; *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 527 (V.I. 2013). Moreover, the court “should not weigh the evidence, make credibility determinations, or draw ‘legitimate inferences’ from the facts when ruling upon summary judgment motions because these are the functions of the jury.” *Todman*, 70 V.I. at 437 (quoting *Williams v. United Corp.*, 50 V.I.

191, 197 (V.I. 2008). In deciding a motion for summary judgment, the court’s role “is not to determine the truth, but rather to determine whether a factual dispute exists that warrants trial on the merits.” *Todman*, 70 V.I. at 437 (quoting *Hawkins v. Greiner*, 66 V.I. 112, 117 (V.I. Super. Ct. 2017)). Because summary judgment is “[a] drastic remedy, a court should only grant summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.’” *Rymer*, 68 V.I. at 575-76 (quoting *Williams*, 50 V.I. 191, 194). Finally, Rule 56 requires the court to “state on the record the reasons for granting or denying the motion.” V.I. R. CIV. P. 56(a).

DISCUSSION

In his motion, Hamed argued that “[t]here is no dispute that millions of dollars of the investments were purchased with Partnership ‘store income’ funds—paid from the Partnership’s ‘d/b/a Plaza Extra’ account” and sought “a determination that ‘because Partnership funds purchased the property in these accounts in full or part, the rebuttable presumption is that funds still in the accounts after September 17, 2006 are Partnership property, and Yusuf will bear the burden of proof as set forth in RUPA §204(c)” (Motion, p. 1) Hamed made the following assertions in support of his argument: (i) There are several checks “written from the Partnership’s ‘d/b/a Plaza Extra’ account for Hamdan’s direct deposit into one of the Merrill Lynch accounts” and Hamed included one example of such checks.⁴ (*Id.*, at p. 1, footnote 1); (ii) “Under RUPA §204(c), it is presumed that such funds still in the accounts after September 17, 2006 are Partnership property.” (*Id.*) (Emphasis and footnotes omitted); (iii) “On March 1, 2018, while Yusuf refused to provide account statements, other documents or answers in his discovery responses (see, e.g., Exhibit 2) he admitted that ‘[t]o the extent that payments were made [from

⁴ Hamed referenced: Motion, **Exhibit 1**-(i) a microfiche reproduction of Partnership check number 14985, in the amount of \$2,000,000.00, dated August 13, 2001, made payable to Hamdan Diamond Corporation, Merrill Lynch account ML-XXX-XX884) and (ii) a letter from Merrill Lynch to Federal Bureau of Investigation, dated October 18, 2001, regarding Grand Jury Subpoena Number 01160, Merrill Lynch File Number 2001-15078.

Partnership funds via the Partnership account] to Hamdan Diamond, they were in repayment of loans.”⁵ (Id., at p. 2) (Emphasis and footnotes omitted); (iv) “[W]hile these accounts are ‘titled’ in the name of Hamdan Diamond Corporation and/or Fathi Yusuf’s niece—Yusuf’s characterization of the purchase funds as ‘loan repayments’ is just an issue of competing evidence under RUPA, and subject to the 402(c) [sic] presumption.”⁶ (Id., at pp. 2-3) (Emphasis and footnotes omitted); (v) Hamdan Diamond Corporation “was a corporation created for the Partners to ‘shelter’ store profits and in 1996 Fathi Yusuf and Wally Hamed were the only two directors—both fully authorized to give written or oral instructions on behalf of Hamdan Diamond Corporation to Merrill Lynch in relation to the subject accounts” and Fathieh Yousef, Yusuf’s niece, “was just a straw man” giving Yusuf “full authority...to manage the above account....he will direct any and all investment activity in this account.”⁷ (Id., at p. 2, footnote 6) (Emphasis omitted); (vi) “[B]ecause there were many cash and other transfers from the Partnership to these accounts to buy the investments and no evidence of such underlying loans, it is important that this burden be fully understood before the final depositions and expert reports take place so that Yusuf has the opportunity to consider what evidence he needs to sustain his burden.” (Id., at p. 3) (Emphasis omitted); (vii) “[T]here is absolutely no evidence of any actual underlying loan or funds provided to the Partnership from Yusuf’s brother or his niece—of any actual ‘incoming’ funds flowing from either of them into the Partnership in such large amounts” and “[t]his appears to simply be a scheme to remove pre-tax money from the supermarkets by labeling some checks as

⁵ Hamed referenced: Motion, **Exhibit 2**-Yusuf and United’s Response to Hamed’s Request for Production of Documents 2 of 50, dated March 1, 2018.

⁶ Hamed referenced: Motion, **Exhibit 3**-a letter from Attorney George C. J. Moore to Mercedes Spatz at Merrill Lynch/Client Account Services regarding Hamdan Diamond Corporation, Merrill Lynch account ML-XXX-XX884, dated November 8, 1996.

⁷ Hamed referenced: Motion, **Exhibit 4**-(i) a certificate of incorporation for Hamdan Diamond Corporation, dated May 16, 1996, (ii) a letter from Mercedes Spatz at Merrill Lynch to Attorney George C. J. Moore regarding Hamdan Diamond Corporation, Merrill Lynch account ML-XXX-XX884, dated November 8, 1996, and (iii) a certificate of incumbency for Hamdan Diamond Corporation, dated October 11, 1996; **Exhibit 5**-a letter from Fathieh Yousef to Merrill Lynch Pierce Fenner & Smith regarding Hamdan Diamond Corporation, Merrill Lynch account ML-XXX-XX884, dated May 21, 1997.

repayments.” (Id., at p. 3, footnote 8) (Emphasis omitted); (viii) “[T]he RUPA concept that even if Yusuf tries to suggest his ‘commingling’ of the Partnership funds with bona fide loan repayments was not due to an active intent to steal, where a partner commingles partnership assets with his own assets, the entire commingled mass is presumed to be partnership”⁸ and “[a]gain, the burden shifts [to Yusuf].” (Id., at p. 4); (ix) “After litigation began, Hamed’s lead counsel verified that there were remaining funds in one or more related accounts at Merrill Lynch.”⁹ (Id., at p. 6; Hamed’s statement of facts, ¶ 7); (x) “There are no financial records or other documents that have been produced by Fathi Yusuf or United—other [sic] otherwise located by Hamed after extensive research, that reflect in any way or manner, any incoming funds for loans from Fathieh Yousef or her father; or loan documents were ever on the Partnership’s books— other than notations on outgoing checks.”¹⁰ (Id., at p. 6; Hamed’s statement of facts, ¶ 8); (xi) “Such a RUPA presumption was triggered no matter what entity the property was originally purchased through, or where the title lies” and “[t]hus, instead of Yusuf/United being able to stonewall here because Hamed has the burden, RUPA presumes that these investments are Partnership property” because “[t]he presumption applies ‘even when the partnership provides only a portion of the purchase price [a]nd it can apply even though a third party who is not a partner to the firm holds title.’”¹¹ (Id., at p. 8); (xii) “As Hamed showed in his earlier motion, there is no minority position in any RUPA jurisdiction. Thus, the best rule for the USVI is the application of a rebuttable presumption that property is partnership property once it is shown that Partnership funds were used for the purchase, and the burden shifts to the putative, hostile title holder to rebut that ownership by proving that

⁸ Hamed cited: *Shepard v. Patel*, 2012 U.S. Dist. LEXIS 168102, at *11-12 (D. Ariz. Nov. 26, 2012).

⁹ Hamed referenced: Motion, **Exhibit 8**-declaration of Attorney Carl J. Hartmann III in support of Hamed’s instant motion, dated November 26, 2019.

¹⁰ Id.

¹¹ Hamed cited: *Mogensen v. Mogensen*, 273 Neb. 208, 215-19, 729 N.W.2d 44, 52-54 (2007).

the intent of the Partners was otherwise.”¹² (Id.); and (xiii) “To the extent that Partnership funds were used in full or part to purchase the stocks and other instruments in the Merrill Lynch accounts, the presumption is that they are Partnership Property, even if held in the name of a third party” (Id., at p. 10). As such, Hamed requested the Master to grant his motion.

In their opposition, Yusuf and United argued that the payments made by the Partnership to Mohamad Hamdan were to repay the money Mohamad Hamdan loaned to the Partnership and “there is no evidence to prove Hamed’s theory that the Merrill Lynch accounts for Mohamad Hamdan and Hamdan Diamond were ever partnership accounts and Hamed has failed to produce any such evidence.” (Opp., p. 2) Yusuf and United also argued that that “[i]n any event, the issue is moot as Yusuf has had no involvement with the Merrill Lynch accounts for Hamdan Diamond or the company Hamdan Diamond, or any other accounts referenced in this Motion since 2001 (19 years ago) and is unaware if they even exist.” (Id.) Yusuf and United made the following assertions in support of their arguments: (i) “Yusuf has been clear that the Merrill Lynch accounts which are the subject of this motion have never been Partnership accounts and that any payments made by the Partnership or on behalf of the Partnership to those accounts were to repay loans provided for the benefit of the Partnership.”¹³ (Id., at p. 3); (ii) “[T] here is evidence demonstrating that the Partnership received funds from Mohamad Hamdan (Yusuf’s brother) dating back as early as 1994.”¹⁴ (Id.) For example, “the St. Thomas store received \$100,000.00 in March of 1994 and the St. Croix store received \$25,000.00 in April of 1994”¹⁵ and “[t]he check from Mohamad Hamdan’s Merrill Lynch Cash Management Account and the deposit slip to United’s Banco

¹² Hamed cited: *In re Estate of Bolinger*, 1998 MT 303, ¶ 80, 292 Mont. 97, 116, 971 P.2d 767, 780 (1998).

¹³ Yusuf and United referenced: Motion, **Exhibit 2**.

¹⁴ Yusuf and United referenced: Opp., **Exhibit A**—“Internal Accounting Records and Merrill Lynch Statements for 1994, Bates Numbers Def.’s Production 2696-9 (FBI 035-1472 thru 75), 2739 (FBI 035-1515), 2741 (FBI 035-1517), 2744-5 (FBI 035-1520 thru 21), 2748 (FBI 035- 1524).”

¹⁵ Id.

Popular account for the \$100,000.00 are dated March 16, 1994.”¹⁶ (Id., at p. 4); (iii) “Hamdan Diamond Corporation was not formed until May 1996” and “[h]ence, before that time in 1994, the funds were received from the Account of Yusuf’s brother, Mohamad Hamdan, Merrill Lynch Account #XXX-XX484.”¹⁷ (Id., at p. 3, footnote 1) “All assets from the Mohamad Hamdan, Merrill Lynch Account #XXX-XX484, were then transferred to the Hamdan Diamond Merrill Lynch Account #XXX-XX884 in the later part of 1996.”¹⁸ (Id.); (iv) “[I]nternal accounting documents from United also reflect loan receipts from Mohamad Hamdan beginning in 1994 as well as interest calculations running through 1995... [and] also present in 1997.”¹⁹ (Id., at p. 4); (v) “These documents reflect that United, operating as the Partnership, was viewing the monies received from Hamdan as loans of the Partnership which were due along with interest that was accruing”²⁰ and “[t]he fact that United maintained the same type of documentation as to other loans it received further supports the credibility of these documents and corroborates Yusuf’s testimony that the Partnership was in need of funds during this period and borrowed money, in some cases from individuals to assist during these financial hardships.”²¹ (Id., at p. 5); (vi) “In 1996, there were a number of interest payments made as to the Hamdan loans.”²² (Id.); (vii) “All of these documents paint a consistent picture of a Partnership in financial need during this time,

¹⁶ Yusuf and United referenced: Opp., **Exhibit C**-“March 1994 Check and Deposit Slip, Bates Numbers 84407 (FBI 185-0806).”

¹⁷ Yusuf and United referenced: Opp., **Exhibit B**-“Letter from Merrill Lynch dated September 21, 2016, Bates Number FY 014912, which confirms that Merrill Lynch Account #XXX-XX484 was opened in 1991 for Mohamad Hamdan.”

¹⁸ Yusuf and United referenced: Opp., **Exhibit H**-“Collective exhibit of Incorporation Documents” including an undated documented authorizing the transfer of “all cash & securities funds/security positions” from Mohamad Hamdan’s Merrill Lynch account ML-XXX-XX484 to Hamdan Diamond Corporation’s account. (Bates Numbers 084730 (FBI 185-1127)).

¹⁹ Yusuf and United referenced: Opp., **Exhibit D**-“Internal Accounting records of loans and accrued interest for Hamdan, Bates Numbers 21601-2 (FBI 072-2662 thru 63)” and **Exhibit E**-“Internal Accounting records of loans and accrued interest for Hamdan, Bates Numbers 21604-5 (FBI 072-2665 thru 66).”

²⁰ Id.

²¹ Yusuf and United referenced: Opp., **Exhibit F**-“Internal Accounting records of a loan from Yacoub Saleh reflecting four loans for \$100,000, \$200,000, \$150,000 and \$250,000 in October 1995.”

²² Yusuf and United referenced: Opp., **Exhibit G**-“Two checks in January 1996 for \$50,000 and \$100,000-Bates Numbers 21610-11 (FBI 072-2671 thru 72).”

funds received from Hamdan, acknowledgment of loans due to Hamdan from the Partnership and payments to Hamdan for interest and principal on said loans.”²³ (Id., at p. 6); (viii) “Hamed offered no testimony or other admissible evidence that the payments were anything other than to re-pay loans.” (Id.); (ix) Upon Mohamad Hamdan’s death in 1997, all of the stock of Hamdan Diamond Corporation were transferred to Fathieh Yousef, Mohamad Hamdan’s niece and daughter-in-law, who subsequently “authorized Mr. Yusuf to manage the account.”²⁴ (Id., at p. 7) However, “at the end of 2001, Mr. Yusuf relinquished any position with Hamdan Diamond and no longer had any further involvement with the company and no further authority as to the Merrill Lynch accounts.”²⁵ (Id., at pp. 7-8); (x) “In April 2001, Yusuf wrote to Merrill Lynch to follow up on a telephone conversation: United Corporation has decided to pay all of the notes payable and accrued interest to Mohamad Hamdan. The debts will be paid into his company, Hamdan Diamond, account nos. XXX-XX884 and XXX-XX951.”²⁶ (Id., at p. 7); (xi) “Since that time in 2001, Mr. Yusuf has no information as to Hamdan Diamond or the accounts that are the subject of this Motion including whether any of them are still open.”²⁷ (Id., at p. 8); (xii) “Hamed fails to address the fact that the only evidence that exists demonstrates that payments made to Mohamad Hamdan and then to his company, Hamdan Diamond Corporation, were for the repayment of debts of the Partnership” and “[e]ven if the loans were to Yusuf, from his brother, Mohamad Hamdan, if used for the benefit of the Partnership, then they are Partnership debts.”²⁸ (Id., at p. 9); (xiii) “Hamed has failed to demonstrate that the accounts that he contends are Partnership accounts are

²³ Yusuf and United referenced: Opp., **Exhibits A, C, D, E, and G.**

²⁴ Yusuf and United referenced: Opp., **Exhibit K**-“Hamdan Death Certificate,” **Exhibit L**-“April 22, 1997 Letter from Attorney Simpson,” and **Exhibit M**-“Documents reflecting transfer of stock shares of Hamdan Diamond in name of Fathieh Yousef,” and **Exhibit N**-“May 20-21, 1997 Correspondence.”

²⁵ Yusuf and United referenced: Opp., **Exhibit P**-“Declaration of Fathi Yusuf, 4/17/2020.”

²⁶ Yusuf and United referenced: Opp., **Exhibit O**-“Yusuf letter and payments for the Mohamad Loans.”

²⁷ Yusuf and United referenced: Opp., **Exhibit P.**

²⁸ Yusuf and United referenced: *Varner v. Garth*, 368 So.2d 12, 13–14 (Ala., 1979), citing 68 C.J.S. Partnership s 80 (“The general rule is that the separate debts of a partner, when they inure to the benefit of the partnership, may be converted into a partnership debt with the consent of the several partners.”)

even viable accounts at this time” because “Mr. Yusuf withdrew from his position with Hamdan Diamond and further abdicated any responsibility as to the Hamdan Diamond accounts” and “since the debts to Hamdan were paid in 2001, no further payments have been made since 2001.” (Id., at p. 11); (xiv) “Counsel for Hamed’s statement in his Declaration, Hamed Exhibit 8, that ‘Hamed’s lead counsel verified that there were funds in one or more related accounts at Merrill Lynch’ is not admissible to support this Motion for Summary Judgment” because (a) “it is a hearsay representation by Attorney Hartmann that another attorney ‘Hamed’s lead counsel’ has ‘verified’ something” and (b) “the statement is vague as to ‘funds in one or more related accounts at Merrill Lynch’ without describing which accounts and the amount of the funds.” (Id.); (xv) “[E]ven if admissible, Yusuf has not had any contact with the accounts since 2001 and the last payments to the account from the Partnership were made in 2001 – nearly 19 years ago” and “[c]onsequently, even if still viable, Hamed has not demonstrated any connection between the Partnership and the accounts for almost twenty (20) years.” (Id.); (xvi) “Hamed has made no attempt to address issues of other possible third parties who may have an interest in said accounts at this point, if they are even in existence.” (Id.); and (xvii) “Even if there is a presumption that the payments made by the Partnership to these accounts are Partnership property, there is ample evidence to rebut that presumption and demonstrate a material issue of disputed fact, precluding partial summary judgment.” (Id., at p. 12). As such, Yusuf and United concluded that “questions of fact remain precluding summary judgment” and requested that the Master denies Hamed’s motion. (Id., at p. 14)

In his reply, Hamed reiterated his arguments and disputed the arguments raised in Yusuf and United’s opposition with the following assertions: (i) “Yusuf did not dispute that RUPA §402(c) [sic] governs, nor did he disagree that this presumption exists” but “[i]nstead, he attempted to refute it by arguing that all funds paid into this Hamden account were either (1) repayment of loans to his brother, Mohamad Yousef Hamden, or his company, Hamden Diamond

Corporation (“HDC”) as well as (2) interest payments on those loans from his brother and/or Hamden.” (Reply, p. 2); (ii) “Yusuf has failed to produce any loan documents, like a promissory note, exchanged with his brother, Mohamad Yousef Hamden or HDC.” (Id., at p. 3); (iii) “Yusuf failed to produce even one single check signed by Mohamad Yousef Hamden that was deposited into (or credited to) any Partnership account which might be evidence that such a loan took place” and “[i]nstead, Yusuf only produced one check on Mohamad Hamden’s account for \$100,000 dated March 16, 1994, that he (Fathi Yusuf) signed, not Mohamad Hamden”(Id.) (Emphasis omitted) “Thus, at best, Yusuf can only establish that he took \$100,000 from “his brother’s account” and deposited it into a partnership account in March of 1994.”²⁹ (Id.) (Emphasis omitted); (iv) “The rest of the exhibits [to Yusuf and United’s oppositions] are either “internally generated” accounting records of United Corporation in the 1994 to 1996 time period (see, e.g., Exhibits A, D, E, and J attached to Yusuf’s Opposition) or anecdotal references to similar items during this same 1991 to 1997 time period that have no bearing whatsoever on whether Yusuf’s brother, Mohamad Yousef Hamed, ever made such loan to the partnership (see, e.g. Exhibits B, F, H and L [attached to Yusuf and United’s Opposition]).”³⁰ (Id.); (v) “[R]epayment of a loan with interest would not result in simple “rounded” numbers like \$15,000, \$17,000, \$50,000 or \$100,000 as Yusuf lists in Exhibits G and J attached to his Opposition” and “[i]nstead, they would look like the check he submitted as the repayment of a loan to an unrelated third party, attached as Exhibit F to his Opposition, which has a figure showing a standard interest calculation based on a per diem calculation of ‘\$739,878.72.’” (Id., at pp. 4-5); and (vi) “[A]ccording to Yusuf, these alleged ‘loans’ owed to his brother and/or HDC by the partnership were all repaid in full by April of 2001” but a Partnership check in the amount of \$2,000,000.00, dated August 13, 2001, was deposited into Merrill Lynch Account ML-XXX-XX8843 “over 4 years after Mohamed Hamden’s death

²⁹ Hamed referenced: Opp., **Exhibit C**.

³⁰ Hamed referenced: Reply, **Exhibit 1**-“A one page summary of these exhibits, with dates referencing each exhibit.”

and four months after Yusuf claims he repaid all of the alleged loans due HDC.”³¹ (Id., at p. 6)
“Thus, even Yusuf cannot claim that this deposit was made to repay some non-existent loan.” (Id.)
As such, Hamed requested the Master to grant his motion.

1. Merrill Lynch Accounts ML-XXX-XX722, ML-XXX-XX884, and ML-XXX-XX951

Although Hamed Claim No. H-33 involves three Merrill Lynch investment accounts, ML-XXX-XX722, ML-XXX-XX884, and ML-XXX-XX951 (each, a “Merrill Lynch Account” and collectively, “Merrill Lynch Accounts”),³² Hamed’s instant motion and reply only addressed Merrill Lynch Account ML-XXX-XX884. In his motion, Hamed asserted that there are several checks “written from the Partnership’s ‘d/b/a Plaza Extra’ account for Hamdan’s direct deposit into one of the Merrill Lynch accounts” but in support of his assertion, Hamed only provided a microfiche reproduction of a Partnership check number 14985, in the amount of \$2,000,000.00, dated August 13, 2001, made payable to “Hamdan Diamond Corporation” for “Merrill Lynch Account ML-XXX-XX884” (hereinafter “Partnership Check No. 14985”). (Motion, p.1, footnote 1; Motion, Exhibit 1) Furthermore, the exhibits to Hamed’s motion only referenced Merrill Lynch Account ML-XXX-XX884 and not Merrill Lynch Account ML-XXX-XX722 or Merrill Lynch Account ML-XXX-XX951.³³ Hamed’s reply was similarly devoid of information and evidence

³¹ Hamed referenced: Motion, **Exhibit 1**.

³² The Merrill Lynch Accounts allowed the account holders to invest in the stock market through the accounts.

³³ With the exception of **Exhibit 2** (Yusuf and United’s Response to Hamed’s Request for Production of Documents 2 of 50, dated March 1, 2018) and **Exhibit 6** (Yusuf and United’s Response to Hamed’s Interrogatory 6 of 50, dated May 15, 2018), which referenced all three Merrill Lynch Accounts.

Exhibits to Hamed’s Motion	Merrill Lynch Account Number Referenced, If Any
Exhibit 1	ML-XXX-XX884
Exhibit 2	Not applicable.
Exhibit 3	ML-XXX-XX884
Exhibit 4	ML-XXX-XX884
Exhibit 5	ML-XXX-XX884
Exhibit 6	Not applicable.
Exhibit 7	None
Exhibit 8	None

for Merrill Lynch Account ML-XXX-XX722 and Merrill Lynch Account ML-XXX-XX951. Hamed's reply included: (i) a copy of Partnership Check No. 14985, (ii) a copy of Mohamad Hamdan check number 159, in the amount of \$100,000.00, dated March 16, 1994, made payable to "Plaza Extra, St. Thomas" (hereinafter "Mohamad Hamdan Check No. 159"),³⁴ (iii) a copy of Partnership check number 3068, in the amount of \$50,000.00, dated January 12, 1996, made payable to "Merrill Lynch Pierce Fenner and Smith Inc." for "Mohamad Hamdan (interest)" (hereinafter "Partnership Check No. 3068"),³⁵ (iv) a copy of Partnership check number 3103, in the amount of \$100,000.00, dated January 22, 1996, made payable to "Merrill Lynch" for "payment of interest on loan from Hamdan" (hereinafter "Partnership Check No. 3103"),³⁶ (v) a copy of Partnership check number 3509, in the amount of \$739,878.72, dated May 10, 1996, made payable to "Yacoub Saleh" for "Principal & Interest paid in full" (hereinafter "Partnership Check No. 3509"),³⁷ and (vi) a copy of a Merrill Lynch deposit slip in the amount of \$500,000.000, dated April 12, 2001, for the account of "Hamdan Diamond Corp.", Merrill Lynch Account ML-XXX-XX884 (hereinafter "April 12, 2001 ML Deposit Slip").³⁸ Upon inspection, none of the checks and deposit slips included in Hamed's reply referenced Merrill Lynch Account ML-XXX-XX722 or Merrill Lynch Account ML-XXX-XX951. In fact, aside from Partnership Check No. 14985 and April 12, 2001 ML Deposit Slip,³⁹ which referenced Merrill Lynch Account ML-XXX-XX884,

³⁴ See **Exhibit C** to Yusuf and United's opposition.

³⁵ See **Exhibit G** to Yusuf and United's opposition.

³⁶ *Id.*

³⁷ See **Exhibit F** to Yusuf and United's opposition.

³⁸ See **Exhibit O** to Yusuf and United's opposition.

³⁹ According to **Exhibit O** to Yusuf and United's opposition, the April 12, 2001 ML Deposit Slip was one of several checks and deposit slips enclosed with Yusuf's April 11, 2001 letter to Merrill Lynch (hereinafter "Yusuf's April 11, 2001 Letter to ML") stating, *inter alia*, that "United Corporation has decided to pay all of the notes payable and accrued interest to Mohammad Hamdan. The debts will be paid into his company, Hamdan Diamond, account nos. [ML-XXX-XX884] and [ML-XXX-XX951]." The following checks and deposit slips were included as part of **Exhibit O**: (i) Scotiabank check 3044972507, in the amount of \$500,000.00, dated April 16, 2001, made payable to "Hamdan Diamond Corp.", (ii) a Merrill Lynch deposit slip in the amount of \$700,000.000, with illegible dates, illegible account holder name, and illegible account number, (iii) Scotiabank check 3044972513, in the amount of \$700,000.00, dated April 19, 2001, made payable to "Hamdan Diamond Corporation", (iv) a Merrill Lynch deposit slip in the amount of \$1,400,000.000, dated April 19, 2001, for the account of "Hamdan Diamond Corp.", Merrill

none of the checks referenced a Merrill Lynch account number at all. While Yusuf and United provided copies of other checks and deposit slips as exhibits to their opposition, but again, the exhibits did not reference Merrill Lynch Account ML-XXX-XX722 or Merrill Lynch Account ML-XXX-XX951; instead, they only referenced Merrill Lynch Account ML-XXX-XX884 and another Merrill Lynch account—ML-XXX-XX484—which is not included in Hamed Claim No. H-33.⁴⁰

Lynch Account ML-XXX-XX884, (v) a Merrill Lynch deposit slip in the amount of \$200,000.000, dated April 23, 2001, for the account of “Hamdan Diamond Corporation”, Merrill Lynch Account ML-XXX-XX884, and (vi) Scotiabank check 3044972519, in the amount of \$200,000.00, dated April 23, 2001, made payable to “Hamdan Diamond Corporation.” Not all of the checks and deposit slips referenced a Merrill Lynch account number, but when they did, they only referenced Merrill Lynch Account ML-XXX-XX884 (barring the deposit slip with the illegible account number).

⁴⁰

Exhibits to Yusuf and United’s Opposition	Merrill Lynch Account Number Referenced, If Any
Exhibit A	ML-XXX-XX484
Exhibit B	ML-XXX-XX484
Exhibit B-1	None. However, Yusuf and United’s Initial Rule 26 Disclosure, dated August 1, 2013, included a coversheet of discovery produced by the Government to the criminal defendants in <i>United States, et al. v. United Corp., et al.</i> , case no. 1:05-cr-15 (D.V.I.) detailing the file name, date, and description, and it is unclear whether any of the discovery items listed therein referenced any Merrill Lynch account.
Exhibit C	None
Exhibit D	None
Exhibit E	None
Exhibit F	None
Exhibit F-1	None
Exhibit G	ML-XXX-XX484
Exhibit H	ML-XXX-XX484
Exhibit I	None
Exhibit J	None
Exhibit K	None
Exhibit L	None
Exhibit M	None
Exhibit N	ML-XXX-XX884
Exhibit O	While Yusuf’s April 11, 2001 Letter to ML referenced ML-XXX-XX884 and ML-XXX-XX951, not all of the checks and deposit slips referenced a Merrill Lynch account number, but when they did, they only referenced Merrill Lynch Account ML-XXX-XX884 (barring the deposit slip with the illegible account number). <i>See supra</i> , footnote 39.
Exhibit P	None
Exhibit Q	Not applicable – Yusuf and United’s statement of facts
Exhibit R	Not applicable – Yusuf and United’s response to Hamed’s statement of facts

Thus, the Master concludes that Hamed has not satisfied his burden of establishing that there are no genuine disputes as to any material fact regarding Hamed's motion for partial summary judgment for "a determination that, 'because Partnership funds purchased the property in these accounts in full or part, the rebuttable presumption is that funds still in the accounts after September 17, 2006 are Partnership property, and Yusuf will bear the burden of proof as set forth in RUPA §204(c)'" as to Merrill Lynch Account ML-XXX-XX722 and Merrill Lynch Account ML-XXX-XX951. *See Rymer*, 68 V.I. at 575-76 (quoting *Williams*, 50 V.I. 191, 194) ("Because summary judgment is "[a] drastic remedy, a court should only grant summary judgment when the 'pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.'"); *see also, Todman*, 70 V.I. at 437 (In deciding a motion for summary judgment, the court's role "is not to determine the truth, but rather to determine whether a factual dispute exists that warrants trial on the merits.").

2. Merrill Lynch Account ML-XXX-XX884

Here, it is not in dispute that Hamdan Diamond Corporation is the account holder of Merrill Lynch Account ML-XXX-XX884⁴¹ but it is in dispute whether Merrill Lynch Account ML-XXX-XX884's assets belong to the Partnership or Hamdan Diamond Corporation. In his motion, Hamed argued that pursuant to Title 26 V.I.C. § 24(c),⁴² Merrill Lynch Account ML-XXX-XX884's assets is presumed to be Partnership property "because Partnership funds

⁴¹ In his statement of facts not in dispute, Hamed stated:

2. When Hamden Diamond opened account ML-XXX-XX884..." (Motion, p. 5)

In their opposition, Yusuf and United stated that (i) Merrill Lynch Account #XXX-XX484 was opened in 1991 for Mohammad Hamdan" (Opp., p. 3, footnote 1) and (ii) "In 1996, Mohammad Hamdan created Hamdan Diamond [Corporation]...[and] all of the investments in Mohammad Hamdan's personal investment account with Merrill Lynch #XXX-XX484 were transferred to the Hamdan Diamond account opened at Merrill Lynch under account #XXX-XX884" (Id., at p. 6; *see also*, Motion, **Exhibit 2**-Yusuf and United's Response to Hamed's Request for Production of Documents 2 of 50, dated March 1, 2018; and Motion, **Exhibit 6**-Yusuf and United's Response to Hamed's Interrogatory 6 of 50, dated May 15, 2018)

⁴² By Act No. 6205, the Revised Uniform Partnership Act (RUPA) was adopted in the U.S. Virgin Islands, effective May 1, 1998, the "Uniform Partnership Act." Title 26 V.I.C. §1, et seq. RUPA § 204 was adopted as Title 26 V.I.C. § 24.

purchased the property in these accounts in full or part” and thus, the burden shifts to Yusuf to overcome the presumption. (Motion, p. 1)

A. Joinder

Rule 19 of Federal Rule of Civil Procedure (hereinafter “Rule 19”) provides that “[a] person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if: (A) in that person's absence, the court cannot accord complete relief among existing parties; or (B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may: (i) as a practical matter impair or impede the person's ability to protect the interest; or (ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.” V.I. R. CIV. P. 19(a)(1). Rule 19 also provides that “[w]hen asserting a claim for relief, a party must state: (1) the name, if known, of any person who is required to be joined if feasible but is not joined; and (2) the reasons for not joining that person.” V.I. R. CIV. P. 19(c). Here, the transfer of any asset from Merrill Lynch Account ML-XXX-XX884 cannot occur without Hamdan Diamond Corporation being a party to this claim and a final decision cannot be rendered without its joinder. Hamed did not provide any reasons for not joining Hamdan Diamond Corporation.

Pursuant to Rule 19, “[i]f a person has not been joined as required, the court must order that the person be made a party.” V.I. R. CIV. P. 19(a)(2). However, the Master cannot join Hamdan Diamond Corporation because Hamed pursued this claim as one of his accounting claims,⁴³ and accounting claims are “assertions of credits and charges to be applied in ascertaining

⁴³ In the Limitations Order, the Court noted that it provided a “detailed analysis of the nature of the claims presented by the parties in this action” in its memorandum opinion and order striking the jury demand, entered on July 25, 2017, and explained that “despite the misleading form of the Complaint and Counterclaim, Hamed presents only a single action for dissolution, wind up, and accounting, while Yusuf presents an action for accounting, and an action for corporate dissolution, and United presents an action for debt/breach of contract for failure to pay rent.” (Limitations Order, p. 10, footnote 9)

the balance of each partner's individual partnership account.”⁴⁴ Under Rule 19, “[i]f a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed” after considering a plethora of factors set forth under Rule 19(b).⁴⁵ V.I. R. CIV. P. 19(b). Upon consideration of the factors included in Rule 19(b),⁴⁶ the Master finds that Hamed Claim No. H-33 should proceed among the existing parties.

⁴⁴ In an order dated June 2, 2020, the Master noted:

As the Court stated in the Limitations Order, “under the RUPA framework, the “claims” to which the parties refer are, in fact, nothing more than the parties’ respective assertions of credits and charges to be applied in ascertaining the balance of each partner's individual partnership account.” (Limitations Order, p. 11) Thus, the resolution of an Accounting Claim should not be viewed as “damages” awarded against one partner and recovered by the other partner, and instead, it should be viewed as credits or charges to be applied in ascertaining the balance of each partner’s individual partnership account. (Order, dated June 2, 2020, p. 25)

⁴⁵ Rule 19. Required Joinder of Parties

...

(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

- (1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;
- (2) the extent to which any prejudice could be lessened or avoided by:
 - (A) protective provisions in the judgment;
 - (B) shaping the relief; or
 - (C) other measures;
- (3) whether a judgment rendered in the person's absence would be adequate; and
- (4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

⁴⁶ The Master’s analysis of the factors under Rule 19:

Rule 19(b)(1): the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties.

In the event that, in Hamdan Diamond Corporation’s absence, the Master finds Merrill Lynch Account ML-XXX-XX884’s assets belong to the Partnership and renders a judgment accordingly, it would greatly prejudice Hamdan Diamond Corporation as the account holder of Merrill Lynch Account ML-XXX-XX884—to wit, Hamdan Diamond Corporation would be deprived of the opportunity to be heard.

Rule 19(b)(2): the extent to which any prejudice could be lessened or avoided by: (A) protective provisions in the judgment; (B) shaping the relief; or (C) other measures:

In the event that the Master finds Merrill Lynch Account ML-XXX-XX884’s assets belong to the Partnership, the Master could lessen the prejudice by shaping the relief so that instead of transferring Merrill Lynch Account ML-XXX-XX884’s assets to the Partnership, the Master can apply credits and/or charges in an amount equal to Merrill Lynch Account ML-XXX-XX884’s assets to the balance of each partner’s individual partnership account.

Rule 19(b)(3): whether a judgment rendered in the person's absence would be adequate; and

B. Title 26 V.I.C. § 24

Title 26 V.I.C. § 24 of the U.S. Virgin Islands Uniform Partnership Act⁴⁷ sets forth the rules determining when property becomes partnership property. *See Hamed v. Yusuf*, 2015 V.I. LEXIS 155, *7 (V.I. Sup. April 27, 2015) (“Without a written partnership agreement, as is the case between Hamed and Yusuf, courts will look to the Uniform Partnership Act to determine a partnership's property and its obligations to creditors (codified at 26 V.I.C. § 24; § 177, respectively).”). Title 26 V.I.C. § 24(c) provides that “[p]roperty is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.”⁴⁸ Title 26 V.I.C. § 24(c).

As discussed above, it is feasible for the Master to shape the relief so that a judgment rendered in Hamdan Diamond Corporation's absence would be adequate.

Rule 19(b)(4): whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder.

Hamed would have an adequate remedy if the action were dismissed for nonjoinder because Hamed could bring a separate action against Hamdan Diamond Corporation regarding Merrill Lynch Account ML-XXX-XX884's asset.

⁴⁷ Title 26 V.I.C. §24 provides:

§24. When property is partnership property

(a) Property is partnership property if acquired in the name of:

(1) the partnership; or

(2) one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership but without an indication of the name of the partnership.

(b) Property is acquired in the name of the partnership by a transfer to:

(1) the partnership in its name; or

(2) one or more partners in their capacity as partners in the partnership, if the name of the partnership is indicated in the instrument transferring title to the property.

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership.

(d) Property acquired in the name of one or more of the partners, without an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership and without use of partnership assets, is presumed to be separate property, even if used for partnership purposes.

⁴⁸ In his motion, Hamed concluded after a very brief *Banks* analysis of Title 26 V.I.C. §24(c) that “the best rule for the USVI is the application of a rebuttable presumption that property is partnership property once it is shown that Partnership funds were used for the purchase, and the burden shifts to the putative, hostile title holder to rebut that ownership by proving that the intent of the Partners was otherwise.” (Motion, p. 8) While the Master is required to conduct a *Banks* analysis when presented with an issue of first impression in this jurisdiction, a *Banks* analysis is not the starting point in interpreting a statute. *In re L.O.F.*, the U.S. Virgin Islands Supreme Court stated:

In his briefs, Hamed pointed out that, *inter alia*, there is no evidence of any loan from Mohamad Hamdan/Hamdan Diamond Corporation to the Partnership and that there are only “internally generated” accounting records without any actual loan documents, such as a promissory note, between the Partnership and Mohamad Hamdan/Hamdan Diamond Corporation evidencing such loans. However, Yusuf and United countered that the loans from Mohamad Hamdan/Hamdan Diamond Corporation to the Partnership were evidenced by internal accounting records and that the Partnership made multiple payments towards the loans (the principal amount and interest accrued thereto). Based on the parties’ arguments, there is clearly a genuine dispute as to whether the payments made from the Partnership to Merrill Lynch Account ML-XXX-

The first step when interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning. If the statutory language is unambiguous and the statutory scheme is coherent and consistent, no further inquiry is needed. In analyzing a statutory scheme, we must give effect to every provision, making sure to avoid interpreting any provision in a manner that would render it — or another provision — wholly superfluous and without an independent meaning or function of its own. But even where a statutory scheme is plain and internally consistent, no statute should be read literally if such a reading is contrary to its objective [and] this Court must consider whether applying the statute’s literal language leads to ... absurd consequences or is otherwise inconsistent with the Legislature’s intent. 62 V.I. 655, 661 (2015) (Internal quotations marks and citations omitted)

Title 26 V.I.C. §24 provides in relevant part:

(c) Property is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person’s capacity as a partner or of the existence of a partnership. Title 26 V.I.C. §24(c).

The Master finds the language of Title 26 V.I.C. §24(c) plain and unambiguous that it creates a rebuttable presumption that the property is partnership property if purchased with partnership assets “even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person’s capacity as a partner or of the existence of a partnership.” Unlike Title 26 V.I.C. §24(a), Title 26 V.I.C. §24(c) does not use mandatory language (“Property **is** partnership property if...”). *See supra*, footnote 47 (Emphasis added). Furthermore, Title 26 V.I.C. § 24 adopted the language of RUPA § 204 in the entirety and the comments to RUPA § 204 provides in relevant part:

3. Ultimately, it is the intention of the partners that controls whether property belongs to the partnership or to one or more of the partners in their individual capacities, at least as among the partners themselves. RUPA sets forth two rebuttable presumptions that apply when the partners have failed to express their intent.

First, under subsection (c), property purchased with partnership funds is presumed to be partnership property, notwithstanding the name in which title is held. The presumption is intended to apply if partnership credit is used to obtain financing, as well as the use of partnership cash or property for payment. Unlike the rule in subsection (b), under which property is **deemed** to be partnership property if the partnership’s name or the partner’s capacity as a partner is disclosed in the instrument of conveyance, subsection (c) raises only a **presumption** that the property is partnership property if it is purchased with partnership assets. (RUPA § 204, Comment 3) (Emphasis in original).

As such, the Master finds the statutory language of Title 26 V.I.C. §24(c) unambiguous that it creates a rebuttable presumption and the statutory scheme coherent and consistent, and therefore, no further inquiry is needed.

XX884 were for the repayment of loans or for financing Merrill Lynch Account ML-XXX-XX884. In fact, Hamed conceded in his motion that it is in dispute whether the payments made were for the repayment of loans or for financing the Merrill Lynch Account ML-XXX-XX884—to wit, Hamed stated “Yusuf’s characterization of the purchase funds as ‘loan repayments’ is just an issue of competing evidence under RUPA, and subject to the 402(c) [sic] presumption.” (Id., at pp. 2-3) (Emphasis and footnotes omitted) As such, there is clearly a genuine dispute as to whether Merrill Lynch Account ML-XXX-XX884’s assets were purchased with Partnership funds (in the event that the payments made from the Partnership to Merrill Lynch Account ML-XXX-XX884 were for financing the account) or Hamdan Diamond Corporation funds (in the event that the payments made from the Partnership to Merrill Lynch Account ML-XXX-XX884 were for the repayment of loans) and thereby there is clearly a genuine dispute as to whether Merrill Lynch Account ML-XXX-XX884’s assets belong to the Partnership or Hamdan Diamond Corporation. Thus, unlike what Hamed argued, the rebuttable presumption that Merrill Lynch Account ML-XXX-XX884’s assets belong to the Partnership pursuant to Title 26 V.I.C. §24(c) has not been met.

At this juncture, the Master concludes that Hamed has not satisfied his burden of establishing that there are no genuine disputes as to any material fact regarding Hamed’s motion for partial summary judgment for “a determination that, ‘because Partnership funds purchased the property in these accounts in full or part, the rebuttable presumption is that funds still in the accounts after September 17, 2006 are Partnership property, and Yusuf will bear the burden of proof as set forth in RUPA §204(c)’” as to Merrill Lynch Account ML-XXX-XX884. *See Rymer*, 68 V.I. at 575-76 (quoting *Williams*, 50 V.I. 191, 194) (“Because summary judgment is “[a] drastic remedy, a court should only grant summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.’”); *see also, Todman*, 70 V.I. at 437 (In deciding a motion for summary judgment, the court’s

role “is not to determine the truth, but rather to determine whether a factual dispute exists that warrants trial on the merits.”).

C. Commingling of Funds

Here, Hamed also argued that under “the RUPA concept even if Yusuf tries to suggest his ‘commingling’ of the Partnership funds with bona fide loan repayments was not due to an active intent to steal, where a partner commingles partnership assets with his own assets, the entire commingled mass is presumed to be partnership” and that “[t]he presumption applies ‘even when the partnership provides only a portion of the purchase price.’” (Motion, pp. 4, 8) In support of his argument, Hamed cited to a case from the District Court of Arizona and a case from the Supreme Court of Nebraska. (Id.)

However, Hamed failed to explain why cases from the District Court of Arizona and the Supreme Court of Nebraska are binding on the courts in the U.S. Virgin Islands and Hamed failed to cite any binding authority. Rule 11 of Federal Rule of Civil Procedure (hereinafter “Rule 11”) provides that “[b]y presenting to the court a pleading, written motion, or other paper — whether by signing, filing, submitting, or later advocating it — an attorney or self-represented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:… (5) **that the applicable Virgin Islands law has been cited, including authority for and against the positions being advocated by the party.**” V.I. R. CIV. P. 11(b)(5) (Emphasis added). “Courts have reasoned that by failing to develop the law by citing the appropriate legal authority to bolster arguments, movants defeat the purpose of adversarial system.” *V.I. Taxi Association v. West Indian Company, Limited*, 2016 V.I. LEXIS 150, *5 (V.I. Sup. Oct. 18, 2016); *see also, In re Catalyst Litig.*, 67 V.I. 16, n. 12 (V.I. Super. Ct. 2015) (“The Supreme Court of the Virgin Islands has established that in order for a motion to be properly before the court, parties must support their arguments by citing the proper legal authority, statute or rule.”); *Antilles School, Inc. v. Lembach*, 64 V.I. 400, n. 13 (V.I. 2016) (“Members of

the Virgin Islands Bar ... must be cognizant of their responsibility to serve as advocates for their clients, which includes making all necessary legal arguments ...”); *Joseph v. Joseph*, 2015 V.I. LEXIS 43, *5 (V.I. Super. Ct. Apr. 23, 2015) (the Court will not make a movant's arguments for him when he has failed to do so). Thus, because Hamed failed to cite the appropriate legal authority in support of his argument with regard to commingling of funds, the Master finds Hamed’s argument deficient and the Master need not address it. *See V.I. Taxi Association*, 2016 V.I. LEXIS 170 at *7 (“Accordingly, if a movant fails to identify applicable law to support its motion, this Court shall deny the motion as deficient.”); *see also People of the Virgin Islands v. Penn*, 53 V.I. 315, 318 (V.I. Super. July 14, 2010) (denying a defendant's motion to dismiss when he did not present any argument or case law supporting his claim of discrimination).

D. Limitations Order

In his motion, Hamed specifically referenced Partnership Check No. 14985. (Motion, Exhibit 1) In his reply, Hamed referenced the documents Yusuf and United attached as exhibits to their opposition and provided a summary thereto with dates.⁴⁹ (Reply, Exhibit 1) All the

⁴⁹ **Exhibit 1** to Hamed’s reply provided:

- YUSUF EXHIBITS TO OPPOSITION MEMORANDUM RB HAMED CLAIM H-33
- Exhibit A-Internal Accounting Records and Hamdan Merrill Lynch Statements **for 1994**
- Exhibit B-Letter from Merrill Lynch confirming that Merrill Lynch Account [ML-XXX-XX484] was **opened in 1991** for Mohammad Hamdan
- Exhibit B-1-Yusuf and United's Initial Disclosures, Aug. 1, 2013 and Notice of Service of Supplemental Disclosures, Aug. 23, 2013 with FBI Index cover sheet
- Exhibit C-**March 1994** Check and Deposit Slip from Hamdan to United
- Exhibit D-**1996** Internal Accounting Records of loans and accrued interest for Hamdan
- Exhibit E-**1997** Internal Accounting Records of loans and accrued interest for Hamdan
- Exhibit F-**1995** Internal Accounting records of similar loan documentation
- Exhibit F-1-Fathi Yusuf 1/21/20 Depo. excerpts and **January 1995** Daily News article
- Exhibit G-Two checks in **January 1996** for \$50,000 and \$100,000 to Hamdan
- Exhibit H-Collective exhibit of **1996** Incorporation Documents for Hamdan Diamond Corp.
- Exhibit I-Last Will and Testament of Mohammad Hamdan dated **September 8, 1996**.
- Exhibit J-Collective Exhibit of **1996** Internal accounting for Tenant Account, V.I. Community Bank Stmt and copy of check for payment of loan to Hamdan
- Exhibit K-Hamdan Death Certificate dated **April 13, 1997**.

transactions referenced therein occurred before September 17, 2006, the cutoff date set forth in the Court's Limitations Order.

The Court clearly ordered in its Limitations Order that only claims "based upon transactions that occurred on or after September 17, 2006" will be considered, regardless of whether it is disputed or undisputed since "it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed" and "even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006." (Limitations Order, p. 11) Thus, Hamed Claim No. H-33 as to Merrill Lynch Account ML-XXX-XX884 is barred by the Limitations Order.

CONCLUSION

Based on the foregoing, the Master will deny Hamed's motion for partial summary judgment for Hamed Claim No. H-33 and strike Hamed Claim No. H-33 as to Merrill Lynch Account ML-XXX-XX884. Accordingly, it is hereby:

ORDERED that Hamed's motion for partial summary judgment for Hamed Claim No. H-33 is **DENIED**. **And** it is:

-
- Exhibit L-**April 22, 1997** Letter from Attorney Simpson
 - Exhibit M-**May 16, 1997** Documents reflecting transfer of stock shares of Hamdan Diamond in name of Fathieh Yousef
 - Exhibit N-**May 20-21, 1997** Correspondence (Reply, Exhibit 1) (Emphasis in original)
 - Exhibit O-**April 11, 2001** Yusuf letter and payments for the Mohammad Hamdan Loans
 - Exhibit P-Declaration of Fathi Yusuf, 4/17/2020
 - Exhibit Q-Yusuf and United's Statement of Material Facts
 - Exhibit R-Yusuf and United's Opposition to Hamed's Statement of Material Facts (Reply, Exhibit 1) (Emphasis in original)

ORDER

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ORDERED that Hamed Claim No. H-33 as to Merrill Lynch Account ML-XXX-XX884 shall be and is hereby **STRICKEN**.

DONE and so ORDERED this 7th day of July, 2020.


EDGAR D. ROSS
Special Master