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.	**Civil No. SX-12-CV-370** **ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, PARTNERSHIP DISSOLUTION, WIND UP, and ACCOUNTING**
WALEED HAMED, AS EXECUTOR OF THE ESTATE OF MOHAMMAD HAMED, PLAINTIFF, **V.** **UNITED CORPORATION,** DEFENDANT.	CONSOLIDATED WITH **Civil No. SX-14-CV-287** **ACTION FOR DAMAGES and DECLARATORY JUDGMENT**
MOHAMMAD HAMED, PLAINTIFF, **V.** **FATHI YUSUF,** DEFENDANT.	CONSOLIDATED WITH **Civil No. SX-14-CV-378** **ACTION FOR DEBT and CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter "Master") on United's motion for partial summary judgment for Yusuf Claim No. Y-8: United's claim for water sales revenue collected by the Partnership from April 1, 2004 through February 28, 2015.[1] In response, Hamed filed his opposition and cross-motion for summary judgment thereto, and United filed its reply and opposition to Hamed's cross-motion for summary judgment thereafter.

BACKGROUND

In 2016, per the Master's order, Parties filed their respective accounting claims. Yusuf's accounting claims, filed on September 30, 2016 (hereinafter "Yusuf's Accounting Claims"), included United's claim for water sales revenue collected by the Partnership from April 1, 2004 through February 28, 2015:

> F. Water Revenue Re Plaza Extra-East
>
> Beginning in 1994, Plaza Extra-East began selling United's water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 ($52,000) and 1998 ($75,000) as $5,291.66 per month. Multiplying the average monthly sales revenue by 131 months, United is owed $693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015. (Yusuf's Accounting Claims, p. 9)

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

[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 United's motion for partial summary judgment falls within the scope of the Master's report and recommendation given that Yusuf Claim No. Y-8 is an alleged debt of the Partnership.

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)

In light of the Limitations Order, the Master ordered Parties to file their amended accounting claims. United's claim for water sales revenue collected by the Partnership from April 1, 2004 through February 28, 2015 was again included in Yusuf's amended accounting claims, filed on filed on October 30, 2017 (hereinafter "Yusuf's Amended Accounting Claims").[2] On April 17, 2020, United 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 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

[2] Yusuf's Amended Accounting Claims provided:

> F. Water Revenue Re Plaza Extra-East
>
> Beginning in 1994, Plaza Extra-East began selling United's water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 ($52,000) and 1998 ($75,000) as $5,291.66 per month. Multiplying the average monthly sales revenue by 131 months, United is owed $693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28, 2015. (Yusuf's Amended Accounting Claims, p. 12)

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 its motion, United argued that "[t]he water sold to third parties (including water delivery services) during that period was pumped from a cistern underneath the shopping center that was fed by two wells on shopping center property" and "[t]he water collection and pumping infrastructure is indisputably part of the United Shopping Center that is owned by United Corporation ("United"), which can only mean that the water and proceeds from its sale belong to United." (Motion, p. 2) United further argued that "[s]ince the partnership collected the proceeds of United's sales of water to third party customers, United's claim for those water revenues is in the nature of a claim for restitution, unjust enrichment, or conversion" and that "[t]he elements of each of these causes of action are readily established here, since the partnership has received the dollar benefit of water sales, Hamed will not permit the partnership to voluntarily relinquish that benefit in response to United's claim, and it is inequitable for the partnership to retain it."[3] (Id., at pp. 5-6) United made the following assertions in support of his argument: (i) "The land and the improvements that make up the United Shopping Center are owned in fee simple by United, not

[3] United referenced: *Walters v. Walters*, 60 V.I. 768, 779-780 (V.I. 2014) (The elements of an unjust enrichment claim in the Virgin Islands are: "(1) that the defendant was enriched, (2) that such enrichment was at the plaintiff's expense, (3) that the defendant had appreciation or knowledge of the benefit, and (4) that the circumstances were such that in equity or good conscience the defendant should return the money or property to the plaintiff."); *Native Son, Inc. v. OME Sales, LLC*, 2016 WL 1048960, *5 (D.V.I. 21016) (citation and internal marks omitted) (There are three elements to a claim for restitution, or "quasi-contract," in the Virgin Islands: "(1) a party must confer benefits on another party; (2) there must be an appreciation of the benefits by the recipient; and (3) there must be an acceptance and retention of these benefits in such circumstances that it would be inequitable for the recipient to retain the benefits without payment of value."); *Ross v. Hodge*, 58 V.I. 292, 308 (V.I. 2013) (citation and internal marks omitted) ("The elements of conversion require that a defendant be proved to have 'intentionally or wrongfully exercise[d] acts of ownership, control or dominion over personal property to which he has no right of possession at the time.")

the partnership."[4] (Id., at p. 3; see also, United's statement of undisputed facts ("United's SOF") ¶ 1); (ii) "The shopping center was built in 1986, destroyed by fire in 1992, and then rebuilt and reopened in May 1994."[5] (Id., at p. 3; see also, United's SOF ¶ 2); (iii) "The shopping center was originally built with several cisterns, including one that was located underneath the portion of Bay 1 that Plaza Extra used for its pharmacy department (the "pre-existing cistern") and that was fed by wells."[6] (Id.; see also, United's SOF ¶ 3); (iv) "When the store was rebuilt, two new cisterns were built on an adjacent piece of property purchased by United, and they were fed only by roof water from the shopping center."[7] (Id., at p. 3; see also, United's SOF ¶ 4); (iv) "United used those new cisterns to provide water to the Plaza Extra store."[8] (Id., at p. 3; see also, United's SOF ¶ 5); (v) "Having them gave United more water capacity than it needed to service Plaza Extra and the other shopping center tenants, and enabled United to begin selling water to third parties."[9] (Id., at p. 3; see also, United's SOF ¶ 6); (vi) "To that end, upon reopening the store in 1994, United installed a pipe stand that pumped water from the pre-existing cistern into customers' truck tanks."[10] (Id., at p. 3; see also, United's SOF ¶ 7); (vii) "The procedure for making payment for water sales varied, depending on the customer." (Id., at p. 3; see also, United's SOF ¶ 8); (viii) "The water and revenues from its sale belonged to United, but Yusuf told Hamed that for the 10 year period beginning in 1994, he would give Hamed one half of the water sales revenues, with the proviso that each of them would disburse half of those funds to their respective relatives in the

[4] United referenced: **Exhibit 1**-Judge Brady's April 27, 2015 Opinion and Order Granting Motion for Summary Judgment re: Rent, p. 12.

[5] United referenced: **Exhibit 2-**Declaration of Fathi Yusuf, dated June 6, 2014, ¶¶ 1, 2.

[6] United referenced: **Exhibit 3**-Transcript of Fathi Yusuf, Waleed "Wally" Hamed, Maher "Mike" Yusuf, Mafeed "Mafi" Yusuf, and Yusuf Yusuf's January 22, 2020 deposition at 96-97, 117 (Mike Yusuf).

[7] United referenced: **Exhibit 3** at 97-98 (Mike Yusuf) and 34-35 (Fathi Yusuf).

[8] United referenced: **Exhibit 3** at 96-97, 114 (Mike Yusuf).

[9] United referenced: **Exhibit 3** at 34 (Fathi Yusuf).

[10] United referenced: **Exhibit 3** at 91-92 (Mike Yusuf) and 29-30 (Fathi Yusuf).

Middle East who were in need of money."[11] (Id., at p. 4; see also, United's SOF ¶ 11); (ix) "That gift to Hamed's family was not in perpetuity, but was to end in 2004.[12] (Id.); (x) "And in fact there has been no gifting of water revenues to Hamed and his relatives in the 2004 to 2015 time period." (Id.); (xi) "The fact that the water collected by United Shopping Center wells and its roof and stored in cisterns belonged to United is confirmed by how the partnership was charged for its own use of water at the Plaza Extra store"—to wit, "Beginning in 2004, a new rental formula was put into place under which the rent at Plaza Extra East was no longer calculated on a per square foot charge, but was instead calculated on the basis of the rent being paid by the Plaza Extra Tutu Park store in St. Thomas to the landlord at the Tutu Park Mall" and "[t]he total rent paid by Plaza Extra Tutu Park was divided by gross sales for that store, and that percentage was applied to Plaza Extra East gross sales to determine the rent,"[13] and since "the rent charged to the Plaza Extra Tutu Park store includes a separate charge for water used by the store" it meant "that the formula for computing Plaza Extra East's rent from 2004 includes charges for water usage."[14] (Id, at pp. 4-5; see also, United's SOF ¶¶ 12-13); (xii) "Inasmuch as Judge Brady found that the "proof is clear" that the partnership was obligated to pay United under the rent formula attached to Mr. Yusuf's September 5, 2013 declaration (and also attached to his September 12, 2014 declaration), and since under that formula the partnership is clearly being charged for water, any claim by Hamed that the water collected and stored in United Shopping Center cisterns was owned by the partnership rather than United would be legally and logically untenable." (Id., at p. 5); and (xiii) "While Hamed believes United's claim amount for Y-8 is overstated, he does not deny that there

[11] United referenced: **Exhibit 3** at 7-8, 10 (Fathi Yusuf).

[12] United referenced: **Exhibit 3** at 20, 61 (Fathi Yusuf).

[13] United referenced: **Exhibit 4**-Declaration of Fathi Yusuf, dated August 12, 2014, ¶ 10, Exhibit A; **Exhibit 5**-Declaration of Fathi Yusuf, dated September 5, 2013, ¶ 6, Exhibit C.

[14] United referenced: **Exhibit 4** at Exhibit A; **Exhibit 5** at Exhibit C; **Exhibit 3** at 15-17 (Fathi Yusuf).

were water sales for the period in which they are being sought."[15] (Id., at p. 6; see also, United's SOF ¶ 18) Thus, United concluded that "[l]iability under any of these three theories is therefore clear" and that it is entitled to partial summary judgment as to the issue of United's claim for water sales revenue collected by the Partnership from April 1, 2004 through February 28, 2015, but will reserve the issue of damages for a later determination. (Id., at pp. 2, 5, 10) As such, United requested the Master to grant his motion.

In his opposition, Hamed opposed United's motion and moved for cross-motion for summary judgment as Yusuf Claim No. Y-8. Hamed requested the Master to review the following threshold issue first:

> Yusuf admits that this claim is being asserted by United Corporation. However, United did not assert such a claim prior to the cut-off for filing claims: Yusuf filed this claim as being his personal claim as a Partner.[1] Thus, since Yusuf concedes this alleged claim belongs to United, not Yusuf, this claim can be summarily rejected as being untimely.
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> _____
> 1 Only Yusuf filed any claims in this action. United did not file within the requisite period mandated by the Court and Special Master. (See page 2 of Yusuf's original 2016 claims submission dated September 30, 2016. It reads: "defendant/counterclaimant Fathi Yusuf ('Yusuf') respectfully submits his Accounting Claims and Proposed Distribution Plan (the "Claim") as follows:
>
> > F. Water Revenue Re Plaza Extra-East
> > Beginning in 1994, Plaza Extra-East began selling United's water. The proceeds for the first 10 years were used primarily for charitable purposes. From April 1, 2004, however, all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United. United has calculated the average water sales per month based upon two years of sales in 1997 ($52,000) and 1998 ($75,000) as $5,291.66 per month. . . . (Opp., p. 2)

Hamed argued that "[t]o the extent the Special Master still decides to address this claim, it is respectfully submitted that Yusuf's motion should still be denied…with summary judgment being granted to Hamed on its cross-motion for summary judgment" because the three theories set forth by United—unjust enrichment, restitution, and conversion—"have no merit." (Id., at pp. 2, 11) First, the equitable theories of unjust enrichment and restitution should be dismissed for the

[15] United referenced: **Exhibit 3** at 57-58 (Waleed Hamed).

following reasons: (i) "Yusuf's conduct in attempting to steal more funds from his own partnership with Hamed by once again putting on his 'United' hat."[16] (Id., at p. 11); (iii) the doctrine of laches should be applied here since United "is seeking to belatedly collect funds from the Plaza East Partnership without any records" and "is doing so for the first time after the Plaza East Partnership was dissolved without any justifiable excuse for the delay in seeking such relief." (Id., at p. 12); (iv) the doctrine of unclean hands should apply here since Yusuf's conduct of asserting this claim on behalf of United against the Partnership is "'tainted by a conflict of interest and self-dealing,' as Yusuf never raised this claim until the dissolution of the Partnership commenced, with Yusuf being the Liquidating Partner." (Id.); (v) United cannot establish any of the elements needed to prove a claim for unjust enrichment.[17] (Id., at pp. 13-15); and (vi) United cannot establish any of the elements needed to prove a claim for restitution.[18] (Id., at pp. 15-16) Second, the common law tort claim of conversion should be dismissed for the following reasons: (i) "[T]here was no wrongful act, no fraud and no intentional taking."[19] (Id., at p. 17) and (ii) "[T]he Plaza East

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[16] United referenced: *Hamed v. Yusuf*, No. SX-12-CV-370, 2017 WL 3168458, at *27 (V.I. Super. July 21, 2017) ("If a party seeks relief in equity, he must be able to show that on his part there has been honesty and fair dealing.") (citing *SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 205–06, (V.I. Super. Ct. 2015) (quoting *Sunshine Shopping Ctr., Inc. v. KMart Corp.*, 85 F. Supp. 2d 537, 544 (D.V.I. 2000)).

[17] In his opposition, Hamed provided the following analysis for unjust enrichment:

> First, United/Yusuf candidly admits that they cannot offer any facts that support a finding that the Plaza East Partnership was "enriched" by the water sales, the first element of this claim… Second, United/Yusuf cannot show that if there was any such enrichment, that it was at United/Yusuf's expense…Third, it is clear that neither the Yusuf managers nor the Hamed managers, much less Hamed, had any "appreciation or knowledge" that United/Yusuf was allegedly providing it some benefit for which it/they expected to be paid…Finally, United/Yusuf has not presented any credible evidence to support a finding that the circumstances in question are such "that in equity or good conscience" the Plaza Extra Partnership "should return the money" to it/them. (Id., at pp. 12-15)

[18] In his opposition, Hamed provided the following analysis for restitution:

> United/Yusuf did not do a Banks analysis on the elements of restitution. However, as noted in *Walters v Walters*, *supra*, the plaintiff there sought "restitution," which lead to the "unjust enrichment" analysis. Indeed, as noted in that opinion, restitution is the remedy for unjust enrichment…
>
> …the elements for unjust enrichment and restitution are the same, with restitution being the remedy for an unjust enrichment claim. Thus, the same analysis set forth in the "unjust enrichment" section above applies here as well, warranting a denial of United/Yusuf's summary judgment motion and the granting of Hamed's cross-motion for summary judgment. (Id., at pp. 15-16)

[19] Hamed referenced: *Penn v. Mosley*, 67 V.I. 869, 898 n.8 (V.I. 2017) ("Conversion is an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor

Partnership conducted the water sales operation with United/Yusuf's full knowledge and blessing, spending Yusuf's 50% share (as well as Hamed's 50% share) of the Partnership funds to sell water, account for it, pay the taxes due and then splitting the profits, if any, with Yusuf himself" so "[c]learly there was no conversion." (Id.) Hamed made the following assertions in support of his argument to deny United's motion and grant his cross-motion: (i) "The Plaza East Supermarket has leased the premises where its store is located from United Corporation since 1986" and when it burned down in 1992, "[t]he building loss was insured against fire by an insurance policy obtained by the Plaza Extra Partnership, paying all premiums on the policy."[20] (Hamed's counterstatement of undisputed facts ("Hamed's CSOF") ¶¶ 1-3); (ii) "The proceeds from the fire insurance policy were used to rebuild the building leased by the Plaza Extra Partnership."[21] (Hamed's CSOF ¶ 4); (iii) While "Yusuf claims he made an agreement with Hamed to split these revenues 50/50 between United and Hamed and that United and Hamed would send 100% of these 'split' revenues to relatives in the Middle East in need of financial assistance[,]… there is no evidence of this new, second "partnership" in 1994 other than Yusuf's self-serving statements made for the first time after the Plaza Extra Partnership was dissolved and this claim was filed." (Opp., pp. 3-4); (iv) "In deposition, the sons on both sides stated that they knew only that it was to be split 50/50 for charity and that was what was always done—no Hamed or other Yusuf family member ever heard of this 10-year, single purpose "United/Hamed" partnership."[22] (Id., at p. 3, footnote 2); (v) "When pressed on details, Yusuf simply says he believes he heard Wally Hamed reference water revenues for 1997 being $52,000 and for 1998 being $75,000, although there is

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may justly be required to pay the other the full value of the chattel.") (citing it prior opinion in *Ross v. Hodge*, 58 V.I. 292, 308 (V.I. 2013)); *see also, Ross v. Hodge*, 58 V.I. at 308-09.

[20] Hamed referenced: **Opposition Exhibit 1**-Declaration of Waleed "Wally" Hamed, dated April 29, 2020.

[21] Hamed referenced: **Opposition Exhibit 1.**

[22] Hamed referenced: **Opposition Group Exhibit 2**-Transcript of Fathi Yusuf, Waleed "Wally" Hamed, Maher "Mike" Yusuf, Mafeed "Mafi" Yusuf, and Yusuf Yusuf's January 22, 2020 deposition at 109-110 (Mike Yusuf), 134-135 (Mafi Hamed).

no evidence of these sales either other than Yusuf's memory." (Id., at p. 4); (vi) "Likewise, no one ever heard of a claim by United that it was entitled to all such water revenues after this "United/Hamed" 10-year, single purpose partnership ended." (Id.); (vii) "[A]ll actions for the entire period from the beginning to date are consistent with a 50/50 split"–to wit, "It is undisputed Plaza East operated the pipestand, maintained the pipestand, paid the utility bills to run the pumps, repaired the pipestand (such as replacing pumps), repaired the cisterns when needed, handled the transfer of water into the water delivery trucks, collected the funds (some of which were collected at the warehouse and some collected by the cashiers in the store), accounted for the funds collected (which accounting was sent to Yusuf), deposited the funds into its Supermarket account, paid the gross receipts on the sales, paid the income taxes on whatever profits may have been made, disbursed whatever the balance may have been left to the Partners and otherwise had its salaried store managers (Mike Yusuf, Mafi Hamed and Yusuf Yusuf) oversee the entire operation between 2004-2015." (Id., at pp. 4-5; see also, Hamed's CSOF ¶¶ 9-23); (viii) "[I]t is undisputed that all of this was done with Yusuf's full knowledge and blessing since 2004 without him ever mentioning that United was entitled to receive these revenues." (Id., at 5); (ix) "Thus, it is clear that Yusuf's belated efforts beginning only in 2016, after becoming the Liquidating Partner, to now claim United is entitled to 100% of these revenues from 2004 to 2015 is the same despicable conduct that the Special Master described in a prior opinion on March 13, 2018, as being 'tainted by a conflict of interest and self-dealing…'" (Id.); (x) "Yusuf even alleges as one of his bases for recovery that the Plaza East Partnership, of which he is a 50/50 member, actually engaged in the tort of conversion in wrongfully taking this water!" (Id.); (xi) "Yusuf's comments about additional rent allegedly being owed by the Plaza East Partnership for water usage is not only incorrect, but it is totally irrelevant to this water claim for 100% of the water sales" and "[t]hus, those allegations can be ignored in addressing this motion." (Id., at p. 17); (xii) "Yusuf's "damages" are totally speculative, as Yusuf actually concedes in his motion" and "proving damages here has an even

higher burden under RUPA."[23] (Id.); and (xiii) "[A]ny claim beyond six years would be barred."[24] (Id., at p. 18) Furthermore, while Hamed conceded that several of the facts set forth in United's SOF are not in dispute,[25] Hamed disputed the following facts: (i) As to United's SOF ¶ 4,[26] Hamed stated that "[i]t is disputed that the adjacent piece of property was purchased by United, as the funds used to purchase the property were funds from the Partnership."[27] (Opp., p. 6); (ii) As to United's SOF ¶ 5,[28] Hamed stated that "[i]t is disputed that United supplied the water to the

[23] Hamed referenced: *Shepard v. Patel*, 101 U.S. Dist. LEXIS 168102, at *11-12 (D. Ariz. Nov. 26, 2012) (Where a fiduciary commingles partnership assets with personal assets, the entire commingled mass is treated as partnership property except so far as the fiduciary may be able to distinguish what is separately his. Hurst, 1 Ariz. App. at 607, 405 P.2d at 917. . . .and the commingling of partnership property with a partner's own property gives rise to a presumption that the entire commingled mass is partnership property.) (citing *Ohaco Sheep Co., Inc. v. Heirs of Ohaco*, 713 P.2d 343, 346 (1986); *Hurst*, 1 Ariz. App. at 606- 07, 405 P.2d at 916-17. (Emphasis added.))

[24] Hamed referenced: *Chase Manhattan Bank, N.A. v. Power Products, Inc.*, 27 V.I. 126 (V.I. Terr. Ct. 1992) (An action for conversion is subject to a six-year statute of limitations). *Frank v. Gov't of Virgin Islands*, No. CIVIL 2009-66, 2012 WL 611373, at *8 (D.V.I. Feb. 23, 2012) (noting there is a six year SOL for an unjust enrichment claim).

[25] Hamed conceded that the following facts set forth in United's SOF are not in dispute: (i) "The land and the improvements that make up the United Shopping Center are owned in fee simple by United, not the partnership." (United's SOF ¶ 1); (ii) "The United Shopping Center was built in 1986, destroyed by fire in 1992, and then rebuilt and reopened in May 1994." (United's SOF ¶ 2); (iii) "The United Shopping Center was originally built with several cisterns, including one that was located underneath the portion of Bay 1 that Plaza Extra used for its pharmacy department (the "pre-existing cistern") and that was fed by wells." (United's SOF ¶ 3); (iv) "The procedure for making payment for water sales varied, depending on the customer. Those business owners who drove their own trucks might pay by cash, while owners whose employees drove their trucks would usually pay by check. Some customers paid in advance for multiple water fill-ups, while others were billed afterwards for fill-ups." (United's SOF ¶ 8); (v) "Mike Yusuf was the person responsible for collecting and recording, on a daily basis, the dollar amount of all water sales from 1994 to 1998, at which time Mufeed Hamed took over that function." (United's SOF ¶ 9); (vi) "Yusuf Yusuf began working at the Plaza Extra East store in September 2000, but Waleed Hamed, who managed the store, and Mufeed Hamed, continued to have responsibility for recording water sales."(United's SOF ¶ 10); (vii) "In February 2012 the partnership paid rent to United for the period January 1, 2004 to December 31, 2011, according to the formula attached to Exhibits 4 and 5, as Judge Brady found in his April 27, 2015 Opinion and Order." (United's SOF ¶ 14); (viii) "Judge Brady has found, consistent with Mr. Yusuf's September 5, 2013 declaration and the exhibits attached to it, that the monthly rent amount under the formula was $58,791.38. Judge Brady further found that '[t]he proof before the Court is clear as to United's claim that rent is due for Bay No. 1 at the rate of $58,791.38 per month, for January 1, 2012 to September 30, 2013, when United's Motion was filed.'" (United's SOF ¶ 15); (ix) "On the basis of his findings that are quoted in the preceding paragraph, Judge Brady ordered $58,791.38 paid for the period January 1, 2004 to September 5, 2013, 'plus rent due from October 1, 2013 at the same rate of $58,791.38 per month until Yusuf assumed possession and control of Plaza Extra-East.'' (United's SOF ¶ 16); and (x) "While Hamed believes that water sales declined after 2000 or 2001, he concedes that sales continued after those years." (United's SOF ¶ 18)

[26] United's SOF ¶ 4 provided: "When the store was rebuilt, two new cisterns were built on an adjacent piece of property purchased by United, and they were fed only by roof water from the shopping center." (Motion, p. 8)

[27] Hamed referenced: **Opposition Exhibit 1**.

[28] United's SOF ¶ 5 provided: "United used those new cisterns to provide water to the Plaza Extra store." (Motion, p. 8)

partnership store, Plaza East, as the Partnership supplied this water to itself."[29] (Id.); (iii) As to United's SOF ¶ 6,[30] Hamed stated that "[i]t is disputed that United owned or sold water to third parties."[31] (Id.); (iv) As to United's SOF ¶ 7,[32] Hamed stated that "[i]t is disputed that United installed a pipestand."[33] (Id.); (v) As to United's SOF ¶ 11,[34] Hamed stated that "[i]t is disputed that the water or the revenues from any sales belonged to United or that Yusuf 'gifted' half of these revenues to Hamed from 1994 to 2004 so long as the funds would be 're-gifted' to relatives in the Middle East."[35] (Id.); (vi) As to United's SOF ¶¶ 12-13,[36] Hamed stated that "[i]t is denied that any modification of the lease payments was made that included a new agreement that the Partnership would now be charged for water by United"[37] and noted that "[i]t is also irrelevant to this "water claim" whether United supplied water to the Plaza East Supermarket for use, as this 'Y-8' claim seeks damages for all water sales, not water usage by the Plaza East Supermarket."

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[29] Hamed referenced: **Opposition Exhibit 1**.

[30] United's SOF ¶ 6 provided: "The addition of two new cisterns at the United Shopping Center gave United more water capacity than it needed to service Plaza Extra and its other shopping center tenants, and enabled United to begin selling water to third parties." (Motion, p. 8)

[31] Hamed referenced: **Opposition Exhibit 1**.

[32] United's SOF ¶ 7 provided: "In order to facilitate sales of water to third parties, upon reopening the store in 1994 United installed a pipe stand that pumped water from the pre-existing cistern into customers' truck tanks." (Motion, p. 8)

[33] Hamed referenced: **Opposition Exhibit 1**.

[34] United's SOF ¶ 11 provided: "The water and revenues from its sale belonged to United, but Yusuf told Hamed that for the 10 year period beginning in 1994, he would give Hamed one half of the water sales revenues, with the proviso that each of them would disburse half of those funds to their respective relatives in the Middle East who were in need of money. That gift to Hamed's family was not in perpetuity, but was to end in 2004, and there has been no such gifting since at least 2004." (Motion, p. 9)

[35] Hamed referenced: **Opposition Exhibit 1**.

[36] United's SOF ¶ 12 provided: "Beginning in 2004, a new rental formula was put into place under which the rent at Plaza Extra East was no longer calculated on a per square foot charge, but was instead calculated on the basis of the rent being paid by the Plaza Extra Tutu Park store in St. Thomas to the landlord at the Tutu Park Mall. The total rent paid by Plaza Extra Tutu Park was divided by gross sales for that store, and that percentage was applied to Plaza Extra East gross sales to determine the rent." (Motion, p. 9)

United's SOF ¶ 13 provided: "Because the rent charged to the Plaza Extra Tutu Park store includes a separate charge for water used by the store, see Exhibit A to Exhibit 4 (same as Exhibit C to Exhibit 5), the formula for computing Plaza Extra East's rent from 2004 includes charges for water usage." (Id.)

[37] Hamed referenced: **Opposition Exhibit 1**.

(Id.); and (vii) As to United's SOF ¶ 17,[38] Hamed stated that "[w]hile Yusuf claims he found these handwritten records, he concedes he cannot find that document now" and "[m]oreover, Wally Hamed has no recollection of ever creating such a document." (Id.) As such, Hamed "submitted that Yusuf is not entitled to partial summary judgment on the "water claim' asserted in Y-8, while Hamed is entitled to summary judgment on his Rule 56 cross-motion for summary judgment." (Id., at p. 18)

In United's reply in support of its motion for partial summary judgment and opposition to Hamed's cross-motion for summary judgment, United argued that the arguments raised by Hamed cannot "withstand scrutiny" and the Master "should grant partial summary judgment to United, and at an appropriate time conduct a short trial or evidentiary hearing to determine the damages to which United is entitled on Claim Y-8." (Reply, p. 2) United made the following assertions in support of its argument: (i) United's claim was timely asserted – Yusuf identified the debts and obligations due to United in Yusuf's Accounting Claims.[39] (Id., at pp. 2-3); (ii) United's claim does not entail a conflict of interest for Yusuf – United mischaracterized the Master's prior ruling since "the Master did not announce the sweeping (and patently absurd) rule that any time United asserts a claim against the Partnership it will have engaged in conduct involving a conflict of interest and self-dealing."[40] (Id., at pp. 3-5); (iii) United is entitled to partial summary judgment under the theory of unjust enrichment – United reiterated its prior argument, disputed the arguments raised in Hamed's opposition (Id., at pp. 5-14), and noted: (a) While Hamed asserted that "insurance proceeds from a policy paid for by the partnership were used to rebuild the Plaza Extra East store,…that is immaterial to United's ownership of the rebuilt store and improvements"

[38] United's SOF ¶ 17 provided: "Handwritten records found by Mr. Yusuf show that United's water sales for 1997 were $52,000 and for 1998 ($75,000)." (Motion, p. 10)

[39] United referenced: **Reply Exhibit 1**-Yusuf's Accounting Claims.

[40] United referenced: **Reply Exhibit 2**-Judge Brady's April 27, 2015 Opinion and Order Granting Motion for Summary Judgment re: Rent, p. 9 (rejecting as false "Plaintiff's denial that the parties had an agreement regarding past rents").

and "[c]onsistent with many commercial leases, Mr. Yusuf has testified that the partnership was obligated under its rent agreement with United to pay for insurance on the building."[41] (Id., at p. 5, footnote 3), (b) The gross receipts and the income taxes paid on the water sales, Yusuf's half of the net income from the water sales, and the allocation of Mike Yusuf's salary should be deducted from the water sales to determine the damages. (Id., at p. 12), and (c) As for Hamed's cross-motion, United stated that "[a]t the very least, United has raised genuine issues of material fact regarding the benefit element of its unjust enrichment claim." (Id., at p.12); (iv) United is entitled to partial summary judgment under the theory of conversion – "United agrees that the water it owned was sold by the partnership with its permission, that the incidental expenses and taxes were paid by the partnership on water sales income, and that Yusuf has received his 50% share of the profits that remain" and "[w]hile true, none of this is relevant to United's claim that 100% of the profits that remain belong to United, and that by wrongfully retaining 50% of them at Hamed's instance in the face of United's demand for their return, the Partnership has converted funds that belong to United." (Id., at pp. 15-16); and (v) United's claim is not time-barred – (a) United "did not demand return of water sales revenue until September 30, 2016, when Yusuf submitted his own claims and United's" and "[s]ince both United's conversion and unjust enrichment causes of action accrued upon a demand for payment that was not complied with, no portion of either United's conversion or unjust enrichment claim is time-barred" and (b) Additionally, "United did file a counterclaim on December 23, 2013, and if it is somehow important to the Master's resolution of the limitations defense, the counterclaim filing can also be treated as a demand" and "[t]hus, the statute of limitations for the damage claims asserted in Defendants' counterclaim for debt, breach of contract, conversion, breach of fiduciary duty, recoupment/constructive trust and accounting are all barred to the extent they arose prior to 6 years before the complaint was filed,

[41] United referenced: **Reply Exhibit 4**-Trasncript of Fathi Yusuf's April 2, 2014 deposition at 53-54.

which was on September 17, 2012, barring all damages based on these theories that arose before September 16, 2006."[42] (Id., at pp. 16-17) United requested that "[i]n the event the Master decides it is necessary to reach this alternative argument regarding the statute of limitations,…he give the parties an opportunity to brief the issue of whether the discovery rule or equitable tolling rules would protect United's 2004 to 2006 claims or any other claims that would be treated as time-barred under this backup statute of limitations analysis." (Id., at p. 17, footnote 10) Furthermore, while United conceded to several of the facts set forth in Hamed's CSOF are not in dispute,[43]

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[42] United referenced: **Reply Exhibit 9**-United's and Yusuf's Counterclaim, filed on December 23, 2013 (Count III: Conversion, Count IV: Restitution, and Count V: Unjust Enrichment); **Reply Exhibit 10**-Hamed's Memoranda in support of Hamed's motion for partial summary judgment re the statute of limitations defense barring Yusuf and United's claims prior to September 16, 2006, p. 3.

[43] United conceded that the following facts set forth in Hamed's CSOF are not in dispute: (i) "The Plaza East Supermarket has leased the premises where its store is located from United Corporation since 1986." (Hamed's CSOF ¶ 1); (ii) "The Plaza East Supermarket burned down in 1992." (Hamed's CSOF ¶ 2); (iii) "When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, two new cisterns were constructed for the new store." (Hamed's CSOF ¶ 5); (iv) Photo depicting Plaza Extra East warehouse and the water pipe (Hamed's CSOF ¶ 8); (v) "By 2004, a switch has been installed inside the receiving door of the Plaza Extra Supermarket warehouse that had to be turned on before water could be distributed to a water truck." (Hamed's CSOF ¶ 9); (vi) "The Plaza East Partnership paid the utility bills to run the pumps." (Hamed's CSOF ¶ 13); (vii) "Employees of the Plaza East Partnership collected the payments made by the water trucks, some of which were collected at the warehouse and some of which were collected by the cashiers in the store." (Hamed's CSOF ¶ 17); (viii) "Accounting employees of the Plaza East Partnership handled any funds collected by the warehouse personnel or cashiers from the water sales, as they would do for all store receipts on any given day." (Hamed's CSOF ¶ 18); (ix) "Accounting employees of the Plaza East Partnership deposited the funds received from the water sales into the Plaza East Partnership Supermarket account, as was done with all receipts." (Hamed's CSOF ¶ 19); (x) "Each month from 2004 until the partnership dissolution in 2015, the Plaza East Partnership paid the gross receipts on the total monthly sales of the Plaza East Supermarket, which would include the co-mingled funds from the water sales." (Hamed's CSOF ¶ 22); (xi) "Each year from 2004 until the partnership dissolution in 2015, the Plaza East Partnership paid the income taxes each year on the total annual income of the Plaza East Partnership, which would include the profit, if any, made from the water sales." (Hamed's CSOF ¶ 23); and (xii) "Between 2004 and 2012, no profits were distributed due to the FBI raid. Thereafter, the Partnership disbursed millions of dollars in accrued profits on a 50/50 basis equally to Hamed and Yusuf, which would have included whatever co-mingled profits, if any, that may have been made on the water sales (after operating expenses, overhead and taxes)." (Hamed's CSOF ¶ 24)

United conceded that the following facts set forth in Hamed's CSOF are not in dispute but with qualifications: (i) As to Hamed's CSOF ¶ 6—"When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, there was an expanded new roof over the leased premises that collected the rain water that went into the two new cisterns"—United stated that "[u]ndisputed that the roof area over the store was greater after the rebuild than before." (Reply, p. 19); (ii) As to Hamed's CSOF ¶ 7—"When the Plaza Extra Supermarket building was rebuilt after the 1992 fire, a pipestand for distributing water from these cisterns was built as well, as depicted in this photograph"—United stated that it is "[u]ndisputed with two qualifications: first, the correct terminology is "standpipe," not "pipestand." Second, the standpipe drew water to pump into trucks not from the new cisterns, but instead from a pre-existing cistern located under the store" and referenced: **Reply Exhibit 3**-Transcript of Fathi Yusuf, Waleed "Wally" Hamed, Maher "Mike" Yusuf, Mafeed "Mafi" Yusuf, and Yusuf Yusuf's January 22, 2020 deposition at 111-114 (Mike Yusuf) (Reply, p. 19); and (iii) As to Hamed's CSOF ¶ 21—"As part of the normal operations of the Plaza Extra Supermarket, all revenues from the water sales would be co-mingled with the daily proceeds from the store sales"—United stated that it is "[u]ndisputed to the extent that Hamed is saying that revenues from water sales were placed into safes or deposited into accounts that also contained revenues from store sales. United could have opened a separate bank account for the

United disputed and/or objected to the following facts: (i) As to Hamed's CSOF ¶ 3,[44] "United object[ed] to this statement of fact on the grounds that it is immaterial to any issues raised United's Motion for Partial Summary Judgment re: Claim Y-8, or Hamed's cross-motion." (Reply, p. 18) United also stated that "[c]onsistent with many commercial leases, the partnership was obligated to, and did pay the premiums on the hazard insurance policy of insurance"[45] and "[t]hat hardly changes the fact that, as Judge Brady found in a prior ruling in this case, the land and the improvements that make up the United Shopping Center are owned in fee simple by United, not the partnership." [46] (Id.); (ii) As to Hamed's CSOF ¶ 4,[47] "United object[ed] to this statement of fact on the grounds that it is immaterial to any of the issues raised by United's Motion for Partial Summary Judgment re: Claim Y-8, or to Hamed's cross-motion" but "[s]ubject to that objection, undisputed." (Id.); (iii) As to Hamed's CSOF ¶ 10,[48] United "[d]isputed, because sometimes the truck drivers themselves operated the switch and sometimes they asked a Plaza Extra employee to do so."[49] (Id., at p. 20); (iv) As to Hamed's CSOF ¶ 11,[50] United "[d]isputed, as the standpipe itself required no maintenance."[51] (Id.); (v) As to Hamed's CSOF ¶ 12,[52] United "[d]isputed, as

deposit of water revenues only, but it was far more efficient to leave the revenues in supermarket accounts and simply make the necessary adjustments to Hamed's and Yusuf's shares of store proceeds to reflect that water revenues belonged to United and were not to be shared with Hamed." (Reply, p. 22)

[44] Hamed's CSOF ¶ 3 provided: "The building loss was insured against fire by an insurance policy obtained by the Plaza Extra Partnership, paying all premiums on the policy."

[45] United referenced: **Reply Exhibit 4** at 53-54.

[46] United referenced: **Reply Exhibit 2** at 12.

[47] Hamed's CSOF ¶ 4 provided: "The proceeds from the fire insurance policy were used to rebuild the building leased by the Plaza Extra Partnership."

[48] Hamed's CSOF ¶ 10 provided: "Employees of the Plaza East Partnership operated this switch for the pipestand, allowing water to be loaded from this pipestand into these water delivery trucks."

[49] Hamed referenced: **Reply Exhibit 8-**Declaration of Mike Yusuf, dated July 6, 2020, ¶ 2.

[50] Hamed's CSOF ¶ 11 provided: "Employees of the Plaza East Partnership maintained the pipestand."

[51] Hamed referenced: **Reply Exhibit 8**, ¶ 3.

[52] Hamed's CSOF ¶ 12 provided: "The Plaza East Partnership paid all expenses associated with the maintenance of the pipestand."

the standpipe itself required no maintenance."[53] (Id., at p. 21); (vi) As to Hamed's CSOF ¶ 14,[54] United "[d]ispute[d] that there were any repairs to the standpipe"[55] but does "not dispute that a pump used to pump water from the cistern to the standpipe may have had to be replaced during the relevant period." (Id.); (vii) As to Hamed's CSOF ¶ 15,[56] "United object[ed]…on the grounds of vagueness because it does not specify what equipment or improvement to United's real estate it is referring to." (Id.); (viii) As to Hamed's CSOF ¶ 16,[57] "United object[ed] to this statement of act because it is not material to any issues raised by United's Motion for Partial Summary Judgment re: Claim Y-8." (Id.); (ix) As to Hamed's CSOF ¶ 20,[58] "Disputed, because the characterization of Yusuf Yusuf's quoted testimony is inaccurate. Yusuf Yusuf testified that Plaza Extra was paying him, but he did not testify that he was working for a "partnership," and he did not mention the word "partnership" in his testimony. At no time did the partnership ever pay any employees. Rather, United was the entity with employees, with an EIN number, who would send W-2's, etc." (Id., at pp. 20-21); and (x) As to Hamed's CSOF ¶ 25,[59] United "[d]isputed, because

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[53] Hamed referenced: **Reply Exhibit 8**, ¶ 3.

[54] Hamed's CSOF ¶ 14 provided: "Employees of the Plaza East Partnership repaired the pipestand (such as replacing pumps)."

[55] Hamed referenced: **Reply Exhibit 8**, ¶ 3.

[56] Hamed's CSOF ¶ 15 provided: "The Plaza East Partnership paid all expenses associated with the needed repairs."

[57] Hamed's CSOF ¶ 16 provided: "Employees of the Plaza East Partnership repaired the two new cisterns when needed."

[58] Hamed's CSOF ¶ 20 provided: "The salaried store managers of the Plaza East Partnership (Mike Yusuf, Mafi Hamed and Yusuf Yusuf) oversaw the entire operation of the pipestand and water sales, including the handling of all funds and all deposits made into the Plaza East Partnership accounts" and "[t]he Yusuf sons testified that they completely understood that when they were working on this "water," they were doing so as employees of the Partnership, not United as a separate entity."

> Q. But sometimes you did work on the water stuff, generally?
>
> A. Well, if you want to say "work on." Pump goes down, yes, I catered to it.
>
> Q. Okay. And -- and when you did that, whenever you were doing that, who was paying you?
>
> A. Plaza Extra was paying me.
>
> Q. The supermarket?
>
> A. I was an employee, yeah. (**Exhibit 3** at 148-149 (Yusuf Yusuf).

[59] Hamed's CSOF ¶ 25 provided: "United never sought recovery for any water revenues until 2015, after the Partnership was dissolved and Yusuf had been appointed the Liquidating Partner by Judge Brady."

United's counterclaim, which was filed on December 23, 2014, included counts sounding in restitution, unjust enrichment and conversion, and that pleading is properly treated as a request for, inter alia, recovery of water revenues." (Id., at p. 22) As such, United requested the Master to deny Hamed's cross-motion and to grant its motion with "damages to be determined at a short trial or evidentiary hearing to be scheduled later," or in the alternative, "the Master should at the very least rule that there are genuine issues of material fact precluding partial summary judgment on Claim Y-8, and that all open issues regarding both claims will be resolved by the Master at a trial or evidentiary hearing." (Id., at p. 23)

1. Hamed's Cross-Motion for Summary Judgment

The Master will first address Hamed's cross-motion for summary judgment for Yusuf Claim No. Y-8 based on the threshold issue of whether United timely asserted this claim prior to the cut-off date. Additionally, although Hamed did not raise the issue of statute of limitations as a threshold issue, it was nonetheless raised, so the Master will also address whether this claim is barred by the applicable statute of limitations before the Master addresses United's motion for partial summary judgment.

A. Whether United asserted this claim prior to the cut-off date for filing claims

Hamed argued that "United did not assert such a claim prior to the cut-off for filing claims" since "Yusuf filed this claim as being his personal claim as a Partner" and "Yusuf concede[d] this alleged claim belongs to United, not Yusuf." (Opp., p. 2) The Master finds Hamed's argument unpersuasive. In Yusuf's Accounting Claims and Yusuf's Amended Accounting Claims, Yusuf clearly noted that several claims were asserted on behalf of United and not as his personal claim as a Partner.[60] Additionally, if Hamed is arguing that it is improper for Yusuf to assert United's

[60] Yusuf's Accounting Claims and Yusuf's Amended Accounting Claims asserted the following claims on behalf of United:

Section III. Outstanding Debts of the Partnership

claims in Yusuf's Accounting Claims and Yusuf's Amended Accounting Claims, then Hamed is guilty of doing essentially the same thing when he asserted claims against United in Hamed's Accounting Claims and Hamed's Amended Accounting Claims.[61] Throughout the course of the Partnership and the litigation, it is not uncommon for United, Yusuf, and Hamed to treat United

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…

B. Unpaid Rent for Plaza Extra-East and Adjacent Bays

…

1. Bay 1 – Increased Rent Due Net of Rent Paid

United provided formal notice of increased rent of $200,000 per month to the Partnership… The outstanding balance of the increased rent claimed as to Bay 1, net of the rent recovered pursuant to the Rent Order, is $6,974,063.10….

2. Bays 5 and 8

Likewise, outstanding rent is due to United for Bays 5 and 8 of the United Shopping Plaza… The total amount due to United for unpaid rent for Bays 5 and 8 is $793,984.34…

3. Interest on Rent Claims

The interest due for the unpaid rent on Bays 5 and 8 is also claimed by United…

C. Reimbursement for Gross Receipts Taxes Paid by United

…The Partnership owes United for certain gross receipts taxes United paid on behalf of the Partnership totaling $60,586.96, which were never reimbursed.

D. Black Book Balance Owed to United

…However, as to funds which United paid on behalf of the Plaza Extra Stores, the Black Book entries reveal that the Partnership owes United 549,991.00 for various expenses it paid on behalf of the Partnership…

E. Additional Ledger Balances Due to United

…However, the total amount of $199,760.00 paid by United has not otherwise been captured in other reconciliations and remains due and owing to United.

F. Water Revenue Re Plaza Extra-East

…Multiplying the average monthly sales revenue by 131 months, United is owed $693,207.46 from the Partnership for the water sales revenue from April 1, 2004 through February 28,2015.

G. Unreimbursed Transfers to Plaza Extra from United's Tenant Account

…The Partnership owes United $188,132 for its unreimbursed transfers…(Yusuf's Accounting Claims, pp. 6-9; Yusuf's Amended Accounting Claims, pp. 7-12)

[61] A sample of the claims asserted against United in Hamed's Amended Accounting Claims: (i) Hamed Claim No. H-150 alleged that United used Partnership funds to pay United's gross receipt taxes for the United Shopping Center; (ii) Hamed Claim No. H-152 alleged that United used Partnership funds to pay United's franchise taxes for the United Shopping Center; (iii) Hamed Claim No. H-142 alleged that United is holding the following described property on behalf of the Partnership: Parcel No. 2-4 Rem Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, U.S. Virgin Islands, consisting of 0.536 acre, more or less; and (iv) Hamed Claim No. H-9 alleged that United should pay for an increased prorated share of John Gaffney's salary, benefits and bonus from 2012 through 2016.

and Yusuf as one and the same.[62] It would be disingenuous at this juncture for the Master to consider these claims asserted on behalf of and against United wrongfully included in Yusuf and Hamed's respective Accounting Claims and Amended Accounting Claims. In light of the foregoing, the Master does not find issue with Yusuf asserting claims on behalf of United in Yusuf's Accounting Claims and Yusuf's Amended Accounting Claims. Similarly, the Master does not find issue with Hamed asserting claims against United in Hamed's Accounting Claims and Hamed's Amended Accounting Claims. Thus, the Master finds that United asserted this claim prior to the cut-off date for filing claims.

B. Whether this claim is barred by the statute of limitations

United's instant claim does not fall within the scope of the Limitations Order.[63] However, the statute of limitations applies to Yusuf Claim No. Y-8 regardless of whether it falls within the scope of the Limitations Order. Title 5 V.I.C. § 31 applies to bar causes of action that are commenced outside of the relevant limitations period—"Civil actions shall only be commenced within the period prescribed below after the cause of action shall have accrued..." Title 5 V.I.C. § 31. Title 5 V.I.C. § 31(3)(A), the applicable statute of limitation for Yusuf Claim No. Y-8, provides that the statute of limitations for "[a]n action upon a contract or liability, express or implied" is six years. Even if Yusuf Claim No. Y-8 was an equitable claim, the six years statute of limitations period applies because Title 5 V.I.C. § 32(a) provides that "[a]n action of an

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[62] This was noted in the Master's March 19, 2020 order addressing Hamed's motion to compel responses to discovery served in connection with Yusuf Claim No. Y-8:

> The Master must note at the outset that Parties seem to treat United and Yusuf as the same entity in connection with Yusuf Claim No. Y-8 and thus, "United" and "Yusuf" are often used interchangeably. For example, while United filed the opposition to Hamed's Motion to Strike, Yusuf filed the opposition to Hamed's instant motion to compel. As such, whenever Yusuf or United is referred to by himself or itself, and where the context so permits, he or it will be deemed to include the other. (March 19, 2020 order, p. 3, n. 3)

[63] The Limitation Order provided 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" *Hamed v. Yusuf*, 2017 V.I. LEXIS at *44-45 (Emphasis added).

equitable nature shall only be commenced within the time limited to commence an action as provided in this chapter [3 – Limitations of Actions (§§ 31-41)]."

Here, Hamed argued that Yusuf Claim No. Y-8 is time-barred. While Hamed stated the applicable statute of limitations, Hamed never stated how the applicable statute of limitations starts to accrue. On the other hand, while United argued that it is not time-barred because United "did not demand return of water sales revenue until September 30, 2016, when Yusuf submitted his own claims and United's" and "[s]ince both United's conversion and unjust enrichment causes of action accrued upon a demand for payment that was not complied with, no portion of either United's conversion or unjust enrichment claim is time-barred," United failed to cite to any binding authorities in support of his argument that, in the U.S. Virgin Islands, the applicable statute of limitation for claims of conversion and unjust enrichment only starts to accrue upon a demand for payment.

According to Yusuf's Accounting Claims and Yusuf's Amended Accounting Claims, United is owed money from the Partnership for the water sales revenue collected by the Partnership from April 1, 2004 through February 28, 2015 because "[f]rom April 1, 2004,…all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United." (Yusuf's Accounting Claims, p. 9; Yusuf's Amended Accounting Claims, p. 12) However, depending on how the applicable statute of limitations starts to accrue in the U.S. Virgin Islands, when this claim was first asserted, and whether any tolling applies in this instance, Yusuf Claim No. Y-8 could be limited. The Master will give Parties the opportunity to brief the issue of whether Yusuf Claim No. Y-8 is barred by the statute of limitations. Nevertheless, at the minimum, a portion of Yusuf Claim No. Y-8 will not be barred.[64] Thus, the Master will address United's motion for partial summary judgment.

[64] Assuming that (i) the applicable statute of limitations starts to accrue on the earliest possible date—to wit, the conversion claim accrued at the time the Partnership wrongfully exercised dominion, and the unjust enrichment claim

2. United's Motion for Partial Summary Judgment

A. United's Conversion Claim[65]

In its motion, United argued that the elements of its conversion claim are "readily established here, since the partnership has received the dollar benefit of water sales, Hamed will not permit the partnership to voluntarily relinquish that benefit in response to United's claim, and it is inequitable for the partnership to retain it" and referenced *Ross v. Hodge*, 58 V.I. at 308, for the elements of conversion. (Motion, pp. 5-6) In his opposition, Hamed referenced *Penn*, 67 V.I. at 898, n.8, and *Ross*, 58 V.I. at 308-09, for the elements of conversion. However, in *Penn v. Mosley*, the U.S. Virgin Islands Supreme Court noted:

> This Court has not adopted the cause of action of conversion pursuant to a Banks Analysis, and the Appellate Division's failure to do so was reversible error. *Connor*, 60 V.I. at 604. Because Penn's failure to establish that Mosley was the party responsible for any missing chattels disposes of this issue and would be a required element of any claim of conversion as a matter of a defendant's Due Process rights, *see Hiibel v. Sixth Judicial Dist. Ct. of Nev.*, 542 U.S. 177, 191, 124 S. Ct. 2451, 159 L. Ed. 2d 292 (2009) (stating that in every case it must be proved that the defendant acted); *cf. Ross*, 58 V.I. at 308 (noting without a Banks Analysis that there must be an "actor" who exercised dominion and control over the chattel), we will limit our analysis to that specific element and leave it to the Superior Court to conduct a full Banks Analysis when the issue is presented in the first instance. 67 V.I. 869, 898 n.8 (V.I. 2017).

Since the U.S. Virgin Islands Supreme Court has not issued an opinion that defines the cause of action of conversion, the parties were required to conduct a *Banks* analysis[66] and determine the soundest rule of law for the Virgin Islands.[67] In *Isaac v. Crichlow*, the Superior Court conducted

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accrued at a time when the unjust enrichment actually occurred, (ii) Yusuf Claim No. Y-8 was first asserted on the latest possible date—to wit, Yusuf's Accounting Claims, filed on September 30, 2016, and (iii) there is no applicable tolling, then the portion of Yusuf Claim No. Y-8 within six years from September 30, 2016 will not be barred.

[65] United's conversion claim will be addressed first since equitable remedies are inappropriate where a legal remedy is available. *Cacciamani & Rover Corp. v. Banco Popular de Puerto Rico*, 61 V.I. 247, 252 (V.I. 2014) ("Because unjust enrichment is an equitable remedy, it – like all equitable remedies – is inappropriate where a legal remedy is available.")

[66] The V.I. Supreme Court established a three-part analysis to determine a common law question of first impression. *Banks v. Int'l Rental & Leasing Corp.*, 55 V.I. 967 (V.I. 2011).

[67] The parties are reminded to cite the applicable Virgin Islands law and to conduct the required Banks analysis when presented with an issue of first impression in this jurisdiction. *See*, V.I. R. CIV. P. 11(b)(5) ("By 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

a *Banks* analysis and determined that the soundest rule of law for the Virgin Islands was to define conversion as "an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." 63 VI 38, 59 (Sup. Ct. Feb. 10, 2015) (quoting RESTATEMENT (SECOND) OF TORTS § 222A). The Master, having reviewed the *Banks* analysis and the authorities relied upon in *Isaac*, is satisfied with *Isaac's* reasoning and conclusion of the soundest rule of law for the Virgin Islands, and adopts its *Banks* analysis as though the same were set forth herein.

Here, the chattel at issue is the money collected from the sale of the water collected in the cisterns located at the Leased Premises ("Water Proceeds"). The evidence demonstrates that the Partnership intentionally exercised of dominion or control over the Water Proceeds and seriously interfered with the right of United to control the Water Proceeds—to wit, it is undisputed that (i) The Partnership's accounting employees handled any money collected from the water sales and deposited said money into the Partnership account (Hamed's CSOF ¶¶ 18-19); (ii) The money collected from the water sales were commingled with the Partnership's daily proceeds from Plaza Extra-East sales (Hamed's CSOF ¶ 21); (iii) Each month from 2014 until the dissolution of the Partnership in 2015, the Partnership paid the gross receipts tax on the total monthly sales of Plaza Extra-East, which would have included the money collected from the water sales (Hamed's CSOF ¶ 22); (iv) Each year from 2004 until the dissolution of the Partnership in 2015, the Partnership paid the income taxes each year on the total annual income, which would have included the profit from the water sales, if any (Hamed's CSOF ¶ 23); and (v) After 2012, the Partnership distributed accrued profits equally between Hamed and Yusuf, which would have included the profit from the water sales (after operating expenses, overhead, and taxes), if any (Hamed's CSOF ¶ 24). That

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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.")

interference, if wrongful, would require the Partnership to pay United the full value of the chattel. Therefore, the critical question is whether United had a right to control the Water Proceeds at the time of the conversion.

Here, it is undisputed that: (i) United owns the land and the improvements that make up the United Shopping Center (United's SOF ¶ 1); (ii) Since 1986, the Partnership leased from United the premises where Plaza Extra-East is located at the United Shopping Center ("Leased Premises") (Hamed's CSOF ¶ 1); (iii) The United Shopping Center was originally built with several cisterns, including a cistern located underneath the Leased Premises ("Pre-existing Cistern") (United's SOF ¶ 3); (iv) The Partnership, as required under the lease, purchased and maintained a fire insurance policy for the Leased Premises (Hamed's CSOF ¶ 3); (v) In 1992, United Shopping Center, including Plaza Extra-West, was destroyed by fire (United's SOF ¶ 2; Hamed's CSOF ¶ 2); (vi) The proceeds from the Partnership's fire insurance policy were used to rebuild the Leased Premises (Hamed's CSOF ¶ 4); and (vii) When the Leased Premises was rebuilt after the fire, two new cisterns ("New Cisterns") were constructed for the Leased Premises Hamed's CSOF ¶ 5). This affirmed the Court's finding in its April 27, 2015 order that United is the fee simple owner and landlord of the Leased Premises. (Judge Brady's Opinion and Order Granting Motion for Summary Judgment re: Rent, p. 11) However, this raised the question of whether the water collected in the cisterns located at the Leased Premises belong to the Partnership (the tenant) or United (the landlord). In the U.S. Virgin Islands, the landlord is permitted to charge the tenant for water. Title 28 V.I.C. § 795 provides that "[n]othing contained in this section shall prohibit the landlord from assessing costs and charges against the tenant for water and/or electricity; provided that the tenant shall be charged based on the amount of water and/or electricity the tenant uses." The Master interprets this statute to mean that the landlord, not the

tenant, owns the water on the landlord's property,[68] and it follows that the landlord, not the tenant, is entitled to the proceeds from the sale of such water. The issue of whether United charged the Partnership for water does not affect the fact that United, as the owner and landlord, owns the water on its property.[69] Similarly, the issue of whether the water was from the Pre-existing Cistern or the New Cisterns at the Leased Premises does not affect the fact that United, as the owner and landlord, owns the water on its property. Additionally, the fact that the proceeds from the Partnership's fire insurance policy were used to rebuild the Leased Premises and the New Cisterns does not affect United's ownership of the Leased Premises and the water located thereon. As such, the Master finds that United is entitled to the Water Proceeds.

However, before the Master can determine whether United had a right to control the Water Proceeds at the time of the conversion, the following question must be addressed first—What was the agreement between Yusuf and Hamed regarding the Water Proceeds? United argued that Yusuf and Hamed had an agreement that Hamed would get one half of the Water Proceeds for ten years beginning in 1994 with the proviso that some of the Water Proceeds would be sent to their

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[68] To interpret this statute to mean that the tenant owns the water on the landlord's property would render it internally inconsistent. In *In re L.O.F.*, the U.S. Virgin Islands Supreme Court stated:

> 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)

[69] United argued that"[t]he fact that the water collected by United Shopping Center wells and its roof and stored in cisterns belonged to United is confirmed by how the partnership was charged for its own use of water at the Plaza Extra store"—to wit, "Beginning in 2004, a new rental formula was put into place under which the rent at Plaza Extra East was no longer calculated on a per square foot charge, but was instead calculated on the basis of the rent being paid by the Plaza Extra Tutu Park store in St. Thomas to the landlord at the Tutu Park Mall" and "[t]he total rent paid by Plaza Extra Tutu Park was divided by gross sales for that store, and that percentage was applied to Plaza Extra East gross sales to determine the rent," and since "the rent charged to the Plaza Extra Tutu Park store includes a separate charge for water used by the store" it meant "that the formula for computing Plaza Extra East's rent from 2004 includes charges for water usage." (Motion, at pp. 4-5; see also, United's SOF ¶¶ 12-13) Hamed countered that "Yusuf's comments about additional rent allegedly being owed by the Plaza East Partnership for water usage is not only incorrect, but it is totally irrelevant to this water claim for 100% of the water sales" and "[t]hus, those allegations can be ignored in addressing this motion." (Opp., at p. 17)

respective relatives in the Middle East.[70] However, Hamed disputed that an agreement with such terms was in place.[71] Based on the parties' arguments,[72] there is clearly a genuine dispute as to the terms of the agreement made as to the Water Proceeds, and thereby, there is clearly a genuine dispute as to whether United had a right to control the Water Proceeds at the time of the conversion. Thus, the Master concludes that United has not satisfied its burden of establishing that there are no genuine disputes as to any material fact regarding its motion for partial summary judgment for Yusuf Claim No. Y-8 as to United's conversion claim. *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

[70] United argued that: (i) "The water and revenues from its sale belonged to United, but Yusuf told Hamed that for the 10 year period beginning in 1994, he would give Hamed one half of the water sales revenues, with the proviso that each of them would disburse half of those funds to their respective relatives in the Middle East who were in need of money." (Motion, p. 4; see also, United's SOF ¶ 11); (ii) "That gift to Hamed's family was not in perpetuity, but was to end in 2004. (Id.); and (iii) "And in fact there has been no gifting of water revenues to Hamed and his relatives in the 2004 to 2015 time period." (Id.)

[71] Hamed argued: (i) While "Yusuf claims he made an agreement with Hamed to split these revenues 50/50 between United and Hamed and that United and Hamed would send 100% of these 'split' revenues to relatives in the Middle East in need of financial assistance[,]… there is no evidence of this new, second "partnership" in 1994 other than Yusuf's self-serving statements made for the first time after the Plaza Extra Partnership was dissolved and this claim was filed." (Opp., pp. 3-4); (ii) "In deposition, the sons on both sides stated that they knew only that it was to be split 50/50 for charity and that was what was always done—no Hamed or other Yusuf family member ever heard of this 10-year, single purpose "United/Hamed" partnership."[71] (Id., at p. 3, footnote 2); (iii) "When pressed on details, Yusuf simply says he believes he heard Wally Hamed reference water revenues for 1997 being $52,000 and for 1998 being $75,000, although there is no evidence of these sales either other than Yusuf's memory." (Id., at 4); (iv) "Likewise, no one ever heard of a claim by United that it was entitled to all such water revenues after this "United/Hamed" 10-year, single purpose partnership ended." (Id.); (v) "[A]ll actions for the entire period from the beginning to date are consistent with a 50/50 split" (Id., at pp. 4-5); and (vi) As to United's SOF ¶ 11, "[i]t is disputed that the water or the revenues from any sales belonged to United or that Yusuf 'gifted' half of these revenues to Hamed from 1994 to 2004 so long as the funds would be 're-gifted' to relatives in the Middle East." (Id., at p. 6)

[72] The parties' arguments here are examples of the prevalence of United, Yusuf, and Hamed treating United and Yusuf as one and the same. Here, as established above, United is entitled to the Water Proceeds. Thus, Yusuf, acting on his own behalf, does not have the authority to enter into agreements with third parties as to the Water Proceeds. However, neither United nor Hamed clarified whether Yusuf was acting on its own behalf or acting on behalf of United or both when he entered into the agreement with Hamed. Thus, when Yusuf entered into an agreement with Hamed as to the Water Proceeds, it is unclear whether the agreement was among United, Yusuf, and Hamed or only United and Hamed.

determine the truth, but rather to determine whether a factual dispute exists that warrants trial on the merits.").

B. United's Unjust Enrichment Claim

In 2014, the U.S. Virgin Islands Supreme Court "reformulated the elements of the unjust enrichment cause of action to require the plaintiff to prove (1) that the defendant was enriched, (2) that such enrichment was at the plaintiff's expense, (3) that the defendant had appreciation or knowledge of the benefit, and (4) that the circumstances were such that in equity or good conscience the defendant should return the money or property to the plaintiff. *Walter v. Walter*, 60 V.I. 786, 779-780 (V.I. 2014). Based on the Master's finding that there is clearly a genuine dispute as to the terms of the agreement made as to the Water Proceeds, there is clearly a genuine dispute as to whether the Partnership was unjustly enriched. Thus, the Master concludes that United has not satisfied its burden of establishing that there are no genuine disputes as to any material fact regarding its motion for partial summary judgment for Yusuf Claim No. Y-8 as to United's unjust enrichment claim. *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. United's Restitution Claim

In its motion, United referenced *Native Son, Inc.*, a District Court of Virgin Islands case, for the elements of its restitution claim. In *Native Son, Inc.*, the District Court of the Virgin Islands treated a claim for restitution the same as a claim for quasi-contract and cited to *Peppertree Terrace v. Williams*, 52 V.I. 225 (V.I. 2009) a U.S. Virgin Islands Supreme Court case. In *Peppertree Terrace*, the concurring opinion discussed, *inter alia*, recovery under a quasi-contract

theory. 52 V.I. at 243-44 ("An implied-in-law contract or a quasi-contract is established where 'there is no actual agreement between the parties, but the law imposes a duty in order to prevent injustice… Three elements are required for recovery under a quasi-contract theory: (1) a party must confer benefits on another party; (2) there must be an appreciation of the benefits by the recipient; and (3) there must be an 'acceptance and retention of these benefits in such circumstances that it would be inequitable for the recipient to retain the benefits without payment of value.'") (citation omitted). However, the U.S. Virgin Islands District Court case is not binding, and neither is the concurring opinion, and in any case, the concurring opinion was written before *Banks.* Thus, this is an issue of first impression in this jurisdiction and a *Banks* analysis is necessary. As Hamed pointed out in his opposition, "United/Yusuf did not do a *Banks* analysis on the elements of restitution."[73] (Opp., p. 15) In its reply, with regards to its restitution claim, United simply stated that "United did in fact file a counterclaim asserting restitution, unjust enrichment claims on December 23, 2013, and Hamed has admitted previously that, for statute of limitations purposes, the counterclaim is treated as filed on the date that Hamed filed his complaint against United and Yusuf – namely, September 17, 2012." (Reply, p. 17, n. 10) At this juncture, the Master will give the parties the opportunity to supplement their respective briefs on the issue of United's restitution claim.

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[73] Likewise, Hamed also did not conduct a Banks analysis. In his opposition, Hamed stated:

> …as noted in *Walters v Walters*, *supra*, the plaintiff there sought "restitution," which lead to the "unjust enrichment" analysis. Indeed, as noted in that opinion, restitution is the remedy for unjust enrichment…

However, unlike what Hamed represented, the *Walters* court did not note that "restitution is the remedy for unjust enrichment." Instead, the *Walters* court conducted a *Banks* analysis to determine the elements for an unjust enrichment claim under Virgin Islands common law and mentioned restitution in passing. 60 V.I. at 776-81 (As to the second factor, the three elements adopted in *Martin* are the same elements that various jurisdictions follow including Colorado, Connecticut, Georgia, Illinois, Iowa, Kansas, Michigan, New Mexico, New York, Pennsylvania, and Washington. *Appendix: Unjust Enrichment Cause of Action by State*, 54 S. TEX. L. REV. 265, 267-68 (2012) (collecting cases). Nevertheless, a clear majority of states have also adopted a fourth element — that the defendant has "appreciated the benefit" and "had knowledge or awareness that it was, in fact, receiving a benefit." *Id.* at 265-66. Moreover, a minority of jurisdictions also follow a position endorsed by the Restatement (Third) of Restitution and Unjust Enrichment, which has taken the position that no strict formula or test for unjust enrichment should exist, but that courts should simply be guided by the principle that "[a] person who is unjustly enriched at the expense of another is subject to liability in restitution." RESTATEMENT (THIRD) OF RESTITUTION and Unjust Enrichment § 1 (2011)) (Emphasis added).

CONCLUSION

Based on the foregoing, the Master will deny United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to its conversion claim and unjust enrichment claim, grant the parties leave to supplement their briefs as to the issue of United's restitution claim, deny Hamed's cross motion for summary judgment for Yusuf Claim No. Y-8 as to the issue of whether United asserted this claim prior to the cut-off date for filing claims, and grant the parties leave to brief the issue of whether Yusuf Claim No. Y-8 is barred by the statute of limitations. Accordingly, it is hereby:

ORDERED that United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to its conversion claim is **DENIED**. It is:

ORDERED that United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to its unjust enrichment claim is **DENIED**. It is:

ORDERED that Hamed's cross-motion for summary judgment for Yusuf Claim No. Y-8 as to the issue of whether United asserted this claim prior to the cut-off date for filing claims is **DENIED**. **And** it is:

ORDERED that, **within six (6) weeks from the date of entry of this Order,** the parties shall file: (i) their respective supplemental briefs as to the issue of United's restitution claim and (ii) their respective briefs as to the issue of whether Yusuf Claim No. Y-8 is barred by the statute of limitations.

DONE and so ORDERED this 3rd **day of September, 2020.**

EDGAR D. ROSS
Special Master