

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE
	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
WALEED HAMED, as Executor of the)	
Estate of MOHAMMAD HAMED,)	
)	
Plaintiff,	)	CIVIL NO. SX-14-CV-287
v.)	
)	
UNITED CORPORATION,	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
)	
<u>Defendant.</u>)	
WALEED HAMED, as Executor of the)	
)	
Estate of MOHAMMAD HAMED,	)	CIVIL NO. SX-14-CV-278
)	
Plaintiff,	)	ACTION FOR DEBT AND
v.	)	CONVERSION
)	
FATHI YUSUF,)	
)	
<u>Defendant.</u>)	
FATHI YUSUF and)	
UNITED CORPORATION,)	
)	
Plaintiffs,	)	CIVIL NO. ST-17-CV-384
v.)	
)	
THE ESTATE OF MOHAMMAD HAMED,	)	ACTION TO SET ASIDE
Waleed Hamed as Executor of the Estate of	)	FRAUDULENT TRANSFERS
Mohammad Hamed, and)	
THE MOHAMMAD A. HAMED LIVING TRUST,)	

Defendants.)
)
)

JOINT INFORMATIONAL MOTION

COME NOW, Counsel for the parties Hamed and Yusuf and provide the Master with this Informational Motion as to the status of the claims resolution process.

A. Claims Resolution Process Overview under the Scheduling Order

As the Master is aware, the parties are currently operating under a Scheduling Order jointly submitted for the orderly resolution and processing of the various remaining claims *See* attached Scheduling Order. The Scheduling Order divided the claims into three categories:

- 1) Group A Claims – comprised of those issues for which accountant John Gaffney’s explanation was needed as to accounting entries in question.
- 2) Group B-1 Claims – claims that required discovery but not expert discovery and potentially could be disposed of by summary motion.
- 3) Group B-2 Claims – claims that would require discovery including possible expert discovery.

See Scheduling Order. The basic format for resolution of the claims was to address the B-1 claims first, engage in discovery and then submit motions for summary judgment. If any motions were denied and required an evidentiary hearing to resolve the remaining issues of fact, then those would be scheduled shortly following the rulings. Thereafter, the B-2 claims followed the same process. In the meantime, as to the Group A claims, the parties developed a format for Mr. Gaffney to provide his explanations. Specific Group A claims are submitted to Mr. Gaffney and his explanation is reviewed. If Hamed is satisfied with the explanation, he has been withdrawing the claims. Of those Group A claims that are still viable following Mr. Gaffney’s explanation, we have a suggestion for resolution as set forth below.

Given the time that has transpired and the impact of COVID19, we provide this Informational Motion as a status report on the progress of the claims resolution process and to propose next steps.

B. Potential Remote Hearings for B-1 Claims with remaining Fact Issues

We have received the Master's rulings on the various B-1 claims, some of which require further evidentiary hearings. Counsel for the parties have discussed these issues and believe it is prudent to pursue a hearing as to certain claims that the Master had determined are not susceptible to summary judgment and for which a factual hearing is required. Given the constraints upon the parties and witnesses as a result of COVID-19, we anticipate that the hearing would be conducted via Zoom and seek to determine whether the Master is amenable to proceeding via remote testimony pursuant to a Zoom conference.

Recognizing these constraints, the parties have reviewed the matters that are ripe for such an evidentiary hearing and have determined that the claims Yusuf Y-2 and Y-4 would be suitable for a Zoom hearing given the limited number of witnesses, who are also all parties to the case and thus, would not require any outside third-party witnesses to be available. At this time, the parties anticipate the time necessary for a hearing on this limited issue to be approximately a half a day and anticipate three to four party witnesses to provide testimony on the issues the Master has identified as the questions of fact pursuant to the Master's orders denying the summary judgment motions.

If the Master is amenable to a hearing in this manner, the parties also have discussed the ability to provide the Master and Attorney Kuo with accommodations for a separate, isolated room to view and participate in the hearing hosted either at the offices of Dudley Newman Feuerzeig in St. Croix or Joel Holt in St. Croix so as to facilitate this hearing.

As with other depositions conducted throughout the Territory, the witnesses for the hearing would be remote and in different locations than counsel presenting the evidence. Zoom calls and conferences of this nature are recorded allowing the Court the opportunity to review the testimony in a video format. In the event that a transcription would be required, we could also coordinate for the assistance of a Court reporter stenographer to take down the testimony as well.

Our thought was to conduct this limited hearing given its relatively limited issues and witnesses to determine whether logistically additional hearings as the other B-1 claims would be feasible. Alternatively, we can simply postpone the hearings until such time as we can scheduling them live as originally anticipated.

C. The B-2 Claims Process is proceeding according to the Scheduling Order

Pursuant to the current Scheduling Order, the parties are engaging in active discovery as to the B-2 claims. Much of the written discovery has been exchanged between the parties and the parties are discussing any discovery disputes relating to that exchange and will be coordinating for depositions on the open issues. At this time, the timing appears to be relatively on track for the B-2 claims, although the parties have been successful in agreeing to extensions where necessary so as to accommodate the challenges everyone has faced as a result of the limitations imposed by COVID-19.

D. The Group A Claims Status and Proposed Next Steps

As to the Group A claims to be submitted to accountant, John Gaffney, relating to questions/claims made by Hamed, the parties demonstrate that, thus far, of the various claims submitted to Gaffney pursuant to the agreed-upon form seeking the related and relevant information to explain the accounting entries. In the joint filing of the parties on September 18,

2018, the parties noted that¹ John Gaffney was dealing with a total of 131 claims. In a series of 1. 26 explanations have been deemed sufficient to no longer merit the pursuit of the questions/claim by Hamed and those claims have been withdrawn and two orders entered by the Court (10/4/19 and 11/22/19) eliminating those claims as continuing issues. There remain 8 Gaffney analyses that have not been fully reviewed by the parties, and there are 5 “Outstanding Claims Where the Master Has Denied Summary Judgment and/or Ordered a Hearing” as reflected on the update spreadsheet supplied by the parties:

- Y-2 Unpaid rent for Plaza Extra-East Bays 5 & 8
- Y-4 9% interest on rent claims for East Bay 1
- H-16 NejeH Yusuf’s use of Partnership resources for his Private Businesses on STT
- H-142 Half acre in Estate Tutu [B-1]
- H-163 Loss of assets due to wrongful dissolution [B-2]

Thus, 39 (26 plus 5 plus 8) of the larger claims have been fully or partially addressed. The parties have also discussed some 35 claims under \$10,000 that may be subject to settlement or some sort of *en masse* resolution.

The onslaught of the pandemic has disrupted the cadence of his responses but we have been assured by Mr. Gaffney that the cadence of one per week is doable under the current circumstances.

The parties suggest as a means to expedite resolution of those open claims, an abbreviated briefing submission be utilized such that the explanation provided by Gaffney will

¹ In that motion, the parties stated:

It should be noted that the Gaffney (Part A) process involved the Court less than the full briefing (Part B) process – and thus 30 claims were added to the original 101 Part A claims. Thus, the “starting figure” for Part A claims was actually 131.

1. 101 original claims were designated as Part A Claims requiring a report from John Gaffney.
2. 30 Part B claims were moved to Gaffney / Part A.
3. Thus, a total of 131 claims are being submitted to Gaffney.

be presented to the Master along with a 3 page submission by Hamed and a corresponding 3 page submission by Yusuf. Much like an abbreviated summary judgment submission, the Court may determine whether the submission is adequate and rule as to the claim either for or against the parties, or, if the Master determines there remains open questions, then a limited hearing with testimony provided by John Gaffney would be scheduled to clarify those remaining open issues.

Otherwise, the Scheduling Order in terms of sequence and timing appears to be adequate to the extent minor changes as to dates are agreed between the parties, it does not require any further intervention by the Master and thus, the Scheduling Order remains operative for the continued pursuit of these claims.

We provide this information for the Court's information as an update to the current status and our best efforts to continue to move the matter forward in the current climate. If the Court would like a status conference hearing to review these issues or have the counsel provide further clarification, we will make ourselves available at a time convenience to the Master.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: September 25, 2020

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