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

Hamed's complaint was filed on September 17, 2012, followed by his first amended complaint, seeking, inter alia, "A full and complete accounting… with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf…" Complaint, at 15, ¶1. Defendants filed their counterclaim on December 23, 2013, followed by his first amended counterclaim, seeking the following reliefs: Declaratory Relief that No Partnership Exists (Count I), Declaratory Relief, in the event that a partnership is determined to exist to determine, among other relief, "their respective rights, interests, and obligations concerning the Plaza Extra Stores and the disposition of the assets and liabilities of these stores"(Count II), Conversion (Count III), Accounting, alleging that "Yusuf is entitled to a full accounting ..." (Count IV), Restitution (Count V), Unjust Enrichment and Imposition of a Constructive Trust (Count VI), Breach of Fiduciary Duty (Count VII); Dissolution of Alleged Partnership, stating: "Although Defendants deny the existence of any partnership with Hamed, in the event the Alleged Partnership is determined to exist, then Yusuf is entitled to dissolution of the Alleged Partnership and to wind up its affairs, in that such partnership would be an oral at-will partnership and Yusuf provided notice of his intent to terminate any business relationship (including any partnership)

[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.

with Hamed in March of 2012" (Count VIII), Dissolution of Plessen (Count IX), Appointment of Receiver (Count X), Rent for Retail Space Bay I (Count XI), Past Rent for Retail Spaces Bay *5* & 8 (Count XII), Civil Conspiracy (Count XIII), and Indemnity and Contribution (Count XIV). Counterclaim ¶¶141-191.

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
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> 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 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 and responses thereto were filed thereafter. In its motion, United argued that it is entitled to partial summary judgment for Yusuf Claim No. Y-8 under the theories of restitution, unjust enrichment, and/or conversion since "[t]he elements of each of these causes of action are readily established here." (Motion, pp. 5-6) In his opposition, Hamed opposed United's motion and also included a cross-motion for summary judgment for Yusuf Claim No. Y-8 based on the threshold issues of whether United timely asserted this claim prior to the cut-off date and whether Yusuf Claim No. Y-8 is barred by the statute of limitations. In its reply, United reiterated its arguments and opposed Hamed's cross-motion for summary judgment.

On September 4, 2020, the Master entered an order whereby the Master denied United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to its conversion claim and its unjust enrichment claim, denied 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 ordered Parties to file: (i) their respective supplemental briefs as to the issue of United's restitution claim[3] and (ii) their respective briefs as to the issue of whether Yusuf Claim

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[2] Yusuf's Amended Accounting Claims provided:

> F. Water Revenue Re Plaza Extra-East
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> 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)

[3] The September 4, 2020 order provided, in relevant part:

> 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

No. Y-8 is barred by the statute of limitations.[4] On September 16, 2020, Hamed filed his first supplemental brief regarding the statute of limitations. On October 16, 2020, United filed its first supplemental brief regarding the statute of limitations. In response, Hamed filed his second supplemental brief regarding the restitution elements and statute of limitations on October 22,

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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."[89] (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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[89] 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). (Sep. 4, 2020 Order, pp. 28-29)

[4] The September 4, 2020 order provided, in relevant part:

> 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.[4] Thus, the Master will address United's motion for partial summary judgment. (Sep. 4, 2020 Order, p. 22)

2020, and United filed its second supplemental brief regarding the statute of limitations on November 6, 2020.

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 from which a jury might reasonably return a verdict in his favor." *Rymer*, 68 V.I. at 576 (citing *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013) (internal citations and quotation marks omitted). The non-moving party "may not rest upon mere allegations, [but] must present actual evidence showing a genuine issue for trial." *Rymer,* 68 V.I. at 576 (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)).

Rule 56 provides that "[e]ach summary judgment motion shall include a statement of undisputed facts in a separate section within the motion" and that "[e]ach paragraph stating an undisputed fact shall be serially numbered and each shall be supported by affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon regarding such fact." V.I. R. CIV. P. 56(c)(1). Additionally, Rule 56(e) states that "[i]f a party fails to properly

support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or (4) issue any other appropriate order." V.I. R. CIV. P. 56(e)(1)-(4). The reviewing court must view all inferences from the evidence in the light most favorable to the nonmoving party, and take the nonmoving party's conflicting allegations as true if properly supported. *Williams,* 50 V.I. at 194; *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 527 (V.I. 2013). Moreover, the court "should not weigh the evidence, make credibility determinations, or draw 'legitimate inferences' from the facts when ruling upon summary judgment motions because these are the functions of the jury." *Todman*, 70 V.I. at 437 (quoting *Williams v. United Corp.*, 50 V.I. 191, 197 (V.I. 2008). In deciding a motion for summary judgment, the court's role "is not to determine the truth, but rather to determine whether a factual dispute exists that warrants trial on the merits." *Todman*, 70 V.I. at 437 (quoting *Hawkins v. Greiner*, 66 V.I. 112, 117 (V.I. Super. Ct. 2017). Because summary judgment is "[a] drastic remedy, a court should only grant summary judgment when the 'pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.'" *Rymer,* 68 V.I. at 575-76 (quoting *Williams,* 50 V.I. 191, 194). Finally, Rule 56 requires the court to "state on the record the reasons for granting or denying the motion." V.I. R. CIV. P. 56(a).

DISCUSSION

In his first supplemental brief, Hamed argued that this claim is timed barred. Hamed made the following assertions in support of his argument: (i) The applicable statute of limitations started to accrue on "September 30, 2010—six years prior to the first ever assertion (or even mention) of such a claim" in Yusuf's accounting claims, filed on September 30, 2016. (Hamed's First Supp. Brief, p. 2) (Emphasis omitted); (ii) "[This claim] is never mentioned, asserted, raised prior to

that, nor was it ever mentioned in any writing, communication or claim." (Id.); (iii) Tolling does not apply "as this claim could have been included in the answer and counterclaim or at any time thereafter—as United has filed many supplemental claims, motions, and arguments in this case" and United was not "in any way impaired from September 30, 2010 until those filings in 2012 and thereafter." (Id.); (iv) "This claim was not a 'mutual, open or current account', as Hamed first learned about this claim when it was filed, so that 5 V.I.C. § 33 does not apply" but "if that section were applicable, the last item claimed took place well after 2010." (Id., at p. 3); and (v) "[W]hile there is no allegation that subsequent promises were made to pay this debt after the last date the alleged claims accrued, it must be noted that such promises would have to be in writing, as expressly required by 5 V.I.C. § 39."[5] (Id.)

In its first supplemental brief, United argued that "the cause of action for restitution is slightly different from the cause of action for unjust enrichment" and "[p]artial summary judgment should be granted for United for liability on claim Y-8 under either theory." (United's First Supp. Brief., p. 2) United also argued that "under either the unjust enrichment, restitution or conversion theories, the claims were asserted well within the statutory period from any of the plausible dates of accrual" which "…means that all sales proceeds from United's water from 2004 are recoverable (less the incidental adjustments discussed in United's prior briefs in support of its Y-8 motion for summary judgment)" and that "[t]here is no need to toll the statute of limitations, but if there were, the tolling analysis used by United for its Y-7 and Y-9 claims would apply here." (Id., at p. 3) United made the following assertions in support of his argument: (i) "Hamed's main argument in opposition to United's Motion for Partial Summary Judgment on Claim Y-8 is that the partnership,

[5] Title 5 V.I.C. § 39 provides:

> No acknowledgment or promise shall be sufficient evidence of a new or continuing contract, whereby to take the case out of the operation of this chapter, unless the same is contained in some writing, signed by the party to be charged thereby; but this section shall not alter the effect of any payment of principal or interest.

United referenced: *Anderson v. Bryan*, No. ST-08-CV-545, 2010 WL 10930917, at *5 (V.I. Super. Dec. 6, 2010) (oral promises acknowledging a contract are not enforceable pursuant to 5 V.I.C. §39).

and not United Corporation ("United"), owned the water whose sales revenues from early 2004 to March 9, 2015 are the subject of this claim" but "[i]n its September 3, 2020 Opinion and Order, the Master rejected that argument, and ruled that the remaining legal issue regarding this claim that may be resolved by summary judgment is whether the statute of limitations bars some or all of the recovery of those water revenues for the period 2004 to September 30, 2010 under any of the theories of recovery advanced by United." (Id., at p. 2); (ii) Unjust enrichment theory: (a) "the statute of limitations for wrongfully withholding United's water sales revenues could only begin running after a partnership was declared to exist and after Hamed gave notice that he would seek to prevent that partnership from returning those monies to United"—to wit, "United did not learn that Hamed would bar the return of those revenues until after it filed its claim Y-8 on September 30, 2016" (Id., at p. 6), (b) "[w]hile there was no formal deadline for responding to claims, United will be conservative and use September 30, 2016 as the date it became clear that Hamed would prevent return of any water sales revenues to United for the period 2004 to March 9, 2015 time period" and "September 30, 2016 would then be the accrual date for the unjust enrichment claim, and the claim is obviously not time-barred"[6] (Id.), (c) "[i]n the alternative, the earliest conceivable date that Hamed could argue that he gave notice of his intent to have the partnership retain United's water revenues is the date that Hamed filed the instant lawsuit – namely, September 16, 2012" (Id., at p. 7), and (d) "United does not need to avail itself of the discovery rule here, because, as already discussed, it pressed its conversion claim within the 6-year limitations period that ran from the date of accrual of the claim, whichever of the possible dates is used for the accrual of that claim [b]ut if the Master were to somehow conclude that part of its claim is time-barred under any one of those possible accrual dates, then he should apply the discovery rule, and rule as a

[6] United referenced: *Vanterpool v. Government of Virgin Islands*, 63 V.I. 563, 594 n. 19 (V.I. 2015) (noting that "statute of limitations began to run on claims of quantum meruit and unjust enrichment when defendants refused demand for payment, as this was the earliest point in time that the plaintiffs could have suffered an injury")

matter of law that under the circumstances of this case United could not have discovered that it had a conversion claim as to all of its water sales proceeds collected from early 2004 and held in Plaza Extra accounts until, at the very earliest, when Hamed filed this lawsuit in September 2012." (Id., at pp. 15-16); (iii) Restitution theory: (a) the soundest rule for the U.S. Virgin Islands with regards to the elements of restitution is to leave out the "knowledge of receipt of benefit" element and have all other elements of restitution and unjust enrichment be identical (Id., at p. 9), (b) "whether restitution and unjust enrichment are identical in their elements, or instead differ only insofar as restitution eliminates the third element of the Walters Court's definition of unjust enrichment, has no effect on United's right to recover one half of the water sales revenues for the period in question under either theory" because "Mohammad Hamed had to know (or reasonably should have known) that the water belonged to United, rather than the partnership, because it was collected by real estate improvements owned by United" (Id., at pp. 9-10) and (c) "United's statute of limitations analysis for unjust enrichment that is developed above applies equally to the restitution theory, and no part of the claim is time-barred." (Id., at p. 10); (iv) Conversion theory: (a) as the September 4, 2020 Order noted, "the soundest definition for the tort of conversion in the Virgin Islands 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 may justly be required to pay the other the full value of the chattel" (Id., at p. 10), (b) "[a] necessary corollary of [the aforementioned definition], which is set forth in section 237 of the Restatement of Torts, is that '[o]ne in possession of a chattel as bailee or otherwise who, on demand, refuses without proper qualification to surrender it to another entitled to its immediate possession is subject to liability for its conversion'" (Id.), (c) "the universal rule is that a conversion can occur where the party was initially in lawful possession of a chattel, but then later refuses on request to turn it (or the cash from its sale) over

to the party entitled to it"[7] (Id., at pp. 10-11), (c) "[h]ere, the retention of accumulated proceeds from the sales of United's water only became unlawful when, upon request, Hamed refused to agree to have the partnership return those funds, and this is the date the conversion claim accrued for statute of limitations purposes"[8] which could be "February 12, 2012, when Mr. Yusuf's then counsel, Nizar DeWood, sent correspondence to Mohammad Hamed asking for a dissolution of the partnership and settlement of all accounts" or "September 17, 2012, the date that Hamed concedes United is deemed to have filed its counterclaim that included a count for conversion" or "September 30, 2016, the date that United submitted its claim for recovery of revenues from sales of its water that were collected and held for it by the partnership" (Id., at p. 11), and (d) "[w]hichever of these dates is taken to be the date the conversion occurred, United's claim for conversion was timely brought and litigated." (Id.); (v) Breach of contract theory:[9] (a) "United did not frame its Y-8 claim as a breach of contract claim in its opening and reply briefs in support of its motion for partial summary judgment on that claim [b]ut even if it had relied on that theory in addition to the three others, the statute of limitations would not cut off any recovery for water sales sold in the 2004 to September 30, 2010 time period" (Id., at p. 12), (b) "United's position is that it gifted one half of the water revenues to Hamed for the period 1994 to early 2004, for distribution to his relatives in the Middle East that needed them, but that it ceased making that gift in early 2004" and "United does not believe that this gifting can be treated as a contract, because

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[7] United referenced: *Barum v. Farugia*, 606 F.2d 42, 43-44 (3d Cir. 1979) (stating that a person will be liable for conversion if he or she "refus[es] to surrender a chattel on demand to a person entitled to lawful possession"); *Snell v. Short*, 544 F.2d 1289, 1291 (5th Cir. 1977) (under the common law tort of conversion, "[w]hen possession of property is lawful at the outset, as it was here, conversion occurs when the possessor refuses the owner's demand for return of the property"); *Jarvis v. Lieder*, 117 Conn. App. 129, 978 A.2d 106 (Conn. App. 2009) (recognizing that one type of conversion occurs "where the possession, originally rightful, becomes wrongful by a wrongful detention").

[8] United referenced: *Whitaker v. Merrill Lynch*, 36 V.I. 75, 84 (V.I. Terr. 1997) (per then Judge Cabret) ("an action for conversion of property is considered complete when the property is first tortiously taken or retained by the defendant").

[9] United pointed out that Hamed's first supplemental brief "analyzes United's claim for water revenues as a breach of contract and says nothing about the accrual dates for the unjust enrichment, restitution and conversion theories of recovery that United is proceeding under." (United's First Supp. Brief, p. 12)

the common law rule is that a promise to make a future gift is revocable at any time" but "even it could be so treated, any such contract ended in early 2004, and contract therefore cannot be the basis for the recovery United is seeking for water sales from early 2004 forward" (Id.), (c) "neither party is asserting that an express contract governed the collection and distribution of water revenues after early 2004" (Id.), (d) "[p]erhaps one could argue for a quasi-contract (i.e., an implied contract) claim regarding retention of United's water revenues…[b]ut the cause of action for quasi-contract is more in the nature of a claim for unjust enrichment, and indeed is frequently just another way of referring to an unjust enrichment claim" (Id., at pp. 12-13), (e) "even assuming *arguendo* that United's claim for recovery of water revenues can also be analyzed as a breach of contract claim, in addition to constituting an unjust enrichment, restitution and conversion claim, Hamed's argument that only six years' worth of damages are recoverable for the alleged breach rests on a logical fallacy" because "[i]f the breach of that contract occurred on September 30, 2016, when United filed its claim for recovery of water sales revenues, and Hamed refused to permit the partnership to pay over the funds that had been collected from 2004 to March 9, 2015, then everything collected is in play, not just water sales proceeds from September 30, 2010 to March 9, 2015" (Id., at p. 13), (f) "Hamed tries to attach significance to the fact that United's claim for recovery of water revenues was not raised and asserted until September 30, 2016" but "United asserted claims for unjust enrichment, restitution and conversion in its December 2013 Counterclaim (which is treated for statute of limitations purposes as having been filed when the Complaint was filed in September 2012) and "[t]he fact is that most of the numerous claims asserted by Hamed, Yusuf and United on September 30, 2016 for resolution by the Master were not specifically set forth in the Complaint and Counterclaim [and] …they are still embraced by the Complaint and Counterclaim under the liberal notice pleading standards of the Virgin Islands Rules of Civil Procedure" (Id.), (g) "Hamed cites no authority, from the Virgin Islands or any other jurisdiction, for the proposition that in the case of a breach of contract claim brought within

the 6-year statute of limitations, the only damages recoverable are those that arose within the 6 years preceding the suit" (Id.), (h) "Hamed does not argue in his supplemental brief that under a *Banks* analysis, doctrine of 'divisible' contracts is part of Virgin Islands law regarding the statute of limitations - - or that if it is, that there would be any basis for applying it here" (Id., at p. 14), (i) "[t]here is a reasonable basis for implying a contract under which the proceeds of each water sale would be held in United's Plaza Extra accounts for later distribution upon request to United (or to its shareholder, Yusuf, for United)" and "under any such implied contract, water sales transactions from early 2004 should be treated as part of a series of interconnected transactions that constitute an open account under 5 V.I.C. § 33, such that the statute of limitations for the entire series of transactions would accrue on the date of the last transaction, which in this case is February 28, 2015 (just before the March 9, 2015 takeover of the Plaza Extra East store by Yusuf)" (Id.), and (j) "Hamed's unsupported assertion that the open account rule cannot apply because Hamed did not learn that United would seek recovery of its water sales revenues until September 16, 2016 is unpersuasive" because "[i]f some quantum of knowledge were required, then the fact that Hamed knew, or at the very least should have known, that the water – and therefore the proceeds from each sale of water – was owned by United would be sufficient for invocation of the open account accrual rule [a]nd in any event, because knowledge of a fact by one partner constitutes knowledge of that fact by the partnership under the Revised Uniform Partnership Act, Mr. Yusuf's knowledge that United owned the water would satisfy any knowledge requirement for the open account accrual rule"[10] (Id., at pp. 14-15); (vi) "United does not need to avail itself of the discovery rule here, because, as already discussed, it pressed its conversion claim within the 6- year limitations period that ran from the date of accrual of the claim, whichever of the possible dates is used for the accrual of that claim [b]ut if the Master were to somehow conclude

[10] United referenced: Title 26 V.I.C. § 3.

that part of its claim is time-barred under any one of those possible accrual dates, then then he should apply the discovery rule, and rule as a matter of law that under the circumstances of this case United could not have discovered that it had a conversion claim as to all of its water sales proceeds collected from early 2004 and held in Plaza Extra accounts until, at the very earliest, when Hamed filed this lawsuit in September 2012." (Id., at pp. 15-16); and (vii) "Since United maintains that none of its unjust enrichment, restitution and conversion claims is even partially time-barred, under either the normal accrual rules or the discovery rule, the Master does not need to reach the issue of equitable tolling [b]ut if the Master disagree…the discovery rule, these two extraordinary circumstances put to bed those issues."[11] (Id., p. 16) As such, United requested "the Master to rule as a matter of law that United is entitled to partial summary judgment on it restitution claim, and to rule that the statute of limitations does not bar recovery of any portion of United's Y-8 claim under unjust enrichment, restitution, conversion and breach of implied or express contract theories of liability." (Id., at p. 17)

In his second supplemental brief, Hamed argued that the Master should deny United's partial motion for summary judgment for Yusuf Claim No. Y-8 as to United's restitution claim and that any claims prior to September 30, 2010 are time-barred. Hamed made the following assertions in support of his argument: (1) United's conclusion that the soundest rule for the U.S. Virgin Islands with regards to the elements of restitution is to leave out the "knowledge of receipt of benefit" element and have all other elements of restitution and unjust enrichment be identical "would not comply with the admonition in *Walters v. Walters*, 60 V.I. 768, 778-79 (V.I. 2014), that unless the 'knowledge of receipt of benefit' element is added, the goal of deterrence in

[11] United referenced: United's Motion for Summary Judgment for Claims Y-7 and Y-9, dated April 15, 2020, at pp. 11-15 and United's Reply to Hamed's Oppositions to that Motion, dated July 7, 2020 at pp. 20-23 for discussions related to the following alleged extraordinary circumstances: "1) the pendency of the criminal case brought against Yusuf, United and the Hamed and Yusuf sons, and 2) that there was no recognized partnership entity to sue in 2004 or 2008, and, moreover, that Yusuf had no reason to effectively sue himself in any event)." (United's First Supp. Brief, p. 16)

establishing the elements of a claim would be missing" (Hamed's Second Supp. Brief, p. 3); (ii) Regardless of whether the "knowledge of receipt of benefit" is one of the elements of the restitution claim, United's motion should be denied—to wit, "if it is found that the 'knowledge' element is still required, then the elements for unjust enrichment and restitution are the same, requiring partial summary judgment to be denied for the restitution claim for the same reasons already given for denying the unjust enrichment claim" and "if it is found that this 'knowledge' element is not part of a restitution claim, the result is the same"…[since] "partial summary judgment was denied on page 28 of the September 3rd Order for the unjust enrichment claim because the 'there is clearly a genuine dispute as to the terms of the agreement made as to the Water Proceeds,' which pertains to the one of the other elements of restitution." (Id., at pp. 3-4); (iii) "Hamed has always argued that Yusuf's Y-8 "water" claim is based on an alleged contractual relationship." (Id., at p. 4); (iv) United cited to the U.S. Virgin Islands Supreme Court's dicta in *Vanterpool v. Gov't of Virgin Islands*, 63 V.I. 563, 594 (2015),[12] which "states the applicable law that answers the question raised in the September 3rd Order if Y-8 is an equitably based contract claim." (Id., at pp. 4-5) (Emphasis omitted); (v) "[T]he ultimate finding in the September 3rd Order that Yusuf was entitled to seek damages for his 'water' claim was not based on any alleged

[12] Hamed noted that in *Vanterpool*, the U.S. Virgin Islands Supreme Court stated in dicta:

> . . . . Nevertheless, we note that this Court has previously held that the statute of limitations on a cause of action begins to run from the date the cause of action accrued, which ordinarily is the date upon "occurrence of the essential facts that give rise to that cause of action." *Anthony v. FirstBank V.I.*, 58 V.I. 224, 230 (V.I. 2013) (quoting *Burton v. First Bank of P.R.*, 49 V.I. 16, 20 (V.I. Super. Ct. 2007)); see also *Sunoco, Inc. (R & M) v. 175–33 Horace Harding Realty Corp.*, 969 F.Supp.2d 297, 304 (E.D.N.Y. 2013) ("[A] cause of action for breach of contract did not accrue until ... the Defendant refused to pay."); *Olson v. Rugloski*, 277 N.W.2d 385, 387–88 (Minn..1979) (stating that a contract is breached when a party "refuses to pay or unreasonably delays payment of an undisputed amount"). These principles apply in quantum meruit cases as well. See, e.g., *Zic v. Italian Gov't Travel Office*, 149 F.Supp.2d 473, 476 (N.D.Ill.2001) (citing *Rohter v. Passarella*, 617 N.E.2d 46, 52 (Ill. App. Ct. 1993)) (quantum meruit "cause of action accrues upon presentment and subsequent rejection of a bill for services"); *Maglica v. Maglica*, 78 Cal.Rptr.2d 101, 106–08 (Cal.Ct.App.1998) (when the statute of limitations begins to run depends upon the nature of the parties' relationship and expectations as to when compensation would be due); *Generation Partners, LP v. Mandell*, 2011 Conn.Super. LEXIS 1913, at *10, 2011 WL 3671966 (Conn. Super. Ct. July 22, 2011) (statute of limitations began to run on claims of quantum meruit and unjust enrichment when defendants refused demand for payment, as this was "the earliest point in time that the plaintiffs could have suffered an injury").

contract either, but on a statute"[13] and "[t]hus, the appropriate questions to resolve appear to be (1) what is the SOL for an action where liability is based on a statute and (2) when is that SOL triggered in such an action?"—as to the first question, " an action based on a liability created by statute is six years" based on Title 5 V.I.C. § 31(3)(B) and as to the second question, the statute of limitation began to accrue "when the tenant, the partnership, used the water in question" because the soundest rule for the U.S. Virgin Islands with regards to when the statute of limitations begins to run on a liability created by a statute is to consider that "[a] cause of action is created when there is a breach of duty owed the plaintiff"[14] or in other words, "when the liability was incurred." (Id., at pp. 6-7); (vi) "As such, the SOL began to run on Yusuf's statutory rights each time the water was taken and used by the partnership" and "[t]hus, applying this six year SOL to the date this 'water' claim was first asserted on September 30, 2016, any 'water' claims prior to September 30, 2010, are time barred." (Id., at p. 8); (vii) "The same analysis applies to the conversion claim that is subject to a six year SOL pursuant to 5 V.I.C. § 31(3)(D), as United was clearly aware of this alleged conversion of its "chattel"—its water--in 2004, so that any "water" claims prior to September 30, 2010 are also time barred." (Id.); and (viii) "[A]s this liability is based on a statute, and not on any conversations that Yusuf had with Hamed, there are no representations involved, much less misrepresentations, and no reliance on any such statements either—meaning there cannot be any equitable tolling of the SOL for this liability based on a statute." (Id.) As such, Hamed requested the Master to deny United's motion.

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[13] Hamed referenced: September 4, 2020 Order, pp. 25-26 (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, and it follows that the landlord, not the tenant, is entitled to the proceeds from the sale of such water.).

[14] Hamed referenced: *Zion Nursing Home, Inc. v. Creasy*, 6 Ohio St. 3d 221, 224, 452 N.E.2d 1272, 1275 (1983) (We conclude that "the cause of action accrued," within the meaning of § 6 of the Portal-to-Portal Act, when the minors were employed. . . . A cause of action is created when there is a breach of duty owed the plaintiff. It is that breach of duty, not its discovery, that normally is controlling.).

In its second supplemental brief, United argued that "[t]here is no principled reason why the Master's statute of limitations analysis as to United's claims Y-7 and Y-9 should not apply equally to United's Y-8 claim for return of water. United made the following assertions in support of its argument: (i) "In his October 20 Order, the Master concluded that the Y-7 and Y-9 claims were brought on September 30, 2016, when United filed its claims for resolution by the Master." (United's Second Supp. Brief, p. 2); (ii) "[T]hat Order rejected Hamed's argument that the statute of limitations began running with each advance that United made to the partnership. Instead, relying on equitable estoppel principles, the Master concluded that the statute of limitations did not accrue on a claim for the total sum of accumulated advances until February 10, 2012." (Id.); (iii) "Since September 30, 2016 is well before February 10, 2018, the Master ruled that the entire claim for advances made up to February 10, 2012 was timely." (Id., at pp. 2-3); (iv) "In the October 20 Order, the Master ruled that Hamed was equitably estopped from invoking the statute of limitations as a defense to United's Y-7 and Y-9 claims for recovery of advances made from United's tenant account to partnership accounts."[15] (Id., at p. 3); (v) "[T]he Master concluded [in the October 20, 2020 order] that Hamed was equitably estopped to use the bar of the statute of limitations against United on the Y-7 and Y-9 claims until February 10, 2012, when, Nizar DeWood, who was then United and Yusuf's attorney, gave Hamed notice of dissolution of the partnership and asked for settlement of all accounts."[16] (Id., at pp. 4-5); (vi) "Yusuf, as the president of United, and the managing partner with absolute control over partnership finances, had the discretion to place water sales revenues in supermarket accounts, and to determine when they would be paid to him, as president of United, from those accounts" and "Hamed acquiesced in Yusuf's discretion over the use of partnership accounts to hold monies that belonged to United until such time as he determined that it made economic sense to repay them." (Id., at p. 5); (vii)

[15] United referenced: The October 20, 2020 order, pp. 22-29.

[16] United referenced: The October 20, 2020 order, p. 29

"United's reliance by not taking any action to force a repayment of the accumulated water revenues was reasonable up until February 10, 2012, when Nizar DeWood sent notice of dissolution of the partnership to Hamed" and "Hamed is therefore equitably estopped from invoking the statute of limitations as to any water sales revenues collected before that date." (Id.); and (viii) "United does not believe the Master has to reach the issue of whether equitable tolling applies in the circumstances of this case" but in the event that the Master reaches that issue, United performed a Banks analysis on the elements of equitable tolling for breach of contract and concluded that the *Pace* test[17] is "the soundest rule for the Virgin Islands because it furthers the policy of deciding cases on the merits, and it prevents a person from lulling another by his deceitful actions into unwittingly giving up his or her rights to sue on meritorious claims." (Id., at pp. 6-7) As such, United concluded that Hamed is equitably estopped from invoking the statute of limitations as to any water sales revenues collected before that date "regardless of whether the Master treats the Y-7 and [sic] Y-8 claims as sounding in unjust enrichment, restitution, conversion, express contract or implied contract (quasi-contract)" and requested the Master to grant its motion. (Id., at p. 5)

The Master must note at the outset that Hamed claimed that he has always argued that Yusuf Claim No. Y-8 was "based on an alleged contractual relationship." However, Yusuf Claim No. Y-8 is United's claim and United, as the claimant, gets to choose the nature of its claim, not Hamed. In its motion, United 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 did not make a claim for breach of contract. (Motion, p. 5) In United's supplemental brief, United belatedly raised new

[17] United referenced: *Pace* v. *DiGuglielmo*, 125 S. Ct. 1807, 1814 (2005) ("Generally, a litigant seeking equitable tolling bears the burden of establishing two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way.").

arguments to address Yusuf Claim No. Y-8 as a breach of contract claim in response to Hamed's claim that Yusuf Claim No. Y-8 is a breach of contract claim. However, the September 4, 2020 order only ordered Parties to brief the following limited issues—(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—and did not order nor permit Parties to submit new arguments. Thus, the Master will not address Yusuf Claim No. Y-8 as a breach of contract claim in this order.

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

In Hamed's first supplemental brief, he argued that the applicable statute of limitations began to accrue on September 30, 2010, six years prior to the date that Yusuf Claim No. Y-8 was first mentioned in Yusuf's Accounting Claim, filed on September 30, 2016. However, Hamed failed to cite to any binding authority to support his position that the date the statute of limitations begins to run is determined by the date that the claim was filed.[18] In *Marsh-Monsanto v. Clarenbach*, the U.S. Virgin Islands Supreme Court clearly stated that the statute of limitations "begins to run on the first date that the injured party possesses sufficient critical facts to put [her] on notice that a wrong has been committed and that [she] need investigate to determine whether [she] is entitled to redress." 66 V.I. 366, 375 (2017), (citing *Santiago v. V.I. Hous. Auth.*, 57 V.I. 256, 274 (V.I. 2012) (quoting *Zeleznik v. United States*, 770 F.2d 20, 23 (3d Cir. 1985))). In Hamed's second supplemental brief, he argued that: (i) "the ultimate finding in the September 3rd

[18] 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 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.") *See also, In re Catalyst Litig.*, 67 V.I. 16, n. 12 (V.I. Super. Ct. 2015) ("The Supreme Court of the Virgin Islands has established that in order for a motion to be properly before the court, parties must support their arguments by citing the proper legal authority, statute or rule."); *Antilles School, Inc. v. Lembach*, 64 V.I. 400, n. 13 (V.I. 2016) ("Members of the Virgin Islands Bar … must be cognizant of their responsibility to serve as advocates for their clients, which includes making all necessary legal arguments …"); *Joseph v. Joseph*, 2015 V.I. LEXIS 43, *5 (V.I. Super. Ct. Apr. 23, 2015) (the Court will not make a movant's arguments for him when he has failed to do so).

Order that Yusuf was entitled to seek damages for his 'water' claim was not based on any alleged contract either, but on a statute" and thus concluded after a brief *Banks* analysis that "the SOL began to run on Yusuf's statutory rights each time the water was taken and used by the partnership" and "[t]hus, applying this six year SOL to the date this 'water' claim was first asserted on September 30, 2016, any 'water' claims prior to September 30, 2010, are time barred" (Hamed's Second Supp. Brief, pp. 6-8) and (ii) "[t]he same analysis applies to the conversion claim that is subject to a six year SOL pursuant to 5 V.I.C. § 31(3)(D), as United was clearly aware of this alleged conversion of its "chattel"—its water--in 2004, so that any "water" claims prior to September 30, 2010 are also time barred." (Id., at 8) However, Hamed misrepresented the Master's finding in the September 4, 2020 Order. The Master did not find that the liability was based on a statute. Instead, the Master concluded that based on Title 28 V.I.C. § 795, the landlord owns the water on the landlord's property and that it follows that the landlord is entitled to the proceeds from the sale of such water, but noted that "before the Master can determine whether United had a right to control the Water Proceeds[19] 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?"[20] Thus, the Master finds Hamed's argument in unpersuasive. In its first supplemental

[19] The September 4, 2020 Order defined "Water Proceeds" as "all of the money collected from the sale of water collected in the cisterns located at the premises where the Partnership leased from United to operate Plaza Extra-East." (Sep. 4, 2020, p. 24) This order will adopt the definition of "Water Proceeds" as set forth in the September 4, 2020 Order.

[20] The September 4, 2020 Order provided, in relevant part:

> The Master interprets this statute to mean that the landlord, not the tenant, owns the water on the landlord's property, 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. 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? (Sep. 4, 2020 Order, pp. 26-27) (Footnotes omitted)

brief, United argued that that the applicable statute of limitations began to accrue on "February 12, 2012, when Mr. Yusuf's then counsel, Nizar DeWood, sent correspondence to Mohammad Hamed asking for a dissolution of the partnership and settlement of all accounts" or "September 17, 2012, the date that Hamed concedes United is deemed to have filed its counterclaim that included a count for conversion" or "September 30, 2016, the date that United submitted its claim for recovery of revenues from sales of its water that were collected and held for it by the partnership." (United's First Supp. Brief, p. 11) However, United did not conclude which date should be used in this instance. In its second supplemental brief, United argued that the Master's statute of limitations analysis in its October 21, 2020 order[21] should apply equally in this instance—to wit, Hamed and the Partnership should be equitably estopped from raising the statute of limitations defense against Yusuf Claim No. Y-8 until February 10, 2012. (United's Second Supp. Brief) The Master agrees with United's argument in its second supplemental brief.

The Master finds that, while Yusuf Claim No. Y-8 is not the claim of the individual partners but the claim of United, a third party, it is being raised in the context of the Partnership accounting and the Master is granted considerable flexibility "in fashioning the specific contours of the accounting process" and "in considering equitable remedies." *See* October 21, 2020 order, p. 22.[22]

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[21] On October 21, 2020, the Master entered an order whereby the Master invoked the doctrine of equitable estoppel and granted United's motion for summary judgment for Yusuf Claim No. Y-7: United's claim for advances United made on behalf of the Partnership in 1994, 1995, and 1998, in the total amount of $199,760.00 and Yusuf Claim No. Y-9: United's claim for advances United made directly to the Partnership in 1996, in the total amount of $188,132.00, and denied United's request to include Supplemental Yusuf Claim No. Y-9 for being time-barred.

[22] In the October 21, 2020 order, the Master discussed the doctrine of equitable estoppel and explained:

> Although Yusuf Claim Nos. Y-7 and Y-9 are not the claims of the individual partners but the claims of United, a third party, these claims are being raised in the context of the Partnership accounting. As explained in the Limitations Order, an accounting of the Partnership is both an equitable cause of action and an equitable remedy in itself, and thus, "the Court is granted considerable flexibility in fashioning the specific contours of the accounting process." (Limitations Order, pp. 13-14) (citing *Isaac v. Crichlow*, 63 V.I. 38, 2015 V.I. LEXIS 15, at *39 (V.I. Super. 2015) ("An equitable accounting is a remedy of restitution where a fiduciary defendant is forced to disgorge gains received from the improper use of the plaintiffs [sic] property or entitlements.") (quoting *Gov't Guarantee Fund of Republic of Finland v. Hyatt Corp*., 5 F. Supp. 2d, 324, 327, 38 V.I. 431 (D.V.I. 1998)) (emphasis added). Additionally, "because '[a] court of equity has traditionally had the power to fashion any remedy deemed necessary and appropriate to do justice in [a]

A. Doctrine of Equitable Estoppel

In *Browne v. Stanley*, the U.S. Virgin Islands Supreme Court established that "[i]n the Virgin Islands, equitable estoppel requires an asserting party to demonstrate that (1) the party to be estopped made a material misrepresentation (2) that induced reasonable reliance by the asserting party and (3) resulted in the asserting party's detriment" and explained that this is the soundest rule "because it promotes equity and justice by preventing one party from taking unfair advantage of another." 66 V.I. 328 at 334 (V.I. 2017). A misrepresentation is "an assertion that is not in accordance with the facts" and a misrepresentation is material "if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce the recipient to do so." *Wilkinson v. Wilkinson*, 70 V.I. 901, 914 (V.I. 2019).[23] Furthermore, in certain circumstances, misrepresentations may also include concealment or even nondisclosure. *See Id.*, 70 V.I. at 914, n.7 ("Actionable misrepresentations may also include, in certain circumstances, concealment or even non-disclosure.") With the elements of equitable estoppel in mind, the Master will begin his evaluation. *See Browne*, 66 V.I. at 336 ("The existence of reasonable reliance and detriment 'depends upon the facts of each particular case.'")

The first element of equitable estoppel concerns the conduct or language amounting to a material misrepresentation. Here, both partners and their respective sons were well aware from the inception of their involvement with the business that Yusuf acted as the managing partner of the Partnership and had absolute control over the Partnership finances. In *Hamed v. Yusuf*, the Court held that:

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particular case,' a court has a great deal more flexibility in considering equitable remedies than it does in considering legal remedies." (Limitations Order, p. 13) (quoting *Kalloo v. Estate of Small*, 62 V.I. 571, 584 (V.I. 2015)). As an extension of the Court in this matter, the Master is granted the same flexibility "in fashioning the specific contours of the accounting process" and "in considering equitable remedies." (Limitations Order, pp. 13-14)

[23] Although the *Wilkinson* court discussed misrepresentation and material misrepresentation in the context of a claim to rescind a contract, the Master nonetheless finds the *Wilkinson* court's definition of misrepresentation and material misrepresentation applicable in this instance.

> To the extent it is not already established by admissions of the parties and previous Orders of the Court, the Court now confirms its preliminary factual finding — as detailed at ¶ 19 of the Memorandum Opinion and Order entered April 25, 2013 (58 V.I. 117, 124) — that since the inception of the partnership, Yusuf acted as the managing partner, such that Hamed was completely removed from the financial aspects of the business. *See* Defendants' Brief in Opposition to Motion for Partial Summary Judgment Re Statute of Limitations Defense, filed June 6, 2014, at 11 ("Mr. Yusuf, as the partner admittedly in charge of all operations of the partnership …"). 69 V.I. 168, 175, n. 4 (Super. Ct. 2017).

In the Limitations Order, the Court similarly held that "[a]s managing partner, Yusuf was not only intimately familiar with the methods of record keeping, or lack thereof, employed by the partnership, but was the one responsible for designing and implementing those procedures in the first place" and that "[i]t was Yusuf's responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners." (Limitations Order, p. 28) In other words, since the inception of the business, Yusuf, as the managing partner of the Partnership, made all the financial decisions for the Partnership with Hamed's full knowledge and agreement. Moreover, both partners and their respective sons were also well aware from the inception of their involvement with the business that Yusuf, while he functioned as the managing partner of the Partnership, he also simultaneously functioned as the president of United, and that the dealings between the Partnership and United were treated as one unit. In other words, since the inception of the business, by practice and usage, all authorities resided in Yusuf as he simultaneously functioned as the president of United and the managing partner of the Partnership, and thereby, since the inception of the business, the dealings between the Partnership and United were treated as one unit with Hamed's full knowledge and agreement. For example, in the early phases of the Partnership, United and the Partnership filed taxes as one unit and United maintained the bank accounts for both the Partnership and United's own separate bank accounts, such as United's tenant account, all with Hamed's full knowledge and agreement. In fact, Hamed's action during the pendency of the criminal case brought by the United States against United further exemplified that Hamed was fully aware and content that all authorities resided in Yusuf and that the dealings

between the Partnership and United were treated as one unit. From the commencement of the prosecution and through the pendency of the criminal case, including the negotiation of the plea agreement and its ultimate execution, Hamed, along with Yusuf and their respective sons, purposefully kept the façade that United and the Partnership were one unit by actively concealing the fact that United and the Partnership were actually separate entities to the prosecutors. *See* October 21, 2020 order, note 43. Nevertheless, Hamed now changed his tune and claimed that he did not have knowledge and did not agree to Yusuf, the managing partner of the Partnership, having absolute control over the Partnership finances, to Yusuf, the president of United and the managing partner of the Partnership, having total authorities over the Partnership and United, and to the treatment of the dealings between the Partnership and United as one unit. In his opposition, Hamed essentially argued that Yusuf could not unilaterally end the original arrangement between United and the Partnership where the Partnership would receive the Water Proceeds and split it evenly between the partners so that starting in 2004, United would keep all the Water Proceeds.[24]

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[24] In his motion, Hamed argued:

> This claim arises solely because Yusuf contends the revenues from these sales after 2004 belong to the separate Yusuf-United entity rather than the Partnership. In this regard, 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.[2] Of course, 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.[3]
>
> 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. 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.

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[2] 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. See Group Exhibit 2. See e.g., Deposition of Wally Hamed at page 48, Exhibit 2a ("A. As far as the 10-year period, anything like that, no."), Deposition of Mike Yusuf at 109-110, Exhibit 2b:

> Q. That it was supposed to go from 1994 to only 2004. Do you have any information about that, other than what you hear today? Did you know about that before or did you not know about that before?
>
> A. No, there was an agreement between my dad and Mr. Mohammad –
>
> Q. Okay.
>
> A. -- about, you know, whatever proceeds, the water, and they'd give it to charity.

However, Hamed himself, either by deposition or otherwise, never denied that Yusuf had such absolute control over the Partnership finances or that Yusuf had total authorities over the Partnership and United or that the dealings between the Partnership and United were treated as one unit, nor presented any evidence showing that he never agreed nor consented to such an arrangement.[25] Thus, the Master finds Hamed's conduct of ongoing and repeated silence and

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> Q. Okay.
>
> A. And what the details were, I was just doing what I was told to do.
>
> Q. Okay. All right. So other than that, you don't have any other information about it?
>
> A. No.
>
> Same as to Deposition of Mafi Hamed at 134-135, Exhibit 2c:
>
> A. The discussions were, the revenues generated from the water sales was going to go as to the family members, or the -- or to the unfortunate family members that are abroad.
>
> Q. Okay.
>
> A. And there was no time limit, as he's saying.
>
> Q. Okay. And that was because -- you know this because of the conversations you had with your father?
>
> A. This is direct knowledge from my father, yes.
>
> Q. Okay.
>
> A. Because my father talks to us.

[3] Of course, Yusuf has no documentation of any water sales other than this one "memory," which is why this motion is only a partial summary judgment motion, as Yusuf has NO evidence of the amount of any of these water sales---ever—whether annual sales or monthly sales. As he stated in part in his November 19, 2019, supplemental interrogatory responses on these damages (submitted over three years after this claim was first filed): As far as receipts go, Yusuf shows that he derived the value of his calculations from a sheet bearing Waleed's handwriting which reflected the values in 1997 and 1998. At present, Yusuf is unable to locate that document but is continuing to make a diligent search for same. And of course, he still has not found that alleged handwritten document, which Waleed Hamed does not recall ever composing (See Exhibit 1), or anything else to identify anything about the water sales. If United really believed it was entitled to such a substantial sum of money, it would have regularly kept these records. Likewise, if it always believed it was entitled to such funds, it would have filed suit in 2010 before the six year statute of limitations expired in the 2004 sales, or in 2011 before the SOL expire on the 2005 sales, or in 2012 before the SOL expired in the 2006 sales, etc. (Opp., pp. 3-4)

Additionally, United's statement of undisputed facts (hereinafter "United's SOF") ¶¶ 12-13 provided:

> 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.)

Hamed's response to United's SOF ¶¶ 12-13 provided:

> It 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. See Exhibit 1. It is also irrelevant to this "water

acceptance of Yusuf, the managing partner of the Partnership, having absolute control over the Partnership finances, of Yusuf, the president of United and the managing partner of the Partnership, having total authorities over the Partnership and United, and of the treatment of the dealings between the Partnership and United as one unit, went beyond a miscommunication or single act and amounted to an ongoing and repeated material misrepresentation of the fact that Hamed agreed and consented to Yusuf having absolute control over the Partnership finances, to Yusuf having total authorities over the Partnership and United, and to the treatment of the dealings between the Partnership and United as one unit.

The second element, reasonable reliance. The facts are clear that Yusuf reasonably relied on Hamed's ongoing and repeated material misrepresentation—to wit, since the inception of the Partnership, Yusuf, as the managing partner of the Partnership and as the president of United, made all the decisions in connection with the Partnership finances under the belief that he had absolute control over the Partnership finances, that he had total authorities over the Partnership and United, and that the dealings between the Partnership and United were treated as one unit, including but not limited to deciding when United demanded any payment or reimbursement from the Partnership and when the Partnership paid or reimbursed United. *See* Limitations Order, p. 28 (holding that "[a]s managing partner, Yusuf was not only intimately familiar with the methods of record keeping, or lack thereof, employed by the partnership, but was the one responsible for

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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. (Opp., p. 6) (Emphasis omitted)

[25] This lawsuit was filed prior to Hamed's passing and thus, Hamed knew that Yusuf asserted that Yusuf had absolute control over the Partnership finances and that Yusuf had all authorities over the Partnership and United. Hamed had the opportunity to contradict Yusuf's assertion, yet no one had asked Hamed any questions related to such an arrangement. In his opposition, Hamed only argued the absence of any evidence showing agreement or consent by Hamed to Yusuf's absolute control over the Partnership finances and Yusuf's total authorities over the Partnership and United. As noted above, Hamed essentially argued that Yusuf could not unilaterally end the original arrangement between United and the Partnership where the Partnership would receive the Water Proceeds and split it evenly between the partners so that starting in 2004, United would keep all the Water Proceeds but Hamed never discussed nor provided any affirmative assertion by Hamed that Yusuf did not have the control and authority to make such decisions.

designing and implementing those procedures in the first place" and that "[i]t was Yusuf's responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners); *Hamed*, 69 V.I. at 175, n. 4 (holding that "Yusuf acted as the managing partner, such that Hamed was completely removed from the financial aspects of the business"); *see also*, October 21, 2020 order, pp. 27-28 (finding that United reasonably relied on Hamed's ongoing and repeated material misrepresentation).[26]

The final element, detriment. Here, Yusuf's reasonable reliance on Hamed's ongoing and repeated material misrepresentations resulted in United's claim—Yusuf Claim No. Y-8—possibly being barred in part or in whole by the statute of limitations because Yusuf as the president of United failed to timely seek payment/reimbursement from the Partnership for the Water Proceeds and Yusuf as the managing partner of the Partnership failed to timely make payment/reimbursement to United for the Water Proceeds. Under these circumstances, the Master is inclined to invoke the doctrine of equitable estoppel to ensure fairness in the relationship between the parties and find that Hamed, and in turn the Partnership, are estopped from taking a position inconsistent with their prior conduct and language. *See Browne*, 66 V.I. 328 at 334 ("because [equitable estoppel] promotes equity and justice by preventing one party from taking unfair advantage of another"). More specifically, Hamed and the Partnership are estopped from

[26] The October 21, 2020 order provided, in relevant part:

> The second element, reasonable reliance. The facts are clear that Yusuf relied on Hamed's ongoing and repeated material misrepresentation—to wit, in its motion and reply, United pointed out that Yusuf, as the president of United, made advances on behalf of the Partnership to third-parties and directly to the Partnership by transferring funds from United's Account to United's Partnership Account and had the discretion to seek repayment from the Partnership at any time, and that Yusuf, as the managing partner of the Partnership, had the discretion to accept the advances from United and to determine when the Partnership should repay United for the advances. (Motion, pp. 14-15; Reply, p. 22) The question remains whether Yusuf's reliance can be considered reasonable under the circumstances. The Master finds that Yusuf's reliance was reasonable because (i) at the time, Yusuf, as the managing partner of the Partnership and as the president of United, made all the decisions in connection with the Partnership finances, including but not limited to instructing United to make advances on behalf of the Partnership to third-parties and directly to the Partnership by transferring funds from United's Account to United's Partnership Account, Hamed never objected nor prevented Yusuf from taking such actions[26] and (ii) at the time when the dealings between the Partnership and United were treated as one unit, Hamed also never objected nor prevented Yusuf from taking any actions as a result thereof. (Oct. 21, 2020 order, pp. 27-28) (Footnote omitted)

raising any arguments, including the statute of limitations defense, based on the premises that Hamed did not agree and consent to Yusuf, the managing partner of the Partnership, having absolute control over the Partnership finances, to Yusuf, the president of United and the managing partner of the Partnership, having total authorities over the Partnership and United, and to the treatment of the dealings between the Partnership and United as one unit.

With that said, this does not mean that the limitation period for Yusuf Claim No. Y-8 never accrues and lasts forever. As soon as Yusuf or Hamed advised the other partner of his intent to dissolve the Partnership, the relationship became adversarial, which in effect terminated Yusuf's absolute control over the Partnership finances, terminated Yusuf's total authorities over the Partnership and United, and terminated the treatment of the dealings between the Partnership and United as one unit. Once the relationship between the partners became adversarial, Hamed and the Partnership are no longer estopped from raising arguments, including the statute of limitations defense, based on the premises that Hamed did not agree and consent to Yusuf, the managing partner of the Partnership, having absolute control over the Partnership finances, to Yusuf, the president of United and the managing partner of the Partnership, having total authorities over the Partnership and United, and to the treatment of the dealings between the Partnership and United as one unit for actions taken by Yusuf thereafter, and the limitation period for claims based on Yusuf's absolute control over the Partnership finances, Yusuf's total authorities over the Partnership and United, and the treatment of the dealings between the Partnership and United as one unit—such as Yusuf Claim No. Y-8—begins to accrue. *See e.g., Marsh-Monsanto*, 66 V.I. at 375 (the statute of limitations "begins to run on the first date that the injured party possesses sufficient critical facts to put [her] on notice that a wrong has been committed and that [she] need investigate to determine whether [she] is entitled to redress."). On February 10, 2012, Attorney Nizar DeWood, Yusuf's attorney, sent an email to Mohammad Hamed regarding the partnership

dissolution with a corresponding letter regarding the same.[27] Thus, the Master concludes that, after February 10, 2012, Hamed and the Partnership were no longer estopped from raising arguments, including the statute of limitations defense, based on the premises that Hamed did not agree and consent to Yusuf's absolute control over the Partnership finances, Yusuf's total authorities over the Partnership and United, and the treatment of the dealings between the Partnership and United as one unit, and the applicable statute of limitations for Yusuf Claim No. Y-8 began to accrue. As such, United timely filed Yusuf Claim No. Y-8 on September 30, 2016, when they were included in Yusuf's Accounting Claims.[28] Therefore, Yusuf Claim No. Y-8 is not barred by the six-year statute of limitations.[29]

In light of the Master's finding above, the Master must revisit his September 4, 2020 Order denying United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to its

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[27] The October 21, 2020 order provided, in relevant part:

> In United's motion, United claimed that Yusuf "took prompt action to dissolve the partnership by having his then attorney, Nizar DeWood, send a letter to Mohammad Hamed giving notice of dissolution of the partnership and a proposed dissolution agreement." The email from Attorney Nizar DeWood regarding the partnership dissolution, with a corresponding letter regarding the same, was dated February 10, 2012. *See* United's Exhibit 8.

[28] In its reply, United argued that it filed "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 noted that "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, pp. 16-17) In its supplement, United argued that "Hamed tries to attach significance to the fact that United's claim for recovery of water revenues was not raised and asserted until September 30, 2016" but "United asserted claims for unjust enrichment, restitution and conversion in its December 2013 Counterclaim (which is treated for statute of limitations purposes as having been filed when the Complaint was filed in September 2012) and "[t]he fact is that most of the numerous claims asserted by Hamed, Yusuf and United on September 30, 2016 for resolution by the Master were not specifically set forth in the Complaint and Counterclaim [and] …they are still embraced by the Complaint and Counterclaim under the liberal notice pleading standards of the Virgin Islands Rules of Civil Procedure" (Id.) The Master disagrees. In the Limitations Order, the Court noted that the Court provided a "detailed analysis of the nature of the claims presented by the parties in this action" in its memorandum opinion and order striking the jury demand, entered on July 25, 2017, and explained that "despite the misleading form of the Complaint and Counterclaim, Hamed presents only a single action for dissolution, wind up, and accounting, while Yusuf presents an action for accounting, and an action for corporate dissolution, and United presents an action for debt/breach of contract for failure to pay rent." (Limitations Order, p. 10, footnote 9) Thus, aside from United's rent claims, United remaining claims were not filed until September 30, 2016, when they were included in Yusuf's Accounting Claims.

[29] In the September 4, 2020 Order, the Master inadvertently stated "Title 5 V.I.C. § 31(3)(A), the applicable statute of limitations 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." (Sep. 4, 2020 Order, p. 21) The applicable statute of limitations for Yusuf Claim No. Y-8 as a conversion claim, "an action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof," is Title 5 V.I.C. § 31(3)(D). Nevertheless, the prescribed limitation period for both Title 5 V.I.C. § 31(3)(A) and Title 5 V.I.C. § 31(3)(D) is six years so the inadvertence was a harmless error.

conversion claim and unjust enrichment claim. As to the conversion claim, the Master previously found that "[b]ased on the parties' arguments, 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" and thus, concluded 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." (Sep. 4, 2020 Order, p. 27) The Master made a similar finding and conclusion as the unjust enrichment claim.

2. United's Conversion Claim[30]

In the September 4, 2020 Order, the Master noted 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." (Sep. 4, 2020 Order, p. 35) Moreover, the Master made the following findings:

> 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 interference, if wrongful, would require the

[30] 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.")

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.

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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) (Sep. 4, 2020 Order, pp. 36-38)

At the time, the Master noted that "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?" (Id., at p. 38) As the Master discussed above, Yusuf, as the managing partner of the Partnership and as the president of United, had absolute control over the Partnership finances and total authorities over the Partnership and United until February 10, 2012, and thereby Yusuf had the control and authority at the time to unilaterally end the original arrangement between United and the Partnership so that starting in 2004, United would keep all the Water Proceeds. Thus, the Master finds that United had the right to control the Water Proceeds at the time of the conversion and thereby, the Partnership's interference caused damages to United since United was deprived of the Water Proceeds. At this juncture, the Master need not determine the amount of damages since United's instant motion for partial summary judgment for Yusuf Claim No. Y-8 only requested a

determination as to liability and reserved the issue of damages for a later determination.[31] As such, the Master will amend his prior determination that "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" and his prior conclusion 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." The Master now concludes that that there is no genuine dispute as to any material fact regarding United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to the liability of United's conversion claim.

3. United's Unjust Enrichment Claim and Restitution Claim

Based on the Master's finding as to United's conversion claim, the Master need not address Yusuf Claim No. Y-8 as to United's equitable claims—unjust enrichment and restitution.[32]

CONCLUSION

Based on the foregoing, the Master will vacate his prior ruling denying United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to its conversion claim, grant United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to its conversion claim, and deny United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to its restitution claim. Accordingly, it is hereby:

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[31] In its motion, 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. (Motion, pp. 2, 5, 10) 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)

[32] *See supra*, note 26.

ORDERED that the portion of the September 4, 2020 Order denying United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to its conversion claim shall be vacated. It is further:

ORDERED that United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to the liability of its conversion claim is **GRANTED**, United is entitled to the Water Proceeds from April 1, 2004 through February 28, 2015. **And** it is further:

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

DONE and so ORDERED this 9th **day of November, 2020.**

EDGAR D. ROSS
Special Master