

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

**MOHAMMAD HAMED, BY HIS
AUTHORIZED AGENT WALEED HAMED,**

PLAINTIFF/COUNTERCLAIM DEFENDANT,

v.

**FATHI YUSUF AND UNITED
CORPORATION,**

DEFENDANTS/COUNTERCLAIMANTS,

v.

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

COUNTERCLAIM DEFENDANTS.

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

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. SX-12-CV-370

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

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and
CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter “Master”) on United’s motion for summary judgment for Yusuf Claim No. Y-5: United’s claim for the reimbursement of the United funds used to pay United Shopping Center’s gross receipt taxes from 1994 to September 2001¹ in the total amount of \$60,586.96, filed on April 17, 2019 and Hamed’s motion for summary judgment for Hamed Claim No. H-150: Hamed’s claim for the reimbursement of the Partnership funds used to pay the United Shopping Center’s gross receipt taxes from 2012 through March 8, 2015² in the total amount of \$70,193.00, filed on April 20, 2020.³ Thereafter, the parties filed their respective oppositions and replies thereto. On July 23, 2020, United filed a motion to supplement summary judgment record regarding Hamed Claim No. H-150. Thereafter, Hamed filed a response and United filed a reply thereto.

BACKGROUND

In 2016, per the Master’s order, the 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 the reimbursement of the United funds used to pay United Shopping Center’s gross receipt taxes in the total amount of \$60,586.96:

¹ The first page of United’s motion indicated that it is seeking reimbursement for the period from 1994 to September 2001—to wit, “From the time Plaza Extra East re-opened in 1994 until just before the FBI raid in September 2001, United paid the GRT on rental income while the Plaza Extra East store was being managed by Waleed Hamed. The Y-5 claim seeks recovery from the partnership of all GRT paid in that period, which comes to \$60,586.96.” (United Motion, p. 2) However, United’s reply indicated that the relevant period for Yusuf Claim No. Y-5 is from 1992 to 2001. (United Reply, p. 8) Nevertheless, the different start date is of no significance here because the amount claimed by United remains the same—\$60,586.96.

² The first page of Hamed’s motion indicated the period from 2012 through March 2015. However, Hamed SOF ¶35 stated “[t]he Partnership paid \$70,938.04 in gross receipt taxes for the Yusuf family-owned United Shopping Center from 2012-April 2015.” Nevertheless, the different end date is of no significance here because the amount claimed by Hamed remains the same—\$70,193.00.

³ The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed’s motion for summary judgment for Hamed Claim No. H-150 and United’s motion for summary judgment for Yusuf Claim No. Y-5 fall within the scope of the Master’s report and recommendation given that Hamed Claim No. H-150 involves an alleged debt United owes the Partnership and Yusuf Claim No. Y-5 involves an alleged debt the Partnership owes United.

Section III. Outstanding Debts of the Partnership

...

C. Reimbursement For Gross Receipts Taxes Paid by United

As Yusuf has testified without contradiction (see transcript of Yusuf's deposition of April 2, 2014 at pages 53-4), the Partners originally agreed that the Plaza Extra Stores would pay all gross receipts taxes and insurance relating to United's Shopping Center. The Partners acted on this agreement for the life of the Partnership, as reflected in the actual payment of these expenses with funds from the Plaza Extra Stores for more than 28 years. The Partnership owes United for certain gross receipts taxes United paid on behalf of the Partnership totaling \$60,586.96, which were never reimbursed. See Exhibit F, Summary and Evidence of United Payment of Gross Receipts Taxes.⁴ (Yusuf's Accounting Claims, p. 8)

Hamed's accounting claims, filed on October 17, 2016 (hereinafter "Hamed's Accounting Claims"), included Hamed's claim for the reimbursement of the Partnership funds used to pay the United Shopping Center's gross receipt taxes in the total amount of \$70,193.00, the obverse of Yusuf's aforementioned claim:

Section III. Statement of the Factual Nature of Each of the Individual Claims:

H. Plaza Extra funds were used to pay the United Shopping Center's gross receipt taxes (Spreadsheet Items 003, 004, 005, 010, 019, 022, 033, 043, 060, 063, 066, 069, 072, 076, 093, 091)

It is undisputed that from 2001 through 2011, Plaza Extra partnership funds were used to pay the United Shopping Center's gross receipt taxes on the non-grocery (solely Yusuf owned) portions of the property. This can be seen in documents 3002a thru 3002j - United's tax returns. Despite repeated requests in discovery for additional detail and records, none had been produced. (Hamed's Accounting Claims, Exhibit A, p. 9)

Exhibit A-1 of Hamed's Accounting Claims, titled "List of Hamed's claims from 1987 to January 1, 2012 with Referenced [sic] to Attached Exhibits," showed the total amount due to the Partnership under this claim for the period 2001 through 2011 as "Unknown"⁵ but Exhibit B-1 of

⁴ Yusuf's Accounting Claims, Exhibit F-An itemized list of gross receipt taxes from 1993 through 2001, in the total amount of \$60,586.96, that United alleged is owed by the Partnership to United, and copies of documents, including but not limited to bank statements, reflecting these gross receipt taxes payment.

⁵ Hamed's Accounting Claims provided:

Item #	Date	Description	Total Amount of [sic] Due from Yusuf to Partnership	Attached Exhibits
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Hamed’s Accounting Claims, titled “Summary of Hamed’s Accounting Claims for January 1, 2012 to Present,” shows the total amount due to the Partnership under this claim for the period January 1, 2012 through present as “\$70,193.20.”⁶ (Hamed’s Accounting Claims, Exhibit A-1, p. 1 and Exhibit B-1, p. 1)

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.” (Limitations Order, pp. 32, 34) In light of the Limitations Order, the Master ordered the parties to file their amended accounting claims. United’s claim for the reimbursement of the United funds used to pay United Shopping Center’s gross receipt taxes in the total amount of \$60,586.96 was again included in Yusuf’s amended

3002	2001-2011	Plaza Extra funds were used to pay the United Shopping Center's gross receipt taxes (GRTs) For analysis, this item covers the years 2001-2011 [Combined item #s 003, 004, 005, 010, 019, 022,033,043, 060, 063, 066, 069, 072, 076, 083, 091]	Unknown	3002-a thru j – 2011-2002 United tax returns
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(Hamed’s Accounting Claims, Exhibit A-1, p. 1)

⁶ Hamed’s Amended Accounting Claims provided:

Item #	Description	Total Claim Amount	Amount Due Partnership	...
3002a	United Shopping Center’s gross receipt taxes	\$70,193.20	\$70,193.20	

(Hamed’s Accounting Claims, Exhibit B-1, p. 1)

accounting claims, filed on October 30, 2017 (hereinafter “Yusuf’s Amended Accounting Claims”). (Yusuf’s Amended Accounting Claims, p. 10) Hamed’s claim for the reimbursement of the Partnership funds used to pay the United Shopping Center’s gross receipt taxes was again included in Hamed’s amended accounting claims, filed on October 30, 2017 (hereinafter “Hamed’s Amended Accounting Claims”), but as two separate claims—Hamed Claim No. H-150 for the total amount of \$70,193.00 and Hamed Claim No. H-160 for an unknown total amount.⁷ (Hamed’s Amended Accounting Claims, Exhibit A, pp. 13-14) On April 9, 2020, Hamed filed its motion for summary judgment for Hamed Claim No. H-150 and on April 17, 2020, United filed its motion for summary judgment for Yusuf Claim No. Y-5.

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

⁷ Hamed’s Amended Accounting Claims provided:

New Claim No.	Previous Item No.	Description	...	Amount Due to Partnership From Yusuf
150	3302a	United Shopping Center’s gross receipt taxes	...	\$70,193
160	Exhibit A-H	United Shopping Center’s gross receipt taxes	...	Pending discovery

(Hamed’s Amended Accounting Claims, pp. 13-14)

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)). “Therefore, to survive summary judgment, the nonmoving party's evidence must amount to more than a scintilla, but may amount to less (in the evaluation of the court) than a preponderance.” *Kennedy Funding, Inc. v. GB Properties, Ltd.*, 2020 V.I. 5, ¶14 (citation and internal quotations omitted).

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 underlying facts in the light most favorable to the nonmoving party, and take the nonmoving party's conflicting allegations as true if properly supported. *Kennedy*, 2020 V.I. 5, ¶14; *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

1. Hamed’s Motion for Summary Judgment for Hamed Claim No. H-150

In his motion, Hamed argued that the Partnership should be reimbursed for the Partnership funds used to pay the United Shopping Center’s gross receipt taxes from “2012 through March 8, 2015.” (Motion, p. 2) Hamed made the following assertions in support of his argument: (1) United Shopping Center is “a completely separate entity that has no relation to the Partnership” other than that “Plaza Extra-East is located in the United Shopping Center.” (Id.); (2) Yusuf’s statement that there was an alleged agreement on Mohammad Hamed’s behalf to pay the gross receipts of the United Shopping Center fails because “a mere assertion of contrary statement (that there was an agreement between the Partners) without supportive facts does not create a genuine dispute as to material fact” (Id.)—to wit, (i) While Yusuf “alleged that prior to 1986 (which was before the establishment of the Partnership), Mohammad Hamed entered into an oral contract that the Partnership would pay the gross receipts on all non-Partnership rents collected by the United Shopping Center in exchange for a ‘very, very low, \$3 a square foot’ rental rate and the ability to deduct the depreciation of the entire [United] Shopping Center on the Partnership’s annual taxes,

[Mohammad] Hamed never testified to such an agreement.” (Id.), (ii) “It is undisputed that no one, other than Fathi Yusuf, had personal knowledge of the purported agreement between Fathi Yusuf and Mohammad Hamed for the Partnership to pay the Yusuf family owned United Shopping Center’s gross receipt taxes.”⁸ (Id. at p. 23), (iii) “It is undisputed that Mohammad Hamed did not agree to have the Partnership pay the gross receipt taxes of the United Shopping Center, according to Fathi Yusuf” since “Yusuf testified in his 2020 deposition that Mr. Mohammad Hamed never specifically agreed to have the Partnership pay the gross receipt taxes for the Yusuf family owned United Shopping Center, rather ‘[w]hat he [Mr. Hamed] said, he never say nothing. Whatever I say goes. And he [Mr. Hamed] accepted it.’”⁹ (Id.), (iv) “No writings or other tangible evidence were produced by either Fathi Yusuf or the United Corporation that substantiated this alleged agreement.”¹⁰ (Id.), (v) “John Gaffney, the controller for the Partnership and the United Corporation also testified that he had no documentation demonstrating this alleged agreement.”¹¹ (Id.), (vi) “It is undisputed that Fathi Yusuf’s ‘rationales’ for why the Partnership would agree to pay the [gross receipt taxes] of the Yusuf family-owned United Shopping Center are also

⁸ Hamed referenced: Hamed SOF ¶¶ 4-6.

- Waleed Hamed had no knowledge of this purported agreement. He testified in his deposition that his father did not tell him of such an agreement. (Hamed SOF ¶ 4)

- Mike Yusuf, Fathi Yusuf’s oldest son and current President of the United Corporation, as well as an employee of Plaza Extra East store from 1991-2000, did not have knowledge of the purported agreement. (Hamed SOF ¶ 5)

- Mafi Hamed, who worked in the Plaza Extra East store, did not know of the alleged agreement. Further, Mafi Hamed testified that his father would have told him had such an agreement existed because his father discussed everything owed with him and his brothers. (Hamed SOF ¶ 6)

⁹ Hamed referenced: Hamed SOF ¶¶ 3, 10.

Q. [Mr. Hartmann. . . .So the gross receipts tax would be paid not only for the grocery store, but also for Yusuf’s United?

A. [FATHI YUSUF] Um-hum.

Q. And you said that you told him that?

A. Yeah.

Q. And he never said anything?

A. He never said. And then I explain to him...” (Hamed SOF ¶ 10)

¹⁰ Hamed referenced: Hamed SOF ¶ 2.

¹¹ Hamed referenced: Hamed SOF ¶ 27.

unsubstantiated” because (a) regarding the “\$3 a square foot’ rental rate” rationale - “Judge Brady found as a matter of fact that the rent was actually \$5.55 per square foot [as the arrangement between 1994 through 2004]” and that “[f]or the time period of this claim, 2012-March 8, 2015, Judge Brady stated the rental amount was \$10.12 per square foot”, and thus, “from 1986-1994, the Plaza Extra East grocery store paid \$5.55 per square foot, not the \$3 per square foot Yusuf testified to under oath and from 2012-March 8, 2015, the Plaza Extra East grocery store paid \$10.12 per square foot, the time period of this claim”¹² and (b) regarding the “ability to deduct the depreciation of the entire United Shopping Center on the Partnership’s annual taxes” rationale - “[n]o documents or other evidence substantiating this depreciation were produced by Fathi Yusuf or the United Corporation for the timeframe of this claim, 2012 to March 8, 2015.”¹³ (Id., at pp. 24-25), and (vii) “[I]t is undisputed that there was no consistency in the manner of which entity paid the GRTs for the United Shopping Center, undercutting the existence of an agreement...”¹⁴ (Id., at p. 25); (3) Yusuf’s statement that there was an alleged agreement on Mohammad Hamed’s

¹² Hamed referenced: Hamed SOF ¶¶ 7-9.

¹³ Hamed referenced: Hamed SOF ¶¶ 10-12.

¹⁴ Hamed referenced: Hamed SOF ¶¶ 13-16, 18-22.

- 1986-1992: Fathi Yusuf testified that the Partnership paid for the Yusuf family owned United Corporation Shopping Center’s gross receipt taxes. (Hamed SOF ¶ 13)

- Wally Hamed did not write Partnership checks for the United Shopping Center’s gross receipt taxes during this time period because he did not have check writing authority until 1994 on the Partnership’s Plaza Extra accounts. (Hamed SOF ¶ 15)

- 1986-1993: In an earlier deposition in 2014, Fathi Yusuf testified that “[t]he Plaza Extra [Partnership] was supposed to pay all the gross receipt from January 1st, 1994 up to present, and it was covering in the building, the entire building of United Shopping Plaza.” (Hamed SOF ¶14)

- 1993-August 2001: The United Corporation Shopping Center paid its own gross receipt taxes from its tenant bank account. (Hamed SOF ¶¶ 16, 18)

- 2002-2012: sometimes the United Corporation paid its own gross receipt taxes and sometimes the Partnership paid the United Shopping Center’s gross receipts. (Hamed SOF ¶¶ 19-20) As Mr. Gaffney testified about this time period, the prior controller, Margie Soeffing, flip-flopped back and forth between sometimes classifying the Partnership’s payment of the Yusuf family owned United Shopping Center’s gross receipt taxes as a “due/to from item” (meaning the entity responsible for the payment hadn’t been determined) and sometimes Ms. Soeffing just wrote the payment off (meaning the Partnership paid it), because Fathi Yusuf pressured her to do so. (Hamed SOF ¶ 21)

- 2013-2015: John Gaffney testified that Judge Ross told him to go ahead and pay the gross receipt taxes for the Yusuf family owned United Shopping Center with Partnership funds and the dispute could be settled later. (Hamed SOF ¶ 22)

behalf to pay the gross receipts of the United Shopping Center fails because “Yusuf’s assertion of an oral contract that the Partnership would pay the United Shopping Center’s gross receipt taxes is belied by how the Partners actually acted with respect to this so-called agreement” (Id., at p. 2)—to wit, (i) There is no consideration for the alleged oral agreement between Yusuf and Mohammad Hamed.¹⁵ (Id., at pp. 25-26), (ii) There is no evidence of an agreement.¹⁶ (Id., at pp. 26-27), and (iii) “There is no evidence of a course of dealing or historical pattern to support Mr. Yusuf’s contention either.”¹⁷ (Id., at p. 28); and (4) “[N]o additional evidentiary hearing is required because the two principal actors as to this alleged agreement have already been deposed and subject to cross-examination, and one, Mr. Hamed, is no longer available” (Id., at p. 2)—to wit, “there is no need for any further hearing as all of the facts and documents will be before the Master, and there is no dispute as to the known facts.” (Id., at 29) Thus, Hamed concluded that “Yusuf has not presented actual evidence, amounting to more than a scintilla, in support of his contention that there was an agreement between himself and Mr. Mohammad Hamed to have the Partnership pay the Yusuf family owned United Shopping Center’s gross receipt taxes”¹⁸ and

¹⁵ Hamed referenced: Hamed SOF ¶¶ 2, 8-12; *Castolenia v. Crafa*, ST-13-CV-243, 2014 V.I. LEXIS 1, *7 (Sup. Ct. Jan. 15, 2014) (“The creation of a valid contract requires “a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.” Consideration requires a performance or a return promise that has been bargained for. Where there is no mutual assent, or no meeting of the minds, there is no contract.”)

¹⁶ Hamed reiterated his assertions from (2)(ii)-(2)(vi) above.

¹⁷ Hamed referenced: Hamed SOF ¶¶ 13-14, 16, 19-23, 28.

¹⁸ Hamed cited: *Anderson v. American Federation of Teachers*, 67 V.I. 777, 789 (V.I. 2017) (the Virgin Islands Supreme Court stated that when the burden shifts to the non-moving party to present contrary evidence, the non-moving party may “[n]ot rest on its allegations alone, but must present actual evidence, amounting to more than a scintilla,” in support of its position”); *McCullough v. Mahally*, 3:17-cv-1780, 2020 U.S. Dist. LEXIS 8744, at *9, (M.D. Pa. Jan 17, 2020)(“[t]he party adverse to summary judgment must raise “more than a mere scintilla of evidence in its favor” and cannot survive Rule 56 scrutiny by relying on unsupported assertions, conclusory allegations, or mere suspicions”); *Woodward v. Norfolk S. Corp.*, 2012-UP-638, 2012 S.C. App. Unpub. LEXIS 798, at *3-4 (S. C. App. Dec 5, 2012)([a]s to yard vegetation damages, Woodward proffered as evidence her own speculative assertion that chlorine gas came in the direction of her property, located approximately 3.75 miles away from the site of derailment; *Strickland v. Madden*, 323 S.C. 63, 68 (Ct. App. 1994)(“[A]n adverse party may not rely on the mere allegations in his pleadings to withstand a summary judgment motion, but must set forth specific facts showing there is a genuine issue for trial.”)); and *Butters v. Valdez*, 149 Idaho 764, 770, 241 P.3d 7, 13, 2010 Ida. App. LEXIS 81, at *16-17 (Ida. App. Sept. 30, 2010)(“[a] mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment. (citation omitted)).

requested the Master to grant his motion. (Id., at pp. 22, 25, 29) Hamed included his statement of undisputed facts (hereinafter “Hamed SOF”) as required under Rule 56.¹⁹

In its opposition, United argued that Hamed Claim No. H-150 “ignores that in 1986, Mr. Yusuf (as principal of United) and Mohammad Hamed agreed that the Partnership would be responsible for paying all of the GRTs, both upon the tenant income recovered by United for space it leased from the United Shopping Center as well as the GRTs due for the income earned from the grocery store business operated by the Partnership” and thus, Hamed’s motion should be denied. (Opp., pp. 1-2) United made the following assertions in support of its argument and to counter Hamed’s assertions: (1) Unlike what Hamed claimed, the agreement for the Partnership to pay United’s gross receipt taxes is supported by “sufficient consideration”—to wit, “United

¹⁹ Rule 56(c)(1) 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) (Emphasis added). Hamed SOF, frequently included multiple facts in one paragraph. For example, Hamed SOF ¶ 2 provided multiple facts:

2. Fathi Yusuf testified that he and Mr. Mohammad Hamed agreed that the Partnership would pay for the gross receipt taxes (“GRT”) of the Yusuf family-owned United Shopping Center before the Partnership came into existence in 1986. Neither Fathi Yusuf nor the United Corporation produced documentation substantiating this alleged agreement. (Exhibits 8, 10)

Q. [Ms. Perrell] So when I say United, I'm talking about United that is your family's entity that owns real estate and the shopping center and so forth.

* * * *

Q. [Ms. Perrell] . . . Has United made a claim in this lawsuit –

A. [FATHI YUSUF] Yes.

Q. -- to recover gross receipts that has been paid by the United on behalf of receipts from tenants that United believes should have been paid by the partnership?

A. It should have. That's the agreement between me and Mr. Mohammad Hamed, is the rent, it was very, very low, \$3 a square foot. . . .

* * * *

Q. [Mr. Hartmann]. . . . Let's talk a little bit about the original deal back with you and Mr. Mohammad Hamed, okay? Back when -- when you say that you agreed about gross receipts tax and insurance, that you weren't going to pay it, okay? When was that? Do you remember, was that like in 1986 when you first started?

A. [FATHI YUSUF] Before 1986.

Q. Before there was a partnership –

A. Yes. (Exhibit 3)

The parties are reminded to comply with Rule 56 in their future filings.

agreed to lease its premises to the Partnership, the Partnership agreed in turn to pay rent and other expenses including the GRTs for United, and Hamed and Yusuf agreed to share in revenues of the supermarket business.” (Id., at p. 4); (2) “Hamed’s arguments about lack of consideration are inapposite, the Master need not even decide whether what Hamed calls Yusuf’s “rationales” for the GRTs agreement were valid ones.” (Id., at p. 5); (3) “[W]hether the depreciation deduction benefitted Hamed in the years covered by claim H-150 (or, for that matter, any prior years) has no relevance to the issues raised by this motion or United’s motion on claim Y-5.” (Id., at p. 6); (4) “Hamed fails to mention other ‘rationales’ underlying the GRTs agreement, including the fact that Mr. Yusuf was giving a personal guaranty and using his home as collateral for the loans that would be needed to establish the supermarket business.”²⁰ (Id.); (5) “Hamed misrepresents the testimony and makes that flimsy claim on the basis of Mr. Yusuf’s unremarkable testimony that during the meeting in which this agreement was made, Mohammad Hamed accepted Yusuf’s proposal without expressing a word of disagreement with it.”²¹ (Id., at p. 7); (6) “[Yusuf] also testified categorically, and without any qualification as to time period, that one of the conditions of the agreement to operate Plaza Extra as partners and pay United rent was that the Partnership would pay United’s GRTs for the Shopping Center income...”²² (Id., at p. 8); (7) “The fact that neither of these individuals[, Mike Ysuuf, Waleed Hamed or Waheed Hamed] knew about the agreement at the time does not in any way detract from Mr. Yusuf’s testimony that he and Mohammad Hamed made it in 1986, in light of their age at that time and lack of involvement with the stores.”²³ (Id., at pp. 9-10); (8) “Mohammad Hamed gave a deposition in this case in 2014, and was not asked

²⁰ United referenced: Exhibit 1-Transcript of Fathi Yusuf, Maher “Mike” Yusuf, Waleed “Wally” Hamed, NejeH Yusuf, Mafeed “Mafi” Yusuf, and John Gaffney’s January 21, 2020 deposition at 9-10 (Fathi Yusuf); Exhibit 2-Transcript of Fathi Yusuf’s April 2, 2014 deposition at 53.

²¹ United referenced: Exhibit 1 at 20 (Fathi Yusuf).

²² United referenced: Exhibit 2 at 54.

²³ United referenced: Exhibit 1 at 12, 17, 24, 32-33 (Fathi Yusuf), 71-72 (Waleed “Wally” Hamed), 114-115 (Mafeed “Mafi” Yusuf); Exhibit 3-Transcript of Fathi Yusuf, Waleed “Wally” Hamed, Maher “Mike” Yusuf, Mafeed “Mafi” Yusuf, and Yusuf Yusuf’s January 22, 2020 deposition at 89-90 (Mike Yusuf).

about the GRTs agreement by either counsel” so [i]f he disagreed with Yusuf’s testimony about the GRTs agreement, he surely could have prepared and signed a declaration to that effect before he passed away in June 2016.” (Id., at p. 11); (9) “[A]ny suggestion by Hamed that United may not prove an agreement through the testimony of Yusuf is mistaken, because the Virgin Islands has not enacted a so-called Deadman’s Statute that would bar a party from proving by his or her own testimony a transaction with a deceased person.” (Id.); (10) Hamed mischaracterized John Gaffney’s testimony, who testified that “on examination by Hamed’s counsel is that he did not know at all whether United’s GRTs from 2002 to 2006 were paid for out of United’s Plaza Extra accounts or its landlord tenant accounts.”²⁴ (Id., at p. 12); (11) “The fact that occasionally United may have paid its own GRTs in the 2006 to 2011 time period from its tenant accounts hardly undercuts the existence of an agreement” because [a]t most, it means that the occasional payments from tenant accounts in that period would be reimbursable to United in this Wind Up proceeding if it had filed a claim for reimbursement for them.” (Id., at p. 13); (12) “Hamed fails to acknowledge the most relevant evidence as to the partners’ course of dealings—that Waheed (“Willie”) Hamed signed checks with NejeH Yusuf to pay for the collective GRTs for the stores as well as the rental income from the Shopping Center” so “[c]learly Hamed is aware of these payments as the documents bear the Hamed bates numbers—HAMD604078 thru HAMD604086” and “[t]he payment of the collective GRTs (as well as other expenses) with the blessing and acknowledgment of the Hameds, before the lawsuit was filed, demonstrates that the Partners acted on the agreement for the entire duration of the Partnership.”²⁵ (Id.); (13) “Far from being at odds with the agreement to pay Shopping Center GRTs, Mr. Yusuf’s directives to Ms. Soeffing that

²⁴ United referenced: Exhibit 1 at 135-136 (John Gaffney); Exhibit 14-Excerpts of United’s opposition to motion to remove the Liquidating Partner, including but not limited to the declaration of John Gaffney, dated February 16, 2016, and various Partnership checks signed by Waheed “Willie” Hamed and various documents related to United Shopping Center’s gross receipt taxes.

²⁵ United referenced: Exhibit 14 (Hamed bates numbers HAMD604078 through HAMD60486, HAMD604050, HAMD604053, HAMD604058, HAMD604067, HAMD604075).

Gaffney testified to would be entirely consistent with it” because “Gaffney’s testimony is that Mr. Yusuf did instruct her to make those GRTs payments from Plaza accounts...and that Mr. Yusuf also instructed her when the issue arose that the payments of United Shopping Center GRTs should be expensed to Plaza Extra accounts and not United Shopping Center tenant accounts, see *id.* at 139.”²⁶ (*Id.*, at p. 14); and (14) “Hamed’s counsel persistently tried to get Gaffney to agree that GAAP supported Hamed’s position, but was unsuccessful” and “[i]t is clear from Hamed’s counsel extensive cross-examination on this subject that Gaffney did not believe that either GAAP or the history of the accounting treatment of this item dictated any particular resolution of this open issue, and it is just as clear that Gaffney would not have left this issue open for later resolution if he believed that GAAP dictated a particular result.”²⁷ (*Id.*, at pp. 15-16) United responded to Hamed SOF and also included United’s counter statement of undisputed facts.²⁸

In his reply, Hamed reiterated his argument and assertions from his motion and added the following assertions in support: (1) “United has not show more than ‘metaphysical doubt’ as to the undisputed material facts.”²⁹ (Reply, p. 3); (2) “United has *not* proved that Willie Hamed had the underlying information showing the United Shopping Center’s GRTs were included in the checks he signed and therefore had knowledge.” (*Id.*, at p. 12); and (3) “United mischaracterizes Hamed and Gaffney’s statements about GAAP.”³⁰ (*Id.*, at p. 13) Hamed responded to United’s

²⁶ United referenced: Exhibit 1 at 131 (John Gaffney).

²⁷ United referenced: Exhibit 1 at 130-151 (John Gaffney). The Master must note that United’s assertions regarding the generally accepted accounting principles (“GAAP”) was made to counter Hamed SOF ¶¶ 25, 26. Hamed never made any arguments regarding GAAP in his motion. Hamed SOF ¶¶ 25 and 26 merely stated John Gaffney’s testimony.

²⁸ Rule 56(c)(2)(C) provides that “a party opposing summary judgment may, if it elects to do so, state additional facts that the party **contends are disputed and material to the motion for summary judgment, presenting one or more genuine issues to be tried**” and “supply affidavit(s) or citations specifically identifying the location(s) of the material(s) in the record relied upon as evidence relating to each such material disputed fact, by number.” V.I. R. CIV. P. 56(c)(2)(C) (Emphasis added). Here, United, instead of filing a statement of disputed material fact, did the opposite by filing a counter statement of undisputed material fact. The parties are reminded to comply with Rule 56 in their future filings.

²⁹ Hamed referenced: *Kennedy*, 2020 V.I. 5.

³⁰ Again, the Master must note that Hamed SOF ¶¶ 25 and 26 merely stated John Gaffney’s testimony and Hamed never made any assertions or arguments regarding GAAP in his motion. *See supra*, note 20.

counter statement of undisputed facts and also included Hamed's response to United's response to Hamed SOF.³¹

2. United's Motion for Summary Judgment for Yusuf Claim No. Y-5

In its motion, United argued that “[a]t the time the oral partnership agreement between Mr. Yusuf and Mohammad Hamed was formed in 1986, one of its terms was that the partnership would pay the GRT on rental income earned by United” and therefore, United is entitled to the reimbursement of the United funds used to pay United Shopping Center's gross receipt taxes from 1994 to September 2001 in the total amount of \$60,586.96. (Motion, p. 2) United made the following assertions in support of its argument: (1) The fact that Waleed Hamed, who was in school when the agreement was made, and Mufeed Hamed, who was a kid at the time the agreement was made, does not “create[] a genuine issue of material fact regarding the existence of the agreement.”³² (Id.); (2) The amount of gross receipt taxes paid with United funds is supported by various documents.³³ United included its statement of undisputed facts (hereinafter “United SOF”) as required under Rule 56.

In his opposition, Hamed argued that United's motion should be denied for the following reasons: (1) “United did not file its claim within the timeframe required by Judge Brady's January 9, 2015 Wind Up Order and the Special Master's August 31, 2016 directive”—to wit, Yusuf timely filed Yusuf's Accounting Claims but that should not be considered because “United claims that it has some rights or claims as a totally distinct third-party, unrelated to Fathi Yusuf's Partners' claims,” and thus, United needed to bring its claim separate from Yusuf's Accounting

³¹ Rule 56 does not allow the moving party to respond to the non-moving party's response to its statement of undisputed facts. Hamed did not cite to any authority that allows for him to respond to United's response to Hamed SOF.

³² United referenced: Exhibit 3-Exhibit F of Yusuf's Accounting Claims. *See supra*, note 4.

³³ United referenced: Exhibit 3; Exhibit 4-Variou records from Virgin Islands Community Bank (1996); Exhibit 5-Variou records from Virgin Islands Community Bank and various general ledgers from United (1995); Exhibit 6-Variou records from Virgin Islands Community Bank and various general ledgers from United (1997-1998).

Claims and United did not do so. (Id., pp. 2, 19); (2) the claim is untimely under Judge Brady’s July 25, 2017 *Order re Limitations on Accounting*, which bars claims occurring prior to September 17, 2006—to wit, “United’s claim is barred because all of the transactions in claim Y-5-Gross Receipt Taxes occurred in 2001 or earlier.” (Id., pp. 2, 19-20); (3) “United’s claim is outside of the normal statute of limitations”—to wit, “the statute of limitations for actions for debt, breach of contract and conversion of property is 6 years” and “the SOL on all of these claims expired years ago, between the years 1999 and 2007, depending on the specific claim.” (Id., at pp. 2, 20); (4) “Fathi Yusuf has not presented actual evidence, amounting to more than a scintilla, in support of his contention that there was an agreement between himself and Mr. Mohammad Hamed to have the Partnership pay the Yusuf family-owned United Shopping Center’s gross receipt taxes”³⁴ (Id., at p. 20)—to wit, (i) “no one, other than Fathi Yusuf, had “knowledge” of the purported agreement,”³⁵ (ii) “Mohammad Hamed did not agree to have the Partnership pay the gross receipt taxes of the United Shopping Center family owned United Shopping Center’s gross receipt taxes,”³⁶ (iii) “[no] writings or other tangible evidence were produced by either Fathi Yusuf or the United Corporation that substantiated this alleged agreement,”³⁷ (iv) “Yusuf’s ‘rationales’ for why the Partnership would agree to the GRTs of the Yusuf family-owned United Shopping Center are also unsubstantiated,”³⁸ and (v) “there was no consistency in the manner of which entity paid the GRTs for the United Shopping Center, undercutting the existence of an agreement.”³⁹ (Id., at pp. 20-23); and (5) There was no agreement to have the Partnership pay United Shopping Center’s

³⁴ Hamed referenced: *Anderson v. American Federation of Teachers*, 67 V.I. 777, 789 (V.I. 2017) (when the burden shifts to the non-moving party to present contrary evidence, the non-moving party may “[n]ot rest on its allegations alone, but must present actual evidence, amounting to more than a scintilla,” in support of its position.)

³⁵ Hamed referenced: Hamed’s counter statement of undisputed facts (hereinafter “Hamed CSOF”) ¶¶ 4-6.

³⁶ Hamed referenced: Hamed CSOF ¶ 3.

³⁷ Hamed referenced: Hamed CSOF ¶¶ 2, 26.

³⁸ Hamed referenced: Hamed CSOF ¶¶ 7-11.

³⁹ Hamed referenced: Hamed CSOF ¶¶ 12-13, 15, 17-22.

gross receipt taxes—to wit, (i) “no consideration was given for the oral agreement,”⁴⁰ (ii) there is “no evidence of an agreement,”⁴¹ and (iii) the partners “did not behave as if there were an agreement.”⁴² (Id., at pp. 24-27) Hamed responded to United SOF and also included Hamed’s counter statement of undisputed facts.⁴³

In its reply, United addressed the arguments raised in Hamed’s opposition. First, United argued that it timely asserted its claim. “The fact that Yusuf did what he was asked to do by preparing and submitting a plan identifying all known claims against the partnership, including third party claims, obviously does not transform that which he clearly identified as a United claim into his own claim. Nor can it possibly mean that United’s Y-5 was not timely presented to the Master.” (Reply, p. 4) Second, United argued that the Limitations Order is not applicable to United’s claims because “[t]he order by its plain terms refers only to accounting claims by a partner brought pursuant to RUPA. (Id., at p. 5) Third, United argued that its claim is “not barred because United has an open account with the partnership...such that the statute of limitations accrued on the date of the last item in that account, which was the August 20, 2001 payment of GRTs.⁴⁴ Under the 10-year statute of limitations that United believes is applicable, the limitations period would have ended on August 20, 2011; under the six-year statute, August 20, 2007... Because the limitations period was tolled or suspended upon the occurrence of these and other extraordinary circumstances until 2012 at the earliest, United’s Y-5 claims were timely brought

⁴⁰ Hamed referenced: Hamed CSOF ¶¶ 2, 7-10; *Castolenia v. Crafa*, 2014 V.I. LEXIS 1, at *7 (Super. Ct. Jan. 15, 2014) (The creation of a valid contract requires “a bargain in which there is a manifestation of mutual assent to the exchange and a consideration.” Consideration requires a performance or a return promise that has been bargained for. Where there is no mutual assent, or no meeting of the minds, there is no contract.)

⁴¹ Hamed referenced: Hamed CSOF ¶¶ 2-6, 26.

⁴² Hamed referenced: Hamed CSOF ¶¶ 2-6, 8, 11-13, 15, 18-22, 26.

⁴³ *See supra*, note 28. Here, Hamed, instead of filing a statement of disputed material fact, did the opposite by filing a counter statement of undisputed material fact.

⁴⁴ United referenced: *In re: Estate of Vanderpool*, 2010 WL 11414826 (V.I. Super. Dec. 30, 2010).

on September 12, 2012 (the date United’s counterclaim is deemed to have been filed).”⁴⁵ (Id., at pp. 5-6) Finally, United argued that it has produced evidence of the agreement and “incorporate[d] by reference as if specifically set forth herein verbatim its Opposition to Hamed’s Motion for Summary Judgment as to its [instant reply]” since “Hamed reproduced verbatim, arguments raised in his Motion for Summary Judgment as to H-150.” (Id., at pp. 6-7) United incorporated its response to Hamed SOF in connection with Hamed Claim H-150 as its response to Hamed CSOF in connection with Yusuf Claim No. Y-5.

The Master will address Hamed’s motion for summary judgment for Hamed Claim No. H-150 and United’s motion for summary judgment for Yusuf Claim No. Y-5 together since both concerns the same issue—whether the Partnership or United was responsible for the payment of United Shopping Center’s gross receipt taxes. However, the Master will first address the following threshold issues raised in Hamed’s opposition to United’s motion for summary judgment for Yusuf Claim No. Y-5 before addressing the merits of Hamed Claim No. H-150 and Yusuf Claim No. Y-5: (i) whether United timely asserted these claims prior to the cut-off date for filing claims, (ii) whether Yusuf Claim No. Y-5 is barred by the Limitations Order, and (iii) whether Yusuf Claim No. Y-5 is barred by the statute of limitations.

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

Hamed argued that United did not bring its claim “under the timeframe set forth by the Special Master” because Yusuf’s Accounting Claims “was not United’s filing.” (Hamed Opp., p. 19) The Master finds Hamed’s argument unpersuasive. This issue was previously addressed by the Master in its order addressing United’s motion for partial summary judgment and Hamed’s cross-motion for summary judgment for Yusuf Claim No. Y-8, entered on September 4, 2020, and

⁴⁵ United noted that “[t]o the extent that the equitable tolling is at issue as to United’s claim Y-5, United incorporates by reference as if fully set forth herein its arguments as set forth in its Reply to Hamed’s Opposition as to United’s claims Y-7 and Y-9...” (Reply, p. 6, note 3)

the Master adopts its previous analysis therein as though the same were set forth herein. Thus, the Master finds that United asserted this claim prior to the cut-off date for filing claims.

B. Whether Yusuf Claim No. Y-5 is barred by the Limitations Order

Hamed argued that “United’s claim is barred because all of the transactions in [Yusuf Claim No. Y-5] occurred in 2001 or earlier.” (Hamed Opp., p. 20) However, United’s claim in Yusuf Claim No. Y-5 does not fall within the scope of the Limitations Order. The Limitations Order provides that “the accounting in this matter, **to which each partner is entitled** under 26 V.I.C. § 177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. § 71(a), based upon transactions that occurred on or after September 17, 2006.” (Limitations Order, p. 34) (Emphasis added). Thus, United’s claim is not barred by the Limitations Order.

C. Whether Yusuf Claim No. Y-5 is barred by the statute of limitations

The statute of limitations applies to Yusuf Claim No. Y-5 regardless of whether it falls within the scope of the Limitations Order. Title 5 V.I.C. § 31 applies to bar causes of action that are commenced outside of the relevant limitations period. Hamed argued that the applicable statute of limitations for Yusuf Claim No. Y-5 is six years pursuant to Title 5 V.I.C. § 31(3)(A)⁴⁶ and “[i]t is undisputed that the SOL on all of these claims expired years ago, between the years 1999 and 2007, depending on the specific claim.” (Hamed Opp., p. 20) United argued that its claim is not barred “because United has an open account with the partnership...such that the statute of

⁴⁶ Title 5 V.I.C. § 31(3)(A) provides:

Civil actions shall only be commenced within the period prescribed below after the cause of action shall have accrued, except when, in special cases, a different limitation is prescribed by statute:

...

(3) *Six years*—

(A) An action upon a contract or liability, express or implied, excepting those mentioned in paragraph (1)(C) of this section.

limitations accrued on the date of the last item in that account, which was the August 20, 2001 payment of GRTs” and “[b]ecause the limitations period was tolled or suspended upon the occurrence of [the FBI raid and seizure of documents on October 3, 2001 and United’s indictment on September 19, 2003] and other extraordinary circumstances until 2012 at the earliest, United’s [claim in Yusuf Claim No. Y-5] were timely brought on September 12, 2012 (the date United’s counterclaim is deemed to have been filed).”⁴⁷ (United Reply, pp. 5-6)

1. The Applicable Statute of Limitations

Here, while United claimed that the ten-year statute of limitations is applicable, United also claimed that United and the Partnership had an agreement that the Partnership would pay all of United Shopping Center’s gross receipt taxes. Thus, the Master finds the arrangement between United and the Partnership was a contract, and the applicable statute of limitations is six years under Title 5 V.I.C. § 31(3)(A).⁴⁸

2. The Limitation Period

Although Yusuf Claim No. Y-5 is not the claim of the individual partners but the claim of United, a third party, this claim is 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

⁴⁷ United never explained why or how an open account existed between United and the Partnership with regards to the payment of United Shopping Center’s gross receipt taxes so that Title 5 V.I.C. § 33 is applicable in this instance. Title 5 V.I.C. § 33 provides:

In an action to recover a balance due upon a mutual, open, and current account, where there have been reciprocal demands between the parties, the cause of action shall be deemed to have accrued from the date of the last item proved in the account on either side; but whenever a period of more than one year shall elapse between any of a series of items or demands, they are not to be deemed such an account.

United also never explained why the ten-year statute of limitations is applicable to Yusuf Claim No. Y-5. United simply referenced *Vanderpool*, 2010 WL 1141826.

⁴⁸ See *supra*, note 46.

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] 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 *Kaloo 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)

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).⁴⁹ 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

⁴⁹ 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.

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:

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 Hamed's motion for summary judgment for Hamed Claim No. H-150 and Hamed's opposition to Yusuf's motion for summary judgment for Yusuf Claim No. Y-5 essentially argued that there was never a valid agreement between the Partnership and United to use Partnership funds to pay for United Shopping Center's gross receipt taxes because Mohammad Hamed never agreed to such an

arrangement between United and the Partnership⁵⁰ and there was no consideration in exchange.⁵¹

However, Hamed himself, either by deposition or otherwise, never denied that Yusuf had such

⁵⁰ In his motion for summary judgment, Hamed argued:

It is undisputed that Mohammad Hamed did not agree to have the Partnership pay the gross receipt taxes of the United Shopping Center, according to Fathi Yusuf. Yusuf testified in his 2020 deposition that Mr. Mohammad Hamed never specifically agreed to have the Partnership pay the gross receipt taxes for the Yusuf family owned United Shopping Center, rather “[w]hat he [Mr. Hamed] said, he never say nothing. Whatever I say goes. And he [Mr. Hamed] accepted it.” (Hamed SOF ¶ 3) In an earlier 2014 deposition, Yusuf testified:

Q. [Mr. Hartmann. . . So the gross receipts tax would be paid not only for the grocery store, but also for Yusufs' United?

A. [FATHI YUSUF] Um-hum.

Q. And you said that you told him that?

A. Yeah.

Q. And he never said anything?

A. He never said. And then I explain to him...” (Hamed SOF ¶ 10) (Hamed MSJ, p. 23)

Additionally, Hamed SOF ¶ 3 provided:

3. According to Fathi Yusuf, Mohammad Hamed did not agree to have the Partnership pay the gross receipt taxes of the United Shopping Center. Fathi Yusuf testified in his 2020 deposition that Mr. Mohammad Hamed never specifically agreed to have the Partnership pay the gross receipt taxes for the Yusuf family-owned United Shopping Center, rather “[w]hat he [Mr. Hamed] said, he never say nothing. Whatever I say goes. And he [Mr. Hamed] accepted it.”

Q. [Mr. Hartmann]. . . Let's talk a little bit about the original deal back with you and Mr. Mohammad Hamed, okay? Back when -- when you say that you agreed about gross receipts tax and insurance, that you weren't going to pay it, okay?

When was that? Do you remember, was that like in 1986 when you first started?

A. [FATHI YUSUF] Before 1986.

Q. Before there was a partnership --

A. Yes.

* * * *

Q. Tell me a little bit about how that took place. Like, if you remember kind of like what he said and what you said.

A. What he said, he never say nothing. Whatever I say goes.

* * * *

A. And he accepted it. (Exhibit 3)

Later in his deposition in 2020, Mr. Yusuf reiterated the fact that Mr. Mohammad Hamed never said anything in response to Yusuf's alleged agreement that the Partnership would pay for the United Shopping Center's gross receipt taxes.

Q. [Mr. Hartmann]-- you said to him, The grocery store's got to pay the receipts, not only for the grocery store, but also for my -- what your lawyer called the part of United that is just the Yusuf, I'll call it Yusuf's United. So the gross receipts tax would be paid not only for the grocery store, but also for Yusufs' United?

A. [FATHI YUSUF] Um-hum.

Q. And you said that you told him that?

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

A. Yeah.

Q. And he never said anything?

A. He never said. And then I explain to him. (Exhibit 3)

In his opposition to United's motion for summary judgment, Hamed argued:

Mr. Yusuf testified, and it is undisputed that Mohammad Hamed did not agree to have the Partnership pay the gross receipt taxes of the United Shopping Center. Yusuf testified in his 2020 deposition that Mr. Mohammad Hamed never agreed to have the Partnership pay the gross receipt taxes for the Yusuf family owned United Shopping Center, rather "[w]hat he [Mr. Hamed] said, he never say nothing. Whatever I say goes. And he [Mr. Hamed] accepted it." (HCSOF ¶ 3) In an earlier 2014 deposition, Yusuf testified: Q. [Mr. Hartmann. . . So the gross receipts tax would be paid not only for the grocery store, but also for Yusuf's United? A. [FATHI YUSUF] Um-hum. Q. And you said that you told him that? A. Yeah. Q. And he never said anything? A. He never said. And then I explain to him. . ." (HCSOF ¶ 3) (Emphasis omitted) (Hamed Opp., p. 22)

Hamed SOF ¶ 3 was restated in Hamed CSOF ¶ 3.

⁵¹ In his motion for summary judgment, Hamed argued:

In *Castolenia v. Crafa*, ST-13-CV-243, 2014 V.I. LEXIS 1, at *7, 2014 WL 239427 (Sup. Ct. Jan. 15, 2014), the VI Superior Court articulated the standard for a valid contract:

The creation of a valid contract requires "a bargain in which there is a manifestation of mutual assent to the exchange and a consideration." Consideration requires a performance or a return promise that has been bargained for. Where there is no mutual assent, or no meeting of the minds, there is no contract.

In this instance, there is no consideration. For example, Mr. Yusuf alleged that United gave the Plaza Extra grocery store a low rental rate of \$3.00 per square foot and in exchange for that rental rate the Partnership would pay the Yusuf-family owned United Shopping Center's gross receipt taxes and property insurance. (Hamed SOF ¶ 2) It is the law of the case, however, that the rental rate for the Plaza Extra grocery store from 1986-2004 was \$5.55 per square foot, not the "very, very low, \$3 a square foot" that Mr. Yusuf testified to under oath in January 2020. (Hamed SOF ¶¶ 2, 8) Further, for the time period of this claim, H-150, Judge Brady found in his April 27, 2015 Order that rent from 2012-March 8, 2015 was charged at a rate of \$10.12 per square foot (Hamed SOF ¶ 9)

Mr. Yusuf alleges that Mr. Hamed agreed to pay the United Shopping Center's gross receipt taxes in exchange for allowing the Partnership to take the depreciation value of the entire United Shopping Center on the Partnership's tax return. (Hamed SOF ¶¶ 10-11) Yusuf, however, has not provided any evidence that the Partnership did in fact get the depreciation value on its taxes for the years 2012-2015, the time period of claim H-150. (Hamed SOF ¶ 12) (Hamed MSJ, pp. 25-26)

Hamed made similar arguments almost verbatim in his opposition to United's motion for summary judgment. (Hamed Opp., p. 24)

arrangement.⁵² Thus, the Master finds Hamed’s conduct of ongoing and repeated silence⁵³ and 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

⁵² 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 fact, as Hamed pointed out in his motion for summary judgment and his opposition to United’s motion for summary judgment, Yusuf testified in 2014 that “Mr. Yusuf stated that ‘I have the final word,’ with respect to the Partnership” and that “the Partnership would pay all of the gross receipts and insurance for the entire building of the whole United Shopping [Center].” (Hamed SOF ¶ 11; Hamed CSOF ¶ 10; Hamed Motion, Exhibit 4-Transcript of Fathi Yusuf’s April 2, 2014 deposition at 53) And as United pointed out in its opposition to Hamed’s motion for summary judgment that “Mohammad Hamed gave a deposition in this case in 2014, and was not asked about the GRTs agreement by either counsel” so [i]f he disagreed with Yusuf’s testimony about the GRTs agreement, he surely could have prepared and signed a declaration to that effect before he passed away in June 2016.” (United Opp., p. 11)

In his opposition to United’s motion for summary judgment, 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 there was never a valid agreement between the Partnership and United to use Partnership funds to pay for United Shopping Center’s gross receipt taxes because Mohammad Hamed never agreed to such an arrangement between United and the Partnership and there was no consideration in exchange. However, while Hamed argued that Mohammad Hamed’s silence should be interpreted as Mohammad Hamed’s disagreement to such an arrangement between the Partnership and United, Hamed never discussed nor provided any affirmative assertion by Hamed that Yusuf did not have the control and authority to make such decisions for the Partnership and United.

⁵³ For example, as both parties pointed out in their respective briefs, Hamed remained silent when Yusuf advised him of the arrangement for the Partnership to use Partnership funds to pay for United Shopping Center’s gross receipt taxes.

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 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).

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-5—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 United funds used to pay United Shopping Center’s gross receipt taxes from 1994 to September 2001 and Yusuf as the managing partner of the Partnership failed to timely make payment/reimbursement to United thereto. 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 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-5 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-5—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.⁵⁴ 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-5 began to accrue. As such, Yusuf Claim No. Y-5 was timely asserted on September 30, 2016, when it was included in Yusuf's Accounting Claims.⁵⁵ Therefore, Yusuf Claim No. Y-5 is not barred by the six-year statute of limitations.

D. Merits of Yusuf Claim No. Y-5 and Hamed Claim No. H-150

Now that the Master has addressed the threshold issues, the Master will turn to the merits of Yusuf Claim No. Y-5 and Hamed Claim No. H-150. In order to determine whether the Partnership or United was responsible for the payment of United Shopping Center's gross receipt taxes, the Master must look at whether there was a valid agreement between the Partnership and United to use Partnership funds to pay for United Shopping Center's gross receipt taxes. 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

⁵⁴ 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.

⁵⁵ In its motion, United indicated that "September 12, 2012 (the date United's counterclaim is deemed to have been filed)" should be the accrual date for Yusuf Claim No. Y-5. (United Reply, p. 6) 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.

Partnership and United until February 10, 2012, and thereby Yusuf had the control and authority at the time to make such decisions—whether it was regarding the arrangement for the Partnership to use Partnership funds to pay for United Shopping Center’s gross receipt taxes or the sufficiency of the consideration in exchange—and enter into a valid agreement on behalf of the Partnership and United.⁵⁶ Thus, the Master finds that the Partnership was responsible for the payment of

⁵⁶ Based on the Master’s finding that there was a valid agreement between the Partnership and United to use Partnership funds to pay for United Shopping Center’s gross receipt taxes, the Master need not address the remaining arguments made in the parties’ respective briefs at this juncture, including but not limited to, arguments related to GAAP, the Deadman’s Statute, and whether other people had knowledge of the agreement. However, the Master will note that while Yusuf claimed in its opposition to Hamed’s motion for summary judgment that “[c]learly Hamed is aware of these [gross receipt taxes] payments” since Waheed Hamed signed the checks with Nejeah Yusuf and the documents bear the Hamed bates numbers—HAMD604078 thru HAMD604086, the Master is not persuaded. (United Opp., p. 13) HAMD604080 is a document that includes two separate portions: the top portion includes the description of United Check Number 35255, dated February 13, 2012, paid in the amount of \$120,000.00, and describes the item to be paid as “GROS REC” and the bottom portion includes a copy of United Check Number 35255 in the amount of \$120,000.00, dated February 13, 2012, paid to the order of “CITICARDS, 1500 Bolton Columbus, OH 43228, USA,” with Waheed Hamed as one of the signatories, and does not included a description of the item to be paid. Similarly, HAMD604086 is a document that includes two separate portions: the top portion includes the description of United Check Number 35461, dated March 20, 2012, paid in the amount of \$110,000.00, and describes the item to be paid as “3/12 GROSS” and the bottom portion includes a copy of United Check Number 35461 in the amount of \$110,000.00, dated March 20, 2012, paid to the order of “CITICARDS, 1500 Bolton Columbus, OH 43228, USA,” with Waheed Hamed as one of the signatories, and does not included a description of the item to be paid. Without more, it is unclear whether the entire document was presented to Waheed Hamed when he signed United Check Number 35255 and United Check Number 35461, and thus, the Master cannot discern whether Waheed Hamed was “clearly” aware that he was signing United Check Number 35255 and United Check Number 35461 to pay for United Shopping Center’s gross receipt taxes. Moreover, HAMD604084 and HAMD604085 are documents that are similar to HAMD604080 and HAMD604086 but for United Check Numbers 35462 and 35460, respectively; however, the description on the top portions only includes “FEB 2012” and “3/19/2012,” respectively. Thus, again, without more, the Master cannot discern whether Waheed Hamed was “clearly” aware that he was signing United Check Number 35462 and United Check Number 35460 to pay for United Shopping Center’s gross receipt taxes.

Interestingly, in his reply to United’s opposition, Hamed did not deny that Waheed Hamed was aware at the time he signed for United Check Numbers 35255, 35461, 35462, and 35460 that it was to pay for United Shopping Center’s gross receipt taxes. Instead, Hamed only argued the absence of any evidence showing that Waheed Hamed was aware:

The checks Willie Hamed signed, however, do not in any way indicate that the Shopping Center’s GRTs were included. United has *not* proved that Willie Hamed had the underlying information showing the United Shopping Center’s GRTs were included in the checks he signed and therefore had knowledge. The checks were issued during the time period that John Gaffney noted the then Comptroller Margie Soeffing sometimes attributed the expense to the Partnership and sometimes to the Shopping Center. Thus, we do not know 1) how this expense was treated on the Partnership’s books or 2) whether Willie Hamed knew the checks he was signing included the Shopping Center.⁶

⁶ Mafi Hamed testified that the Yusufs were not presenting him with the underlying documentation showing that he was signing Partnership checks to pay for the Shopping Center’s GRTs. Mafi Hamed stated that the Yusuf’s were keeping accounting information from the Hameds and blocked them from accessing the Partnership accounts. Mafi Hamed noted that eventually Judge Brady told the Yusuf’s they could not continue to block the Hameds from the Partnership accounts. (Exhibit 21) (Hamed Reply, p. 12)

The Master finds Hamed’s argument unpersuasive. First, as noted above, while it is unclear whether the entire document was presented to Waheed Hamed when he signed United Check Number 35255 and United Check Number 35461, the top portions of these documents did reference gross receipt taxes in some abbreviated form—to wit,

United Shopping Center's gross receipt taxes and thereby concludes that that there is no genuine dispute as to any material fact regarding United's motion for summary judgment for Yusuf Claim No. Y-5. In light of the Master's finding, the Master will deny United's motion to supplement summary judgment record regarding Hamed Claim No. H-150 and deny United's motion to supplement summary judgment record regarding Hamed Claim No. H-150.

CONCLUSION

Based on the foregoing, the Master will grant United's motion for summary judgment for Yusuf Claim No. Y-5, deny Hamed's motion for summary judgment for Hamed Claim No. H-150, and deny United's motion to supplement summary judgment record regarding Hamed Claim No. H-150. Accordingly, it is hereby:

ORDERED that United's motion for summary judgment for Yusuf Claim No. Y-5: United's claim for the reimbursement of the United funds used to pay United Shopping Center's gross receipt taxes from 1994 to September 2001 in the total amount of \$60,586.96, filed on April 17, 2019, is **GRANTED**. It is further:

ORDERED that Hamed's motion for summary judgment for Hamed Claim No. H-150: Hamed's claim for the reimbursement of the Partnership funds used to pay the United Shopping Center's gross receipt taxes from 2012 through March 8, 2015 in the total amount of \$70,193.00, filed on April 20, 2020, is **DENIED**. **And** it is further:

ORDERED that United's motion to supplement summary judgment record regarding Hamed Claim No. H-150, filed on July 23, 2020, is **DENIED**.

"GROS REC" for United Check Number 35255 and "3/12 GROSS" for United Check Number 35461. Second, Hamed never discussed nor provided any affirmative assertion by Waheed Hamed that he was not aware at the time he signed for United Check Numbers 35255, 35461, 35462, and 35460 that it was to pay for United Shopping Center's gross receipt taxes. Finally, Hamed's silence and nondenial that Waheed Hamed was aware at the time he signed for United Check Numbers 35255, 35461, 35462, and 35460 that it was to pay for United Shopping Center's gross receipt taxes further attests to its veracity and establishes that the Partnership and United had an unquestioned history of using Partnership funds to pay for United Shopping Center's gross receipt taxes. Nevertheless, the question of whether Waheed Hamed or other people had knowledge of the agreement need not be resolved for the purpose of this order.

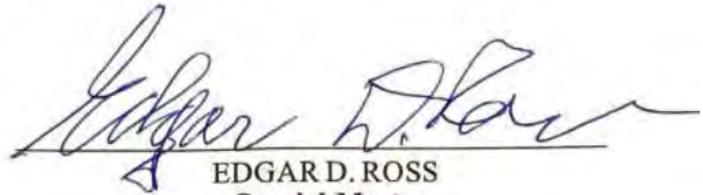
Hamed v. Yusuf, et al.

SX-12-CV-370; SX-14-CV-278; SX-14-CV-287

ORDER

Page 32 of 32

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

A handwritten signature in cursive script, appearing to read "Edgar D. Ross", written over a horizontal line.

EDGARD D. ROSS
Special Master