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

MEMORANDUM OPINION

THIS MATTER came before the Special Master (hereinafter "Master") for a hearing, held on February 4, 2021, in connection with Yusuf Claim No. Y-2: past due rent to United for Bay 5 and Bay 8 of the United Shopping Plaza and Yusuf Claim No. Y-4: prejudgment interest on the past due rent to United for Bay 5 and Bay 8 of the United Shopping Plaza.[1]

BACKGROUND

Hamed filed his complaint on September 17, 2012, followed by his first amended complaint on October 19, 2012, seeking, among other relief, "A full and complete accounting … with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf …" (Compl. p. 15, ¶1.)

On May 17, 2013, United's attorney sent a letter to Hamed's attorney demanding rent from the Partnership for its use of Bay 5 and Bay 8 of the United Shopping Center (hereinafter "Bay 5" and "Bay 8," respectively). In response to United's May 17, 2013 letter, Hamed's attorney sent a letter stating that there never was an agreement to pay rent for Plaza Extra-East's use of Bay 5 and Bay 8. On September 9, 2013, United filed a motion to withdraw rent (hereinafter "United's September 9, 2013 Motion to Withdraw Rent").

Subsequently, Yusuf and United filed their counterclaim on December 23, 2013, followed by their first amended counterclaim on January 13, 2014, seeking, *inter alia*: Count XI — Rent for Retail Space Bay 1 and Count XII — Past Rent for Retail Spaces Bay 5 & Bay 8.

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[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 Yusuf Claim Nos. Y-2 and Y-4 fall within the scope of the Master's report and recommendation given that Yusuf Claim Nos. Y-2 and Y-4 are alleged debt owed by the Partnership to United.

On May 13, 2014, Hamed filed a motion for partial summary judgment regarding the statute of limitations defense barring United and Yusuf's counterclaim damages prior to September 16, 2006 (hereinafter "Hamed's May 13, 2014 Motion for Partial Summary Judgment"). On August 12, 2014, Yusuf and United filed a motion for partial summary judgments on Counts IV, XI, and XII of their counterclaims regarding past rent for certain premises at United Shopping Plaza (hereinafter "Yusuf and United's August 12, 2014 Motion for Partial Summary Judgment"). On April 27, 2015, the Court entered a memorandum opinion and order as to United's September 9, 2013 Motion to Withdraw Rent and Hamed's May 13, 2014 Motion for Partial Summary Judgment (hereinafter "Rent Order") and ordered United's motion granted and Hamed's motion denied in part. In the Rent Order, the Court noted that United's September 9, 2013 Motion to Withdraw Rent only sought back rent for Bay 1 of the United Shopping Center (hereinafter "Bay 1"), and thus, the Rent Order addressed only Bay 1.[2] In the Rent Order, the Court held, *inter alia*, that the statute of limitations does not bar United's claim for rent and United is entitled to past due rent for Bay 1 at the rate of $5.55 per square foot for the period January 1, 1994 through May 4, 2004 based on Yusuf's September 9, 2013 affidavit (¶¶ 4-6) and Yusuf's April 2, 2014 deposition (86:8-12) and at the rate of $58,791.38 per month for the period January 1, 2012 through September 30, 2013 and for the period October 1, 2013 until the date that Yusuf assumed sole possession and control of Plaza Extra-East based on the sales of Plaza Extra-Tutu Park in St. Thomas. (Rent Order, p. 7-12.)

[2] In the Rent Order, the Court stated:

> Defendant United's Counterclaim seeks back rent from Bays 1, 5 and 8 located in the same premises. However, for purposes of winding up the Partnership and because United's Motion only seeks back rent for Bay No. 1, this Order addresses only Bay No. 1.
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> (Rent Order, p. 1 n. 1)

In 2016, per the Master's orders, Parties filed their respective accounting claims. Yusuf, in his accounting claims filed on September 30, 2016, included United's claims for: (1) past rent payment for Bay 5 and Bay 8 in the total amount of $793,984.34, (2) prejudgment interest thereto, and (3) prejudgment interest on the rent awarded by the Rent Order to United for Bay 1. (Yusuf's accounting claims, pp. 7-8.) Subsequently, in response to various pending motions, including Hamed's May 13, 2014 Motion, and Yusuf and United's August 12, 2014 Motion for Partial Summary Judgment, the Court entered a memorandum opinion and order dated July 21, 2017 (hereinafter "Limitations Order"). In the Limitations Order, the Court addressed, *inter alia*, United's claim for rent for Bay 5 and Bay 8:

> By Memorandum Opinion and Order entered April 27, 2015, the Court denied Plaintiff's Motion for Partial Summary Judgment Re: Statute of Limitations as to United's Count XI for debt in the form of rent owed with respect to "Bay 1" and granted United's Motion to Withdraw Rent, filed September 9, 2013; authorizing the Liquidating Partner, under the supervision of the Master, to pay to United from partnership funds the total amount of $5,234,298.71 plus additional rents that have come due from October 1, 2013 at the rate of $58,791.38 per month. That Memorandum Opinion and Order also effectively, though not explicitly, granted in part Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, as to Count XI, and entered judgment thereon in favor of United.
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> In Count XII of Defendants' Counterclaim, United seeks an award of $793,984.38 for rent owed with respect to "Bay 5" and "Bay 8," which the partnership allegedly used for storage space in connection with the Plaza Extra-East store during various periods between 1994 and 2013. Counterclaim ¶¶ 179-84. United's arguments against the applying the statute of limitations to bar its claims for rent generally fail to distinguish between the rent owed for Bay 1 (Count XI) and the rent owed for Bays 5 and 8 (Count XII). Thus, the Court must infer that United opposes Hamed's statute of limitations argument as to Count XII on the same grounds as it opposed the argument with respect to Count XI. In denying Hamed's Motion for Partial Summary Judgment Re Statute of Limitations as to Count XI, the Court found that the limitations period had been tolled on the basis of Hamed's undisputed acknowledgement and partial payment of the debt.
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> However, in his August 24, 2014 Declaration, attached as Exhibit 1 to Plaintiff's Response to Defendants' Rule 56.1 Statement of Facts and Counterstatement of Facts, Waleed Hamed expressly states that "there was no agreement to use [Bay 5 and Bay 8] other than on a

> temporary and periodic basis, nor was there any agreement to pay rent for this space, as United made it available at no cost." Declaration of Waleed Hamed ¶¶ 19-20. Mohammed Hamed's comments acknowledging the debt, which formed the basis of the Court's judgment as to Count XI, do not explicitly distinguish between the rent owed for Bay 1 and the rent owed for Bays 5 and 8. Yet, considered in light of the declaration of his son, the Court is compelled to conclude that a genuine dispute of material fact exists as to whether Hamed ever acknowledged any debt as to rent owed for Bays 5 and 8, and more basically, whether the partnership ever agreed to pay any rent for the use of Bays 5 and 8 in the first place. Accordingly, both Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations and Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must be denied as to Count XII of Defendants' Counterclaim.[5] (Limitations Order, pp. 7-8)
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> [5] Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must also be denied as to Count IV (Accounting). While Hamed and Yusuf are each entitled to an accounting of the partnership pursuant to 26 V.I.C. § 177, United's cause of action for rent is entirely unrelated to the partners' respective actions for accounting except insofar as each partner will ultimately be liable in the final accounting for 50% of whatever debt is found to be owing from the partnership to United.

Ultimately, the Court 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. 33-34.)

In light of the Court's ruling in its Limitations Order, the Master ordered Parties to file their amended accounting claims. United's claims for rent for Bay 5 and Bay 8, prejudgment interest thereto, and prejudgment interest on the rent awarded by the Rent Order to United for Bay 1 were again included in Yusuf's amended accounting claims, filed on October 30, 2017. (Yusuf's amended accounting claims, pp. 9-10.) In Yusuf's amended accounting claims, United claimed, *inter alia*, that (i) "[t]he total amount due to United for unpaid rent for Bays 5 and 8 is

$793,984.34,"[3] (ii) for Bay 1, "[t]he interest that accrued at 9% per annum on the rent actually awarded by the Rent Order ($6,248,924.14) is $881,955.08 as of May 11, 2015, when that rent was paid to United" which "does not include any interest accruing at the 9% rate on each month's unpaid rent from June 1, 2013 through March 8, 2015,"[4] and (iii) for Bay 5 and Bay 8, "[t]he interest due for the unpaid rent on Bays 5 and 8 is also claimed by United [with] [t]he total interest calculated at 9% per annum for the period from May 17, 2013 through September 30, 2016 is $241,005.18 [and] [s]uch interest continues to accrue at the daily rate of $195.78 until paid."[5] (Id.)

[3] United referenced: Yusuf Declaration, dated August 12, 2014, at ¶¶ 21-25.

[4] United referenced: Yusuf's accounting claims, Exhibit D-calculation of interest for Bay 1.

[5] United referenced: Yusuf's accounting claims, Exhibit E-calculation of interest for Bay 5 and Bay 8.

On June 22, 2019, United filed a revised motion for summary judgment as to Yusuf Claim Nos. Y-2, Y-3, and Y-4.[6] Thereafter, Hamed filed his oppositions[7] and United filed his reply[8]

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[6] United's previously filed a motion for summary judgment as to Yusuf Claim Nos. Y-2 through Y-4 on February 25, 2019, which the Master subsequently denied without prejudice for failure to comply with Rule 56 and Rule 6-1 of the Virgin Islands Rules of Civil Procedure.

In its November 14, 2019 order, the Master noted:

> In his motion as to Yusuf Claim No. Y-2, United argued that it is entitled to recover past due rent for Bays 5 Bay 8 and for prejudgment interest thereto as follows: (1) Bay 5 – May 1, 1994 through July 31, 2001 for the total amount of $271,875.00 (hereinafter "Bay 5 Rent") (Motion, pp. 2-6); (2) Bay 8 – May 1, 1994 through September 30, 2002 for the total amount of $323,515.63 (hereinafter "First Bay 8 Rent") (Id., at pp. 2, 6-7); and (3) Bay 8 – April 1, 2008 through May 30, 2013 for the total amount of $198,593.75 (hereinafter "Second Bay 8 Rent") (Id., at pp. 2, 7-8). As to the Bay 5 Rent, United claimed that: (1) "Waleed Hamed has acknowledged that he and Mike [Yusuf] broke through the wall and used the space in Bay 5 for storage of Plaza Extra-East sodas and other items." (Motion, p. 3; SOF ¶ 14); (2) "Bay 5 was utilized by Plaza Extra-East from May 1, 1994 (upon reopening after the fire) until July 31, 2001 for storage (7 years and 2 month)." (Motion, p. 4; SOF ¶ 15); (3) "As with the rent for Bay 1, United allowed the rent to accrue to provide the Partnership with greater liquidity (as the business was rebounding after the fire and as Plaza Extra-Tutu Park was just beginning to open)" and that "Waleed Hamed agreed to this arrangement." (Motion, p. 5; SOF ¶ 23); (4) "There is no written lease for Plaza Extra-East's use of the Bays 5 or 8, just as there was no written lease for the use of Bay 1 space to house the Plaza Extra-East store as the entire grocery store business was operating as United." (Motion, p. 6; SOF ¶ 28); and (5) "The Bay 5 Rent is calculated by multiplying the square feet occupied (3,125) by $12.00 for 7.25 years" and "[t]he total due for Bay 5 Rent is $271,875.00." (Motion, p. 6; SOF ¶ 29) As to the First Bay 8 Rent, United claimed that: (1) "Plaza Extra-East reopened in May 1994 and began utilizing Bay 8 for additional storage." (Motion, p. 6; SOF ¶ 32); (2) "Bay 8 was occupied by Plaza Extra-East from May 1, 1994 through September 30, 2002 (8 years and 5 months)." (Motion, p. 7; SOF ¶ 33); (3) "…Yusuf discussed with Waleed Hamed that Plaza Extra-East would need to pay rent for the use of this additional space and Waleed Hamed agreed." (Id.); (4) "As with the rent for Bay 1, United allowed the rent to accrue to provide the Partnership with greater liquidity" and "Waleed Hamed agreed to this arrangement." (Motion, p. 7; SOF ¶ 34); and (5) "The First Bay 8 Rent is calculated by multiplying the square feet occupied (6,250) by $6.15 for 8 years, 5 months" and "[t]he total amount due to United for the First Bay 8 Rent is…for $323,515.63." (Motion, p. 7; SOF ¶ 38) As to the Second Bay 8 Rent, United claimed that: (1) "As with the earlier period of use and the use of Bay 5, Yusuf discussed with Waleed Hamed that Plaza Extra-East would pay rent on the same terms as before and Waleed Hamed agreed." (Motion, pp. 8-9; SOF ¶ 39); (2) "Plaza Extra-East occupied and used Bay 8 from April 1, 2008 through May 30, 2013 (5 years and 1 month)" and "[t]he total amount due to United for the Second Bay 8 Rent is…$198,593.44." (Motion, p. 8; SOF ¶ 40); and (3) "As before, United allowed the rent for this period to accrue rather than demanding paying to allow the partnership greater liquidity and given the pendency of the criminal case to not take any action that would reflect that the business operated as a partnership." (Motion, p. 8; SOF ¶ 41) Furthermore, as to the rent of both Bays 5 and 8, United claimed that: (1) "Waleed Hamed has confirmed that the space was utilized, that Plaza Extra-East had unfettered and continuous access to the space for storage and that he is unable to dispute the timeframes of the use set forth by the Yusufs." (Motion, pp. 8, 15; SOF ¶ 42); (2) "Yusuf considered the partial rent payments[3] made by the Partnership as to Bay 1 as a partial payment of the total rent debt due, which included the rent for Bays 5 and 8." (Motion, p. 9; SOF ¶ 46); (3) Due to issues related criminal case, "Yusuf made a decision and Waleed Hamed, on behalf of Hamed, agreed, that there was no prospect for the payment of rent during the pendency of the criminal case and that the rent would continue to be deferred" and that a demand for payment was not made until May 17, 2013. (Motion, p. 11; SOF ¶¶ 51-52); and (4) The statute of limitation is not applicable here—the Second Bay 8 Rent's statute of limitations has not expired; the Bay 5 Rent and the First Bay 8 Rent's statute of

limitations was tolled by the "doctrine of equitable tolling" and the "doctrine of acknowledgment of the debt and partial payment." (Motion, pp. 16-19) As such, United concluded that "[t]he Partnership's obligation to pay rent to United has been clearly established throughout this case…" and "United is entitled to past due rent for Bays 5 and 8..." (Motion, p. 20) However, United requested an evidentiary hearing "in the event that the Master determines there to be issues of fact as to the entitlement or amount of rent due to United." (Id., at p. 21)

[3] The partial rent payments referenced by United is a check in the amount of $5,408,806.74 with the memo "Plaza Extra (Sion Farm) Rent" paid by the Partnership to United on February 7, 2012.

In its December 4, 2019 order, the Master noted:

> In its motion as to Yusuf Claim Nos. Y-3 and Y-4, United argued that it "is entitled to recover prejudgment interest at 9% per annum, as provided by V.I. Code Ann. Tit. 11§ 951(a)(4), from the date it demanded payment – May 17, 2013." (Motion, p. 19) In support of its argument, United cited to *Skretvedt v. E.I. Dupont de Nemours*, 372 F. 3d 193, 208 (3d Cir. 2004) ("As a general rule, prejudgment interest is to be awarded when the amount of the underlying liability is reasonably capable of ascertainment and the relief granted would otherwise fall short of making the claimant whole because he or she has been denied the use of money which is legally due. Awarding judgment interest is intended to serve at least two purposes: to compensate prevailing parties for the true costs of money damages incurred, and, where liability and the amount of damages are fairly certain, to promote settlement and deter attempts to benefit from the inherent delays of litigation. Thus, prejudgment interest should ordinarily be granted unless exceptional or unusual circumstances exist making the award of interest inequitable.") (internal quotation marks and citation omitted), *Booker v. Taylor Milk, Co.*, 64 F.3d 860, 868 (3d Cir. 1995) ("To fulfill this make-whole purpose, prejudgment interest should be given in response to considerations of fairness and denied when its exaction would be inequitable.") (internal quotation marks and citation omitted), and *Elbrecht v. Carambola Partners, LLC*, 2010 U.S. Dist. LEXIS 72158 (D.V.I. July 16, 2010). (Motion, p. 19) United further argued that "[h]ere, there are no exceptional or unusual circumstances that would make it unfair for United to recover prejudgment interest" and that "[t]o the contrary, it would be entirely unfair to United if the Partnership is allowed to have the uncompensated use of the United's money after it made demand for payment in May of 2013." (Id., at pp. 19-20) As such, United concluded that it is entitled to "an award of prejudgment interest on the outstanding Bay [sic] 5 and 8 rents from the date demand for rent was made on May 17, 2013 to the date the Master renders his determination at a rate of $195.78 per day"[3] (Id., at p. 20) and "an award of prejudgment interest on the rent actually awarded by the Rent Order in the amount of $881,995 as of May 11, 2015, when the rent was paid to United."[4] (Id., at pp. 20-21) Furthermore, United requested an evidentiary hearing "in the event that the Master determines there to be issues of fact as to the entitlement or amount of prejudgment interest due to United for Bays 5 and 8 as well as for the previously ordered rent as to Bay 1." (Id., at p. 21)

[3] According to United:

> Yusuf has calculated the interest due from the demand through September 30, 2016, when the claims were filed is [sic] $241,005.18. Such interest continues to accrue at the daily rate of $195.78 until paid off. Upon a determination of the amount due for the unpaid rents for Bays 5 and 8, the Master can assess the additional interest due from September 30, 2016 to the date of such a determination. (Motion, p. 20)

[4] According to United:

> …the interest that accrued at 9% per annum on the rent actually awarded by the Rent Order ($6,248,924.14) is $881,955.08 as of May 11, 2015, when the rent was paid to United. (Id.)

[7] In response to United's motion, Hamed filed an opposition as to Yusuf Claim No. Y-2 and a separate opposition as to Yusuf Claim Nos. Y-3 and Y-4.

In its November 14, 2019 order, the Master noted:

> In his opposition to Yusuf Claim No. Y-2, Hamed claimed that while "Plaza Extra-East did use Bays 5 and 8 at various times as a convenience, but either (1) any rent claim was included in the payments and settlements already made to United or, more to the point, (2) he never agreed to pay (nor did he pay) additional rent for those spaces." (Opp., p. 3; CSOF ¶¶ 26, 29) (emphasis omitted) Hamed also claimed that there is no agreed-upon rent amount—to wit, United "discuss[ed] at least three different amounts per square foot for Bays 5 and 8 (the United Corporation Accounts Receivable Current Month report adds a fourth rental amount)—and no agreed-upon rent period—to wit, United alleged "that the Bay 5 lease ended either on October 31, 2001 or July 31, 2001" and "Yusuf initially stated that Bay 8 was used only from April 1, 2008 to May 30, 2013…then stated that Bay 8 was also used from May 1, 1994 to July 31, 2001." (Opp., p. 4) (emphasis omitted) Thus, Hamed argued that there are "two key points" against Yusuf Claim No. Y-2: the statute of frauds and the statute of limitations. (Id., at p. 3) First, Hamed argued that "the statute of frauds ("SOF"), is dispositive, so the Special Master need not reach the statute of limitations ("SOL") issue." (Id.) Hamed pointed out that: (1) the Virgin Islands SOF requires real estate contracts of more than a year to be in writing. *See* Title 28 V.I.C. §§241(a), 242; *see also, Stanley v. Browne*, 62 V.I. 384, 391-92 (V.I. Super. Ct., April 30, 2015), *aff'd*, 66 V.I. 328 (V.I. 2017) (The Statute of Frauds, codified in the Virgin Islands at V.I. Code Ann. tit. 28, §241(a), requires that the conveyance of any interest in real property, outside of a lease for no more than one year, must be in writing.) (Opp., p. 5); (2) Yusuf admitted that no writing exists here (Opp., p. 5); (3) "United tacitly asserts an exception to the statute of frauds—that even though there was no writing, a contract should be 'implied' because Hamed has somehow 'admitted' such a contract was formed in 1994 [b]ut what United really contends is that it can claim an exception if Wally Hamed admits the store 'used the property' or discussed 'use of' the property with Mr. Yusuf." (Id., at p. 5) (emphasis Omitted); (4) that no such exception to SOF as claimed by United exists. (Id.); and (5) "United absolutely does not argue that Hamed 'admits to the contract's existence and its terms'" but "[t]o the contrary, what United argues is that Wally Hamed has admitted use of the premises." (Id., at p.7) Second, Hamed argued that "if the Master does reach the SOL issue, United is wrong: There was no admission—United confuses the affirmation of use of the premises with an affirmation of a contractual obligation, and no partial performance, as the store never paid a cent for the 'alleged rent obligations' under a lease contract for Bays 5 and 8." (Id., at p. 3) (emphasis omitted) Hamed pointed out that: (1) As to the Bay 5 Rent and the First Bay 8 Rent, they are both barred by the Court's Limitations Order. (Id., at pp. 13-14); (2) As to the Second Bay 8 Rent, the facts surrounding is distinguishable from the rent for Bay 1—to wit, "Hamed had agreed to the existence of such rent for Bay 1 in deposition, but he never agreed to anything about Bays 5 and 8. Nor did the store ever partially perform this alleged obligation – it never paid a cent under such a contract." (Id., at p. 15); (3) There is nothing in writing that limits the application of the check in the amount of $5,408,806.74 with the memo "Plaza Extra (Sion Farm) Rent" paid by the Partnership to United on February 7, 2012 to rent for Bay 1 (Id., at p. 16); (4) On May 17, 2013, United's attorney sent a letter to Hamed's attorney demanding rent for: "Bay No. 5, May 1, 1994 through October 31, 2001; 3,125 SQ. FT. at $12.00, 6 years and 184 days, Balance Due $243,904.00" and "Bay No. 8 April 1, 2008 through May 30, 2013; 6,250 SQ. FT. at $12.00, 5 years and one month, Balance Due $381,250.00." (Id.; (5) In response to United's May 17, 2013 letter, Hamed's attorney sent a letter stating that there never was an agreement to pay rent for Plaza-Extra-East's use of Bays 5 and 8. (Id.); and (6) United's attorney "never contradicted this or sent contrary facts in response." (Id.) As such, Hamed requested the Master to deny United's motion for summary judgment.

In its December 4, 2019 order, the Master noted:

> In his opposition to Yusuf Claim Nos. Y-3 and Y-4, Hamed argued that Yusuf's claim for prejudgment interest on the rent awarded for Bay 1 and past rent for Bays 5 and 8 should be denied. Hamed pointed out that Yusuf's claim for prejudgment interest on the rent awarded for Bay 1 should be denied for the following reasons: (1) "it is really just an attempt to seek reconsideration of [the Rent Order]" (Opp., p. 6) – (i) United did not seek prejudgment interest in the original counterclaim, the original motion to the Court or the reply thereto (Id.), (ii) the Rent Order did not award any prejudgment interest (Id.), (iii) United's "failure to compute the requested interest damages and include them in his…motion and…reply make this motion for reconsideration" (Id., at p. 7), and (iv) United has "procedurally missed the time for filing a motion for

reconsideration and further, [it] cannot meet the substantive requirements for requesting a motion to reconsider..." (Id., at p. 9); (2) "since there was no definite rate and no stated interest rate for late or non-payment in the alleged contract, the amount is in dispute and should not be awarded" (Id., at p. 6) – (i) United "seeks interest on the basis of the fourth option [under Title 11 V.I.C. section 951]" but "Judge Brady did not find a 'contract [with] no interest specified'" (Id., at p. 10) (emphasis omitted), (ii) "[t]here was no finding as to what interest was agreed to by the parties from Judge Brady – nor can the Special Master now, retroactively, determine whether or not 'no rate was specified'" (Id.), and (iii) "Judge Brady would have to consider this related argument" (Id.); (3) "even if such interest were to be awarded, it would only be from September 30, 2016 because no demand was made for prejudgment interest as to Bay 1 until September 30, 2016" (Id., at p. 6) – (i) "it is clear that pre-judgment interest runs from the date of demand [for interest]" and "[d]emand for interest on Bay 1 was never made in this case prior to the 2012 start of litigation, in the counterclaim or in the original rent motion" (Id., at p. 9); (ii) "[d]emand for interest on Bay 1 was never made in this case prior to the 2012 start of litigation, in the counterclaim or in the original rent motion" (Id.); (iii) "[t]hus, even if interest were said to run, it would only run from the date of the claim document on September 30, 2016 the first and only place Bay 1 interest is raised" (Id.); (iv) "the back payment of rent for Bay 1 occurred on May 11, 2015" (Id.); and (v) "this would be a matter for Judge Brady, not this claims process." (Id.); and (4) "a demand for interest on Bay 1 is not within the statute" (Id., at p. 10) – (i) United "seeks interest on the basis of the fourth option 'money due or to become due where there is a contract and no rate is specified" but "Judge Brady did not find 'a contract [with] no interest specified'" (Id.) (emphasis omitted); (ii) "[t]here was no finding as to what interest was agreed to by the parties from Judge Brady – nor can the Special Master now, retroactively, determine whether or not "no rate was specified" (Id.); and (iii) "this is why Judge Brady would have to consider this related argument." (Id.) Hamed pointed out that Yusuf's claim for prejudgment interest on past rent for Bays 5 and 8 should be denied for the following reasons: (1) for the same reasons pointed out for prejudgment interest on the rent for Bay 1 (Id., at p. 11); (2) "there was not even a verbal contract to pay rent, much less a specified amount of rent or even any specific period of time for which rent should be paid" (Id.); (3) "Yusuf repeatedly admits… that there never was any contemporaneous requests for rent" and "Wally and Willie both dispute that rent was ever requested for Bays 5 and 8" (Id., at p. 13) (emphasis omitted); and (4) "[t]he requirements of [under Title 11 V.I.C. section 951(a)(4) for awarding interest have not been met by [United]" (Id., at p. 18) As such, the Hamed requested the Master to deny United's revised motion for summary judgment as to Yusuf Claim Nos. Y-3 and Y-4.

[8] In response to Hamed's oppositions, United filed a single reply. In its reply, United did not address the arguments raised in Hamed's opposition as to Yusuf Claim Nos. Y-3 and Y-4.

In its November 14, 2019 order, the Master noted:

> In its reply as to Yusuf Claim No. Y-2, United made the following arguments in response to Hamed's opposition: (1) The statute of frauds does not bar United claims for the Bay 5 Rent, the First Bay 8 Rent, and the Second Bay 8 Rent because the agreement between United and the Partnership regarding Bay 5 and Bay 8 "could have been terminated by either party in less than a year" and "[t]his takes it outside the statute of frauds." (Reply, pp. 3-4)—United pointed out that, "[i]n *Yusuf v. Hamed*, 59 V.I. 841 (2013), the Supreme Court rejected Yusuf's and United's argument that an oral Partnership claim was void under the statute of frauds…because the alleged agreement was for an indefinite term that exceeded one year" and held that "the statute of frauds has no application to oral contracts that, while intended to last more than a year, have no stated durational terms and could conclude within a year." 59 V.I. at 852 (emphasis omitted) (Reply, p. 3). United also pointed out that the Supreme Court explained that "it is well settled that the oral contracts invalidated by the statute of frauds because they are not to be performed within a year include only those which cannot be performed within that period" and that it is "immaterial that the performance of the contract *actually* exceeds one year…" 59 V.I. at 852-53 (citation and internal marks omitted; emphasis in original) (Reply, p. 3); (2) "Even assuming that Hamed has raised any genuine issues of material fact regarding the enforceability of the contract claims, he has admitted facts sufficient to establish liability for unjust enrichment" (Reply, p. 6)—United pointed out that "Hamed's testimony satisfies those elements [of an unjust enrichment claim in the Virgin Islands], and establishes liability for unjust enrichment." (Id., at p. 7); (3) The Limitations Order only applies to the claims between the partners does not apply to claims of United for

thereto. Subsequently, Hamed also filed a notice of supplementation as to Yusuf Claim No. Y-2.[9] On November 14, 2019, the Master entered an order (hereinafter "November 14, 2019 Order") whereby the Master addressed United's revised motion for summary judgment only as to Claim No. Y-2 and denied United's revised motion for summary judgment only as to Claim No. Y-2.[10] In the November 14, 2019 Order, the Master explained:

> Based on the record before the Master, there is clearly a genuine dispute as to the Bay 5 Rent, the First Bay 8 Rent, and the Second Bay 8 Rent. While United argued in its motion that it was agreed upon for the Partnership to pay United rent for Bays 5 and 8, Hamed repeatedly refuted such argument in his opposition and in his counter statement of facts that he never agreed to pay rent for Bays 5 and 8: (1) "[Hamed] never agreed to pay (nor did he pay additional rent for those spaces [at Bays 5 and 8]." (Opp., p. 3) (emphasis omitted); (2) "United absolutely does not argue that Hamed 'admits to the contract's existence and its terms. To the contrary, what United argues is that Wally Hamed has

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debts (Id., at pp. 8-9); (4) Although Hamed stated that the dates as to occupancy have changed, "United set for the correct dates in the [sic] its August 12, 2014 Motion and Declaration of Yusuf which are accurate and further supported by the subsequent interrogatory responses and documents produced reflecting when third-party tenants occupied Bays 5 and 8." (Id., at p. 9); (5) "The proper foundation was not laid for the admission of the report [prepared by Luff] as a business record and therefore, it cannot be considered…" and "[e]ven if considered, it offers no relevant evidence as to the issues before the Court." (Id., at pp. 10-11); and (6) The check in the amount of $5,408,806.74 with the memo "Plaza Extra (Sion Farm) Rent" paid by the Partnership to United on February 7, 2012 only covered rent due for the period between 2004 to 2011, and "[i]t is United's position that the Partial Settlement Check did not and could not include rent for Bays 5 and 8." (Id., at pp. 11-12)0 As such, United concluded that it "is entitled to a judgment for amounts owed for the Partnership's use of Bays 5 and 8 and interest, under a contract or unjust enrichment theory" or "[i]n the alternative, at the very least, United is entitled to partial summary judgment finding that it is entitled to recover from the Partnership for its use of Bays 5 and 8 as there is no triable issue regarding the fact that the Partnership utilized Bays 5 and 8 for storage and has not paid United for that use." (Id., at pp. 12-13) United further concluded "if any disputes raised by Hamed are deemed to create genuine issues of material fact, they relate only to the frequency and duration of the use of Bays 5 and 8 by the Partnership and possibly the fair value of that use by the Partnership" and "[h]ence, United is entitled to partial summary judgment finding that it is entitled to recover from the Partnership for its use of Bays 5 and 8, the value of which the Court can determine by conducting a limited evidentiary hearing to resolve those issues of facts as to frequency, duration and fair value." (Id., at p. 13) United did not address the arguments raised in Hamed's opposition as to Yusuf Claim Nos. Y-3 and Y-4.

[9] In his notice of supplementation, Hamed advised the Master that "a business record of United, prepared by its accounting staff and consistent with other such reports provided with regard to [United's revised motion for summary judgment]… demonstrates that United, itself – on its own contemporaneous accounting records – showed that the $5 million settlement check WAS for back rent on the units in the 'Shopping Center,'" and "[m]ore particularly, the record shows that United booked the payment in specifically against Bay 8." (Ntc., p. 2) (emphasis in original) the notice was accompanied by a declaration of Carl J. Hartmann III, Esq., Hamed's attorney, dated October 31, 2019.

[10] For clarity, the Master separated United's arguments as to Yusuf Claim No. Y-2 and Yusuf Claim Nos. Y-3 and Y-4.

admitted use of the premises." (Id., at p. 7) (emphasis omitted); (3) Hamed's attorney's May 22, 2013 letter in response to United's attorney's May 17, 2013 letter demanding rent for Bays 5 and 8—"there was never any agreement to pay rent for [Bay 5]" and "[t]he rent claimed for this Bay [8] was never agreed to." (Opp., at p. 16; CSOF ¶ 12); and (4) "On January 21, 2019, Wally Hamed testified in his deposition that Bays 5 and 8 were provided to the Partnership rent-free and he had no conversation with Fathi Yusuf where he agreed or Fathi Yusuf asked that the Partnership would pay rent for the Bays." (CSOF ¶ 26) Thus, as the Court previously concluded in its Limitations Order, the Master is similarly compelled to conclude that "a genuine dispute of material fact exists as to whether Hamed ever acknowledged any debt as to rent owed for Bays 5 and 8, and more basically, whether the partnership ever agreed to pay any rent for the use of Bays 5 and 8 in the first place." (Limitations Order, p. 8) Furthermore, there is also a genuine dispute as to whether the check in the amount of $5,408,806.74 with the memo "Plaza Extra (Sion Farm) Rent" paid by the Partnership to United on February 7, 2012 is a settlement that applied to Bay 5 and/or Bay 8—United said no while Hamed said yes. As such, the Master concludes that United has not satisfied his burden of establishing that there is no genuine dispute as to any material fact regarding Yusuf Claim No. Y-2.[6] *See Rymer,* 68 V.I. at 575-76 (quoting *Williams,* 50 V.I. 191, 194) ("Because summary judgment is "[a] drastic remedy, a court should only grant summary judgment when the 'pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.'")

[6] At this juncture, in light of the Master's finding, the Master need not address other issues raised by Parties.

On December 4, 2019, the Master entered an order (hereinafter "December 4, 2019 Order") whereby the Master addressed United's revised motion for summary judgment only as to Claim Nos. Y-3 and Y-4, denied United's revised motion for summary judgment only as to Claim No. Y-3, denied without prejudice United's revised motion for summary judgment only as to Claim No. Y-4, and granted summary judgment in favor of Hamed as to the issue of prejudgment interest on the rent awarded by the Rent Order for Bay 1. In the December 4, 2019 Order, the Master explained:

1. Yusuf Claim No. Y-3: Prejudgment Interest on the Rent Awarded by the Rent Order to United for Bay 1

United argued that it is entitled to recovery prejudgment interest at the rate of 9% per annum on the rent awarded by the Rent Order pursuant to Title 11 V.I.C. §951(a)(4)

because "there are no exceptional or unusual circumstances that would make it unfair for United to recover prejudgment interest" and that "[t]o the contrary, it would be entirely unfair to United if the Partnership is allowed to have the uncompensated use of the United's money after it made demand for payment in May of 2013." (Id., at pp. 19-20) The Master finds United's argument unpersuasive. United stated in its September 9, 2013 motion to withdraw rent:

> **The parties have settled in the past any rents owing to Defendant United Corporation once every seven to ten year period. That has been the customary practice between the parties: that United is entitled to make demands for rent as it sees fit.** For example, the parties settled the rents due between 1986 and 1993, and between 2004 and 2011. In both periods, the parties settled the rent when requested by United. There was no dispute as to amount, and neither was there a dispute as to whether Statute of Limitations applied. As for the period of 1994 to 2004, United held off on the demand for rent because certain financial records were seized by the U.S. Government and were therefore unavailable to Defendant United to ensure proper calculation (as to the exact period of time) of the rents due. See, Affidavit of Fathi Yusuf, EXHIBIT A. At no time did Plaintiff Hamed ever contend that Defendant United was not entitled to any rents due as to trigger the running of the Statute of Limitations. It is only after the September 18th, 2012 action in this case was filed did Plaintiff Hamed decided to contest something as basic as the rent due. (United's September 9, 2013 motion, pp. 6-7) (Emphasis added)

The foregoing shows that it was common practice for the Partnership to make lump sum rent payments when United made rent payment demands, as opposed to monthly or even yearly rent payments, and that the construct of Parties' rent payment arrangement for Bay 1 throughout their relationship never provided for prejudgment interest. Thus, the Master finds it inequitable and unjust to award prejudgment interest in this instance. *Williams,* 2017 V.I. LEXIS 105 *6 ("The assessment of prejudgment interest is permissible where the interests of justice so demand. Prejudgment interest is normally granted, except in exceptional or unusual circumstances that make the award for interest inequitable") (internal quotation marks and citation omitted). As such, the Master concludes that United has not satisfied his burden of establishing that there is no genuine dispute as to any material fact regarding Yusuf Claim No. Y-3.[6] *See Rymer,* 68 V.I. at 575-76 (quoting *Williams,* 50 V.I. 191, 194) ("Because summary judgment is "[a] drastic remedy, a court should only grant summary judgment when the 'pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.'")

In fact, upon review of the record before the Master, the Master finds that Yusuf never addressed any of Hamed's assertions in his opposition, such as Hamed's assertion that "[d]emand for interest on Bay 1 was never made in this case prior to the 2012 start of litigation, in the counterclaim or in the original rent motion." United's failure to address Hamed's assertions in its reply, coupled with United's arguments in its September 9, 2013

motion to withdraw rent, make clear that there is no genuine dispute as to any material fact regarding the construct of Parties' rent payment arrangement for Bay 1 throughout their relationship never provided for prejudgment interest. As such, pursuant to Rule 56(e),[7] the Master will grant summary judgment in favor of Hamed as to the issue of prejudgment interest on the rent awarded by the Rent Order for Bay 1. *See Isaac*, 63 V.I. 38, 69-70 ("The grant or denial of prejudgment interest remains within the sound discretion of the trial court.")

2. Yusuf Claim No. Y-4: Prejudgment Interest on the Past Rent Due to United for Bays 5 and Bay 8

In light of the Master's November 14, 2019 Order denying United's revised motion for summary judgment as to Yusuf Claim No. Y-2: past rent due to United for Bays 5 and 8, there is no monetary award subject to prejudgment interest. As such, the Master cannot address United's request for prejudgment interest on the past rent due to United for Bays 5 and Bay 8 until a final assessment of United's request for past rent due to United for Bays 5 and Bay 8 is made. Thus, the Master concludes that United has not satisfied his burden of establishing that there is no genuine dispute as to any material fact regarding Yusuf Claim No. Y-4. *See Rymer,* 68 V.I. at 575-76 (quoting *Williams,* 50 V.I. 191, 194) ("Because summary judgment is "[a] drastic remedy, a court should only grant summary judgment when the 'pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.'")

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[6] In light of the Master's finding, the Master need not address the arguments raised by Hamed.

[7] V.I. R. CIV. P. 56(e) provides that:

> If 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).

(December 4, 2019 Order, pp. 12-14.)

On February 4, 2021, the parties appeared for a hearing on Yusuf Claim No. Y-2 and Yusuf Claim No. Y-4. United and Hamed each presented witness testimony and exhibits. More specifically, the Master heard oral testimony from Fathi Yusuf, Maher Yusuf, and Waleed Hamed. At the conclusion of the hearing, the Master took the matter under advisement and ordered United

and Hamed to file their respective proposed findings of facts and conclusions of law. Thereafter, the parties timely filed their post-hearing filings. In his post-hearing filing, Hamed withdrew his prior statute of frauds argument[11] and noted that while it did not re-argue his statute of limitations argument at the hearing,[12] it "expressly preserved this objection in the event it may be needed for an appeal on this issue." (Hamed's Post-Hearing Filing, p. 2.)

STANDARD OF REVIEW

Rule 52 of the Virgin Islands Rules of Civil Procedure provides:

> In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.
>
> V.I. R. Civ. P. 52(a)(1)(A).

DISCUSSION

Regarding Yusuf Claim No. Y-2, United claimed that it is entitled to recover past due rent from the Partnership for its use of Bay 5 and Bay 8 in the total amount of $793,984.38. According to Yusuf's amended accounting claims,[13] Yusuf and United's August 12, 2014 Motion for Partial Summary Judgment, and United's revised motion for summary judgment as to Yusuf Claim Nos. Y-2, Y-3, and Y-4, the breakdown of the past due rent for Bay 5 and Bay 8 was as follows: $271,875.00, the total amount of past due rent for Bay 5 from May 1, 1994 through July 31, 2001,

[11] In his post-hearing filing, Hamed explained that "it is now undisputed that the alleged Bay rentals were not for a fixed period of time and could be terminated at any time" and "[a]s noted by the Virgin Islands Supreme Court in *Yusuf v. Hamed*, 59 V.I. 841, 852 (201), agreements that can be terminated in less than a year are outside the Statute of Frauds." (Hamed's Post-Hearing Filing, p. 2)

[12] In his post-hearing filing, Hamed explained that "the Special Master previously held that this Limitations Order does not necessarily apply to claims regarding United..." (Id.)

[13] In Yusuf's amended accounting claims, Yusuf referenced Yusuf Declaration, dated August 12, 2014, at ¶¶ 21-25.

plus $323,515.63, the total amount of past due rent for Bay 8 from May 1, 1994 through September 30, 2002, and plus $198,593.75, the total amount of past due rent for Bay 8 from April 1, 2008 through May 30, 2013. On the other hand, while Hamed admitted that the Partnership used Bay 5 and Bay 8 at various times, Hamed claimed that United is not entitled to recover past due rent for Bay 5 and Bay 8 because: (i) this claim is barred by the statute of limitations, (ii) there is no evidence showing that Mohammad Hamed[14] personally agreed for the Partnership to pay rent to United for the use of Bay 5 and Bay 8, (iii) United did not request rent payment from the Partnership for the use of Bay 5 and Bay 8 until after the relationship between Mohammad Hamed and Yusuf became adversarial, (iv) there is no written evidence of an agreement between the Partnership and United for the Partnership to pay rent to United for the use of Bay 5 and Bay 8, (v) United gratuitously permitted the Partnership to use Bay 5 and Bay 8, and (vi) if the Partnership owed United rent for the use of Bay 5 and Bay 8, then the February 7, 2012 check for $5,408,806.74 was a settlement that applied to past due rent for Bay 5 and Bay 8.

Regarding Yusuf Claim No. Y-4, United claimed that it is entitled to recover prejudgment interest at 9% per annum, as provided by Title 11 V.I.C. § 951(a)(4),[15] from the Partnership for the past due rent the Partnership owes for Bay 5 and Bay 8, from the date it demanded payment—May 17, 2013. On the other hand, Hamed claimed that United is not entitled to recover prejudgment interest on past due rent for Bay 5 and Bay 8 because (i) United did not seek prejudgment interest in the original counterclaim, (ii) there was no agreement for the Partnership

[14] To clarify, in this memorandum opinion, whenever references are made to "Hamed," the Master is referencing the plaintiff/counterclaim defendant party, and whenever references are made specifically to "Mohammad Hamed," the Master is referencing the individual—Mohammad Hamed.

[15] Title 11 V.I.C. § 951(a)(4) provides that "[t]he rate of interest shall be nine (9%) per centum per annum -- on money due or to become due where there is a contract and no rate is specified."

to pay United rent for Bay 5 and Bay 8, and (iii) United has not met the requirements under Title 11 V.I.C. § 951(a)(4) for awarding interest. (Hamed's opposition to United's revised motion for summary judgment as to Yusuf Claim Nos. Y-2, Y-3, and Y-4, pp. 11, 13, 18.)

In accordance with Rule 52(a) of the Virgin Islands Rules of Civil Procedure and having reviewed the entire record, the Master now makes the following findings of fact and conclusions of law.

Findings of Fact

1. United is the fee simple owner and landlord of the United Shopping Center.

2. The United Shopping Center is comprised of multiple bays, including Bay 1, Bay 5, and Bay 8. Bay 5 is located between Bay 4 and Bay 6. Bay 8 is located at the end of the building. Both Bay 5 and Bay 8 have access to the loading/unloading areas.

3. After being burnt down, Plaza Extra-East was rebuilt and reopened in May 1994.

4. The Partnership operated Plaza Extra-East out of Bay 1 at the United Shopping Center.

5. The Partnership utilized Bay 1 for both retail use and warehouse use.

6. There was no written lease agreement between United and the Partnership for the Partnership's use of Bay 1.

7. The Partnership paid rent for the use of Bay 1.

8. The Partnership needed additional storage space for Plaza Extra-East's inventory.

9. In 1994, Fathi Yusuf was primarily on St. Thomas but came back to St. Croix regularly. Fathi Yusuf was on St. Thomas when Waleed Hamed and Maher Yusuf broke the wall between Bay 1 loading area and Bay 5 to allow access for a forklift between Bay 1 and Bay 5.

10. The Partnership had direct forklift access between Bay 1 and Bay 5.

11. In 1994, when Plaza Extra-East reopened, Bay 5 and Bay 8 were available to rent to third parties.

12. The Partnership used Bay 5 and Bay 8 as a warehouse to store its inventory.

13. The Partnership began using Bay 5 and Bay 8 when Plaza Extra-East opened in May 1994.

14. The Partnership understood that if United was able to rent Bay 5 and Bay 8 to other tenants, then United could evict the Partnership from Bay 5 and Bay 8 and the Partnership would be required to vacate Bay 5 and Bay 8.

15. There was no written and no oral lease agreement between United and the Partnership for the Partneship's use of Bay 5 and Bay 8.

16. United's arrangement with the Partnership for its use of Bay 1, Bay 5, and Bay 8 was not consistently recorded on the company books or accounting records.

17. Bay 5 was used continuously by the Partnership from May 1, 1994 through July 31, 2001.

18. Bay 5 was rented to Diamond Girl at some point.[16] According to the lease, the lease term was for ten calendar years commencing on September 1, 2001, the leased premises measured approximately 3,125 square feet, and the rent was $2,604.00 per month.

19. The Partnership stopped using Bay 5 once Diamond Girl's lease commenced.

20. Bay 8 was used continuously by the Partnership from May 1, 1994 through September 30, 2002 and from April 1, 2008 through May 30, 2013.

21. Bay 8 was rented to Riverdale at some point.[17] According to the lease, the lease term was for sixty-three calendar months commencing on October 1, 2002, the leased premises measured approximately 6,250 square feet, and the rent was $2,605.00 per month for the first year and $3,125.00 per month for the remaining years.

22. The Partnership paid United with a check, dated February 7, 2012, in the amount of $5,408,806.74 with the memo "Plaza Extra (Sion Farm)."

23. In the Rent Order, the Court concluded that the rent for Bay 1 was to be calculated at the rate of $5.55 per square foot for the period January 1, 1994 to May 4, 2004.

24. United did not request rent payment from the Partnership for the use of Bay 5 and Bay 8 until after Attorney Nizar DeWood, Yusuf's attorney, sent an email to Mohammad

[16] The parties referred to the tenant as "Diamond Girl," but the lease was between United (landlord) and David Zahriyah and Mazen Awadallah (tenants).

[17] The parties referred to the tenant as "Riverdale," but the lease was between United (landlord) and Mahmud A. Idheilah and Majdi Zgheir (tenants).

Hamed on February 10, 2012 regarding the partnership dissolution with a corresponding letter regarding the same.

25. Fathi Yusuf is the president of United. Fathi Yusuf has the final word as to United, including but not limited to the rentals at United Shopping Center.

26. Fathi Yusuf was the managing partner of the Partnership. Fathi Yusuf has the final word as to the Partnership.

Conclusions of Law

I. Whether Yusuf Claim Nos. Y-2 and Y-4 are Barred

A. Whether Yusuf Claim Nos. Y-2 and Y-4 are Barred by 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.) United is not a partner of the Partnership. Thus, United's claims are not barred by the Limitations Order.

B. Whether Yusuf Claim Nos. Y-2 and Y-4 are Barred by the Statute of Limitations

The statute of limitations applies to Yusuf Claim Nos. Y-2 and Y-4 regardless of whether they fall 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.

1. The Applicable Statute of Limitations

Yusuf Claim Nos. Y-2 and Y-4 are based on United's claim that there was an agreement between United and the Partnership for the Partnership to pay rent to United for the use of Bay 5 and Bay 8. Title 5 V.I.C. § 31(3)(A)(3) provides that "[a]n action upon a contract or liability, express or implied, excepting those mentioned in paragraph (1)(C) of this section" must be

commenced within six years after the cause of action have accrued. Title 5 V.I.C. § 31(3)(A)(3). Thus, the applicable statute of limitations for Yusuf Claim Nos. Y-2 and Y-4 is six years.

2. The Limitations Period

Although Yusuf Claim Nos. Y-2 and Y-4 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] 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.)

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).[18] 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:

> 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

[18] 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.

> 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. July 21, 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 Mohammad 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. Simply put, 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 since the inception of the business, the dealings between the Partnership and United were treated as one unit with Mohammad 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 Mohammad Hamed's full knowledge and acquiescence. In fact, Mohammad Hamed's action during the pendency of the criminal case brought by the United States against United further exemplified that Mohammad 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, Mohammad 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, n. 43.[19] Nevertheless, Hamed now has changed his tune and claimed that he did not have

[19] On October 21, 2020, the Master entered an order whereby the Master addressed 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.

The October 21, 2020 order provided:

> In his motion, United stated:
>
> > The criminal case brought by the United States against United Corporation for underreporting and failing to pay gross receipts taxes and income taxes owed on revenues from the supermarket business was filed in the District Court on September 18, 2003. The theory of that prosecution was that United, a corporation owned by Fathi Yusuf and his family members–and not a Hamed/Yusuf partnership–owned and operated the Plaza Extra supermarkets and was responsible for paying taxes on store revenues. The criminal defense lawyers instructed Yusuf and the other defendants not to take any action that would support the existence of a partnership, and thereby draw Mohammad Hamed (who was not named in the indictment) into the criminal case. (Motion, pp. 11-12; United's statement of facts ("SOF") ¶ 9)
>
> United referenced: Exhibit 6-Declaration of Fathi Yusuf, dated April 15, 2020, ¶ 4 ("…In addition, the defense lawyers for me and the other defendants in the criminal advised us not to do or say nothing that would suggest the existence of a partnership between me and Mohammad Hamed, because that would hurt our defense and cause Mohammad Hamed to be added to the case.").
>
> In his oppositions, Hamed neither agreed "that the fact is undisputed for the purpose of ruling on the motion for summary judgment only" nor "stated that the fact is disputed and providing affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon as evidence relating to each such material fact, by number" as required by Rule 56. See V.I. R. CIV. P. 56(c)(2)(B). Instead, Hamed's responses to United's SOF ¶ 9 stated:
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> > Y-7 Opposition
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> > That was one of many alternate theories of the defense. This claims process is a matter of allocation of "real" amounts NOW in a "real amounts" claims process. Yusuf is arguing that because this was once one of MANY positions taken, Hamed is forever estopped from pointing out the actual facts or what really happened—and what is really owed. Fine. If this is to be the rule in this case, Yusuf repeatedly said he was not a partner in this Partnership, and is, therefore, forever barred from ANYTHING from the Partnership. But, seriously, it is a little late for these sorts of debating club semantics. On the other hand, Hamed would agree to this logic, thus case should end and all of the

Partnerships remaining assets should go to Hamed. Otherwise, historical estoppel is not a real "thing" in a RUPA partnership division.

On a more practical level, the statute of limitations for the 1994 and 1995 claims expired in 2000 and 2001, before the 2003 criminal indictment, so United's purported reason for tolling the SOL with respect to these claims does not apply. (HCSOF ¶ 27)

Further, the federal monitors, brought in to provide oversight on United's financials during the pendency of the criminal case allowed expenditures to be made out of the Yusuf family-owned tenant account and the Partnership bank accounts, despite those accounts being under a court imposed injunction. For example, United was allowed to use the tenant bank account to fund the building of a home on St. Thomas for Fathi Yusuf's son, Nejeh Yusuf, to fund and open a laundromat in United's name. Plaza Extra also was allowed to make capital expenditures at the Plaza Extra East store for new shelves. (HCSOF ¶ 28) If the alleged 1998 debt was legitimate, there was no reason why United couldn't have requested authorization for repayment from the monitors prior to the expiration of the statute of limitations on that claim. (Y-7 Opp., p. 29-30)

Y-9 Opposition

That was one of many alternate theories of the defense. This claims process is a matter of allocation of "real" amounts NOW in a "real amounts" claims process. Yusuf is arguing that because this was once one of MANY positions taken, Hamed is forever estopped from pointing out the actual facts or what really happened—and what is really owed. Fine. If this is to be the rule in this case, Yusuf repeatedly said he was not a partner in this Partnership, and is, therefore, forever barred from ANYTHING from the Partnership. But, seriously, it is a little late for these sorts of debating club semantics. On the other hand, Hamed would agree to this logic, thus case should end and all of the Partnerships remaining assets should go to Hamed. Otherwise, historical estoppel is not a real "thing" in a real RUPA partnership division.

On a practical level, assuming the expenditures were legitimate, it was possible for United to seek reimbursement from the Partnership within the applicable statute of limitations period by requesting funds to be moved from the Plaza Extra bank accounts to the United tenant bank account. There is ample evidence that the federal monitors allowed funds to be expended from both the tenant account and Plaza Extra accounts for things such as purchasing new store shelving, starting a new laundromat business and completing construction of Nejeh Yusuf's home. (HCSOF ¶ 19) (Y-9 Opp., p. 25)

In its reply, United pointed out "Hamed does not and cannot dispute that '[t]he theory of the prosecution was that United Corporation, a corporation owned by Fathi Yusuf and his family members – and not an undocumented, oral Hamed/Yusuf partnership – owned and operated the Plaza Extra supermarkets and was responsible for paying income and gross receipts taxes on store revenues'" and that "Hamed's response to United's [SOF ¶ 9] is silent regarding Mr. Yusuf's account of the defense lawyers' instructions to the defendants." (Reply, pp. 20-21)

The Master agrees with United's assessment of Hamed's oppositions. In Hamed's responses to United's SOF ¶ 9, Hamed never disputed that Yusuf and the other defendants were instructed to not to take any action that would support the existence of a partnership nor that they complied with such instructions. Additionally, the oppositions failed to provide any affirmative assertion by Hamed objecting to Yusuf and the other defendants not taking any action that would support the existence of a partnership. Thus, Hamed, through his silent acceptance and affirmation of the others not taking any action that would support the existence of a partnership, actively concealed the fact that United and the Partnership were actually separate entities to the prosecutors. Furthermore, when the parties in the criminal case finally executed the plea agreement—to wit, United pled guilty to "Count Sixty of the Third Superseding Indictment, which charges willfully making and subscribing a 2001 U.S. Corporation Income Tax Return (Form 1120S), in violation of Title 33, Virgin Islands Code, Section 1525(2)" and all other counts of the indictment against the remaining defendants and all remaining counts of the indictment against United were dismissed with prejudice (The Plea Agreement in

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. However, Mohammad 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.[20] Thus, the Master finds Mohammad Hamed and Waleed Hamed's conduct of ongoing and repeated silence and

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> the Criminal Case, dated February 26, 2010)—neither Hamed nor Yusuf advised the prosecutors that United and the Partnership were actually separate entities, which would have resulted in more taxes due. Instead, Hamed and Yusuf continued to actively conceal, either by silence or action, the fact that United and the Partnership were actually separate entities. Hamed and Yusuf had a duty to tell the truth and avoid deception before the Court, yet, they failed to do so, and thus, their suppression of the truth was an affirmation of the fact that the Partnership and United were treated as one unit.
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> (October 21, 2020 order, n. 43.)

[20] This lawsuit was filed prior to Mohammad Hamed's passing and thus, he knew that Yusuf asserted that Yusuf had absolute control over the Partnership finances and that Yusuf had all authorities over the Partnership and United. Mohammad Hamed had the opportunity to contradict Yusuf's assertion, yet no one had asked Mohammad Hamed any questions related to such an arrangement. In other words, Hamed only argued the absence of any evidence showing agreement or consent by Mohammad Hamed to Yusuf's absolute control over the Partnership finances and Yusuf's total authorities over the Partnership and United. In the December 9, 2020 order addressing United's motion for summary judgment as to 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 and 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, the Master similarly pointed out that Hamed only argued the absence of any evidence showing agreement or consent by Mohammad Hamed to Yusuf's absolute control over the Partnership finances and Yusuf's total authorities over the Partnership and United. *See* December 9, 2020 Order, p. 26 n. 52. More specifically, the Master explained in the December 9, 2020 order:

> …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.
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> (December 9, 2020 Order, p. 26 n. 52.)

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 Mohammad 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 Mohammad 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 rent payment from the Partnership and when the Partnership paid rent to 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").

The final element, detriment. Here, Yusuf's reasonable reliance on Mohammad Hamed's ongoing and repeated material misrepresentations resulted in United's claims—Yusuf Claim Nos. Y-2 and Y-4—possibly being barred in part or in whole by the statute of limitations because Yusuf, as the president of United, did not timely demand rent payment from the Partnership for the use of Bay 5 and Bay 8 and Yusuf, as the managing partner of the Partnership, did not timely make such rent payment to United. 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 Mohammad 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 Nos. Y-2 and Y-4 never accrues and lasts forever. As soon as Yusuf or Mohammad 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 Mohammad 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 Nos. Y-2 and Y-4—began 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.[21] 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 Mohammad 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 for actions taken by Yusuf

[21] 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.

thereafter, and the applicable statute of limitations for Yusuf Claim Nos. Y-2 and Y-4 began to accrue. As such, Yusuf Claim Nos. Y-2 and Y-4 were timely asserted on December 23, 2013, when they were included in Yusuf and United's counterclaims and Yusuf's accounting claims.[22] Therefore, Yusuf Claim Nos. Y-2 and Y-4 are not barred by the six-year statute of limitations.

II. Whether United is Entitled to Rent from the Partnership for the Use of Bay 5 and Bay 8

After hearing the witnesses' testimony, and after due consideration of the evidence in the record, the Master finds that regardless of whether Mohammad Hamed personally agreed that the Partnership will pay rent to United for the use of Bay 5 and Bay 8, there was nonetheless an agreement between United and the Partnership that the Partnership will pay rent to United for the use of Bay 5 and Bay 8 because (i) it is not in dispute that the Partnership first began to use Bay 5 and Bay 8 prior to February 10, 2012; and (ii) as noted above, up until February 10, 2012, 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, and therefore, Yusuf unilaterally had the authority to decide that United will charge the Partnership rent for the use of Bay 5 and Bay 8 and the Partnership will pay rent to United for the use of Bay 5 and Bay 8, and enter into such an agreement between the Partnership and United.

[22] 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, n. 9.) Thus, United's rent claims were timely asserted on December 23, 2013. However, the Master will note that Yusuf and United's counterclaims for rent did not include the rent due for Bay 8 for the period May 1, 1994 through September 30, 2002. Nevertheless, United included the rent due for Bay 8 for the period May 1, 1994 through September 30, 2002 in Yusuf's Accounting Claims, and thus, it was still timely asserted on September 30, 2016.

In opposing Yusuf Claim Nos. Y-2 and Y-4, one of Hamed's main argument was the absence of any evidence showing Mohammad Hamed personally agreed that the Partnership will pay rent to United for the use of Bay 5 and Bay 8, and that Mohammad Hamed's silence as to this issue should be interpreted as Mohammad Hamed's disagreement to such an agreement between the Partnership and United. The Master finds Hamed's argument unpersuasive. Hamed never discussed nor provided any affirmative assertion by Mohammad Hamed that Yusuf did not have the absolute control and total authorities to make such decisions for the Partnership and United so that Yusuf cound not unilaterally decide that United will charge the Partnership rent for the use of Bay 5 and Bay 8 and the Partnership will pay rent to United for the use of Bay 5 and Bay 8, and thereby, Yusuf could not unitlaterally enter into such an agreement between the Partnership and United. In fact, the counterclaims were filed prior to Mohammad Hamed's passing and thus, he knew that United asserted a claim for past due rent the Partnership owes United for the use of Bay 5 and Bay 8. Mohammad Hamed had the opportunity to contradict Yusuf's assertion that there was an agreement between the Partnership and United for the Partnership to pay rent to United for the use of Bay 5 and Bay 8, yet no one had asked Mohammad Hamed any questions related to such an agreement. Mohammad Hamed himself, either by deposition or otherwise, never denied that there was an agreement between the Partnership and United for the Partnership to pay rent to United for the use of Bay 5 and Bay 8, or that the Partnership owes United rent for the use of Bay 5 and Bay 8, nor presented any evidence showing that he never agreed nor consented to such an agreement. While Waleed Hamed[23] testified that he never personally agreed that the Partnership

[23] Mohammad Hamed's sons and Yusuf's sons were delegated the authority to operate the Plaza Extra stores under the supervision, directions, and control of Fathi Yusuf.

will pay rent to United for the use of Bay 5 and Bay 8, that in and of itself, does not negate Yusuf's absolute control over the Partnership finances, Yusuf's total authorities over the Partnership and United, and Yusuf's unilateral authority to decide that United will charge the Partnership rent for the use of Bay 5 and Bay 8 and the Partnership will pay rent to United for the use of Bay 5 and Bay 8, and enter into such an agreement between the Partnership and United up until the relationship between Mohammad Hamed and Yusuf became adversarial.

Hamed also argued that the Partnership should not have to pay rent to United for the use of Bay 5 and Bay 8 because United did not request rent payment from the Partnership for such use until after the relationship between Mohammad Hamed and Yusuf became adversarial. Hamed reasoned that, given that the Master has already determined that "[a]s 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," Yusuf lacked the unilateral authority to enter into an agreement between the Partnership and United for the Partnership to pay rent to United for the use of Bay 5 and Bay 8. However, under the circumstances, the Master is again inclined to invoke the doctrine of equitable estoppel to ensure fairness in the relationship between the parties. The first element of equitable estoppel concerns the conduct or language amounting to a material misrepresentation. Here, both partners and their respective sons had, at all times, either actual or constructive knowledge, of the common practice for the Partnership to make lump sum rent payments when United made rent payment demands from time to time at its discretion, as opposed to the Partnership making monthly or yearly rent payments to United—for

example, the Partnership made lump sum rent payment for Bay 1 for the period between 1986 and 1993 and the period between 2004 and 2011 upon United's demand, and in the Rent Order, the Court also, *inter alia*, granted United's request for lump sum rent payment for Bay 1 for the period between 1994 and 2004. Thus, the Master finds Mohammad Hamed's conduct of ongoing and repeated silence and acceptance of the Partnership's lump sum rent payment upon United's demand from time to time at its discretion over the years went beyond a miscommunication or single act and amounted to an ongoing and repeated material misrepresentation of the fact that Mohammad Hamed agreed and consented to such rent payment arrangement. The second element, reasonable reliance. The facts are clear that Yusuf reasonably relied on Mohammad Hamed's ongoing and repeated misrepresentation—to wit, such lump sum rent payment arrangement continued for years without any objections from Mohammad Hamed or any actions by Mohammad Hamed to change the arrangement to monthly or yearly rent payments.[24] The final element, detriment. Here, Yusuf's reasonable reliance on Mohammad Hamed's ongoing and repeated material misrepresentations resulted in Yusuf Claim Nos. Y-2 and Y-4 being disputed due to the fact that United, at its discretion, demanded lump sum rent payments from the Partnership for the use of Bay 5 and Bay 8 for various periods. Based on the foregoing, the Master finds that Hamed, and in turn the Partnership, are estopped from taking a position inconsistent with their prior conduct and language—to wit, the acceptance of the Partnership's lump sum rent payment upon United's demand from time to time at its discretion over the years. *See Browne*, 66 V.I. 328 at 334 ("because [equitable estoppel] promotes equity and justice by preventing one party from taking

[24] In fact, Yusuf testified at the February 4, 2021 hearing the Partnership, and thereby Mohammad Hamed, benefited from such lump sum rent payment arrangement because the Partnership, by not having to pay monthly rent to United, was able to accumulate more liquidity on hand and use that "rent money" for other purposes such as property investments.

unfair advantage of another"). More specifically, Hamed and the Partnership are estopped from raising any defenses against Yusuf Claim Nos. Y-2 and Y-4 based on the argument that the Partnership should not have to pay rent to United for the use of Bay 5 and Bay 8 because United did not have the discretion to decide when to demand a lump sum rent payment from the Partnership.

Hamed also argued that the Partnership should not have to pay rent to United for the use of Bay 5 and Bay 8 because there was no written evidence of an agreement between the Partnership and United for the Partnership to pay rent to United for the use of Bay 5 and Bay 8—to wit, the agreement was not memorialized in leases and not acknowledged in United's company books or accounting records. However, under the circumstances, the Master is again inclined to invoke the doctrine of equitable estoppel to ensure fairness in the relationship between the parties. The first element of equitable estoppel concerns the conduct or language amounting to a material misrepresentation. Here, as the Court pointed out in the Limitations Order, both partners and their respective sons had, at all times, either actual or constructive knowledge, of the Partnership's notably informal and unreliable record keeping and accounting.[25] The Court also pointed out that

[25] In the Limitations Order, the Court stated:

> …Here however, as a result of the questionable and highly informal financial accounting practices of the partnership, by which both partners and their respective family members unilaterally withdrew funds from partnership accounts as needed to cover various business and personal expenses, there exists no authoritative ledger or series of financial statements recording the distribution of funds between partners upon which the Master or the Court could reasonably rely in conducting an accounting. Instead, the Court finds itself in the predicament of having to account for multiple decades worth of distributions of partnership funds among the partners and their family members based upon little more than a patchwork of cancelled checks, hand-written receipts for cash withdrawn from Plaza Extra safes, and the personal recollections of the partners and their agents.
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> (Limitations Order, p. 11, n. 10.)
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> …
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> Turning to the case at bar, there are both striking similarities and critical differences between the factual scenario presented in this matter and that before the court in Williams. Just as in Williams, this matter is best

described as a battle between two partners, here former friends and brothers-in-law, over how the assets of the partnership were handled. Additionally, despite having, at all times, either actual or constructive knowledge of the alleged ongoing, repeated withdrawals of partnership funds, both Hamed and Yusuf ignored these issues year after year and allowed one another to continue conducting partnership business, each implying to the other that all was well.

…As a result of the partnership's notably informal and unreliable accounting, as well as each partner's general lack of concern or attention toward each other's financial practices over the lifetime of the partnership, neither partner truly knows what he might uncover upon investigation.

…

Here, the pleadings alone demonstrate the imprecision and inadequacy of the partners' accounting practices. Hamed's Complaint explains the partners' practice of unilaterally withdrawing partnership funds as needed for various business and personal expenses on the understanding that "there would always be an equal (50/50) amount [*30] of these withdrawals for each partner directly or to designated family members." See Complaint ¶ 21. Though Hamed alleges that the partners "scrupulously maintained" records of these withdrawals, the other pleadings and evidence of record in this matter fatally belie this unsupported assertion. For example, Yusuf's First Amended Counterclaim in SX-14-CV-278 (FAC 278) speaks of the need for reconciliation of both "documented withdrawals" of cash from store safes, and "undocumented withdrawals from safes (i.e., all misappropriations)," in the § 177 accounting process. See FAC 278 ¶¶ 37-38.

…

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes "a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012." See Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership. See Plaintiff's Motion to Strike BDO Report, Exhibit 1, at 22. Additionally, the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' § 71(a) accounts. Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.

…

In his April 3, 2014 deposition in this matter, Maher Yusuf recounted one instance, just prior to the FBI's raid of the Plaza Extra stores in 2001, in which Waheed Hamed advised Waleed Hamed of the impending raid, and Maher Yusuf and the Hameds mutually "decided to destroy some of the receipts, because they were all in cash." See Op. Letter, at 7 n.5. According to his deposition testimony, Maher Yusuf, together with Mufeed Hamed, "pulled out a good bit of receipts from the safe in Plaza East," and after roughly estimating the amount of withdrawals attributable to the Hameds and the Yusufs, each family destroyed their own receipts. Id. At the hearing on March 6-7, 2017, witnesses including Hamed's sons corroborated this account as well as many of the allegations of the Third Superseding Indictment. Evidence presented at the hearing included testimony concerning a cash diversion scheme involving cashier's checks, conflicting testimony regarding the ledger and receipt system for keeping track of cash withdrawals at each partnership store, and testimony that records documenting the withdrawals had been destroyed.

Altogether, the allegations presented in the pleadings paint a clear picture of the partners' loose, "honor system" style accounting practices by which each partner and his sons freely and unilaterally withdrew partnership funds, either by check drawn upon partnership bank accounts or, apparently more often, by directly removing cash from store safes; the only apparent control being a general understanding between the partners that such withdrawals would be documented by hand-written receipts to be placed in the safe so

each partner "ignores issues year after year and allows the other partner to proceed along thinking everything is fine, [neither partner will] be heard to cry upon dissolution a decade or more later, 'I'd like a do over.'"[26] (Limitations Order, p. 28) (citation omitted.) For example, there was no

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that the partners, at some undetermined date, could reconcile their accounts if, and when, they deemed it appropriate. Additionally, evidence of record reveals one clear instance in which the partners, through their sons, deliberately destroyed a substantial amount of records evidencing such withdrawals, and further suggests a general pattern of negligent, if not willful, failure to record such withdrawals throughout the history of the partnership. At a bare minimum, the pleadings and record evidence establish that the partners and their sons had both unfettered access to large amounts of cash, deliberately kept off company books, and ample opportunity to secretly remove that cash, secure in the knowledge that no partner, accountant, or investigator would be able, after the fact, to ascertain the amount taken, as the total amount of cash kept in store safes was intentionally omitted from any record keeping.

(Id., at pp. 21-27) (footnotes omitted.)

[26] In the Limitations Order, the Court stated:

> Here, both partners and their respective sons were well aware from the beginning of their involvement with the business that any record keeping and accounting of distributions to the partners was highly informal and controlled only by the "honor system." As 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. It was Yusuf's responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners. And though Yusuf was content to dispense with the standard business accounting formalities for nearly the entire life of the partnership, upon Hamed's filing his Complaint in this matter, Yusuf changed course and now seeks to vindicate his right to a thorough and methodical partnership accounting.
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> Hamed is no less to blame for this state of affairs and no less at fault for failing to seek any formal accounting of his interest until this late hour. Although Hamed was not the managing partner, he was undoubtedly aware of the absence of any formal record keeping from at least the date of the first and only true-up of the partnership business in 1993, if not from the very inception of the partnership. While Hamed may not have had the foresight to know that the 1993 true-up would be the last undertaken, the fact that the partners waited approximately seven years—since the founding of the partnership in 1986—to conduct the first and only complete reconciliation of the accounts between them demonstrates that Hamed was equally content with this practice of informal and sporadic accounting.
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> Furthermore, both partners were clearly aware, during the entire life of the partnership, of their mutual practice of making, either personally or through their sons, unilateral withdrawals of partnership funds documented by hand-written receipts and controlled only by the honor system. Additionally, by at least 2001 and likely before, Hamed and Yusuf were similarly aware that substantial monies deposited in the store safes were being deliberately kept off the partnership books, and that all involved acted without hesitation in destroying voluminous records of cash withdrawals thereby rendering any independently verifiable accounting or audit impossible. Certainly, by the time of the 2003 filing of the Third Superseding Indictment in the criminal case recounting the cash diversion scheme implemented by the officers of United, even the most trusting individual would have sufficient reason to suspect malfeasance, thereby putting both partners on inquiry notice.
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> Thus, on the basis of the pleadings and evidence of record, it is clear that both Hamed and Yusuf, personally and through their sons as agents, had actual notice of the informal and imprecise nature of the accounting practices of the partnership since at least 1993, as well as actual notice of the deliberate destruction of substantial accounting records in 2001. In turn, even if the partners were ignorant of any one withdrawal of partnership funds considered in isolation, they both had actual notice of the significant potential for abuse

written evidence of an agreement between the Partnership and United for the Partnership to pay rent to United for the use of Bay 1—to wit, the agreement was not memorialized in leases and not acknowledged in United's company books or accounting records[27]—and nevertheless, even without such written evidence, the Partnership paid rent to United for the use of Bay 1.[28] Thus, the Master finds Mohammad Hamed's conduct of ongoing and repeated silence and acceptance of the

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inherent in their chosen method of record keeping, and therefore constructive, if not actual, notice of the need to protect their respective partnership interests by action pursuant to 26 V.I.C. § 75(b).

Additionally, by his acquiescence to such inadequate record keeping and his inexcusable delay in seeking to enforce his rights under 26 V.I.C. §§ 71(a) and 75(b), each partner has irrevocably prejudiced the ability of the other to respond to the various allegations against him. Here, as in Williams "the passage of time puts [each partner] at an unfair disadvantage in responding to the merits of [the other partner's] claims." 2010 Conn. Super. LEXIS 2344, at *39-40. Similarly, "because many of [the] claims involve how transactions were or were not recorded… an analysis of those claims would likely involve testimony" from the partners and their sons, yet, how much they might remember concerning the details of a transaction completed a decade earlier "is questionable, at best." Id. Lastly, while the court in Williams concluded that the defendant was prejudiced despite the production of "substantial records," here, in the absence of complete or comprehensive records, the partners are even more so "at a distinct disadvantage" in any attempt to "recreate or find decades of accounting records." Id. at *40. Thus, the Court concludes that consideration of the principles underlying the doctrine of laches strongly supports the imposition of an equitable limitation on the submission of § 71(a) claims in the accounting and distribution phase of the Wind Up Plan.

(Id., at pp. 28-31) (footnotes omitted.)

[27] Bay 1 was not included in the following documents:

1. Hamed's Exhibit F at the February 4, 2021 Hearing, Bate Stamp No. FBIX237825-A copy of a document titled "Accts Receivable Current Month," dated July 27, 2001: Bay 1 was not included in this document even though it was clearly rented to the Partnership at the time;
2. Hamed's Exhibit F at the February 4, 2021 Hearing, Bate Stamp No. FBIX237823-A copy of a document titled "Accts Receivable Current Month," dated July 27, 2001: Bay 1 was not included in this document even though it was clearly rented to the Partnership at the time;
3. Hamed's Exhibit F at the February 4, 2021 Hearing, Bate Stamp No. HAMD664274-A copy of a document titled "Accts Receivable Current Month," dated August 22, 2001: Bay 1 was not included in this document even though it was clearly rented to the Partnership at the time;
4. Hamed's Exhibit F at the February 4, 2021 Hearing, Bate Stamp No. HAMD664275-A copy of a document titled "Lease Data," dated August 22, 2001: Bay 1 was not included in this document even though it was clearly rented to the Partnership at the time; and
5. Hamed's Exhibit I at the February 4, 2021 Hearing, Bate Stamp No. HAMD262211-A copy of a document identified as "Accounts Receivable 2012," dated "Feb-12": Bay 1 was not included in this document even though it was clearly rented to the Partnership at the time.

The Master must note that it is unclear the origin of the documents with Bate Stamp No. starting with "FBIX."

[28] In fact, Yusuf testified at the February 4, 2021 hearing that the reason for the lack of written evidence as to the rent payment arrangement between the Partnership and United for Bay 1, Bay 5, and Bay 8 in United's company books and accounting records was to avoid United paying taxes on these rent payments.

inadequacy of the Partnership's accounting and record keeping went beyond a miscommunication or single act and amounted to an ongoing and repeated material misrepresentation of the fact that Mohammad Hamed agreed and consented to such inadequacy. The second element, reasonable reliance. The facts are clear that Yusuf reasonably relied on Mohammad Hamed's ongoing and repeated misrepresentation—to wit, the inadequacy of the Partnership accounting and record keeping continued for years without any objections from Mohammad Hamed or any actions by Mohammad Hamed to rectify the situation.[29] In fact, as the Court noted in its Limitations Order, "Hamed is no less to blame for this state of affairs and no less at fault for failing to seek any formal accounting of his interest until this late hour." (Limitations Order, p. 28.) The final element, detriment. Here, Yusuf's reasonable reliance on Mohammad Hamed's ongoing and repeated material misrepresentations resulted in Yusuf Claim Nos. Y-2 and Y-4 being disputed due to the informal and unreliable accounting and record keeping during the relevant period. Based on the foregoing, the Master finds that Hamed, and in turn the Partnership, are estopped from taking a position inconsistent with their prior conduct and language—to wit, the acceptance of the inadequacy of the Partnership accounting and record keeping. *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 defenses against Yusuf Claim Nos. Y-2 and Y-4 based on the argument that the

[29] *See supra*, notes 25, 26.

Partnership should not have to pay rent to United for the use of Bay 5 and Bay 8 because the Partnership's accounting and record keeping were inadequate to support such rent claims.[30]

As such, the Master finds that United is entitled to rent from the Partnership for the use of Bay 5 and Bay 8. Even assuming arguendo that Yusuf lacked the unilateral authority to enter into an agreement between the Partnership and United for the Partnerhsip to pay rent to United for the use of Bay 5 and Bay 8, and thereby, there was no agreement, United is still entitled to rent from the Partnership for the use of Bay 5 and Bay 8 under the theory of unjust enrichment. *See Cacciamani & Rover Corp. v. Banco Popular de P.R.*, 61 V.I. 247, 254 (V.I. 2014) ("the function of an equitable claim for unjust enrichment to 'imply a contract in order to prevent [injustice] when one party inequitably receives and retains a benefit from another'").“A cause of action for *quantum meruit*, also known as unjust enrichment, will ordinarily lie in a case where the defendant 'receive[s] something of value to which he is not entitled and which he should restore' to the plaintiff." *Id.*, 61 V.I. at 251 (citations omitted). In *Walters v. Walters*, the Virgin Islands Supreme Court, after conducting a *Banks* analysis, reformulated the elements of a common law claim for unjust enrichment in the Virgin Islands as follows—in order to recover for unjust enrichment, a plaintiff must prove "(1) that the defendant was enriched, (2) that such enrichment was at the plaintiff's expense, (3) that the defendant had appreciation or knowledge of the benefit, and (4) that the circumstances were such that in equity or good conscience the defendant should return the money or property to the plaintiff." 60 V.I. 768, 779-780 (V.I. 2014). "[T]he unjust enrichment tort, as its name implies, is concerned with preventing an unjust conferral of a benefit onto the

[30] With that said, this ruling is not a blanket estoppel for all the accounting claims and is not limited to Hamed and the Partnership. The Master will exercise the significant discretion he possesses in fashioning equitable remedies as the need arises and make the determination on a case by case basis.

defendant at the expense of the plaintiff." *Id.,* 60 V.I. at 779. As to the first element, the Partnership's use of Bay 5 and Bay 8 unquestionably benefited and enriched the Partnership—to wit, the Partnership used Bay 5 and Bay 8 to store its inventory, such as soda, and in fact, the Partnership had direct forklift access between Bay 1 and Bay 5. As to the second element, the enrichment was at United's expense because Bay 5 and Bay 8 belong to United.[31] As to the third element, the Partnership had appreciation and knowledge of the benefit given that the Partnership was using United's property—Bay 5 and Bay 8—as a warehouse to store its inventory. As to the fourth element, the circumstances were such that in equity or good conscience the Partnership should be required to pay rent to United for the Partnership's use of Bay 5 and Bay 8 because the Partnership was unjustly enriched.[32] Thus, the Master concludes that United is entitled to recover rent from the Partnership under the theory of unjust enrichment.

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[31] While it is true that the Partnership only used Bay 5 and Bay 8 when they were not used by United and not rented to other tenants, and that United could evict the Partnership and the Partnership would be required to vacate whenever United was able to rent Bay 5 and Bay 8 to other tenants, and therefore, the Partnership could argue that it was not enriched at United's expense. However, the fact is, Bay 5 and Bay 8 belong to United and the Partnership was using United's property and thereby, the Partnership was enriched at United's expense regardless of whether Bay 5 and Bay 8 were rented or used by United at that time. It would be illogical if the opposite is true—that the Partnership was enriched but not at United's expense simply because Bay 5 and Bay 8 were not rented or used by United at that time—because then it would mean that, as long as a property is not in use, anyone could use said property and not be liable to pay rent to the property owner under the theory of unjust enrichment since he/she would be enriched but not at the property owner's expense given that the property was not in use at that time.

[32] In opposing Yusuf Claim Nos. Y-2 and Y-4, Hamed also argued that, not only was there no agreement for the Partnership to pay rent to United for the use of Bay 5 and Bay 8, United in fact gratuitously permitted the Partnership to use Bay 5 and Bay 8. "The gratuitous nature of such an act will negate a claim of unjust enrichment, as one cannot be unjustly enriched by something freely given." *Callwood v. Cruse*, 47 V.I. 396, 402 (Super. Ct. April 18, 2006). However, there is no evidence to support such gratuitous nature on behalf of United. The lack of written evidence of an agreement between the Partnership and United for the Partnership to pay rent to United for the use of Bay 5 and Bay 8 is not, in and of itself, evidence that United gratuitously permitted the Partnership to use Bay 5 and Bay 8. For example, as noted above, there was no written evidence of an agreement between the Partnership and United for the Partnership to pay rent to United for the use of Bay 1 and United definitelty did not gratuitously permit the Partnership to use Bay 1. Moreover, as noted above, it was common practice for the dealings between the Partnership and United to be treated as one unit and it was also common practice for the Partnership to keep informal and unreliable record and accounting. As such, the Master finds Hamed's argument that United conferred a gratuitous benefit to the Partnership unpersuasive.

A. The February 7, 2012 Check for $5,408,806.74

In opposing Yusuf Claim Nos. Y-2 and Y-4, Hamed also argued that, if the Partnership owed United rent for Bay 5 and Bay 8, the check, dated February 7, 2012, in the amount of $5,408,806.74 with the memo "Plaza Extra (Sion Farm) Rent" paid by the Partnership to United (hereinafter "February 7, 2012 Check") was a settlement that applied to past due rent for Bay 5 and Bay 8. The Master finds Hamed's argument unpersuasive. The February 7, 2012 Check only covered rent for the period of May 5, 2004 through December 31, 2011 and did not include the periods the Partnership used Bay 5 and Bay 8—which credible evidence indicates that the Partnership exercised dominion and control over Bay 5 and Bay for the following periods: Bay 5-May 1, 1994 through July 31, 2001 and Bay 8-May 1, 1994 through September 30, 2002 and April 1, 2008 to May 30, 2013. Additionally, rent payment for Bay 1 and rent payment for Bay 5and Bay 8 have always been treated as separate payments—to wit, (i) Yusuf and United's counterclaims distinguished between rent owed for Bay 1 (Count XI) and rent owed for Bays 5 and 8 (Count XII); (ii) In its Rent Order, the Court acknowledged that United's counterclaims sought rent due for Bay 1, Bay 5, and Bay 8, and the Court specifically noted that the order only addressed rent due for Bay 1;[33] (iii) In his opposition to United's motion to withdraw rent, filed on September 16, 2013, and in his opposition to Yusuf and United's motion for partial summary judgment on Counts IV, XI, and XII regarding rent, filed on August 25, 2014, Hamed never raised the argument that the rent payment for Bay 1 and the rent payment for Bay 5 and Bay 8 were to be treated collectively as one rent payment. As such, the Master concludes that the February 7, 2012

[33] *See supra*, note 2.

Check was not a settlement for past due rent for Bay 5 and Bay 8 and the Partnership still owes rent to United for the use of Bay 5 and Bay 8.

B. Rent Calculation

In the Rent Order, the Court, based on Yusuf's September 9, 2013 affidavit (¶¶ 4-6) and Yusuf's April 2, 2014 deposition (86:8-12), concluded that the rent for Bay 1 was calculated at the rate of $5.55 per square foot for the period January 1, 1994 to May 4, 2004.[34] (Rent Order, p. 9.) The Court did not differentiate between the retail use versus the warehouse use of Bay 1 yet the testimony indicates that Bay 1 was utilized for both purposes.[35] In the absence of any credible

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[34] In the Rent Order, the Court also concluded that, for the period January 1, 2012 through September 30, 2013 and for the period October 1, 2013 until the date that Yusuf assumed sole possession and control of Plaza Extra-East, rent for Bay 1 was to be calculated at the rate of $58,791.38 per month based on the sales of Plaza Extra-Tutu Park in St. Thomas. However, for the purpose of evaluating the rent claimed by United for Bay 5 and Bay 8, the Master finds this monthly rate inapplicable and will not use it in his evaluation.

[35] At the February 4, 2021 hearing, Maher Yusuf and Waleed Hamed testified to the following:

Q Okay. And do you recall the circumstances that led to the use of Bay 5?

A [Maher Yusuf] Yeah. We were tight on space. **The warehouse for Plaza East was not big enough**, and we were forced to use the space.

…

Q Okay. Exhibit 7. Where on Exhibit 7 -- can you describe where you knocked through the wall, you and Wally knocked through the wall.

A Well, right in the corner, right below the arrow a little bit. A little below the arrow --

Q Okay.

A -- facing the store. That was the warehouse for the store.

Q Okay. So that little section to -- we're looking at it -- would be maybe behind the Bays 2, 3 and 4. That's the warehouse component of the Plaza Extra store?

A Yes.

Q Okay.

(February 4, 2021 Hearing Tr. 118:7-11, 119:1-14) (emphasis added.)

Q Okay. And Mr. Yusuf, your father, described a little bit of the warehousing needs for the current store. Can you just give us some understanding of how much warehousing is needed for the current Plaza Extra East store.

A **The Plaza Extra East store is – the warehouse for it is too small for the size retail store it has.** Remember, we have to bring all these goods from the mainland, and you bring them in 40-foot

containers. You need space. Some things we buy in trailer loads -- one item we buy in trailer loads, and…

(February 4, 2021 Hearing Tr. 125:7-14-25) (emphasis added.)

Q Okay. Well, let me ask it like this. At 2008, April of 2008, Plaza East had no need for Bays 5 and 8, did it? If it needed to store stuff, it could do it on the second floor of Plaza West, correct?

A [Maher Yusuf] 2008. Let me get familiar with -- no. **The warehouse for Plaza is small.**

Q So at Plaza West --

A **You cannot store anything upstairs.**

Q Okay.

A **Remember, upstairs is only made – you cannot store sodas upstairs, you cannot store flour upstairs, you cannot store corned beef upstairs; all this is heavy product; that's a second floor. And we didn't have enough space on the bottom floor, so they used Bay 8 when they buy trailer loads. I mean, at one time we bought -- my dad said eight trailers of Bounty. We bought 12 trailers of Bounty between the two stores.**

Q But Plaza West, half the store is grocery store and the other half is warehouse on the first floor, isn't it?

A Plaza West, half -- no.

Q What's your percentage between store and warehouse on the first floor of Plaza West?

A It depends on what kind of warehouse you're talking about. There's two types of warehouse. We have cold storage warehouse, and we have frozen warehouse, and we have light product warehouse, and we have heavy product warehouse --

Q How much of Plaza West --

A -- items that are there.

Q How much of Plaza West is store part that customers use?

A Plaza West, I believe it was 46,000 or 44,000 square foot, and the rest of it -- that's walking space for the customers. And I think the rest of it was about 97,000 square foot. So it was more product area, cold storage, frozen storage, and

(February 4, 2021 Hearing Tr. 147:12-148:25) (emphasis added.)

A **Plaza East warehouse is so small compared even to St. Thomas.** The warehouse is too small, so it needed some warehouse space. So, you know, that's why we built Plaza West so big, to help Plaza East with all that, to accommodate a lot of inventory.

(February 4, 2021 Hearing Tr. 155:7-11) (emphasis added.)

Q And did you have somewhere else that you could have stored it if you didn't put it in Bay 5?

A [Waleed Hamed] At the time, if he didn't, we would make accommodations upstairs. You see, everybody is thinking that – or everybody is stating that Plaza East only had that small space warehouse on the bottom floor. Well, what about the second story that we have at Plaza East, all that empty space up there?

(February 4, 2021 Hearing Tr. 160:16-24) (emphasis added.)

evidence to establish a reasonable and fair rental rate for the Partnership's use of Bay 5 and Bay 8, the Master will exercise the significant discretion he possesses in fashioning equitable remedies as the need arises and use this rate for the evaluation of the rent claimed by United for Bay 5 and Bay 8.

It is undisputed that the square footage of Bay 5 is 3,125 square feet and the square footage of Bay 8 is 6,250 square feet. As noted above, credible evidence indicates that the Partnership exercised dominion and control over Bay 5 and Bay 8 for the following periods: Bay 5-May 1, 1994 through July 31, 2001, which totals 7 years and 3 months, and Bay 8-May 1, 1994 through September 30, 2002 and April 1, 2008 to May 30, 2013, which totals 13 years and 7 months.[36] Thus, applying $5.55 as the appropriate rate, the total rent due for Bay 5 would be $125,742.19 for the rental period May 1, 1994 through July 31, 2001 and the total rent due for Bay 8 would be $713,984.36 for the rental periods May 1, 1994 through September 30, 2002 and April 1, 2008 through May 30, 2013.[37] In comparison to those numbers, the Master finds: (i) United's claim for

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> Q Okay. And showing you Exhibit Number J, by the time this letter came, Bay 5 had a store in it; Bay 8 still was empty. What did you do with the items in Bay 8 after you received that letter?
>
> A [Waleed Hamed] We took that -- whatever merchandise that was really not significant and we moved it into the Plaza East warehouse.
>
> Q And that's what you would have done if you'd known they were charging you rent long before that?
>
> A Absolutely. Absolutely.
>
> (February 4, 2021 Hearing Tr. 162:14-24) (emphasis added.)

[36] The month of May 2013 was a day short of the full month since it ended on May 30, 2013 instead of May 31, 2013. Nevertheless, for the purpose of the calculation of rent for Bay 8, the Master will treat May 1, 2013 through May 30, 2013 as a full month to keep the numbers simple.

[37] The rent calculation for Bay 8 is as follows:

$5.55 x 6,250 sq. ft. = $34,687.50 per year

$34,687.50 x 13 years = $450,937.50

($450,937.50/12 months) x 7 months = $263,046.88

$450,937.50 + $263,046.88 = $713,984.38

past due rent for Bay 5 for the aforementioned rental period in the total amount of $271,875.00 unreasonable and not supported by evidence and (ii) United's claim for past due rent for Bay 8 for the aforementioned rental periods in the total amount of $522,109.38[38] reasonable and supported by evidence. Accordingly, the Master will adjust United's claim for the total past due rent for Bay 5 for the aforementioned period from $271,875.00 to $125,742.19, an amount that is reasonable and supported by evidence, and keep United's claim for the total past due rent for Bay 8 for the aforementioned rental periods at $522,109.38, for a total of $647,851.57.

C. Prejudgment Interest

Title 11 V.I.C. § 951(a)(4) provides that "[t]he rate of interest shall be nine (9%) per centum per annum on — money due or to become due where there is a contract and no rate is specified.[39] Title 11 V.I.C. § 951(a)(4). "The grant or denial of prejudgment interest remains within the sound discretion of the trial court." *Isaac v. Crichloaw*, 63 V.I. 38, 69-70 (Super. Ct. Feb. 10, 2015) In *Williams v. Edwards*, the court stated:

> The assessment of prejudgment interest is permissible where the interests of justice so demand. Prejudgment interest is normally granted, except in exceptional or unusual circumstances that make the award for interest inequitable. As a general rule, prejudgment interest is to be awarded when the amount of the underlying liability is reasonably capable of ascertainment and the relief granted would otherwise fall short of making the claimant whole because he or she has been denied the use of the money which was legally due. *Williams,* 2017 V.I. LEXIS 105 *6 (Super. Ct. July 12, 2017) (internal quotation marks and citation omitted); *see also, Isaac*, 63 V.I. at 69.

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[38] $323,515.63 (United's claim for the past due rent for Bay 8 for the rental period May 1, 1994 through September 30, 2002) + $198,593.75 (United's claim for the total rent due for Bay 8 for the rental period April 1, 2008 through May 30, 2013) = $522,109.38.

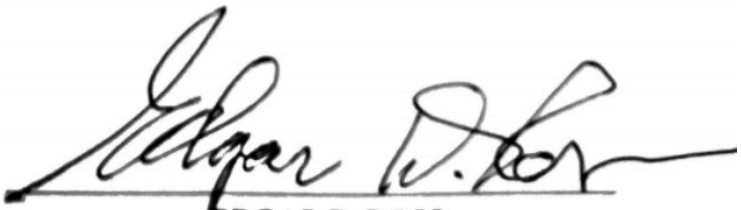
[39] In its motion, United argued that it "is entitled to recover prejudgment interest at 9% per annum, as provided by V.I. Code Ann. Tit. 11§ 951(a)(4)." (United's revised motion for summary judgment as to Yusuf Claim Nos. Y-2, Y-3, and Y-4, p. 19)

As noted above, it was common practice for the Partrnership to make lump sum rent payments when United made rent payment demands from time to time at its discretion, as opposed to the Partnership making monthly or yearly rent payments to United, and as the Master previously noted in its December 4, 2019 Order, "the construct of Parties' rent payment arrangement for Bay 1 throughout their relationship never provided for prejudgment interest." (Dec. 4, 2019 Order, p. 12.) Thus, the Master finds it inequitable and unjust to award prejudgment interest in this instance for past due rent for Bay 5 and Bay 8. *See Williams,* 2017 V.I. LEXIS 105 *6 ("The assessment of prejudgment interest is permissible where the interests of justice so demand. Prejudgment interest is normally granted, except in exceptional or unusual circumstances that make the award for interest inequitable") (internal quotation marks and citation omitted).

CONCLUSION

Based on the foregoing, the Master finds that United is entitled to rent from the Partnership for the use of Bay 5 and Bay 8 in the total amount $647,851.57 and that United is not entitled to prejudgment interest for past due rent for Bay 5 and Bay 8. An order and judgment consistent with this Memorandum Opinion will be entered contemporaneously herewith.

DONE this _5th_ day of May, 2021.



EDGAR D. ROSS
Special Master

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 AND JUDGMENT

In accordance with the Memorandum Opinion entered contemporaneously herewith, it is hereby:

ORDERED, ADJUDGED, AND DECREED Yusuf Claim No. Y-2 against the Partnership for past rent due to United for Bay 5 and Bay 8 of the United Shopping Plaza in the amount of $647,851.57 is **GRANTED**. It is further:

ORDERED, ADJUDGED, AND DECREED that United shall recover from the Partnership the sum of $647,851.57 on Yusuf Claim No. Y-2. **And** it is further:

ORDERED, ADJUDGED, AND DECREED that Yusuf Claim No. Y-4 against the Partnership for prejudgment interest on the past rent due to United for Bay 5 and Bay 8 of the United Shopping Plaza is **DENIED**.

DONE and so ORDERED this 5th day of May, 2021.

EDGAR D. ROSS
Special Master