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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

CONSOLIDATED WITH

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

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

Civil No. SX-14-CV-287

ACTION FOR DAMAGES and DECLARATORY JUDGMENT

CONSOLIDATED WITH

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

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 on April 15, 2021 to determine the issue of damages for Yusuf Claim No. Y-8: water sales revenue collected by the Partnership from April 1, 2004 through February 28, 2015.[1]

BACKGROUND

Hamed[2] 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.)

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

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

[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 No. Y-8 falls within the scope of the Master's report and recommendation given that Yusuf Claim No. Y-8 is an alleged debt owed by the Partnership to United.

[2] 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.

(Yusuf's Accounting Claims, p. 9.)

Subsequently, on July 25, 2017, the Court entered a memorandum opinion and order limiting accounting (hereinafter "Limitations Order"). In the Limitations Order, the Court "exercise[d] the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter and ordered, inter alia, that "the accounting in this matter, to which each partner is entitled under 26 V.I.C. §177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. §71(a), based upon transactions that occurred on or after September 17, 2006." (Id., at pp. 32, 34.)

In light of the Limitations Order, the Master ordered the parties to file their amended accounting claims. United's claim for water sales revenue collected by the Partnership from April 1, 2004 through February 28, 2015 was again included in Yusuf's amended accounting claims, filed on filed on October 30, 2017 (hereinafter "Yusuf's Amended Accounting Claims").[3]

Subsequently, the parties proceeded with discovery. On April 17, 2020, United filed a motion for partial summary judgment for Yusuf Claim No. Y-8 and responses thereto were filed thereafter. In its motion, United argued that it is entitled to partial summary judgment for Yusuf Claim No. Y-8 under the theories of restitution, unjust enrichment, and/or conversion since "[t]he

[3] Yusuf's Amended Accounting Claims provided:

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

elements of each of these causes of action are readily established here." (April 17, 2020 Motion, pp. 5-6.) In his opposition, Hamed opposed United's motion and also included a cross-motion for summary judgment for Yusuf Claim No. Y-8 based on the threshold issues of whether United timely asserted this claim prior to the cut-off date and whether Yusuf Claim No. Y-8 is barred by the statute of limitations. In its reply, United reiterated its arguments and opposed Hamed's cross-motion for summary judgment.

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

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

> In its motion, United referenced *Native Son, Inc.*, a District Court of Virgin Islands case, for the elements of its restitution claim. In *Native Son, Inc.*, the District Court of the Virgin Islands treated a claim for restitution the same as a claim for quasi-contract and cited to *Peppertree Terrace v. Williams*, 52 V.I. 225 (V.I. 2009) a U.S. Virgin Islands Supreme Court case. In *Peppertree Terrace*, the concurring opinion discussed, *inter alia*, recovery under a quasi-contract theory. 52 V.I. at 243-44 ("An implied-in-law contract or a quasi-contract is established where 'there is no actual agreement between the parties, but the law imposes a duty in order to prevent injustice… Three elements are required for recovery under a quasi-contract theory: (1) a party must confer benefits on another party; (2) there must be an appreciation of the benefits by the recipient; and (3) there must be an 'acceptance and retention of these benefits in such circumstances that it would be inequitable for the recipient to retain the benefits without payment of value.'") (citation omitted). However, the U.S. Virgin Islands District Court case is not binding, and neither is the concurring opinion, and in any case, the concurring opinion was written before *Banks.* Thus, this is an issue of first impression in this jurisdiction and a *Banks* analysis is necessary. As Hamed pointed out in his opposition, "United/Yusuf did not do a *Banks* analysis on the elements of restitution."[89] (Opp., p. 15) In its reply, with regards to its restitution claim, United simply stated that "United did in fact file a counterclaim asserting restitution, unjust enrichment claims on December 23, 2013, and Hamed has admitted previously that, for statute of limitations purposes, the counterclaim is treated as filed on the date that Hamed filed his complaint against United and Yusuf – namely, September 17, 2012." (Reply, p. 17, n. 10) At this juncture, the Master will give the parties the opportunity to supplement their respective briefs on the issue of United's restitution claim.
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> [89] Likewise, Hamed also did not conduct a Banks analysis. In his opposition, Hamed stated:

barred by the statute of limitations.[5] On September 16, 2020, Hamed filed his first supplemental brief regarding the statute of limitations, and on October 22, 2020, Hamed filed his second supplemental brief regarding the restitution elements and statute of limitations. On November 6, 2020, United filed its supplemental brief regarding the statute of limitations.

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

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

(Sep. 4, 2020 Order, pp. 28-29.)

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

> According to Yusuf's Accounting Claims and Yusuf's Amended Accounting Claims, United is owed money from the Partnership for the water sales revenue collected by the Partnership from April 1, 2004 through February 28, 2015 because "[f]rom April 1, 2004,…all revenue from the sale of United's water that was collected by Plaza Extra-East was to be paid to United." (Yusuf's Accounting Claims, p. 9; Yusuf's Amended Accounting Claims, p. 12) However, depending on how the applicable statute of limitations starts to accrue in the U.S. Virgin Islands, when this claim was first asserted, and whether any tolling applies in this instance, Yusuf Claim No. Y-8 could be limited. The Master will give Parties the opportunity to brief the issue of whether Yusuf Claim No. Y-8 is barred by the statute of limitations. Nevertheless, at the minimum, a portion of Yusuf Claim No. Y-8 will not be barred.[64] Thus, the Master will address United's motion for partial summary judgment.
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> [64] Assuming that (i) the applicable statute of limitations starts to accrue on the earliest possible date—to wit, the conversion claim accrued at the time the Partnership wrongfully exercised dominion, and the unjust enrichment claim accrued at a time when the unjust enrichment actually occurred, (ii) Yusuf Claim No. Y-8 was first asserted on the latest possible date—to wit, Yusuf's Accounting Claims, filed on September 30, 2016, and (iii) there is no applicable tolling, then the portion of Yusuf Claim No. Y-8 within six years from September 30, 2016 will not be barred.

(Sep. 4, 2020 Order, pp. 22-23.)

On November 9, 2020, the Master entered an order whereby the Master found that Yusuf Claim No. Y-8 is not barred by the six-year statute of limitations, vacated the portion of the September 4, 2020 order denying United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to its conversion claim, granted United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to the liability of its conversion claim, ordered that United is entitled to the money collected from the sale of the water collected in the cisterns located at the United Shopping Center (hereinafter "Water Proceeds") from April 1, 2004 through February 28, 2015, and denied United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to its restitution claim.[6]

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[6] In the November 9, 2020 order, the Master explained:

> In the September 4, 2020 Order, the Master noted that the soundest rule of law for the Virgin Islands was to define conversion as "an intentional exercise of dominion or control over a chattel which so seriously interferes with the right of another to control it that the actor may justly be required to pay the other the full value of the chattel." (Sep. 4, 2020 Order, p. 35) Moreover, the Master made the following findings:
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>> Here, the chattel at issue is the money collected from the sale of the water collected in the cisterns located at the Leased Premises ("Water Proceeds"). The evidence demonstrates that the Partnership intentionally exercised of dominion or control over the Water Proceeds and seriously interfered with the right of United to control the Water Proceeds—to wit, it is undisputed that (i) The Partnership's accounting employees handled any money collected from the water sales and deposited said money into the Partnership account (Hamed's CSOF ¶¶ 18-19); (ii) The money collected from the water sales were commingled with the Partnership's daily proceeds from Plaza Extra-East sales (Hamed's CSOF ¶ 21); (iii) Each month from 2014 until the dissolution of the Partnership in 2015, the Partnership paid the gross receipts tax on the total monthly sales of Plaza Extra-East, which would have included the money collected from the water sales (Hamed's CSOF ¶ 22); (iv) Each year from 2004 until the dissolution of the Partnership in 2015, the Partnership paid the income taxes each year on the total annual income, which would have included the profit from the water sales, if any (Hamed's CSOF ¶ 23); and (v) After 2012, the Partnership distributed accrued profits equally between Hamed and Yusuf, which would have included the profit from the water sales (after operating expenses, overhead, and taxes), if any (Hamed's CSOF ¶ 24). That interference, if wrongful, would require the Partnership to pay United the full value of the chattel. Therefore, the critical question is whether United had a right to control the Water Proceeds at the time of the conversion.
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>> Here, it is undisputed that: (i) United owns the land and the improvements that make up the United Shopping Center (United's SOF ¶ 1); (ii) Since 1986, the Partnership leased from United the premises where Plaza Extra-East is located at the United Shopping Center ("Leased Premises") (Hamed's CSOF ¶ 1); (iii) The United Shopping Center was originally built with several cisterns, including a cistern located underneath the Leased Premises ("Pre-existing Cistern") (United's SOF ¶ 3); (iv) The Partnership, as required under the lease, purchased and maintained a fire insurance policy for the Leased Premises (Hamed's CSOF ¶ 3); (v) In 1992, United Shopping Center,

including Plaza Extra-West, was destroyed by fire (United's SOF ¶ 2; Hamed's CSOF ¶ 2); (vi) The proceeds from the Partnership's fire insurance policy were used to rebuild the Leased Premises (Hamed's CSOF ¶ 4); and (vii) When the Leased Premises was rebuilt after the fire, two new cisterns ("New Cisterns") were constructed for the Leased Premises Hamed's CSOF ¶ 5). This affirmed the Court's finding in its April 27, 2015 order that United is the fee simple owner and landlord of the Leased Premises. (Judge Brady's Opinion and Order Granting Motion for Summary Judgment re: Rent, p. 11) However, this raised the question of whether the water collected in the cisterns located at the Leased Premises belong to the Partnership (the tenant) or United (the landlord). In the U.S. Virgin Islands, the landlord is permitted to charge the tenant for water. Title 28 V.I.C. § 795 provides that "[n]othing contained in this section shall prohibit the landlord from assessing costs and charges against the tenant for water and/or electricity; provided that the tenant shall be charged based on the amount of water and/or electricity the tenant uses." The Master interprets this statute to mean that the landlord, not the tenant, owns the water on the landlord's property,[68] and it follows that the landlord, not the tenant, is entitled to the proceeds from the sale of such water. The issue of whether United charged the Partnership for water does not affect the fact that United, as the owner and landlord, owns the water on its property.[69] Similarly, the issue of whether the water was from the Pre-existing Cistern or the New Cisterns at the Leased Premises does not affect the fact that United, as the owner and landlord, owns the water on its property. Additionally, the fact that the proceeds from the Partnership's fire insurance policy were used to rebuild the Leased Premises and the New Cisterns does not affect United's ownership of the Leased Premises and the water located thereon. As such, the Master finds that United is entitled to the Water Proceeds.

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

> The first step when interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning. If the statutory language is unambiguous and the statutory scheme is coherent and consistent, no further inquiry is needed. In analyzing a statutory scheme, we must give effect to every provision, making sure to avoid interpreting any provision in a manner that would render it — or another provision — wholly superfluous and without an independent meaning or function of its own. But even where a statutory scheme is plain and internally consistent, no statute should be read literally if such a reading is contrary to its objective [and] this Court must consider whether applying the statute's literal language leads to … absurd consequences or is otherwise inconsistent with the Legislature's intent. 62 V.I. 655, 661 (2015) (Internal quotations marks and citations omitted)

[69] United argued that"[t]he fact that the water collected by United Shopping Center wells and its roof and stored in cisterns belonged to United is confirmed by how the partnership was charged for its own use of water at the Plaza Extra store"—to wit, "Beginning in 2004, a new rental formula was put into place under which the rent at Plaza Extra East was no longer calculated on a per square foot charge, but was instead calculated on the basis of the rent being paid by the Plaza Extra Tutu Park store in St. Thomas to the landlord at the Tutu Park Mall" and "[t]he total rent paid by Plaza Extra Tutu Park was divided by gross sales for that store, and that percentage was applied to Plaza Extra East gross sales to determine the rent," and since "the rent charged to the Plaza Extra Tutu Park store includes a separate charge for water used by the store" it meant "that the formula for computing Plaza Extra East's rent from 2004 includes charges for water usage." (Motion, at pp. 4-5; see also, United's SOF ¶¶ 12-13) Hamed countered that "Yusuf's comments about additional rent allegedly being owed by the Plaza East Partnership for water usage is not only incorrect, but it is totally irrelevant to this water claim for 100% of the water sales" and "[t]hus, those allegations can be ignored in addressing this motion." (Opp., at p. 17) (Sep. 4, 2020 Order, pp. 36-38)

At the time, the Master noted that "before the Master can determine whether United had a right to control the Water Proceeds at the time of the conversion, the following question must be addressed first—

On April 15, 2021, the parties appeared for a hearing on Yusuf Claim No. Y-8 to determine the issue of damages. United and Hamed each presented witness testimony and exhibits. More specifically, the Master heard oral testimony from Fathi Yusuf, Maher Yusuf, and Waleed Hamed.[7] 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.

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

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> What was the agreement between Yusuf and Hamed regarding the Water Proceeds?" (Id., at p. 38) As the Master discussed above, Yusuf, as the managing partner of the Partnership and as the president of United, had absolute control over the Partnership finances and total authorities over the Partnership and United until February 10, 2012, and thereby Yusuf had the control and authority at the time to unilaterally end the original arrangement between United and the Partnership so that starting in 2004, United would keep all the Water Proceeds. Thus, the Master finds that United had the right to control the Water Proceeds at the time of the conversion and thereby, the Partnership's interference caused damages to United since United was deprived of the Water Proceeds. At this juncture, the Master need not determine the amount of damages since United's instant motion for partial summary judgment for Yusuf Claim No. Y-8 only requested a determination as to liability and reserved the issue of damages for a later determination.[31] As such, the Master will amend his prior determination that "there is clearly a genuine dispute as to the terms of the agreement made as to the Water Proceeds, and thereby, there is clearly a genuine dispute as to whether United had a right to control the Water Proceeds at the time of the conversion" and his prior conclusion that "United has not satisfied its burden of establishing that there are no genuine disputes as to any material fact regarding its motion for partial summary judgment for Yusuf Claim No. Y-8 as to United's conversion claim." The Master now concludes that that there is no genuine dispute as to any material fact regarding United's motion for partial summary judgment for Yusuf Claim No. Y-8 as to the liability of United's conversion claim.
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> [31] In its motion, United concluded that "[l]iability under any of these three theories is therefore clear" and that it is entitled to partial summary judgment as to the issue of United's claim for water sales revenue collected by the Partnership from April 1, 2004 through February 28, 2015, but will reserve the issue of damages for a later determination. (Motion, pp. 2, 5, 10) In United's reply in support of its motion for partial summary judgment and opposition to Hamed's cross-motion for summary judgment, United argued that the arguments raised by Hamed cannot "withstand scrutiny" and the Master "should grant partial summary judgment to United, and at an appropriate time conduct a short trial or evidentiary hearing to determine the damages to which United is entitled on Claim Y-8." (Reply, p. 2.)
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> (Nov. 4, 2020 Order, pp. 30-33.)

[7] 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.

> 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.
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> V.I. R. Civ. P. 52(a)(1)(A).

DISCUSSION

Regarding the issue of damages for Yusuf Claim No. Y-8, United claimed that it is entitled to recover damages from the Partnership for the period April 1, 2004 through February 28, 2015, in the total amount of $693,207.45. In Yusuf's amended accounting claims, United explained that "United has calculated the average water sales per month based upon two years of sales in 1997 ($52,000) and 1998 ($75,000) as $5,291.66 per month" and "[m]ultiplying the average monthly sales revenue by 131 months, United is owed $693,207.46 from the Partnership." (Yusuf's Amended Accounting Claims, p. 12.) On the other hand, Hamed claimed that nothing supports the monthly sales figure as claimed by United and the total amount of damages claimed by United did not take into account the amount of Partnership money expended in connection with the sale of water to third parties during the relevant period. Thus, Hamed argued that United is not entitled to damages in the amount of $693,207.46 from the Partnership for Yusuf Claim No. Y-8.

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 as to the issue of damages for Yusuf Claim No. Y-8.

Findings of Fact

1. During the period of April 1, 2004 through February 28, 2015, the Partnership sold water to third parties at the rate of Fifteen Dollars ($15.00) per 1,000 gallons of water, or One-and-a-Half Cents ($0.015) per gallon of water.

2. During the period of April 1, 2004 through February 28, 2015, the average number of water trucks per day in connection with the water sale varied.

3. During the period of April 1, 2004 through February 28, 2015, the capacity of the water trucks in connection with the water sale varied.

4. During the period of April 1, 2004 through February 28, 2015, the Partnership expended Partnership money in connection with the sale of water to third parties.

Conclusions of Law

I. Deficiency of Records

Hamed argued extensively that the records are deficient to support for the amount of damages United claimed for Yusuf Claim No. Y-8. Although Yusuf Claim No. Y-8 is not the claim of the individual partners but the claim of United, a third party, this claim is being raised in the context of the Partnership accounting. As explained in the Limitations Order, an accounting of the Partnership is both an equitable cause of action and an equitable remedy in itself, and thus, "the Court is granted considerable flexibility in fashioning the specific contours of the accounting process." (Limitations Order, pp. 13-14) (citing *Isaac v. Crichlow*, 63 V.I. 38, 2015 V.I. LEXIS 15, at *39 (V.I. Super. 2015) ("An equitable 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).[8] 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, 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 accounting and record keeping, including the deliberate destruction of a substantial amount of records prior to the FBI raid in 2001.[9] The Court

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[8] 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.

[9] 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.

(Limitations Order, p. 11, footnote 10.)

…

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

also pointed out that 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.'"[10] (Limitations Order, p. 28) (citation omitted.) Thus,

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> 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 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.
>
> (Limitations Order, pp. 21-27) (footnotes omitted.)

[10] 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.
>
> 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.
>
> 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

the Master finds Mohammad Hamed's conduct of ongoing and repeated silence and acceptance of the inadequacy of the Partnership accounting over the years and the lack of record keeping either through failure to document or active destruction of documents 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. For example, in the specific context of Yusuf Claim No. Y-8, Mohammad Hamed's son, Waleed Hamed,[11] was a store manager at Plaza Extra-East located at the United Shopping Center during the relevant period of 2004 through 2015 (April 15, 2021 Hr'g Tr. 55:2-5), and though the accounting and record keeping in connection

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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.

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 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.

(Limitations Order, pp. 28-31) (footnotes omitted.)

[11] *See supra*, footnote 7.

with the water sale were inadequate and deficient, neither Mohammad Hamed nor Waleed Hamed objected or took any actions to rectify the situation.

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 the lack of record keeping continued for years without any objections from Mohammad Hamed or any actions by Mohammad Hamed to rectify the situation.[12] 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 No. Y-8 being disputed due to the unreliability and deficiency of the Partnership accounting and record keeping during the relevant period. Under these circumstances, the Master is inclined to invoke equitable estoppel to ensure fairness in the relationship between the parties for Yusuf Claim No. Y-8 and find 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 based on the argument that United is not entitled to damages for Yusuf Claim No. Y-8 because the calculation

[12] *See supra*, footnotes 9, 10.

of damages is speculative due to inadequate accounting and deficient record keeping in connection with the water sale.

II. Calculation of Damages

After hearing the witnesses' testimony, and after due consideration of the evidence in the record, the Master will exercise the significant discretion he possesses in fashioning equitable remedies and establish the following figures to evaluate the reasonableness of the amount of damages claimed by United for Yusuf Claim No. Y-8:

> During the period of April 1, 2004 through February 28, 2015, the Partnership sold water to third parties at the rate of Fifteen Dollars ($15.00) per 1,000 gallons of water, the Partnership averaged one and one-half (1 ½) water trucks per day in water sale,[13] and the average capacity of the water trucks was 5,000 gallons.[14] In other words, $112.50 per day (1½ 5,000-gallon water truck per day at $15.00 per 1000 gallons of water) multiplied by 3,986 days (the number of days for the period of April 1, 2004 through February 28, 2015) = $448,425.00 in Water Proceeds.

[13] At the April 15, 2021 hearing, Fathi Yusuf and Maher Yusuf testified that the average number of water trucks per day varied significantly day to day during the relevant period, and Waleed Hamed testified that his prior discovery responses to Fathi Yusuf's Interrogatory 30—that "[t]o get a sense of the scope, in the 2000s, the Partnership was sending out one or two trucks a day to deliver water, rather than the previous 10 or more trucks"—were correct. (April 15, 2021 Hr'g Tr. 8:1-25, 10:1-5, 37:23-25, 38:1-11, 49:8-12, 53:4-12.) Here, in the absence of any other supporting evidence that there were more water trucks per day in connection with the water sale than the numbers conceded to by Waleed Hamed, the Master will use the average of the numbers conceded to by Waleed Hamed to calculate the Water Proceeds. In other words, for the purpose of evaluating the reasonableness of the amount of damages claimed by United for Yusuf Claim No. Y-8, the Master will use the following figure as the average number of water trucks per day in connection with the water sale during the relevant period: one and one-half (1½) water trucks per day.

[14] At the April 15, 2021 hearing, Fathi Yusuf and Maher Yusuf essentially both testified that the average capacity of the water trucks was 5,000 gallons during the relevant period, and Waleed Hamed testified that his prior discovery responses to Fathi Yusuf's Interrogatory 30—that "[a]t its peak, in the 1990s, 10 or more trucks a day, each with a capacity of 30,000 gallons, delivered water to St. Croix residents" and that "[t]o get a sense of the scope, in the 2000s, the Partnership was sending out one or two trucks a day to deliver water, rather than the previous 10 or more trucks"—were correct. (April 15, 2021 Hr'g Tr. 6:13-25, 7:1-11, 36:6-21, 41:1-14, 52: 7-17.) Here, in the absence of any other supporting evidence that the average capacity of the water trucks in connection with the water sale was 30,000 gallons during the relevant period, the Master will use the number Fathi Yusuf and Maher Yusuf testified to to calculate the Water Proceeds. In other words, for the purpose of evaluating the reasonableness of the amount of damages claimed by United for Yusuf Claim No. Y-8, the Master will use the following figure as the average capacity of the water trucks in connection with the water sale during the relevant period: 5,000-gallon water trucks.

There was no testimony or evidence that supports a finding that the Partnership sold water to third parties at a different rate for water sold at the United Shopping Center versus water sold via delivery. Thus, in determining the average capacity of the water trucks during the relevant period, the Master did not differentiate between water trucks that purchased water at the United Shopping Center and water trucks that delivered water for sale.

However, the amount above—$448,425.00—must be reduced in half to $224,212.50 since United had previously conceded in its reply to Hamed's opposition to United's partial motion for summary judgment for Yusuf Claim No. Y-8, filed on July 7, 2020, that "the gross sales would have to cut in half to arrive at recoverable damages because United's principal, Fathi Yusuf, has already received one half of the net income from water sales." (July 7, 2020 Reply, p. 12.) Moreover, before the Master can arrive at the final amount, the Master must consider how much, if any, should be credited to the Partnership for Partnership money expended in connection with the sale of water to third parties during the period of April 1, 2004 through February 28, 2015.[15]

A. Partnership Money Expended

1. Incidental Expenses

Hamed pointed out that Partnership money was used to pay for all the incidental expenses associated with the sale of water to third parties during the period of April 1, 2004 through February 28, 2015, such as electricity, pump and cistern maintenance, and employee costs. Thus, Hamed argued the amount of Partnership money expended in the aforementioned incidental expenses should be taken into account when calculating the damages for Yusuf Claim No. Y-8. United opposed Hamed's argument and argued that credit to the Partnership is not warranted for Partnership money expended on incidental expenses because Hamed failed to provide any information as to the value of the incidental expenses and that even if the value was calculated, it would be *de minimus*.[16]

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[15] While United and Hamed addressed the issue of Partnership money expended in connection with the sale of water to third parties during the relevant period in terms of a deduction from the damages to United and the Master addressed it in terms of a credit to the Partnership, the ultimate result is the same—namely, the amount of Partnership money expended will be taken into account when calculating the damages for Yusuf Claim No. Y-8.

[16] United had previously conceded in its reply to Hamed's opposition to United's partial motion for summary judgment for Yusuf Claim No. Y-8, filed on July 7, 2020, that "it would be appropriate to deduct the allocation of Mike Yusuf's salary, based on the time he spent on that installation [of the standpipe used to deliver water to the water trucks], to

Here, aside from conclusory statements that Partnership money was used to pay the incidental expenses, Hamed failed to provide any testimony or evidence whatsoever as to the amount of Partnership money that was used to pay the incidental expenses. As such, the Master finds that no credit is warranted to the Partnership in connection with the incidental expenses.[17]

2. Taxes

Hamed also pointed out that that Partnership money was used to pay the taxes associated with the sale of water to third parties during the period of April 1, 2004 through February 28, 2015,

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arrive at an appropriate measure of damages." (July 7, 2020 Reply, p. 12.) However, Hamed failed to provide any testimony or evidence whatsoever as to the amount of Mike Yusuf's salary for the installation of the standpipe. Thus, the Master finds that no credit is warranted to the Partnership in connection with Mike Yusuf's salary for the installation of the standpipe.

[17] In his proposed findings of facts and conclusions of law, Hamed made the following comments in passing in a footnote:

> If the September 4th and November 9th Orders rejected the "water" as being the chattel that was converted, holding that it was the water proceeds that were converted, then this alternate finding is misplaced. However, it is respectfully submitted that the partnership always owned the proceeds, the issue is what is the value of the water before adding any costs associated with selling it. See, e.g, Am.Jur., Sec. 231 of "Mines and Minerals," at page 445:
>
>> In some cases, the plaintiff has been held entitled to the value of the coal or other mineral wrongfully mined, without allowing the defendant anything for the cost of digging or severing, for his equipment and facilities used in the trespass, or for breaking or other acts necessary to render the article marketable. A different rule of damages, and one more favorable to the defendant, has been followed by many courts. They deduct the cost of digging or severing the article in cases where the defendant is not chargeable with fraud, violence, or wilful negligence or wrong. (citations omitted).
>
> Here, there certainly was no such fraud or wilful misconduct, as Yusuf not only knew all about the partnership selling the water, but was 'in charge of the office decisions' at that time. See, e.g., Tr. 11.
>
> (Hamed's Proposed Findings of Facts and Conclusions of Law, p. 9, footnote 6.)

To the extent that Hamed is trying to re-litigate the issue of whether the Partnership or United owned the Water Proceeds, the Master has already made its ruling thereto and will not address it again here.

To the extent that Hamed is arguing that Partnership money expended should be taken into account when calculating the damages for Yusuf Claim No. Y-8 because no fraud and wilful misconduct exists, the Master finds Hamed's argument undeveloped and not properly supported—to wit, Hamed did not cite the proper binding legal authority, statute or rule, or develop its argument as to why Am.Jur., Sec. 231 of "Mines and Minerals" should apply in this instance. *See Simpson v. Golden*, 56 V.I. 272, 280 (V.I. 2012) ("The rules that require a litigant to brief and support his arguments … before the Superior Court, are not mere formalistic requirements. They exist to give the Superior Court the opportunity to consider, review, and address an argument."). "It is not the Court's job to research and construct legal arguments open to parties … In order to develop a legal argument effectively, the facts at issue must be bolstered by relevant legal authority; a perfunctory and undeveloped assertion is inadequate." *V.I. Taxi Association v. West Indian Company, Limited*, 2016 V.I. LEXIS 170, *4 (Super. Ct. Oct. 18, 2016) (citing *Charles v. CBI Acquisitions, LLC,* 2016 V.I. LEXIS 62, *27 n. 66). Thus, the Court will not address this argument.

such as gross receipts taxes and income taxes. Thus, Hamed also argued the amount of Partnership money expended in the aforementioned taxes should be taken into account when calculating the damages for Yusuf Claim No. Y-8. United had previously conceded to this argument in its reply to Hamed's opposition to United's partial motion for summary judgment for Yusuf Claim No. Y-8, filed on July 7, 2020. (July 7, 2020 Reply, p. 12.)

However, again, aside from conclusory statements that Partnership money was used to pay the aforementioned taxes, Hamed failed to provide any testimony or evidence whatsoever as to the amount of Partnership money that was used to pay the aforementioned taxes. However, as United indicated in its reply to Hamed's opposition to United's partial motion for summary judgment for Yusuf Claim No. Y-8, filed on July 7, 2020, during the relevant period, the U.S. Virgin Islands imposed a tax of four percent (4%) to five percent (5%) on the gross receipts of U.S. Virgin Islands businesses.[18] (July 7, 2020 Reply, p. 12.) As such, the Master finds that no credit is warranted to the Partnership in connection with the income taxes, but that credit is warranted to the Partnership in connection with the gross receipts taxes in the amount of $19,168.88.[19]

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[18] According to Title 33 V.I.C. § 43(a), "[e]very individual and every firm, corporation, and other association doing business in the Virgin Islands shall report their gross receipts and pay a tax of four percent (4%) on the gross receipts of such business." Additionally, according to the Editor's Note thereto, "Act 7248, § 3, amended by Act 7342, § 7, and again amended by Act 7346, § 16, provides: 'Notwithstanding title 33 Virgin Islands Code, chapter 3, section 43(a), every individual and every firm, corporation, and other association doing business in the Virgin Islands shall report their gross receipts and pay a tax of 5 percent on the gross receipts of such business from March 1, 2012, until such time as the corporate income taxes collected reaches the $185,000,000 level.'" Thus, a tax of four percent (4%) will be used to calculate the gross receipts taxes for the period of April 1, 2004 through February 29, 2012, and a tax of five percent (5%) will be used to calculate the gross receipts taxes for the period of March 1, 2021 through February 28, 2015.

[19] This amount is based on the following calculations using the figures the Master established above to evaluate the reasonableness of the amount of damages claimed by United for Yusuf Claim No. Y-8:

April 1, 2004 through February 29, 2012 (2,891 days):

$112.50 x 2,891 days = $325,237.50

0.04 x $325,237.50 = $13,009.50

March 1, 2021 through February 28, 2015 (1,095 days):

$112.50 x 1,095 days = $123,187.50

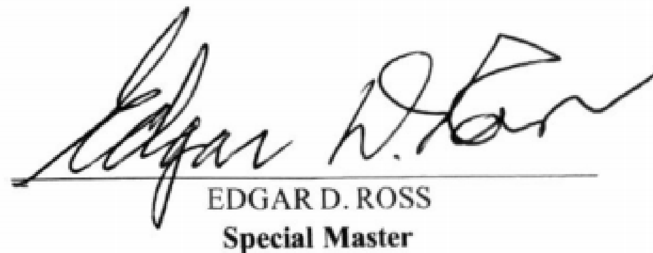
B. Final Amount

Based on the figures above, the Master arrives at the final amount of $205,043.62.[20] In comparison to that number, the Master finds the amount of damages United claimed for Yusuf Claim No. Y-8—$693,207.46—unreasonable and unsupported. Accordingly, the Master will adjust the amount of damages claimed by United in Yusuf Claim No. Y-8 from $693,207.46 to $205,043.62.

CONCLUSION

Based on the foregoing, the Master finds that United is entitled to damages from the Partnership for Yusuf Claim No. Y-8 in the total amount of $205,043.62. An order and judgment consistent with this Memorandum Opinion will be entered contemporaneously herewith.

DONE this 12th day of July, 2021.



0.05 x $123,187.50 = $6,159.38

Total: $13,009.50 + $6,159.38 = $19,168.88

[20] This amount is based on the following calculation: $224,212.50 – $19,168.88 = $205,043.62.

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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

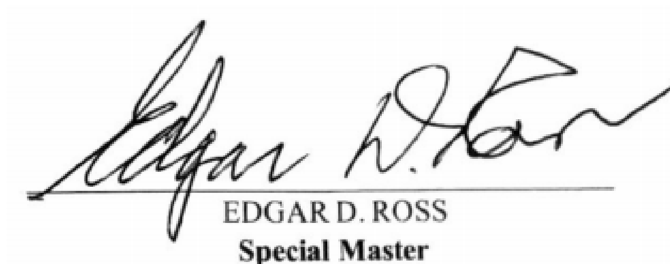
ORDER AND JUDGMENT

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

ORDERED, ADJUDGED, AND DECREED that Yusuf Claim No. Y-8 against the Partnership for water sales revenue collected by the Partnership from April 1, 2004 through February 28, 2015 in the amount of $205,043.62 is **GRANTED**. **And** it is further:

ORDERED, ADJUDGED, AND DECREED that United shall recover from the Partnership the sum of $205,043.62 on Yusuf Claim No. Y-8.

DONE and so ORDERED this 12th day of July, 2021.


EDGAR D. ROSS
Special Master