

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

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff/Counterclaim Defendant,)

v.)

FATHI YUSUF and UNITED CORPORATION,)

Defendants/Counterclaimants,)

v.)

WALEED HAMED, WAHEED HAMED,)
MUFEED HAMED, HISHAM HAMED, and)
PLESSEN ENTERPRISES, INC.,)

Additional Counterclaim Defendants.)

CIVIL NO. SX-12-CV-370

ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, AND
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

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)

Plaintiff,)

v.)

FATHI YUSUF,)

Defendant.)

CIVIL NO. SX-14-CV-278

ACTION FOR DEBT AND
CONVERSION

FATHI YUSUF and
UNITED CORPORATION,

Plaintiffs,

v.

THE ESTATE OF MOHAMMAD HAMED,
WALEED HAMED, as Executor of the Estate of
Mohammad Hamed, and **THE MOHAMMAD A.**
HAMED LIVING TRUST,

Defendants.

CIVIL NO. ST-17-CV-384

**ACTION TO SET ASIDE
FRAUDULENT TRANSFERS**

KAC357, INC., a USVI Corporation,

Plaintiff,

v.

FATHI YUSUF, a partner, and
THE HAMED-YUSUF PARTNERSHIP
a/k/a **THE PLAZA EXTRA SUPERMARKET**
PARTNERSHIP,

Defendants.

CASE NO.: SX-18-CV-219

**ACTION FOR DEBT AND
UNJUST ENRICHMENT**

**UNITED’S MOTION FOR RECONSIDERATION OF MASTER’S
JULY 13, 2021 ORDER RE: CLAIM Y-8**

The Master’s July 13, 2021 Order awarding a recovery to United on the Y-8 claim for water sales revenues concluded that the revenues for the 2004 to 2015 period in question were \$448,425, but that this amount would have to be reduced by half to \$224,212.50 (and then by the amount of gross receipts taxes) to arrive at a final judgment amount of \$205,043.62. *See* Master’s July 13, 2021 Order at pp. 17, 19-20. United submits that this reduction of the gross amount due United by 50% is inconsistent with how United’s other claims have been handled by Judge Brady (in his April 2015 Order directing the payment of rent to United) and in the Master’s Orders granting summary judgment and a money award to United on the Y-7/Y-9 claims and the Y-5 claim. *See*

Master's Orders of October 21, 2020 and December 9, 2020. In all three of these awards to United, there was no discounting by 50% of the gross amounts recoverable.

United's proposed findings of fact and conclusions of law submitted on May 19, 2021, after the evidentiary hearing on the water claim asserted a right to a 100% recovery of water sales revenues from the partnership. Proposed Finding no. 11 stated that "the total value of Water Proceeds ... is \$597,687.50." United's May 19, 2021 Proposed Findings of Fact and Conclusions of Law, p. 3, finding no. 11. Proposed finding of fact number 15 asserted that "[t]he Court finds that [the] amount due to United for the Water Proceeds...is \$597,687.50. *Id.* at p. 4. Conclusion of Law number 10 was to the same effect: "United is entitled to a recovery in the amount of \$597,687.50..." *Id.* at p. 7. As Hamed stated in his own May 19, 2010 proposed findings and conclusions, Yusuf testified: "At the April 15th hearing, Yusuf testified that United is entitled to damages in the amount of \$693,207.46". *See* Hamed Proposed Findings and Conclusions at p. 3,

¶3

However, Hamed argued in its 2020 briefing a year ago that while there were no distributions of profits during the pendency of the criminal case in the period 2004 to 2012, after 2012 "millions of dollars in accrued profits" were distributed to Yusuf and Hamed on a 50-50 basis and that these distributions to each included the profits earned on the water sales after payment of taxes and expenses, to bolster his argument that the Partnership (as a tenant) was entitled to the water proceeds – a position that the Master has rejected finding that United (as the landlord) owns the water and the proceeds from its sale. *See* Hamed's May 1, 2020 Opposition at pp. 5, 10. There has been no earmarking of the distributions that have been made by approval of the Master since 2012 such that it can be said that any part of them include profits on the water sales, much less that none are still sitting in the \$9,000,000+ partnership fund that will be distributed to the partners once the claims resolution process had been concluded. Distributions to Hamed and Yusuf (even

if they are of net profits from water sales collected for United) are not payments to United. Yusuf and United are not the same.¹ United is a creditor of the Partnership, if the Partnership has made earlier distributions to its partners, those distributions do not impact the funds now found to be due to its creditor – United.

But even if any partnership monies distributed on an equal basis to Hamed and Yusuf after 2012 are deemed to have included all post-tax water sales revenues, United would not be made whole if it only collects only half of what it is owed. Then Hamed would still owe United half of after-tax water sales (\$205,043.62) that he received. He could satisfy that obligation to United in one of two ways: either by writing a check to United for \$205,043.62 after all claims have been resolved, or by having the partnership pay United twice that amount or \$410,087.24.² It would be inequitable for the amount awarded to United to be only 50% of what it is actually entitled to.

¹“The Master finds that, while Yusuf Claim No. Y-8 is not the claim of the individual partners but the claim of United, a third party, it is being raised in the context of the Partnership accounting and the Master is granted considerable flexibility ‘in fashioning the specific contours of the accounting process’ and ‘in considering equitable remedies.’” See November 9, 2020 Order, at p. 21.

²The Master’s ruling cited a reply brief that United filed a year ago and its statement that the judgment amount would have to be reduced by half in support of its ruling. See United’s July 7, 2020 Reply Brief on Y-8 Claim at p. 12. The statement was mistakenly made in response to the arguments from Hamed that all the water proceeds were owned by the Partnership, as the tenant, as opposed to United, as the landlord – a position rejected by the Master. In any event, all of the prior submissions in Yusuf’s Accounting Claims and Proposed Distribution Plan of September 30, 2016 (“Initial Distribution Plan”), Yusuf’s Amended Accounting Claims of October 30, 2017 (“Amended Distribution Plan”), at the April 15, 2021 hearing and the Proposed Findings and Conclusions submitted by United almost a year later, on May 19, 2021 consistently took the position that 100% of United’s water proceeds were recoverable, as noted above. This position is consistent with the formula in the Yusuf’s Initial and Amended Distribution Plans to provide reserves, then pay debts of the partnership and then finally to reconcile the accounting claims between the partners. While statements in a denied motion for summary judgment or other brief may, in some circumstances, be introduced at trial as evidence, Hamed made no attempt to do that at the April 15, 2021 trial. Nor did he allude to that in his post-trial proposed findings and conclusions. Had Hamed requested that statements from United’s brief from a year before, be treated as evidence, contradicted by Yusuf’s trial testimony and United’s Proposed Findings and Conclusions of Law, be admitted into evidence, United would have objected and explained why the full 100% was sought. See *American Title Insurance Co. v. Lacelaw*, 861 F.2d. 224, 227 (9th

For all of the foregoing reasons, United Corporation respectfully requests that the Master grant its Motion for Reconsideration and rule that the full amount of the net water revenues, or \$410,087.24, be awarded to it.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: August 2, 2021

By: s/Charlotte K. Perrell
CHARLOTTE K. PERRELL (V.I. Bar No. 1281)
P.O. Box 756
St. Thomas, VI 00804-0756
1000 Frederiksberg Gade
St. Thomas, VI 00802-6736
Telephone: (340) 774-4422
E-Mail: cperrell@DNFvi.com

Attorneys for Fathi Yusuf and United Corporation

Cir. 1988) (where party did not seek to introduce at trial a statement in a brief, court ruled correctly that the statement could not be treated as binding on the party). Instead, Hamed argued at trial and in his proposed findings and conclusions that United was entitled to no recovery at all because it had not proved its damages.

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of August, 2021, I caused the foregoing **UNITED'S MOTION FOR RECONSIDERATION OF MASTER'S JULY 13, 2021 ORDER RE: CLAIM Y-8**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
Quinn House - Suite 2
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

E-Mail: holtvi.plaza@gmail.com

Carl J. Hartmann, III, Esq.
5000 Estate Coakley Bay – Unit L-6
Christiansted, St. Croix
U.S. Virgin Islands 00820

E-Mail: carl@carlhartmann.com

The Honorable Edgar D. Ross
E-Mail: edgarrossjudge@hotmail.com

and via U.S. Mail to:

The Honorable Edgar D. Ross
Master
P.O. Box 5119
Kingshill, St. Croix
U.S. Virgin Islands 00851

Alice Kuo
5000 Estate Southgate
Christiansted, St. Croix
U.S. Virgin Islands 00820

s/Charlotte K. Perrell
