

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff,*

vs.

UNITED CORPORATION, *Defendant.*

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff*

vs.

FATHI YUSUF, *Defendant.*

Consolidated with

Case No.: ST-17-CV-384

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*
Defendants.

Consolidated with

Case No.: ST-18-CV-219

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,
Defendant.

**HAMED'S OPPOSITION TO UNITED'S MOTION FOR RECONSIDERATION OF THE
JULY 12TH SPECIAL MASTER'S ORDER RE THE Y-8 CLAIM**

Hamed respectfully opposes United's motion to reconsider the July 12th Order of the Special Master ("Order"). The Special Master found the amount of the total water sales to be \$448,425.00, which was then reduced by half—to \$224,212.50. Reduction was based on United's express admission (quoted by the Special Master on p. 17 of the instant Order) 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." (quoting United's July 7, 2020 Reply, p. 12).

First, Yusuf's original statement and reasoning were absolutely correct. Fathi Yusuf already received one-half of any profits that the Partnership, not Hamed personally, kept. Second, United failed to point to any provision of V.I.R. Civ. P. 6-4 setting forth the grounds upon which this reconsideration motion seeks relief,¹ nor did this Court err in adopting United's express admission. Third, the other claims Yusuf identifies (Y-5, Y-7 and Y-9) were not instances where the Partnership kept PROFITS that were then divided and paid out 50-50 to the partners, as they were *expenses* found to be due United. Thus, the current ruling is not even slightly inconsistent with any past rulings.

¹ Subsection (b) of Rule 6-4 provides as follows:

(b) Grounds. A motion to reconsider must be based on:

- (1) intervening change in controlling law;
- (2) availability of new evidence;
- (3) the need to correct clear error of law; or
- (4) failure of the court to address an issue specifically raised prior to the court's ruling.

Obviously none of these subsections apply. Indeed, relying on an admission of a party could hardly constitute an erroneous finding under any of these subsections.

An example here is helpful. Assume the total gross sales were \$100. Also assume there were no costs, so the \$100 is also the net sales (i.e., profits). When the partners split the profits as received by the Partnership, Yusuf received \$50 and Hamed received \$50. As such, it would be a \$50 windfall to Yusuf if his corporation, United, now was paid the entire \$100 from the Partnership without an offset for the \$50 he already received. This is exactly the reasoning put forward by Yusuf in his reply—as quoted above.

Finally, the award on this Y-8 claim was based on the exercise of the Special Master's sound discretion. That award was largely based on a finding of equitable estoppel in favor of "Yusuf" due to Hamed's conduct during the partnership. If anything, this Court should exercise its discretion and vacate the entire award, as "Yusuf" is not the party here, so that **United (a non-partner third party)** should not be permitted to rely upon equitable estoppel *between the partners*. While the *partners* failed to keep accurate records, leading to the equitable estoppel finding, **United is a third party seeking amounts that it should have proven based on its own records**, which it either did not have or failed to use for this claim. There has never been a finding, nor should there have been, that United can benefit on the equitably questionable conduct between the partners—in this instance it is merely a third party claimant.

In any event, it is respectfully submitted that the motion should be denied since United's theory is wrong and because United conceded that that the award must be cut in half---which is correct—and is why Hamed did not address this issue in his own post-

hearing submission.² Thus, the July 12th findings, as included in the Order, should not be changed regarding the issue raised by United in its motion for reconsideration.

Dated: August 7, 2021

/s/ Joel H. Holt _____

Joel H. Holt, Esq.

Counsel for Plaintiff

Law Offices of Joel H. Holt

2132 Company Street,

Christiansted, VI 00820

Email: holtvi@aol.com

Tele: (340) 773-8709

Fax: (340) 773-8679

Carl J. Hartmann III, Esq.

Co-Counsel for Plaintiff

2940 Brookwind Dr.

Holland, MI 49424

Email: carl@carlhartmann.com

Tele: (340) 642-4422

² Had this issue been raised with Hamed before filing, he would not only have pointed out the erroneous “math” contained in the opposition memorandum, but also the prior admission and the fact that Yusuf could hardly have “converted” funds due his own corporation, requiring his portion of the converted funds to revert back to United, since in the end they are the same “pocket.”

CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 6-1(e)

I hereby certify that the above document meets the requirements of Rule 6-1(e) and was served this 7th day of August, 2021. I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross
Special Master
% edgarrossjudge@hotmail.com

Stefan Herpel
Charlotte Perrell
DUDLEY, NEWMAN FEUERZEIG LLP
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
sherpel@dnfvi.com
cperrell@dnfvi.com

/s/ Joel H. Holt