

**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

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

vs.

**UNITED CORPORATION**, *Defendant.*

**Case No.: SX-2014-CV-287**

Consolidated with

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

vs.

**FATHI YUSUF**, *Defendant.*

**Case No.: SX-2014-CV-278**

Consolidated with

**FATHI YUSUF**, *Plaintiff,*

vs.

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

**Case No.: ST-17-CV-384**

Consolidated with

**KAC357 Inc.**, *Plaintiff,*

vs.

**HAMED/YUSUF PARTNERSHIP**,  
*Defendant.*

**Case No.: ST-18-CV-219**

**HAMED'S SECOND REQUEST TO TAKE JUDICIAL NOTICE**

Pursuant to Rule 201 of the Virgin Islands Rules of Civil Procedure, the Plaintiff Hamed hereby request this Court to take Judicial Notice of the Orders in already entered in this case regarding the following matters:

1. That the three affidavits the Parties have agreed to submit without having the witnesses to testify (Mohammad Hannun, Suleiman Klalad and Bakir Hussein) were obtained by Fathi Yusuf in 2014, but not produced in this matter until 2017. See Order dated May 3, 2020 at pp. 17-18 (Attached as Exhibit A)

**Dated:** September 28, 2021

*Counsel for Hamed*

/s/ Joel H. Holt

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**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 28<sup>th</sup> day of September, 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**

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/s/ Joel H. Holt

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.

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

PLAINTIFF,

v.

**UNITED CORPORATION,**

DEFENDANT.

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**MOHAMMAD HAMED,**

PLAINTIFF,

v.

**FATHI YUSUF,**

DEFENDANT.

Civil No. SX-12-CV-370

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

CONSOLIDATED WITH

Civil No. SX-14-CV-287

**ACTION FOR DAMAGES and  
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. SX-14-CV-378

**ACTION FOR DEBT and  
CONVERSION**

**ORDER**

Blumberg No. 5208

EXHIBIT

A

**THIS MATTER** came before the Special Master (hereinafter “Master”) on Hamed’s motion for summary judgment (hereinafter “MSJ”) for Hamed Claim No. H-142: Parcel No. 2-4 Rem Estate Charlotte Amalie, No. 3 New Quarter, St. Thomas, U.S. Virgin Islands, consisting of 0.536 acre, more or less (hereinafter “Half Acre in Estate Tutu”),<sup>1</sup> filed on February 3, 2020 and refiled on February 7, 2020, and Hamed’s motion in limine (hereinafter “MIL”) for Hamed Claim No. H-142, filed on February 7, 2020. On March 2, 2020, Hamed filed a Rule 6.1(d) notice of supplementation to his motion in limine. On March 9, 2020, Yusuf and United filed their oppositions to Hamed’s motion for summary judgment and Hamed’s motion in limine (hereinafter “MSJ Opposition” and “MIL Opposition” respectively), and Hamed filed his replies thereafter (hereinafter “MSJ Reply” and “MIL Reply” respectively).

#### **BACKGROUND**

In 2016, per the Master’s orders, Parties filed their respective accounting claims. Hamed, in his accounting claims filed on October 17, 2016 (hereinafter “Hamed’s Accounting Claims”), included Hamed’s claim that the Half Acre in Estate Tutu belongs to the Partnership and was incorrectly titled in United Corporation and thus, Hamed claims a total of \$500,000.00 is due to the Partnership.<sup>2</sup> (Hamed’s Accounting Claims, Exhibit B-1, p. 12) Yusuf, in his accounting claims filed on September 30, 2016 (hereinafter “Yusuf’s Accounting Claims”), claimed:

Hamed’s interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as Exhibit O.<sup>16</sup> Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance

<sup>1</sup> The Master was appointed by the Court to “direct and oversee the winding up of the Hamed-Yusuf Partnership” (Sept. 18, 2015 order: Order Appointing Master) and “make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination.” (Jan. 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed’s instant motion to compel falls within the scope of the Master’s report and recommendation given that Hamed Claim No. H-142 is an alleged asset of the Partnership.

<sup>2</sup> Hamed’s Accounting Claims provided:

<u>Item No.</u>	<u>Description</u>	<u>...</u>	<u>Total Claim Amount</u>	<u>Amount Due to Partnership</u>
490	Half acre in Estate Tutu		\$500,000	\$500,000

**ORDER**

of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. See Ninth Bi-Monthly Report at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc. Hamed, through his son, Waleed, refused to convey this third parcel.

Although Yusuf is not pursuing his claims regarding the misappropriated 2,000,000 [sic], Hamed's sons are still seeking to somehow rescind Hamed's conveyance of his interest in the Jordanian parcel that is the subject of Exhibit N in their second amended complaint in Hamed v. Yusuf, Civil No. SX-12-CV-377. Yusuf asks this Court to bind Hamed's estate by the agreement signed by Hamed.

<sup>16</sup> Yusuf is arranging for this document to be translated. An English version will be provided to the Master and counsel upon receipt. (Yusuf's Accounting Claims, pp.13-14)

Subsequently, the Court entered a memorandum opinion and order dated July 21, 2017 whereby 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” (hereinafter “Limitations Order”). (Limitations Order, pp. 33-34) In light of the Limitations Order, the Master ordered Parties to file their amended accounting claims. Hamed’s claim that the Half Acre in Estate Tutu belongs to the Partnership and was incorrectly titled in United Corporation was again included in Hamed’s amended accounting claims, filed on filed on October 30, 2017 (hereinafter “Hamed’s Amended Accounting Claims”). (Hamed’s Amended Accounting Claims, Exhibit A, p. 12) However, unlike what Hamed previously claimed in Hamed’s Accounting Claims—that a total of \$500,000.00 is due to the Partnership, Hamed claimed in Hamed’s Accounting Claims that the Half Acre in Estate Tutu should be sold or split.<sup>3</sup>

<sup>3</sup> Hamed’s Amended Accounting Claims provided:

<u>New Claim No.</u>	<u>Previous Item No.</u>	<u>Description</u>	<u>...</u>	<u>Amount Due to Partnership From Yusuf</u>
143	490	Half acre in Estate Tutu		Sale or split of Property

Yusuf's claim that Hamed agreed to transfer, *inter alia*, his interests in the Half Acre in Estate Tutu, to Yusuf in exchange for the resolution of Hamed's misappropriation of \$2,000,000 was again included in Yusuf's amended accounting claims, filed on filed on October 30, 2017 (hereinafter "Yusuf's Amended Accounting Claims"). (Yusuf's Amended Accounting Claims, pp. 17-18)

Thereafter, Parties engaged in discovery. On February 21, 2018, Hamed propounded, *inter alia*, Hamed's Interrogatory 21 of 50 (hereinafter "Hamed's Interrogatory 21") and Hamed's requests for production of document 13 of 50 (hereinafter "Hamed's RFPD 13") that sought information in connection with Hamed's Claim No. H-142. On February 26, 2018, Yusuf and United filed a motion to strike Hamed Claim Nos. H-142 and H-143. In response, Hamed filed an opposition to Yusuf and United's motion to strike and Yusuf and United filed a reply thereafter. On May 15, 2018, Yusuf and United filed a response to, *inter alia*, Hamed's Interrogatory 21 and Hamed's RFPD 13. On July 12, 2018, the Master entered an order whereby the Master ordered, *inter alia*, that Yusuf and United's motion to strike as to Hamed Claim No. H-142 is denied and permitted discovery in connection with Hamed Claim No. H-142. (July 12, 2018 order) On July 19, 2018, Yusuf and United provided supplemental responses to, *inter alia*, discovery propounded in connection with Hamed Claim No. H-142—Hamed's Interrogatory 21 and Hamed's RFPD 13 (hereinafter "Yusuf and United's Supplemental Responses"). After subsequent correspondences and meet and confers between Parties, on October 2, 2019, Hamed filed a motion to compel as to Hamed's Interrogatory 21 and Hamed's RFPD 13.

On November 20, 2019, Hamed filed a motion for partial summary judgment for Hamed Claim No. H-142. On December 19, 2019, the Master entered an order whereby the Master found Yusuf and United's responses to Hamed's Interrogatory 21 and Hamed's RFPD 13 deficient and ordered, *inter alia*, that Yusuf and United's motion to compel is granted and Yusuf and United to

provide supplemental responses to Hamed's Interrogatory 21 and Hamed's RFPD 13 in compliance with the Virgin Islands Rules of Civil Procedure. On December 20, 2019, Yusuf and United filed an opposition to the motion for partial summary judgment and thereafter, Hamed filed a reply, Yusuf and United filed a motion for leave to file sur-response to Hamed's reply, and Hamed filed response thereto. On January 14, 2020, the Master entered an order ("Partial Summary Judgment Order") whereby the Master, *inter alia*, denied Hamed's motion for partial summary judgment for Hamed Claim No. H-142 and granted summary judgment regarding the narrow issue that the Partnership's United held title to the Half Acre in Estate Tutu from 2008 to 2011. (Partial Summary Judgment Order) The Master explained:

Here, based on the record before the Master, it is undisputed that: (1) partnership funds in the total amount of \$330,000 were used to purchase the Half Acre in Estate Tutu, (2) Hamed and Yusuf elected to have their jointly owned corporation, Plessen Enterprises, Inc. (hereinafter "Plessen"), hold title to the Half Acre in Estate Tutu, (3) Plessen simultaneously issued a mortgage note in the amount of \$330,000 in favor of United secured by a first priority mortgage on the Half Acre in Estate Tutu, (4) Plessen subsequently transferred title of the Half Acre in Estate Tutu to United pursuant to a deed-in-lieu in 2008, and (5) United has held title to the Half Acre in Estate Tutu since 2008. However, there is clearly a genuine dispute as to whether United has since held title to the Half Acre in Estate Tutu as United operating as the Partnership (hereinafter "Partnership's United") or United operating as a separate distinct entity from the Partnership solely owned by Yusuf (hereinafter "Yusuf's United"), and thereby there is clearly a genuine dispute as to whether the Half Acre in Estate Tutu is currently a Partnership asset. In his motion, Hamed argued that the Partnership's United has held title of the Half Acre in Estate Tutu from 2008 until present and the Half Acre in Estate Tutu remains a Partnership asset, and in his reply, Hamed argued that United and Yusuf conceded in their opposition that "United is holding the property for the Partnership" and thus, "[t]hat ends this issue and warrants entry of partial summary judgment as requested." (Reply, p. 2) However, that is not an accurate restatement of United and Yusuf's concession. In their opposition, United and Yusuf conceded that the Partnership's United held title of the Half Acre in Estate Tutu from 2008 until 2011 and that the Half Acre in Estate Tutu only remained a Partnership asset until 2011. United and Yusuf claimed that in 2011, Hamed transferred, *inter alia*, his interest in the Half Acre in Estate Tutu to Yusuf per an agreement between Yusuf and Hamed for Hamed to transfer his interest in two Partnership properties—the Tabarbour, Jordanian property and the collective Tutu property, including both the 9.3 acre tract and the Half Acre in Estate Tutu—to Yusuf "[a]s part of Hamed's efforts to appease Yusuf following his discovery of this significant misappropriation [of \$2,000,000]." (Opp., p. 3) In his reply, Hamed disputed United and Yusuf's claim that the agreement between Yusuf and Hamed was for Hamed to transfer of both the Tabarbour, Jordanian property and the collective Tutu property, and instead argued that the agreement between

Yusuf and Hamed was for Hamed to transfer only one property—the Tabarbour, Jordanian property—which Hamed subsequently transferred to Yusuf.

At this juncture, the Master concludes that Hamed has not satisfied his burden of establishing that there are no genuine disputes as to any material fact regarding Hamed’s partial motion for summary judgment for the limited holding that “the ‘United’ that has been in record title **since** 2008 is ‘United operating as the Partnership.’” *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.’”) With that said, in light of United and Yusuf’s concession, the Master will grant summary judgment regarding the narrow issue that the Partnership’s United held title to the Half Acre in Estate Tutu from 2008 to 2011; whether the Partnership’s United or Yusuf’s United held title after 2011 remains in dispute. (Partial Summary Judgment Order, pp. 12-13)

On February 7, 2020, Hamed filed this instant MSJ and this instant MIL.

#### **STANDARD OF REVIEW**

##### Motion in Limine

A motion in limine allows “the trial court to rule in advance of trial on the admissibility and relevance of certain forecasted evidence.” *Todman v. Hicks*, 70 V.I. 430, 449 (V.I. Super. Ct. April 17, 2019) (quoting *In re Asbestos, Catalyst & Silica Toxic Dust Exposure Litig.*, 68 V.I. 507, 522 (V.I. Super. Ct. April 26, 2018)) “In general, on a motion in limine the moving party has the burden to show that the evidence is irrelevant or should be excluded.” *Id.* Under Rule 401 of Virgin Islands Rules of Evidence (hereinafter “Rule 401”), “[e]vidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action.” V.I. R. EVID. 401 (colon and subsection numbers omitted). But relevant evidence can still be excluded from trial. *See e.g.*, V.I. R. EVID. 403 (“The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of ... unfair prejudice; confusing the issues; misleading the jury; undue delay; wasting time; or needlessly presenting cumulative evidence.”); V.I. R. EVID. 408(a) (“Evidence of the following is not admissible -- on behalf of any party -- either to prove or disprove the validity or amount of a

disputed claim or to impeach by a prior inconsistent statement or by contradiction: furnishing, promising, or offering -- or accepting, promising to accept, or offering to accept -- a valuable consideration in compromising or attempting to compromise the claim; and conduct or a statement made during compromise negotiations about the claim.”) (colon and subsection numbers omitted); V.I. R. CIV. P. 90(d)(7) (“Any or all communications, written or oral, made in the course of a mediation proceeding, other than an executed settlement agreement, shall be inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.”); V.I. R. CIV. P. 37(c)(1) (“If a party fails to provide information or identify a witness as required by Rule 26(a) or (e),<sup>4</sup> the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless.”). A denial of a motion in limine does not automatically render the evidence admissible, but rather, it “only means that outside the context of trial, the court cannot determine whether the evidence in question is admissible.” *Pedro v. Ranger American of the V.I., Inc.*, 70 V.I. 251 (V.I. Super. March 22, 2019). “A trial court has wide discretion in determining whether to exclude otherwise admissible evidence under Rule 403.” *In re Asbestos*, 68 V.I. at 517 (quoting *Fahie v. People*, 62 V.I. 625, 641 (V.I. 2015)).

#### Motion for Summary Judgment

Rule 56 of Virgin Islands Rules of Civil Procedure (hereinafter “Rule 56”) provides that “[a] party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought” and “[t]he court shall grant

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<sup>4</sup> Under Rule 26 of Virgin Islands Rules of Civil Procedure (hereinafter “Rule 26”), “a party must, without awaiting a discovery request, provide to the other parties ... a copy ... of all documents ... the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.” V.I. R. CIV. P. 26(a). If disclosures or responses are shown later to be “incomplete or incorrect,” a party has a duty to “supplement or correct its disclosure or response in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing; or as ordered by the court.” V.I. R. CIV. P. 26(e)(1)(a) (colon and subsection numbers omitted).

summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. CIV. P. 56; *see also Rymer v. Kmart Corp.*, 68 V.I. 571, 575 (V.I. 2018) (“A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record.”). “A factual dispute is deemed genuine if ‘the evidence is such that a reasonable jury could return a verdict for the nonmoving party[.]’ ” and a fact is material only where it “might affect the outcome of the suit under the governing law[.]” *Todman*, 70 V.I. at 436 (citations omitted) “Once the moving party has identified the portions of the record that demonstrate no issue of material fact, “the burden shifts to the non-moving party to present affirmative evidence from which a jury might reasonably return a verdict in his favor.” *Rymer*, 68 V.I. at 576 (citing *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013) (internal citations and quotation marks omitted). The non-moving party “may not rest upon mere allegations, [but] must present actual evidence showing a genuine issue for trial.” *Rymer*, 68 V.I. at 576 (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)).

The reviewing court must view all inferences from the evidence in the light most favorable to the nonmoving party, and take the nonmoving party's conflicting allegations as true if properly supported. *Williams*, 50 V.I. at 194; *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 527 (V.I. 2013). Moreover, the court “should not weigh the evidence, make credibility determinations, or draw ‘legitimate inferences’ from the facts when ruling upon summary judgment motions because these are the functions of the jury.” *Todman*, 70 V.I. at 437 (quoting *Williams v. United Corp.*, 50 V.I. 191, 197 (V.I. 2008). In deciding a motion for summary judgment, the court’s role “is not to determine the truth, but rather to determine whether a factual dispute exists that warrants trial on the merits.” *Todman*, 70 V.I. at 437 (quoting *Hawkins v. Greiner*, 66 V.I. 112, 117 (V.I. Super. Ct. 2017). Because summary judgment is “[a] drastic remedy, a court should only grant

summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.’” *Rymer*, 68 V.I. at 575-76 (quoting *Williams*, 50 V.I. 191, 194). Finally, Rule 56 requires the court to “state on the record the reasons for granting or denying the motion.” V.I. R. CIV. P. 56(a).

## DISCUSSION

### A. MOTION IN LIMINE

In his MIL, Hamed argued that all the witnesses to the alleged settlement negotiations and their testimony should be excluded because “[t]he subject witnesses and testimony involve mediations and settlement negotiations,” “the evidence was withheld,” “[t]he evidence was not on a privilege log,” and “[t]he witnesses, discussions, mediations and settlement negotiations have never been set forth by Hamed and are privileged, confidential, and violative of Rules 408, 26, 34, and 37.” (MIL, p. 15) Hamed claimed that “Yusuf tries to improperly use statements from these post-July 2011 mediations and settlement negotiations to conflate a fictional ‘two parcel’ oral contract which wasn’t reduced to a writing, with a real ‘one parcel’ agreement which was reduced to writing.” (MIL, p. 4) (Emphasis omitted) Hamed made the following arguments in his motion in limine: (1) *Webster v. FirstBank P.R.* violation – “The participants called these settlement negotiations ‘mediations’—as did the parties” and “[m]ediation proceedings are privileged and confidential.” (MIL, p. 4) In support of his argument, Hamed cited to *Webster v. FirstBank P.R.*, 66 V.I. 514, 520 (V.I. 2017). (MIL, p. 4); (2) Rule 408 violation – “Even if that were not the case as ‘mediations,’ it is black letter law in the USVI that any negotiations for settlement are completely inadmissible to show either what was said or any putative settlement—even if they are pre-litigation, involve third parties or are informal.” (Id., at pp. 4-5) In support of his argument, Hamed cited to Rule 408 and *Statoil USA Onshore Props. V. Pine Resources, LLC*, No. 2:14-cv-21169, 2018 U.S. Dist. LEXIS 23936, at \*13 n.5 (S.D. W. Va. Feb. 14, 2018), and

*People v. Brewley*, No. ST-06-CR-402, 2007 V.I. LEXIS 24, at \*16-17 (Super. Ct. Nov. 16, 2007). (Id., at pp. 5-6); and (3) Rule 26 and Rule 34 violation – “[I]n 2017 Yusuf filed one of three affidavits about settlement mediations about the alleged sale and transfer of this half-acre parcel to Yusuf—but did not disclose two others” and thus, Yusuf must be “precluded from using anything that he failed to disclose and produce until the very last second, and then only because of an order compelling that disclosure.” (Id., at p. 6)

In their MIL Opposition, Yusuf and United argued that Hamed’s MIL must be denied based on the following: (1) “It is unclear from Hamed’s [MIL], what exactly he seeks to prohibit and why”—to wit, “Hamed has not asked for specific relief from such an evidentiary hearing and so that issue is not before the Court at this juncture” and “[h]ence, it is unclear, exactly what relief Hamed seeks.” (MIL Opp., pp. 2-3); (2) Hamed indicated that certain “‘described witnesses and their affidavits’ should be excluded and thus will obviate the need for a ‘third round of testimony,’” but “[i]ronically, it was Hamed, who introduced the statements in the Affidavit of Mohammad Hunnan as an exhibit in support of Hamed’s Motion for Summary Judgment as to H-142.” (Id., at p. 3); and (3) “Yusuf disputes that the discussions between himself and members of his community would be considered formal ‘mediation’ discussions in the sense of a court sanctioned or prescribed mediation”—to wit, “[t]here existed no formality as to keeping the issues and discussions confidential or privileged” and “[w]hile they were attempting to help family members in conflict, the discussions do not break the threshold of a mediation agreement to be protected by privilege.” (Id., at p. 4) As such, Yusuf and United requested that the Master deny Hamed’s motion in limine, and “[t]o the extent that the issues of admissibility of such individuals’ testimony is pertinent to a matter before the Court during an evidentiary hearing, it can be addressed at that time.” (Id., at p. 5)

In his MIL reply, Hamed argued that Yusuf and United's opposition to his motion in limine should be disposed of based on the following: (1) Yusuf and United's MIL Opposition "dealt only with the issue of the settlement negotiations being excludeable as mediations" and "there is absolutely no mention of, and no response to the fact that regardless of how these settlement negotiations were characterized, they were settlement negotiations." (MIL Reply, p. 2) Moreover, "Yusuf's proposed new 'exception' to Rule 408 would leave parties free to sandbag opponents with settlement negotiations by simply having family members or community poo-bahs in the room—which was obviously Yusuf's intent in the first place." (Id.); and (2) "Yusuf, not Hamed introduced the subject testimony and witnesses into the record, discussed them and relied on them—not Hamed" and that "Hamed merely responded, and will obviously remove any such reference if this motion is granted." (Id., at p. 3) As previously stated in his MIL, "Hamed seeks to exclude testimony from persons present at settlement negotiations and statements made there..." (Id., at p. 5)

Here, In his MIL, Hamed belabored that the various meetings ("Meetings") and conversations ("Conversations") had to resolve the issue between Yusuf and Hamed regarding Yusuf's discovery of Hamed's misappropriation of funds were mediations and/or settlement negotiations, and moved to exclude all the witnesses to the Meetings and Conversations and their testimony pursuant to the U.S. Virgin Islands Supreme Court's ruling in *Webster*, 66 V.I. at 520 that "mediation proceedings are privileged and confidential" and Rule 408 of Virgin Islands Rules of Evidence (hereinafter "Rule 408"). Additionally, Hamed also moved to apply Rule 37 of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 37") sanction to exclude evidence produced by Yusuf in violation of Rule 26.

## 1. Mediations

The Master must note at the outset that, in *Webster*, while the U.S. Virgin Islands Supreme Court stated that “mediation proceedings are privileged and confidential,” it cited to Superior Court Rules 40(d)(5) which has since been repealed on April 7, 2017, by Supreme Court Promulgation No. 2017-0006.<sup>5</sup> As such, the Master will look at Rule 90 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 90”) for guidance. Rule 90 provides in relevant parts:

### Rule 90. Civil Mediation

(a) Definition. “Mediation” means a process whereby a neutral third person called a “mediator” acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and non-adversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision-making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.

...

### (d) Procedure.

(9) Inadmissibility of Mediation Proceedings. Any or all communications, written or oral, made in the course of a mediation proceeding, other than an executed settlement agreement, shall be inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.

As the moving party, Hamed has the burden to show that that the evidence should be excluded. *See Todman*, 70 V.I. at 449. Thus, Hamed has the burden to show the Meetings were mediations and the Conversations are protected by mediation confidentiality. In his MIL, Hamed simply stated that “[t]he participants called these settlement negotiations ‘mediations’—as did the parties” and that “Yusuf admits that the parties and mediators met to negotiate a compromise to a disputed claim”, and concluded that the Meetings were mediations and the Conversations are

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<sup>5</sup> In *Webster*, 66 V.I. at 519, footnote 3, the U.S. Virgin Islands Supreme Court noted:

At the time this matter was pending in the Superior Court, Superior Court Rule 40 governed mediation procedure in the Superior Court. However, on July 31, 2016, the Governor signed Act No. 7888 into law, which conferred this Court with the authority to promulgate the rules of civil procedure to be used in Virgin Islands courts. Although this Court exercised that authority to promulgate the Virgin Islands Rules of Civil Procedure, which went into effect on March 31, 2017, *see* Promulgation Order No. 2017-002 (April 3, 2017), we continue to apply the former procedural rules on appeal because the final judgment in this case was entered before that date. *Blyden v. People*, 53 V.I. 637, 658 n.15 (V.I. 2010).

mediation communications protected by mediation confidentiality. (MIL, pp. 4-5) However, Hamed failed to support his assertion with instances where Yusuf referred to the Meetings as mediations and the Conversations as mediation communications. Nevertheless, the Master notes that in Yusuf answers to Plaintiff Waleed “Wally”<sup>6</sup> Hamed’s first set of interrogatories in *Hamed v. Yusuf*, Civil Case No. SX-2012-CV-377, dated November 20, 2013 (hereinafter “Yusuf’s Interrogatory Answers in Case 733”), Yusuf described the meetings as a process where “Plaintiff Waleed Hamed enlisted the assistance of his Uncle Mohammed Hannun and certain business associates in the Muslim Community to help settle the parties’ disputes” but did not specifically refer to the Meetings as mediations. (Yusuf’s Interrogatory Answers in Case 733, p. 9)<sup>7</sup> In any event, the Master finds the words “mediate” and “mediation” and the process where disputing parties enlist a neutral third party to help settle a disagreement to have technical, legal implications that differ from the implications that might be ascribed to the same terms and process in common parlance. Here, Hamed failed to bring forth any evidence to demonstrate that, at the time of the Meetings, Parties considered the Meetings to be mediations with mediation confidentiality as when used in legal parlance. In fact, Yusuf and United argued in their MIL Opposition that:

Yusuf disputes that the discussions between himself and members of his community would be considered formal “mediation” discussions in the sense of a court sanctioned or prescribed mediation. As to Mr. Hunnan, he is Waleed’s Uncle and Yusuf’s brother-in-law, family members. See Exhibit B – Waleed Depo. p. 191 and 192. Counsel for Hamed belittled the group dubbing them to be “local poohbahs” who berated Waleed. *Id.* at 191. These were various members of the community, some family, who were present at differing points in time throughout the parties’ history. They discussed each other’s problems as friends, family members and elders in their community. There existed no formality as to keeping the issues and discussions confidential or privileged. So to attempt

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<sup>6</sup> Parties have used “Waleed” and “Wally” interchangeably to reference Waleed “Wally” Hamed.

<sup>7</sup> In Yusuf’s Interrogatory Answers in Case 733, Yusuf provided in relevant part:

The parties’ relationship broke down completely, Defendant [Yusuf] informed Wally Hamed and Mohammed Hamed that he no longer wanted to work with them and it was time for the families to go their separate ways.

Sometime thereafter Plaintiff Waleed Hamed enlisted the assistance of his Uncle Mohammed Hannun and certain business associates in the Muslim Community to help settle the parties’ disputes. The meetings to settle the dispute were arranged with the consent of Plaintiff Waleed Hamed as agent for Plaintiff Mohammed Hamed. (Yusuf’s Interrogatory Answers in Case 733, p. 9)

to couch these series of meetings as formal or official mediation sessions is stretching the bounds of fiction. While they were attempting to help family members in conflict, the discussions do not break the threshold of a mediation agreement to be protected by privilege. To do so would open the door to every discussion with a friend of family member in conflict into a mediation session or in anticipation of mediation, such that it is cloaked with privilege. To the extent that a party makes admissions against interest to third parties, he cannot then characterize their discussion as a mediation session to prohibit disclosure. Here, where numerous members of the community, including extended family, were openly discussing the problems that the Yusuf and Hamed families were having, those discussions are not necessarily worthy of protection and privilege. (MIL Opp., p. 4)

Moreover, Hamed also failed to bring forth any evidence to demonstrate that the third parties involved in the Meetings and the Conversations were neutral. In fact, based on Waleed Hamed's testimony at his January 22, 2020 deposition, Waleed regarded said third parties as "Yusuf's people" and not neutral third parties.<sup>8</sup> As such, Hamed failed to meet his burden and the Conversations will not be excluded by mediation confidentiality.

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<sup>8</sup> At his January 22, 2020 deposition, Waleed Hamed testified:

Q. (Ms. Perrell) All right. Were you pre -- were you in certain meetings that occurred between you -- well, between Mr. Yusuf and Mr. Mohammad Hamed and other members of the Arab community to discuss resolving the issues between the two families?

A. There was a lot of meetings. Don't recall exactly. My father really wasn't present in most of those meetings.

Q. Okay. So were you present, though?

A. Yeah. **Fathi would go out there. He would have his little session with his little people.** They're nice people. And then they would call me and say, Come over. Let's solve this.

...

Q. Okay. Tell me what happened in that meeting.

A. I -- **I was called, I believe, into Food Town, that's where they had, I guess, a meeting session. Prior to that, Fathi has had -- sitting down with the good folks over there. They came to some conclusion after hours and hour of talking to him and all that. And they called me over and they put a lot of pressure on me.** I didn't agree to it, but -- but they put a lot of pressure. A lot of pressure just to get -- get this over with. Done with it, so I agreed to -

Q. You agreed to what?

A. To a second piece of property.

Q. That was the second piece in Jordan, the one that

Mr. -

A. Yes.

Q. Okay. So -- so in -- now, when you said they put a lot of pressure on you, was this -- were they threatening to beat you up, or was this moral pressure by community leaders?

## 2. Compromise Negotiations

Again, as the moving party, Hamed has the burden to show that the evidence should be excluded. *See Todman*, 70 V.I. at 449. Thus, Hamed has the burden to show the Conversations are compromise negotiations protected by Rule 408. Under Rule 408, evidence of “furnishing, promising, or offering — or accepting, promising to accept, or offering to accept — a valuable consideration in compromising or attempting to compromise the claim and conduct or a statement made during compromise negotiations about the claim” is not admissible “to prove or disprove the validity or amount of a disputed claim.” V.I. R. EVID. 408(a) (colon and subsection numbers omitted). In his MIL, Hamed simply stated that “[t]he participants called these settlement negotiations ‘mediations’—as did the parties” and that “Yusuf admits that the parties and mediators met to negotiate a compromise to a disputed claim”, and concluded that the Conversations are compromise negotiations protected by Rule 408. (MIL, pp. 4-5) Hamed did not specify which portions of the Conversations are compromise negotiations; thus, it seems like Hamed considered all the Conversations as compromise negotiations and therefore, all the Conversations should be excluded pursuant to Rule 408. In their MIL Opposition, Yusuf and United did not address the issue of compromise negotiations separately and instead, they seem to rely on the same arguments they made as to the issue of mediation confidentiality.

Here, as evidenced by Parties’ continued references and quotations to the Conversations in their respective MSJ briefings,<sup>9</sup> the Master finds the Conversations beneficial to show Parties’

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A. It wasn't threatening things. **It was just moral pressure as far as -- because they are the elders in the community, in our community, and we, you know, we have to respect and honor them.** (Waleed Hamed Dep., 170:20-171:7, 189:1-23, Jan. 22, 2020) (Emphasis added)

<sup>9</sup> While Hamed seems to consider all the Conversations as compromise negotiations and therefore excluded pursuant to Rule 408, Hamed himself referenced and quoted portions of the Conversations in his MSJ’s statement of facts (hereinafter “Hamed’s SOF”) and MIL—to wit, Yusuf’s testimony at his April 2, 2014 deposition, Mohammad Hamed’s testimony at his March 31, 2014 deposition, and the affidavit of Mohammad Hannun.

In Hamed’s SOF, Hamed provided in relevant part:

10. Fathi Yusuf’s deposition of April 2, 2014, provides the following at 77-79. Exhibit 8. ...[Yusuf] I—we met, and after I tell him my story of what I know at that time, he say, What do you want? I say, I’ll take two

intent. As such, without determining whether all or portions of the Conversations are compromise negotiations and whether Hamed met his burden, the Master will admit the Conversations under Rule 408(b)<sup>10</sup> for the limited purpose of showing Parties' intent.

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property for what I discover so far. He say, Which? I give him the description of the property, one in Jordan and one at Tutu Park. The one in Jordan, I pay one million two, approximate. The one at Tutu Park, I paid 1 million for it. 1,000,350, I believe. It's two pieces at Tutu Park, but we call it one piece. One-half an acre as an entrance, and 9.31 as the major piece of property. He say, You can have it. And after they say it, the man come up front after I tell him my story, and he was very generous to say, You can have it. And we kept talking, as a family. After all, we are family, as you mentioned over and over in your correspondence. We are family at that time, and we have a very high respect for each other, even though, up to now we still have high respect to each other, and I told him, No, one is enough.

...

13. ...Or, as Mohammad Hamed stated at 148-149 of his deposition: Mr. Fathi had asked for two pieces of property. He [Hamed] had agreed to that. Mr. Fathi had then said one is enough, and then again changed his mind and said, No, he wants the two. And I understood that then he also asked for a third piece of property. That there was a back and forth trying to find a way to -- to reach settlement, and that he [Hamed] says he's been accused by Mr. Fathi of stealing, he and his son. He says, I have not stolen. My son has not stolen. We are honorable people."

...

19. Yusuf's testimony makes it clear that multiple attempts to increase this to two (and perhaps three) parcels failed because he told the Hameds starting the NEXT DAY, that he was trying to get this "extra" land in compensation for "other claims" he "might discover" in the future— which he described as 'known or unknown'—for which he sought this additional land. Yusuf stated that Hamed rejected those proposal. Id. Again, Yusuf admitted the following: Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc.

20. Affidavit of Mohammad Hannun, April 21, 2014, (Ex. 4) states, at ¶19, Exhibit 4: before 24 hours past, Mr. Yusuf called and asked, if I find anything else, can he ask for it, and I said no the agreement covers everything, even what he doesn't know about right now, and Mr. Yusuf said no, that the agreement was for what he knew now, not for anything else he finds. Then there was no more agreement. And at ¶21: Finally, at one the last meetings, Mr. Yusuf said that if the Hameds transferred a third piece of property that would settle everything about the unauthorized monies, whatever he knows and he would not do any more searching for monies he did not know about." (MSJ, p. 17; Hamed's SOF ¶¶ 10, 13, 19, 20)

In his MIL, Hamed provided in relevant parts:

In that affidavit, Mr. Mohammad Hannun states of direct, personal knowledge as one of the mediators, that the partners had agreed early that day, in a post-July 2011 mediation, to finally execute a two parcel deal, but after they agreed, after they shook, after it was over and everyone went home:

before 24 hours past, Mr. Yusuf called and asked, if I find anything else, can he ask for it, and I said no the agreement covers everything, even what he doesn't know about right now, and Mr. Yusuf said no, that the agreement was for what he knew now, not for anything else he finds. Then there was no more agreement.

...

He says it plainly: "Then there was no more agreement." (MIL, pp. 6-7) (Emphasis in original)

<sup>10</sup> Rule 408(b) provides:

(b) Exceptions. The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, or negating a contention of undue delay

### **3. Rule 37 Sanctions**

The “imposition of sanctions for abuse of discovery [procedures] under [V.I. R. Civ. P.] 37 is a matter within the discretion of the trial court.” *Pedro v. Ranger American of the V.I., Inc.*, 70 V.I. 251, 294 (Super. Ct. March 22, 2019) (quoting *Davis v. Varlack Ventures, Inc.*, 59 V.I. 229, 236 (V.I. 2013)). Here, Hamed argued that Yusuf should not be allowed to use the affidavit of Mohammad Hannun, dated April 21, 2014 (hereinafter, Mohammad Hannun’s Affidavit), the affidavit of Bakir Hussein, dated August 10, 2014 (hereinafter “Bakir Hussein’s Affidavit), and the affidavit of Suleiman Khaled, dated May 31, 2014 (hereinafter “Suleiman Khaled’s Affidavit”)<sup>11</sup> under Rule 37 for failure to “disclose and produce until the very last second.” (MIL, p. 6) The Master will discuss the affidavits in turn.

#### **a. Bakir Hussein’s Affidavit**

The Master finds that, as to Bakir Hussein’s Affidavit, Yusuf and United did not “disclose and produce until the very last second.” As Hamed acknowledged in his MIL and MIL Reply, Bakir Hussein’s Affidavit was previously produced as an exhibit to Yusuf and United’s bench memorandum for status conference, dated December 13, 2017.<sup>12</sup> In fact, approximately a month later, Bakir Hussein’s Affidavit was produced again as an exhibit to Yusuf and United’s response

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<sup>11</sup> While Hamed did not identify the affiants in his MIL and MIL reply, Hamed referenced the affidavits produced by Yusuf and United in their second supplemental responses as to Hamed’s discovery served in connection with Hamed Claim No. H-142, dated December 30, 2019, and the affidavits attached to Yusuf and United’s motion for leave to file surresponse to Hamed’s reply in connection with Hamed’s motion for partial summary judgment for Hamed Claim No. H-142, dated January 6, 2020—which included: Mohammad Hannun’s Affidavit, Bakir Hussein’s Affidavit, and Suleiman Khaled’s Affidavit.

<sup>12</sup> In his MIL, Hamed noted that “in 2017 Yusuf filed one of three affidavits about settlement mediations about the alleged sale and transfer of this half-acre parcel to Yusuf—but did not disclose two others.” (MIL, p. 6) (Emphasis omitted)

In his MIL Reply, Hamed quoted to Yusuf and United’s motion for leave to file surresponse to Hamed’s reply in connection with Hamed’s motion for partial summary judgment for Hamed Claim No. H-142, dated January 6, 2020:

6. Affidavit of Bakkir Hussein filed in December 2017 also confirms Agreement In addition to the positions taken by Yusuf, the Affidavit of Bakkir Hussein previously produced on December 13, 2017 as Exhibit 1 to Yusuf’s Bench Memorandum for Status Conference, Bates Number FY015024-26, reflects the Partners’ agreement for Hamed to relinquish two properties to Yusuf in exchange for the misappropriations of which Yusuf was then aware. (MIL Reply, p. 4)

to Hamed's motion as to Hamed Claim No. H-2, filed on January 16, 2018. As such, the Master will not preclude Yusuf and United from using Bakir Hussein's Affidavit but only for the limited purpose of showing Parties' intent.<sup>13</sup>

**b. Mohammad Hannun's Affidavit and Suleiman Khaled's Affidavit**

The exclusion of evidence is not required for violations of Rule 26 as Rule 37(c)(1) explicitly states that “[i]n addition to or instead of this sanction, the court, on motion and after giving an opportunity to be heard may order payment of the reasonable expenses, including attorney's fees, caused by the failure; may inform the jury of the party's failure; and may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(2)(A)(i)-(vi).” V.I. R. Civ. P. 37(c)(1) (colon and subsection numbers omitted). The Court finds that Yusuf and United were given the opportunity to be heard via their MIL Opposition but they failed to use the opportunity to address the issue of sanctions raised in Hamed's MIL—they did not argue that their failure was justified or is harmless or why they should not be sanctioned under Rule 37. Nevertheless, the Master will exercise discretion and not preclude Yusuf and United from using Mohammad Hannun's Affidavit and Suleiman Khaled's Affidavit but only for the limited purpose of showing Parties' intent.<sup>14</sup> Instead, the Master will order Yusuf and United to pay for the reasonable fees and costs in connection with Hamed's MIL argument with regards to Rule 37 sanctions.

**B. MOTION FOR SUMMARY JUDGMENT**

In his MSJ, Hamed argued that “the Master has jurisdiction to hear this claim pursuant to RUPA...” despite Yusuf's claim that “as a threshold matter, [the Half Acre in Estate Tutu] wasn't Partnership property by 2011—and out of the Master's purview.” (MSJ, pp. 4-6) Hamed also

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<sup>13</sup> See discussion under Section A.2. Compromise Negotiations.

<sup>14</sup> See discussion under Section A.2. Compromise Negotiations.

made the following arguments in support of his MSJ: (1) “Legal Issue 1” - “This new Yusuf argument involves what both parties state was a settlement negotiation, and intermediate oral ‘agreements’ during such discussions are inadmissible and non-binding.” (Id., at p. 10); (2) “Legal Issue 2” - “Parol oral evidence cannot be admitted contradicting the writing that Yusuf calls the Agreement” and that “...Yusuf is trying to get away with is the argument that while the two men retained counsel, had a writing drafted and entered into it with regard to the Jordanian parcel; but oddly, the parallel contract for [the Half Acre in Estate Tutu] was not in writing.” (Id., at p. 11); (3) “Legal Issue 3” - “Yusuf is judicially estopped from arguing ‘alternative facts’” because “Fathi Yusuf submitted statements and financials, under oath to the IRB and to this Court; that until 2015, the half-acre parcel was always on the books and financials of the Partnership as a Partnership asset.” (Id., at p. 12); (4) “Legal Issue 4” - “...there is no offer and acceptance after the initial oral agreement as to the one parcel in Jordan—which Hamed did transfer to Yusuf—exactly as described in the writing.” (Id., at p. 13); (5) “Legal Issue 5” - “Even if Yusuf thought he initially had an oral deal for two parcels, Yusuf repudiated and then breached that deal by subsequently demanding that the deal would only go through with 2 then 3 parcels.” (Id., at p. 14); (6) “Legal Issue 6” - “Even if Yusuf thought he had an oral deal for two parcels, he cannot show facts that suggest he ‘paid’ the full ‘purchase price’ where he finally stated that he would not provide a release absent a third parcel.” (Id.); and (7) “Legal Issue 7” – “RUPA §204(c) creates a mandatory presumption that because the Partnership supplied the funds from its ‘d/b/a Plaza Extra account’ it is the owner” and that [the Half Acre in Estate Tutu] is treated as Partnership properties after 2011 as evidenced by the fact that rent deposits and accounting entries were carried on the Partnership’s books. (Id., at pp. 14-18) (Emphasis omitted) As such, Hamed concluded that “[t]here are no disputes as to any of the material facts here”, that “[t]here is no dispositive fact

which requires testimony”, that “[a]s a matter of law, there is no contract and no transfer of [the Half Acre in Estate Tutu].” (Id., at p. 18) (Emphasis omitted)

In their MSJ Opposition, Yusuf and United argued that “[n]othing in Hamed’s newly filed Motion for Summary Judgment resolves this dispute, factually or legally and, therefore, Hamed is not entitled to summary judgment as to Hamed Claim H-142” and that “[r]ather, there exists additional evidence to support Yusuf’s position that Hamed relinquished his interest in [the Half Acre in Estate Tutu] in 2011 as a result of a larger agreement between Yusuf and Hamed, further demonstrating that a genuine issue of material fact remains as to whether [the Half Acre in Estate Tutu] remained a Partnership asset after 2011.” (MSJ Opp., p. 2) Yusuf and United also made the following arguments in support of their MSJ Opposition: (1) “Yusuf has set forth sufficient factual evidence that he and Hamed had reached an agreement to resolve the \$2 million transgression with Hamed’s agreement to relinquish his interests to the Jordan Property as well as the Collective Tutu Property.” (Id., at p. 15); (2) “None of the ‘Legal Issues’ raised by Hamed are sufficient to demonstrate an entitlement to summary judgment as to the issue of ownership to [the Half Acre in Estate Tutu] after 2011.” (Id., at p. 16) More specifically, (i) “As to Hamed’s ‘Legal Issue 1’ that the events described were not settlement discussions, not an agreement and therefore, are inadmissible is incorrect”—to wit, “Yusuf’s agreement with Hamed was a fully consummated agreement, which Hamed breached when he refused to transfer the 9.3 acre portion of the Collective Tutu Property, months after the agreement had been reached and partially performed.” (Id.); (ii) As to ‘Legal Issue 2’, “Hamed’s argument that the broader agreement reached between the partners as to the relinquishment of Hamed’s interests in the Collective Tutu Property cannot exist because it was not in writing is without merit” because “[o]ral agreements and testimony by the partners as to the ownership and transfer of ownership of real property between the partnership and themselves is allowed as such matters are not governed by the statute of frauds” and

“[e]vidence as to such agreements are also not constrained by the parole evidence rule.” (Id., at p. 17); (iii) “As to Hamed’s ‘Legal Issue 3’ that Yusuf should be prohibited from arguing ‘alternative facts,’ Yusuf has demonstrated that his position has been consistent from the time the agreement was reached and the breached” and that “[t]o the extent that an incorrect statement was made in a pleading or an accounting record, it was noted.” (Id., at p. 18); (iv) “Likewise, as to Hamed’s ‘Legal Issue 4’ whether there was a meeting of the minds, Yusuf has demonstrated a clear understanding as to the agreement and has demonstrated Hamed’s assent.” (Id., at p. 19); (v) “As to Hamed’s ‘Legal Issue 5,’ there was no repudiation, the agreement ultimately reached was for two properties.” (Id., at p. 20); (vi) “As to Hamed’s ‘Legal Issue 6’ there was consideration, as Yusuf has not pursued the specific issues giving rise to the \$2 million transgression and agreed to forebear the pursuit of them.” (Id.); and (vii) “Finally, as to [Hamed’s ‘Legal Issue 7’] the issue of rebuttable presumption of the nature of the asset, Yusuf has demonstrated that Hamed’s relinquishment of [the Half Acre in Estate Tutu] was the result of an agreement reached between the parties to compensate for misappropriations and that it was effective upon the agreement and evidenced, in part, by the partial performance of the agreement with the transfer of the Jordan Property.” (Id., at pp. 20-21) As such, Yusuf and United requested the Master to deny Hamed’s motion for summary judgment.

In his MSJ Reply, Hamed reiterated his arguments and disputed specific parts of Yusuf and United’s MSJ Opposition. (MSJ Reply, pp. 1-12) Hamed pointed out that Yusuf and United never addressed “the facts under RUPA §204(c) that: (1) in 2011, the Partnership did not actually transfer the parcel, (2) that in 2011, the Partner expressed his intent not to transfer and refused to transfer and (3) that the treatment in the years after the alleged 2011 transfer reflects the intent of the Partners not to transfer—that this was still intended to be Partnership Property—the Partnership paid all taxes, collected all rents, carried the parcel on its books and represented its

ownership to both federal and territorial tax and corporate authorities.” (Id., at p. 12) Hamed also responded to Yusuf and United’s responses to Hamed’s “Legal Issues”: (i) “Legal Issue 1” - Yusuf and United did “not dispute that it was a settlement negotiation” and “[t]hus, any discussion of a two-parcel contract falls squarely under Rule 408 and must be excluded.” (Id., at p. 13); (ii) “Legal Issue 2” - the parol evidence rule is not obviated by RUPA (Id.); (iii) “Legal Issue 3” - Yusuf and United have changed their position after 2015 and they “cannot ‘correct’ long-term, consistent and explicit documented factual representations 3 years into a case by saying ‘oops...’ we ‘misspoke’ repeatedly.” (Id., at pp. 15-16); (iv) “Legal Issue 4” - Yusuf and United “admit[ed] as a fact, that there was not a meeting of the minds, but suggest[ed] that this was due to deception...because Wally failed or was deceptive as a messenger” or “[a]lternatively, Yusuf [and United] argue[d] there was never evidence of a lack of meeting of the minds because Mohammad did not dispute statements Yusuf said he made when signing a document Yusuf had drafted which said the opposite...one parcel.” (Id., at p. 17) (Emphasis omitted); (v) “Legal Issue 5” - “[T]he negotiations never really stopped” and that additional parcels came up during renegotiation. (Id., at p. 20); (vi) “Legal Issue 6” - Yusuf and United’s response was a “misrepresentation” because they have pursued the \$2 million transgression and tried to recover these funds. (Id.); and (vii) “Legal Issue 7” - Yusuf and United failed to “address the real impact and holding of the whole body of RUPA law...” and “[t]his case should really be decided on this RUPA issue as a matter of law.” (Id., at p. 22) As such, Hamed again concluded that “[t]here are no disputes as to any of the material facts here”, that “[t]here is no dispositive fact which requires testimony”, that “[a]s a matter of law, there is no contract and no transfer of [the Half Acre in Estate Tutu].” (Id., at p. 23) (Emphasis omitted)

The Master must address the threshold issue at the outset<sup>15</sup> that the Master has jurisdiction to hear motions filed in connection with Hamed Claim No. H-142.<sup>16</sup>

### **1. The Original Agreement**

Based on the record before the Master, the Master finds that: (i) it is undisputed that Hamed, Yusuf, and Waleed Hamed, at some time in 2010 or 2011, met to discuss Yusuf's discovery of Hamed's misappropriation of funds;<sup>17</sup> and (ii) it is undisputed, per Yusuf's admission and corroborated by Hamed, that while Yusuf originally asked for two properties— with one of the two properties being a property located in Jordan (hereinafter "Jordan Property")—to resolve the issue of Hamed's misappropriation of funds, he ultimately agreed to one property— the Jordan Property—because he believed Hamed "was being straight with him" (hereinafter "Original

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<sup>15</sup> Although the threshold issue of whether jurisdiction to hear motions filed in connection with Hamed Claim No. H-142 was not raised in Yusuf and United, it was addressed in Hamed's motion.

<sup>16</sup> See *supra*, footnote 1. Also, in the Partial Summary Judgment Order, the Master found that it remains in dispute whether the Partnership's United or Yusuf's United held title to the Half Acre in Estate Tutu after 2011.

<sup>17</sup> In Hamed's SOF, Hamed provided in relevant parts,

9. Fathi Yusuf and Mohammad Hamed gave very similar deposition testimonies about **what happened regarding the 2010 in-person negotiation** and 2011 writing that underlie Yusuf's position here. Compare Yusuf testimony with Hamed testimony. ¶¶ 10-16 below. (Hamed's SOF, ¶¶ 8-9) (Emphasis added)

In their MSJ Opposition, Yusuf and United provided in relevant parts,

**1. Discussion with Hamed, Yusuf and Waleed at Hamed's Home in St. Croix.** (MSJ Opp., p. 4)

In their opposition to Hamed's SOF, Yusuf and United provided in relevant parts,

Yusuf's Response to Hamed Statement No. 9: Disputed as written. **Yusuf admits that he discovered transgression of the Hameds and investigated these issue [sic] in discussions with them.** There was an agreement reached for Hamed to transfer and/or relinquish his interest in a property in Jordan and property in Tutu consisting of a 9.3 acre tract and the half-acre entrance parcel, which is the subject of Hamed's Motion. The substance of this agreement and factual support for the same are set forth in Yusuf's Opposition to the Motion as well as his Statement of Disputed Facts. Both are incorporated herein as responsive to this statement to the extent that it seeks to evidence any statements to the contrary. (Emphasis added)

In the statement of facts attached to Yusuf and United's opposition to Hamed's motion for summary judgment (hereinafter "Yusuf and United's SOF"), Yusuf and United provided in relevant parts,

**5. At the meeting at Hamed's St. Croix home**, Hamed agreed to relinquish his interests in two properties, the Jordan Property and the Collective Tutu Property, but Yusuf then says one is enough—the Jordan Property... (Yusuf and United's SOF, ¶ 5) (Emphasis omitted)

At his January 22, 2020 deposition, Waleed Hamed testified:

Q. Okay. And do you recall the specific day that Mr. Yusuf was talking about? The day where you and he and your father met?

A. **It was sometime – sometime in 2010.** (Waleed Hamed Dep. 151:21-24, Jan. 22, 2020) (Emphasis added)

Agreement”).<sup>18</sup> However, the following issues are in dispute: (i) As to the second property Yusuf asked for, whether the second property referred to (a) the Half Acre in Estate Tutu, or (b) the entire

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<sup>18</sup> In Yusuf and United’s SOF, Yusuf and United provided in relevant parts,

5. At the meeting at Hamed’s St. Croix home, Hamed agreed to relinquish his interests in **two properties, the Jordan Property and the Collective Tutu Property, but Yusuf then says one is enough—the Jordan Property...** (Yusuf and United’s SOF, ¶ 5) (Emphasis added)

At his April 2, 2014 deposition, Yusuf testified:

A. I -- we met, and after I tell him my story of what I know at that time, he say, What do you want? I say, **I'll take two property for what I discover so far. He say, Which? I give him the description of the property, one in Jordan and one at Tutu Park.** The one in Jordan, I pay one million two, approximate. The one at Tutu Park, I paid 1 million for it. 1,000,350, I believe. It's two pieces at Tutu Park, but we call it one piece. One-half an acre as an entrance, and 9.31 as the major piece of property.

He say, You can have it. And after they say it, the man come up front after I tell him my story, and he was very generous to say, You can have it. And we kept talking, as a family. After all, we are family, as you mentioned over and over in your correspondence. We are family at that time, and we have a very high respect for each other, even though, up to now we still have high respect to each other, **and I told him, No, one is enough.** (Yusuf Dep. 78:9-25, April 2, 2014) (Emphasis added)

In Yusuf’s Interrogatory Answers in Case 733, Yusuf provided in relevant parts:

It was then then that Mohammed Hamed asked Responding Part [Yusuf], “what he [Responding Party] wanted in exchange” and Responding Party requested that for what he has seen so far, including an estimated amount for the gambling, the account will balance out if Mohammed Hamed were transfer his interest in two (2) properties: the one property in Jordan, and the property in Tutu Park. Defendant Yusuf had purchased both properties and transferred a half interest to Mohammed Hamed and/or a corporation owned by both families.

**When Mohammed immediately agreed to transferring his interest in the two (2) properties, admitting responsibility, Responding Party believed that Mohammed Hamed was being straight with him. Responding Party then said that one property was enough, that he will take the property in Jordan.** (Yusuf’s Interrogatory Answers in Case 733, p. 8) (Emphasis added)

At his March 31, 2014 deposition, Hamed testified:

Q. (Mr. Hodges) Mr. Hamed, given the 25 -plus years that your -- you and Mr. Yusuf have -- have worked together in the store, why haven't you taken the time to make sure you understand what the facts are with respect to this \$2.7 million dispute?

...

Q. (Mr. Hodges) In the past two years, isn't that right?

A. (Speaking in Arabic.) Okay. Go ahead.

THE INTERPRETER: He said, I begged him to sit and -- and -- and -- so we can finish this, and in Jordan, we -- we -- we, in my house, we met, and I was giving him -- (speaking in Arabic). **He asked for two pieces of -**

A. **Just one I want.** (Hamed Dep. 137:10-14, 138:7-15, March 31, 2014) (Emphasis added).

At his January 22, 2020 deposition, Waleed Hamed testified:

A. And the deal was to go ahead. We're going to sell the stores. We're going to get our half. Everybody goes his own way. And like Fathi said in the video, we're family and we want to stay family and so on. At the end of the deal where my dad asked Fathi, Okay. Well, look, we need to finish with this. We need to buy peace or -- or get peace together, we can't continue doing this. **And he offered -- Fathi said, I want two pieces of property. My father said, Yes. Fathi said, Look, it's not -- at the end of the day, he only accepted one.**

Q. And where were those two pieces?

A. **Those two pieces of property were -- were in Jordan.**

Estate Tutu (which includes the Half Acre in Estate Tutu and the 9.3 acre parcel of Estate Tutu (hereinafter “9.3 Acres of Estate Tutu” together with Half Acre in Estate Tutu, the “Entire Estate Tutu”)), or (c) another property in Jordan (hereinafter “Second Jordan Property”). Based on Yusuf’s Amended Accounting Claims, the second property seems to refer only to the Half Acre in Estate Tutu.<sup>19</sup> However, based on Yusuf testimony at his April 2, 2014 deposition and Yusuf’s SOF, the second property seems to refer to the Entire Estate Tutu,<sup>20</sup> and based on Waleed Hamed’s

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**Q. So the original deal was for two pieces – your father said yes to a deal for two pieces of property in Jordan?**

**A. Yes, sir.**

Q. Okay. And -- and after he said yes, Mr. Yusuf and your father talked some more?

A. Yes.

**Q. And before the thing was over, Mr. Yusuf said, You don't need to give me two pieces, you just give me one parcel?**

**A. Yes.**

Q. Okay. And did they shake on that?

A. Yes, they did.

Q. And did they say that's a deal?

A. Yes, sir.

Q. And that was it, it was over?

A. Yes. (Waleed Hamed Dep. 155:3-156:8, Jan. 22, 2020) (Emphasis added)

<sup>19</sup> In Yusuf’s Amended Accounting Claims, Yusuf provided in relevant parts:

Hamed’s interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed’s efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed’s interest in such parcel is attached as Exhibit O.<sup>16</sup> **Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed’s interest in two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner’s Bi-Monthly Reports. See Ninth Bi-Monthly Report at p. 5-6. Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc.** Hamed, through his son, Waleed, refused to convey this third parcel. (Yusuf’s Amended Accounting Claims, pp.13-14) (Emphasis added)

<sup>20</sup> At his April 2, 2014 deposition, Yusuf testified:

A. I -- we met, and after I tell him my story of what I know at that time, he say, What do you want? I say, I’ll take two property for what I discover so far. He say, Which? **I give him the description of the property, one in Jordan and one at Tutu Park. The one in Jordan, I pay one million two, approximate. The one at Tutu Park, I paid 1 million for it. 1,000,350, I believe. It’s two pieces at Tutu Park, but we call it one piece. One-half an acre as an entrance, and 9.31 as the major piece of property.** (Yusuf Dep. 78:9-25, April 2, 2014) (Emphasis added)

In Yusuf’s SOF, Yusuf and United provided in relevant parts,

testimony at his January 22, 2020 deposition, the second property seems to refer to the Second Jordan Property;<sup>21</sup> (ii) As to the Original Agreement, whether it resolved the issue of Hamed's misappropriation known at the time or the issue of all of Hamed's misappropriation, whether known or unknown. According to Yusuf's testimony at his January 22, 2020 deposition,<sup>22</sup> Yusuf's

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5. At the meeting at Hamed's St. Croix home, Hamed agreed to relinquish his interests in two properties, the Jordan Property and the **Collective Tutu Property**, but Yusuf then says one is enough—the Jordan Property... (Yusuf and United's SOF, p. 2) (Emphasis added)

*See also, infra*, footnote 34.

<sup>21</sup> At his January 22, 2020 deposition, Waleed Hamed testified:

A. And the deal was to go ahead. We're going to sell the stores. We're going to get our half. Everybody goes his own way. And like Fathi said in the video, we're family and we want to stay family and so on. At the end of the deal where my dad asked Fathi, Okay. Well, look, we need to finish with this. We need to buy peace or -- or get peace together, we can't continue doing this. **And he offered -- Fathi said, I want two pieces of property. My father said, Yes. Fathi said, Look, it's not -- at the end of the day, he only accepted one.**

Q. [Mr. Hartmann] And where were those two pieces?

A. **Those two pieces of property were -- were in Jordan.**

Q. **So the original deal was for two pieces -- your father said yes to a deal for two pieces of property in Jordan?**

A. **Yes, sir.**

...

Q. [Ms. Perrell] Okay. **Mr. Yusuf's position is that the property that were discussed at this meeting with the three of you actually involved property in St. Thomas, that we refer to as the Tutu Park property. Not Tutu Park, just Tutu property. Do you dispute that?**

A. Yes.

Q. Okay. **So is it your testimony that there was no discussion about the Tutu property at all during this meeting that you had -- well, that you were present for between Mohammad Hamed and Mr. Yusuf?**

A. **That's correct.** (Waleed Hamed Dep. 155:3-20, 156:18-157:4, Jan. 22, 2020) (Emphasis added)

*See also, infra*, footnote 35.

<sup>22</sup> At his January 22, 2020 deposition, Yusuf testified:

Q. Right. No, what happened at the actual meeting that you had with --

...

A. But Mr. Mohammad, I want you to know, **the settlement only cover what I discover so far.** Now, I have all the right to accuse these people, they're not straight. So I will take it as a settlement in exchange of the 3.4; the 2 million and the one million point 4. Because the property, Tutu Park, I purchased for \$1 million. And the half acre, three thirty. That's one million three. And the property in Jordan is about one million one, one million two. So it's a total of like two million something.

...

...

A. ...I told Wally -- after about half an hour in my office, I double-check. I find what Mohammad told me unfortunately is the opposite.

Q. Okay.

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**A. I say then, I should never done what I did, and they don't deserve it. They have to put it back. But now these two property, only for what I discover. Only and only for what I discover. A million four and 2 million.**

Q. Okay. So what did you say to Wally?

A. I told him, Wally, do me a favor. Tell your father I have to have the two property for this deal to cover this, the three million four is, you know, to cover it up.

...

**Q. Mr. Yusuf, I think I need to clarify one question. When you had the initial meeting with the three of you, -**

**A. Yes.**

**Q. -- was that on the basis of just what you had found out so far?**

**A. Exactly.**

Q. Okay. And did you convey that to both Mohammad Hamed -

A. Explain.

Q. But I'm asking you, did you -

A. Yes.

Q. -- say to them, we're going to resolve this issue only?

A. Yes.

Q. Okay. All right. (Yusuf Dep. 208:19-20, 209:9-18, 212:22-213:9, 224:4-19 January 22, 2020) (Emphasis added)

Amended Accounting Claims,<sup>23</sup> Yusuf's Interrogatory Answers in Case 733,<sup>24</sup> and Yusuf's testimony at his April 2, 2014 deposition,<sup>25</sup> it seems like the Original Agreement was to resolve the issue of Hamed's misappropriation known at the time. However, according to Waleed

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<sup>23</sup> In Yusuf's Amended Accounting Claims, Yusuf provided in relevant parts:

**Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997.** A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as Exhibit O.<sup>16</sup> Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. See Ninth Bi-Monthly Report at p. 5-6. **Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc.** Hamed, through his son, Waleed, refused to convey this third parcel. (Yusuf's Amended Accounting Claims, pp.13-14) (Emphasis added)

<sup>24</sup> In Yusuf's Interrogatory Answers in Case 733, Yusuf provided in relevant parts:

...Responding Party has asked Waleed Hamed to account for certain transactions based on the report from the St. Martin Banking Authorities given to the US Government.... Such documents, include and are not limited to...shows that "\$2,000,000 dollars [were transferred], in favor of Mohammad Abdel Qader Hamed...

...

Responding Party [Yusuf] also reminded Mohammed Hamed that he had told [Mohammed Hamed] even before this dispute arose, to speak to Wally Hamed about his gambling addiction and that Wally has been going almost every night to the casino and gambling the maximum amount of \$500.00 on each hand.... During this same meeting in Estate Carlton, Responding Party also discussed several deposits of funds to Wally Hamed's personal Merrill Lynch account that he had seen on the Hard drive, amounting to about \$300,000.00+.

It was then that Mohammed Hamed asked Responding Party, "what he [Responding Part] wanted in exchange" and Responding Party **requested that for what he has seen so far, including an estimated amount for the gambling**, the account will balance out if Mohammed Hamed were transfer his interest in two (2) properties: the one property in Jordan, and the property in Tutu Park.

When Mohammed immediately agreed to transferring his interest in the two (2) properties, admitting responsibility, Responding Party believed that Mohammed Hamed was being straight with him. Responding Party then said that one property was enough, that he will take the property in Jordan.

... (Yusuf's Interrogatory Answers in Case 733, p. 8) (Emphasis added)

<sup>25</sup> At his April 2, 2014 deposition, Yusuf testified:

A. I -- we met, and after I tell him my story of what I know at that time, he say, What do you want? I say, **I'll take two property for what I discover so far.** He say, Which? I give him the description of the property, one in Jordan and one at Tutu Park. The one in Jordan, I pay one million two, approximate. The one at Tutu Park, I paid 1 million for it. 1,000,350, I believe. It's two pieces at Tutu Park, but we call it one piece. One-half an acre as an entrance, and 9.31 as the major piece of property. (Yusuf Dep. 78:9-25, April 2, 2014) (Emphasis added)

Hamed's testimony at his January 22, 2020 deposition,<sup>26</sup> it seems like the Original Agreement was to resolve the issue of all of Hamed's misappropriation, whether known or unknown.

## **2. The Original Agreement was Rescinded by Yusuf**

Based on the record before the Master, the Master finds that it is undisputed, per Yusuf's admission and corroborated by Hamed, that Yusuf subsequently rescinded the Original

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<sup>26</sup> At his January 22, 2020 deposition, Waleed Hamed testified:

Q. (Ms. Perrell) The -- the agreement, as you understood it, which was to transfer one property, **was it your understanding that that was an agreement that would resolve all of the outstanding issues between the partners?**

A. **Yes.** And it was an agreement also to go ahead and sell the stores or divide the stores up equally and everybody goes their separate ways.

Q. Okay. Are you aware, or were you ever present for a series of other meetings that took place in -- subsequent to this initial meeting that you had with Mr. Yusuf and your father?

...

Q. Okay. And just to be clear, **you dispute Mr. Yusuf's contention that the resolution that he had reached with your father as to a limited number of claims he had involved the Tutu half acre or the Tutu property; is that correct?**

A. **Yeah, I disagree with him.** (Waleed Hamed Dep. 169:9-20, 173:11-17, Jan. 22, 2020) (Emphasis added)

Agreement.<sup>27</sup> According to Yusuf and United's SOF,<sup>28</sup> Yusuf testimony at his April 2, 2014 deposition,<sup>29</sup> and Yusuf's Interrogatory Answers in Case 733,<sup>30</sup> Yusuf rescinded the Original Agreement because he discovered additional misappropriation of funds by Hamed.

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<sup>27</sup> In Yusuf and United's SOF, Yusuf provided in relevant parts:

7. Within hours of returning to the Store from Hamed's home, Yusuf tells Waleed to advise Mohammed that the deal is for two properties—the Jordan Property and the Collective Tutu Property as originally agreed to... (Yusuf and United's SOF, ¶ 7)

In Yusuf's Amended Accounting Claims, Yusuf provided in relevant parts:

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as Exhibit O to the Original Claims<sup>18</sup>. **Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas**, previously titled in the name of Plessen Enterprises, Inc., which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. See Ninth Bi-Monthly Report at p. 5-6. **Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc.** Hamed, through his son, Waleed, refused to convey this third parcel. (Yusuf's Amended Accounting Claims, pp.13-14) (Emphasis added)

At his April 2, 2014 deposition, Yusuf testified:

[Yusuf.] He say, You can have it. And after they say it, the man come up front after I tell him my story, and he was very generous to say, You can have it. And we kept talking, as a family. After all, we are family, as you mentioned over and over in your correspondence. We are family at that time, and we have a very high respect for each other, even though, up to now we still have high respect to each other, and I told him, No, one is enough. But we kept talking.

And when we kept talking, you know, whatever what he was saying, it doesn't add up. So I went to the store, I take a look, and I analyze the bank statement of what he was saying. I say, Man, after that, this man would not even tell me the truth, unfortunate? **So immediately I told Wally, Do me a favor, Wally. You was present. Go back to your father and tell him, No, I wanted the two piece of property.** (Yusuf Dep. 78:9-79:9, April 2, 2014) (Emphasis added)

In Yusuf's Interrogatory Answers in Case 733, Yusuf provided in relevant parts:

Immediately, the same afternoon, **Responding Party [Yusuf] informed Waleed Hamed to tell his father that one property not enough to compensate and that it had to be the two (2) properties** they had agreed on -the Jordanian Property, and the Tutu Park property.

...

When Responding Party returned to St. Croix, he continued to review the hard -drive and discovered even more unauthorized transactions of Wally Hamed taking funds for his personal use. As a result of these new discoveries of even more unauthorized transfer of funds by Plaintiff Waleed Hamed, **the Defendant [Yusuf] informed Wally Hamed that it has to be three (3) properties to cover everything Responding Party had found.** Responding Party requested that Mohammed Hamed transfer his interest in another property in Jordan Responding Party had bought and given an half interest to Mohammed Hamed. (Yusuf's Interrogatory Answers in Case 733, pp. 8-9) (Emphasis added)

At his March 31, 2014 deposition, Hamed testified:

THE INTERPRETER: He said, I begged him to sit and -- and -- and -- so we can finish this, and in Jordan, we -- we -- we, in my house, we met, and I was giving him -- (speaking in Arabic). He asked for two pieces of -

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**A. Just one I want.**

THE INTERPRETER: -- he had asked for two pieces of property in Jordan. He told him, I'd sign for – for them, no problem. Later, he came – him, You've kicked me in my stomach. It's a term of, in other words, he was willing to accept, as I understand, one piece of property instead of two.

**Next day, he came back and asked for the other piece of property.** (Hamed Dep. 138:10-24, March 31, 2014) (Emphasis added).

<sup>28</sup> In Yusuf and United's SOF, Yusuf and United provided in relevant parts:

6. Discussions continued at Hamed's home between Yusuf and Hamed and Yusuf's memory is triggered to verify Hamed's statements as he described in his November, 2013 Interrogatory Response:

**After Mohammed Hamed had immediately agreed to make up for the transactions and to give up his interests in the two properties, Responding Party [Yusuf] and Mohammed Hamed began to chat. We talked about different properties. As Mohammed Hamed and Responding Party [Yusuf] continued to talk, Mohammed Hamed disclosed to Responding Party [Yusuf] that he had bought a piece of property in Jordan, a five-acre Olive Farm...The conversation triggered a memory, and when Responding Party [Yusuf] went back to the store he looked at the bank statements to confirm what Mohammed Hamed had told him, and the bank statement show that Mohammed Hamed had not been telling the truth... See Exhibit B-Yusuf Nov. 2013 Interrog. Resp. in 377 Case, No. 1, p. 8.**

7. Within hours of returning to the Store from Hamed's home, Yusuf tells Waleed to advise Mohammed that the deal is for two properties—the Jordan Property and the Collective Tutu Property as originally agreed as he testified in his November, 2013 Interrogatory Response:

**Immediately, the same afternoon, Responding Party [Yusuf] informed Waleed Hamed to tell his father that one property not enough to compensate and that it had to be the two (2) properties they had agreed on—the Jordanian Property, and the Tutu Park property. See Exhibit B-Yusuf Nov. 2013 Interrog. Resp. in 377 Case, No. 1, p. 8-9. (Yusuf and United's SOF, ¶¶ 6-7) (Emphasis added)**

<sup>29</sup> At his April 2, 2014 deposition, Yusuf testified:

[Yusuf.] He say, You can have it. And after they say it, the man come up front after I tell him my story, and he was very generous to say, You can have it. And we kept talking, as a family. After all, we are family, as you mentioned over and over in your correspondence. We are family at that time, and we have a very high respect for each other, even though, up to now we still have high respect to each other, and I told him, No, one is enough. But we kept talking.

And when we kept talking, you know, whatever what he was saying, it doesn't add up. **So I went to the store, I take a look, and I analyze the bank statement of what he was saying. I say, Man, after that, this man would not even tell me the truth, unfortunate?** So immediately I told Wally, Do me a favor, Wally. You was present. **Go back to your father and tell him, No, I wanted the two piece of property.** (Yusuf Dep. 78:9-79:9, April 2, 2014) (Emphasis added)

<sup>30</sup> In Yusuf's Interrogatory Answers in Case 733, Yusuf provided in relevant parts:

After Mohammed Hamed had immediately agreed to make up for the transactions and to give up his interests in the two properties, Responding Part and Mohammed Hamed began to chat. We talked about different properties. As Mohammed Hamed and Responding Part continued to talk, Mohammed Hamed disclosed to Responding Part that he had bought a piece of property in Jordan, a five-acre Olive Farm for \$20,000.00. **The conversation triggered a memory, and when Responding Party went back to the store he looked at the bank statements to confirm that Mohammed Hamed had told him, and the bank statement show that Mohammed Hamed has not been telling the truth and that he had actually paid \$119,000.00 for the Olive Farm.**

This proof from Mohammed Hamed's own bank statements and Mohammed Hamed and Waleed insisting that the money had been transferred from St. Martin Bank in Jordanian dollars, **Responding Party realized that when Mohammed Hamed had sworn on the Qur'an that he had not betrayed Responding Party, that this transaction with the farm shows that Mohammed Hamed had not told the truth and had "sworn lie."** (Yusuf's Interrogatory Answers in Case 733, p. 9) (Emphasis added)

In *Wilkinson v. Wilkinson*, the U.S. Virgin Islands Supreme Court concluded that “sections 162 and 164 of the Restatement (Second) of Contracts represent the soundest rules of decision for the Virgin Islands” and that “[t]hese rules have been regularly applied to evaluate rescission claims in courts of the Virgin Islands for the last fifty years, and we see no reason to deviate from that practice now.” 70 V.I. 901, 913 (V.I. 2019). The U.S. Virgin Islands Supreme Court held that:

...to prevail on a claim to rescind a contract based upon fraud in the inducement, a party must show that: (1) there was a misrepresentation, (2) the misrepresentation was fraudulent or material, (3) the misrepresentation induced the recipient to enter the contract, and (4) that the recipient's reliance on the misrepresentation was reasonable.

A misrepresentation, in this context, is “an assertion that is not in accord with the facts. In turn, a misrepresentation is fraudulent where the maker “intends his assertion to induce a party to manifest his assent and the maker (a) knows or believes that the assertion is not in accord with the facts, or (b) does not have the confidence that he states or implies in the truth of the assertion, or (c) knows that he does not have the basis that he states or implies for the assertion.” *See Pollara*, 58 V.I. at 471. 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.” RESTATEMENT (SECOND) OF CONTRACTS § 162(2). *Id.*, 70 V.I. at 914.

In this instance, Yusuf entered into the Original Agreement based on Hamed’s representation that there is no other misappropriation of funds by Hamed but Yusuf subsequently discovered other

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Immediately, the same afternoon, Responding Party [Yusuf] informed Waleed Hamed to tell his father that one property not enough to compensate and that it had to be the two (2) properties they had agreed on -the Jordanian Property, and the Tutu Park property.

Shortly thereafter, Mohammed Hamed travelled to Jordan with his son Mufeed Hamed. Responding Party followed them to Jordan to complete the transfer of the property in Jordan. Before Mohammed Hamed transferred the property, Responding Party made it clear, more than once, that his acceptance of the two (2) properties were only for what he had discovered so far, the approximately \$300+ Merrill Lynch deposits, the \$1.3 million (\$2 million less the \$700K he had received) and an estimate of a \$1 million at least, to cover Wally Hamed's gambling habit.

Mohammed Hamed went ahead and transferred his interest in the Jordanian Property, and was supposed to transfer his interest in the Tutu Park Property, but never did so.

**When Responding Party returned to St. Croix, he continued to review the hard -drive and discovered even more unauthorized transactions of Wally Hamed taking funds for his personal use.** As a result of these new discoveries of even more unauthorized transfer of funds by Plaintiff Waleed Hamed, the Defendant [Yusuf] informed Wally Hamed that it has to be three (3) properties to cover everything Responding Party had found. Responding Party requested that Mohammed Hamed transfer his interest in another property in Jordan Responding Party had bought and given an half interest to Mohammed Hamed. (Yusuf’s Interrogatory Answers in Case 733, pp. 8-9) (Emphasis added)

misappropriation of funds by Hamed.<sup>31</sup> The Master finds that: (1) there was a misrepresentation by Hamed—to wit, Hamed’s representation that there are no other misappropriation of funds by Hamed but other misappropriation of funds by Hamed were discovered, (2) the misrepresentation was fraudulent or material—to wit, it was material because “it would be likely to induce a reasonable person to manifest his assent” or “the maker [Hamed] knows “that it would be likely to induce the recipient [Yusuf] to do so”, (3) the misrepresentation induced the Yusuf to enter into the Original Agreement, and (4) that Yusuf’s reliance on the misrepresentation was reasonable. As such, Yusuf was allowed to rescind the Original Agreement on the basis of material misrepresentation.

### **3. Yusuf’s New Offers to Hamed**

Based on the record before the Master, the Master finds that it is undisputed, per Yusuf’s admission and corroborated by Hamed, that Yusuf subsequently extended new offers to Hamed after Yusuf rescinded the Original Agreement—to wit, Yusuf asked for additional properties to resolve the issue of Hamed’s misappropriation of funds.<sup>32</sup> However, the following issues are in dispute: (i) As to the additional properties Yusuf asked for, whether the second property referred to the Half Acre of Estate Tutu or the Entire Estate Tutu or the Second Jordan Property and

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<sup>31</sup> See *infra*, footnotes 28, 29, and 30.

<sup>32</sup> See *infra*, footnotes 28, 29, and 30.

In Hamed’s SOF, Hamed provided in relevant part:

13. But Yusuf made a HUGE error between that first negotiation and his subsequent demands over the next few days and then months. **He has testified that he started trying to justify more parcels by stating to Wally that he knew there were additional acts of theft and malfeasance he would find**, and that based on his post-meeting “review of [his] papers” he was demanding the additional land for “known and unknown claims.” This really, really, really, really upset Mohammad Hamed... (Hamed’s SOF ¶13) (Emphasis added)

At his April 1, 2014 deposition, Hamed testified:

THE INTERPRETER: He -- and I'll do my best to remember everything, and I'll try to relate what he -- what he said. He says he -- he pleaded with Mr. Fathi Yusuf not to let this get bigger and get -- go to court; that in the process of trying to settle this, Mr. Fathi had asked for two pieces of property. He had agreed to that. Mr. Fathi had then said one is enough, and then again changed his mind and said, No, he wants the two. And I understood that then he also asked for a third piece of property. That there was a back and forth trying to find a way to -- to reach settlement, and that he says he's been accused by Mr. Fathi of stealing, he and his son. (Hamed Dep. 148:20-149:7)

whether the third property referred to the 9.3 Acres of Estate Tutu or the Entire Estate Tutu or the Second Jordan Property. Based on Yusuf's Amended Accounting Claims, and as pointed out by Hamed, the second property seems to refer to the Half Acre of Estate Tutu and the third property seems to refer to the 9.3 Acres of Estate Tutu.<sup>33</sup> However, based on Yusuf and United's MSJ Opposition, Yusuf and United's SOF, Yusuf's testimony at his January 22, 2020 deposition, Yusuf testimony at his April 2, 2014 deposition, and Yusuf's Interrogatory Answers in Case 733, the second property seems to refer to the Entire Estate Tutu and the third property seems to refer to the Second Jordan Property.<sup>34</sup> But, based on Waleed Hamed's testimony at his January 22, 2020

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<sup>33</sup> In Yusuf's Amended Accounting Claims, Yusuf provided in relevant parts:

Hamed's interest in another parcel that was purchased in Jordan using funds from the Plaza Extra Stores has already been conveyed to Yusuf as part of Hamed's efforts to appease Yusuf following his discovery of the misappropriation of \$2,000,000 sent to Hamed from St. Maarten in or around 1997. A copy of the agreement in Arabic conveying Hamed's interest in such parcel is attached as Exhibit O to the Original Claims<sup>18</sup>. Yusuf had agreed to resolve this misappropriation, but not any others that Yusuf might later discover, by the conveyance of Hamed's interest in **two parcels, one in Jordan that is the subject of Exhibit N, and one half acre parcel in St. Thomas, previously titled in the name of Plessen Enterprises, Inc.**, which is addressed in a number of the Liquidating Partner's Bi-Monthly Reports. See Ninth Bi-Monthly Report at p. 5-6. **Yusuf insisted that if Hamed wanted a resolution addressing all Hamed misappropriations, whether known or unknown, Hamed would have to arrange for the conveyance to Yusuf or United of another approximately 9.3 acre parcel located on St. Thomas also titled in the name of Plessen Enterprises, Inc.** Hamed, through his son, Waleed, refused to convey this third parcel. (Yusuf's Amended Accounting Claims, pp.13-14) (Emphasis added)

<sup>34</sup> In Yusuf and United's MSJ Opposition, Yusuf and United provided in relevant parts:

As Yusuf stated in his original opposition to Hamed's Motion for Partial Summary Judgment, in 2011, the Partners agreed to reconcile a \$2,000,000 disparity, in which Yusuf discovered Hamed had misappropriated partnership assets. **As part of Hamed's efforts to appease Yusuf following his discovery of this significant misappropriation, Hamed agreed to relinquish his interests to two Partnership properties: to wit, 1) one located in the district of Tabarbour in Jordan (the "Jordan Property"), and 2) property located in Tutu, St. Thomas including both a 9.3 acre tract titled in Plessen and the Tutu Half-Acre (titled, at the time, in United)(both the 9.3 acre tract and the Tutu Half-Acre are referred to collectively as the "Collective Tutu Property")** so that Yusuf would then own these properties separate and apart from the Partnership. In exchange, Yusuf would forbear pursuit of Hamed for the \$2 million misappropriation of partnership assets. (MSJ Opp., pp. 2-3) (Emphasis added)

In Yusuf and United's SOF, Yusuf and United provided in relevant parts:

5. At the meeting at Hamed's St. Croix home, Hamed agreed to relinquish his interests in two properties, the Jordan Property and the **Collective Tutu Property**, but Yusuf then says one is enough—the Jordan Property... (Yusuf and United's SOF, ¶5) (Emphasis added)

At his January 22, 2020 deposition, Yusuf testified:

Q. [Mr. Hartmann] Okay. And do you remember that in his deposition, he testified that originally, you asked for two parcels in Jordan?

A. **Never in Jordan, sir. It's always one in Jordan and one at Tutu Park.**

...

deposition, the second property seems to refer to the Second Jordan Property and the third property seems to refer to either the Half Acre of Estate Tutu or the 9.3 Acres of Estate Tutu or the Entire

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**A. I never asked for two pieces in Jordan at the same time.** At the very beginning.

..

Q. (Ms. Perrell) Yeah, let me ask the next question, okay? So at -- you were talking about the meeting. You were talking about that you discussed the Jordan property and then you discussed the Tutu property, the half acre and the 9.3.

A. Yes.

Q. And did Hamed agree to do that?

A. Yes.

...

A. When I find more wrongdoing -- even a check of a hundred thousand dollars written out of the St. Maarten account. In the back of it, it says, Attention Gloria. And deposited -- it have to be in his fund. The check is written in my name. He signs it, because it's in his account. He wrote the check in my name. And in -- in the check stub, it says Attention Gloria. I never saw that check. And Gloria looked like she passes it on to him. That's not the way people go partnership. And that's why I couldn't leave myself open. **Then I asked for the third property in Jordan, because the third property in Jordan, I pay \$3 million for it.** (Yusuf Dep. 199:19-23, 201:21-22, 211:5-13, 216:3-15, January 22, 2020) (Emphasis added)

At his April 2, 2014 deposition, Yusuf testified:

A. I -- we met, and after I tell him my story of what I know at that time, he say, What do you want? I say, I'll take two property for what I discover so far. He say, Which? **I give him the description of the property, one in Jordan and one at Tutu Park. The one in Jordan, I pay one million two, approximate. The one at Tutu Park, I paid 1 million for it. 1,000,350, I believe. It's two pieces at Tutu Park, but we call it one piece. One-half an acre as an entrance, and 9.31 as the major piece of property.**

He say, You can have it. And after they say it, the man come up front after I tell him my story, and he was very generous to say, You can have it. And we kept talking, as a family. After all, we are family, as you mentioned over and over in your correspondence. We are family at that time, and we have a very high respect for each other, even though, up to now we still have high respect to each other, **and I told him, No, one is enough.** But we kept talking.

And when we kept talking, you know, whatever what he was saying, it doesn't add up. So I went to the store, I take a look, and I analyze the bank statement of what he was saying. I say, Man, after that, this man would not even tell me the truth, unfortunate? **So immediately I told Wally, Do me a favor, Wally. You was present. Go back to your father and tell him, No, I wanted the two piece of property.** (Yusuf Dep. 78:9-79:9, April 2, 2014) (Emphasis added)

In Yusuf's Interrogatory Answers in Case 733, Yusuf provided in relevant parts:

Immediately, the same afternoon, **Responding Party [Yusuf] informed Waleed Hamed to tell his father that one property not enough to compensate and that it had to be the two (2) properties** they had agreed on -the Jordanian Property, and the Tutu Park property.

...

When Responding Party returned to St. Croix, he continued to review the hard -drive and discovered even more unauthorized transactions of Wally Hamed taking funds for his personal use. As a result of these new discoveries of even more unauthorized transfer of funds by Plaintiff Waleed Hamed, **the Defendant [Yusuf] informed Wally Hamed that it has to be three (3) properties to cover everything Responding Party had found. Responding Party requested that Mohammed Hamed transfer his interest in another property in Jordan Responding Party had bought and given an half interest to Mohammed Hamed.** (Yusuf's Interrogatory Answers in Case 733, pp. 8-9) (Emphasis added)

Estate Tutu.<sup>35</sup> (ii) As to the new offers, whether Hamed accepted any of these new offers.

According to Hamed's MSJ and MSJ Reply,<sup>36</sup> there were no new agreements between Hamed and

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<sup>35</sup> See *supra*, footnote 21.

At his January 22, 2020 deposition, Waleed Hamed testified:

Q. Okay. Did you have an occasion to speak to him about the deal that you said was resolved? Was there any further discussions about the deal that afternoon, or that evening?

A. Well, like he said in his deposition, he came back and he said, No, Go back and tell your father I want the other piece.

Q. Okay. So there was a conversation about that?

A. Yeah, that's what he told me.

**Q. Okay. And in your mind, you understood "the other piece" to mean, the other piece that is a piece of property in Jordan?**

**A. Well, that's the only two pieces they discussed.**

Q. I know. I'm just clarifying for the record.

A. Yeah.

...

Q. Okay. All right. So are you -- do you have any knowledge of any communications between either yourself and Mr. Yusuf, or your father and Mr. Yusuf, related to the Tutu half acre or the 9.3 acres being transferred, in any way, to the Yusufs?

A. Well, down the road when -- after Fathi came back from Jordan after he followed my father to go ahead and do that document they did in 2011, he came back and the -- the deal was, it's a complete disengagement. Complete peace out. Everybody divided. Everybody out of it. The stores as well. Anything that he has, whatever claims that he has in his head. It's a complete, complete everything. Now, after he secure my dad's signature on that document, he came back from Jordan and he brought me offer to the desk. And he says, I found more. I found 1.5 million. Where did this go? Okay. I looked at it, and I said, in my head, What the hell is going on? That's what I said in my head. I thought we had a deal. You got the property. The property's transferred. We're going to go ahead and divide up whatever and we're done. He's asking me about stuff that's already closed. I said, You have all the documents. You see all the documents. We've shown you everything. We've given you everything and you're not satisfied. What is it going to take for you to finish all this? **He says, I want another piece of property. I told him, Let me think about it. And that's when the Tutu acre came up.**

Q. So when -

A. Not -- the Tutu property came up.

Q. Okay. And when you were talking about the Tutu property, or having this conversation with Mr. Yusuf, did you understand, when you said Tutu property, it encompassed both the 9.3 and the half acre, together?

A. I -- honestly, I don't exactly remember if it, but I know we have land in Tutu that we owned.

...

Q. And what did Mr. Hannun tell you?

A. That there's no deal. There's no deal. Fathi wants this and Fathi wants that.

Q. And what, specifically, did Fathi want this time?

**A. Fathi wants a third piece.**

**Q. Let me finish asking the question.**

**A. Fathi wants a third piece.**

**Q. And what third piece is that?**

**A. Oh, St. Thomas, Tutu.**

Yusuf as Hamed did not accept Yusuf's new offers. However, according to Waleed Hamed's testimony at his January 22, 2020 deposition,<sup>37</sup> it seems that there was an agreement to two

...

Q. All right. And just to be clear, it's your understanding that when there was a discussion of what is called a third property, that it's your belief that the third property relates to the property in Tutu, the 9.3 and the half acre; is that correct?

A. It was Tutu. Whether it was the -- like you say, half acre, 9.3, I know it's St. Thomas property.

(Waleed Hamed Dep., 157:13-23, 173:18-175:2, 192:6-14, 196:16-2, Jan. 22, 2020) (Emphasis added)

<sup>36</sup> In Hamed's MSJ and MSJ Reply, he pointed out to the following facts to support his assertion that there was no agreement: (a) Hamed's refusal to transfer the 9.3 Acres of Estate Tutu and (b) Hamed's position that the Half Acre of Estate Tutu is still owned by the Partnership's United which is supported by the fact that the Partnership continued to pay taxes, file tax returns, collect rents, and carry the Half Acre of Estate Tutu on the Partnership's books. (MSJ; MSJ Reply)

<sup>37</sup> At his January 22, 2020 deposition, Waleed Hamed testified:

Q. [Mr. Hartmann] Okay. Tell me what happened in that meeting.

A. I -- I was called, I believe, into Food Town, that's where they had, I guess, a meeting session. Prior to that, Fathi has had -- sitting down with the good folks over there. They came to some conclusion after hours and hour of talking to him and all that. And they called me over and they put a lot of pressure on me. I didn't agree to it, but -- but they put a lot of pressure. A lot of pressure just to get -- get this over with. Done with it, so I agreed to -

Q. You agreed to what?

A. To a second piece of property.

Q. That was the second piece in Jordan, the one that

Mr. -

A. Yes.

Q. Okay. So -- so in -- now, when you said they put a lot of pressure on you, was this -- were they threatening to beat you up, or was this moral pressure by community leaders?

A. It wasn't threatening things. It was just moral pressure as far as -- because they are the elders in the community, in our community, and we, you know, we have to respect and honor them.

Q. And did you understand this to be a mediation where they were trying to help you understand?

A. Yes.

Q. And him understand?

A. Yes.

Q. And were you trying -- were the negotiations for the purpose of settling a contested claim?

A. Not the contested -- contested claim.

Q. Well, a claim between two parties?

A. Yes, yes, yes.

Q. All right. And -- and at the conclusion of this thing, did you once again agree to a two-parcel property deal?

A. Yes, yes.

Q. Okay. Now, how come you didn't call up your father and okay it with him at that -- this time?

A. Because my father gave me the authority to act on his behalf.

Q. Okay. And why did he do that? Why did this time, in particular?

A. Because he was sick.

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Q. Okay.

A. He was sick.

Q. What did he have?

A. He had cancer.

Q. Okay. And was he being actively -- as soon as he got back from Jordan, did he start being actively treated for cancer again?

A. Yes, sir. Yes.

Q. And did he become so debilitated that he wasn't eventually able to do things like this?

A. Yes, sir.

Q. Okay. And did he eventually die from that cancer?

A. Yes, sir.

Q. Okay. And so you went into a meeting and they asked you stuff. And so finally after being berated by the local pooh-bahs, you said, Okay. Fine. I'll give you the second piece in Jordan; is that correct?

A. Yes, sir.

Q. Okay. And were you happy about that?

A. Definitely not, but there was so much pressure exerted, and just to get it over with. My dad was sick. We -- Fathi always threatening that we have nothing in our names and he's going to take everything.

Q. Okay. So -- so at the end of that, you shook hands. And now for the second time in 2011, you had a two-parcel-in-Jordan deal; is that correct?

A. Yes.

Q. Okay. And you went home and you thought to yourself, Thank God, this is all over, right?

A. Yes, sir.

Q. Okay. And then what happened? The flavor changed.

Q. Did the phone ring?

A. Yes, sir.

Q. And who was on the phone?

A. Mr. Hannun.

**Q. And what did Mr. Hannun tell you?**

**A. That there's no deal. There's no deal. Fathi wants this and Fathi wants that.**

**Q. And what, specifically, did Fathi want this time?**

**A. Fathi wants a third piece.**

**Q. Let me finish asking the question.**

**A. Fathi wants a third piece.**

**Q. And what third piece is that?**

**A. Oh, St. Thomas, Tutu.**

Q. Okay. So now he wants a third piece, which is St. Thomas, Tutu. And what do you say to Mr. Hannun?

A. I told -

Q. Who is who? By the way, who is Mr. Hannun?

A. Mr. Hannun is my uncle and Mike's uncle.

Q. Okay.

A. He is Fathi's brother-in-law and my father's brother-in-law.

Q. So he's -- he's a relative of both of you. He sat in the meeting. He's watched you shake hands, right?

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A. Yes, sir.

**Q. He's heard Fathi Yusuf say, We have a deal. You've left believing you have a deal. And then Mr. Hannun called you up and told you, you have no deal, right?**

A. Yes.

Q. Okay. And what did you say to Mr. Hannun?

**A. I told him, No deal. I'm not going to agree to one property. I'm not going to agree to two properties. I'm not going to agree to three properties. I'm done.**

Q. And why wouldn't you -- why did you tell him you wouldn't give him the third property?

A. Because he's always changing his mind. He can't -- can't agree onto one thing. I mean, it's just - it's more and more. You give him one, you give him two, you give him three. What's the end? What's going to be it? Is there going to be more? Going to be the fourth, the fifth, the sixth?

Q. Okay.

A. Until what?

Q. And -- and at that time, when you were in this meeting with Mr. Hannun that he speaks of, when they asked for the third parcel, which was the Tutu parcel, and you said no to that, now to the -- to the renegotiation of the renegotiation, did you still think you had a deal with Mr. Yusuf for a fair splitting up of the stores and everything?

A. No, sir.

Q. And how many times did you think you agreed to that deal already?

A. Several times.

....

Q. [Ms. Perrell] Okay. So wouldn't it be fair to say after you left this meeting, because you had subsequent meetings to discuss how to resolve certain things, that you believe that there was still discussion about how to resolve it all, and you were still discussing it?

A. No, ma'am.

Q. Okay.

A. When I left this meeting -- when I left this meeting, it was a done deal. Just like when we left that meeting earlier in the year, it was a done deal. Now we have another meeting with maybe 7-8 adults in the community, and **I get a call there's no deal, because he changed the flavor.**

Q. All right. And just to be clear, it's your understanding that when there was a discussion of what is called a third property, that it's your belief that the third property relates to the property in Tutu, the 9.3 and the half acre; is that correct?

A. It was Tutu. Whether it was the -- like you say, half acre, 9.3, I know it's St. Thomas property.

...

Q. I would like you to look at Paragraph 21 there. I'll read it into the record and then ask you a question. Paragraph 21 says, "Finally, at one of the last meetings, Mr. Yusuf said that if the Hameds transferred a third piece of property that would settle everything about the unauthorized monies, whatever he knows" about "he would not do" -- "and he would not do any more searching for monies he did not know about."

So, whether it was at that particular meeting with Hannun, or at some other point, there finally came a point where he said there was going to be no settlement unless there was a third parcel; is that correct?

A. Yes, sir.

Q. And you didn't accept that, right?

A. I didn't accept that, no.

Q. And that's reflected in 20 -- Paragraph 22 here?

A. Twenty-one.

Q. Mr. Yusuf -- after you said no to the third parcel, he "said he cannot work with the Hameds and that they still had to sell the business and to divide the business and go their separate ways."

properties but it was again rescinded by Yusuf, so ultimately, there were no new agreements between Hamed and Yusuf. On the other hand, according to Yusuf and United's MSJ Opposition,<sup>38</sup> Yusuf's testimony at his January 22, 2020 deposition,<sup>39</sup> and Yusuf's Interrogatory

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Was that the end result of all of these negotiations after you rejected that third parcel?

A. Yes, sir. (Waleed Hamed Dep., 189:1-194:5, 196:3-22, 197:3-198-1, Jan. 22, 2020) (Emphasis added)

<sup>38</sup> In Yusuf and United's MSJ Opposition, they argued that Hamed accepted Yusuf's offer to transfer the Entire Estate Tutu as the second property, and maintained that: (i) Hamed's refusal to transfer the 9.3 Acres of Estate Tutu is in fact a breach of the agreement (MSJ Opp., p. 10); (ii) the Half Acre of Estate Tutu automatically transferred to Yusuf's United since "no documented transfer was necessary for Hamed to have relinquished his interest" (Id., at p. 11); and (iii) that "[a]s to the identification of the Tutu Half-Acre on the books of United, Yusuf shows that he identified that it was erroneously carried on those books in the various Bi-Monthly Reports" (Id., at p. 14).

<sup>39</sup> At his January 22, 2020 deposition, Yusuf testified:

A. ...I told Wally – after about half an hour in my office, I double-check. I find what Mohammad told me unfortunately is the opposite.

Q. Okay.

A. I say then, I should never done what I did, and they don't deserve it. They have to put it back. But now these two property, only for what I discover. Only and only for what I discover. A million four and 2 million.

Q. Okay. So what did you say to Wally?

A. I told him, Wally, do me a favor. Tell your father I have to have the two property for this deal to cover this, the three million four is, you know, to cover it up.

Q. Okay.

A. And he says the next day, Did you tell your father? He said, Yes.

Q. Okay. And when he said that, did you understand that he -- what did you understood he meant when he said, Yes?

A. That it's okay.

Q. Okay.

A. And I could tell you, my calculation is right. Two months later, he travel to Jordan and he move one of the property to me. **Then when I come back, I told Wally, When are we going to change the Tutu Park property?** He say, We're not going to do it...

...

**Q. So Mr. Yusuf, was your understanding that after you came -- after you had the original meeting and the conversation the next day, that there was a set deal that everybody had agreed to for the two properties: The one in Jordan, the Taberpour property, and also the Tutu property, including -**

**A. Yes.**

**Q. -- the 9.3 and the half acre; is that right?**

A. Yes, that's correct.

Q. And that's based upon the conversations that you had both with Mr. Hamed -

A. Um-hum.

Q. -- and the fact that he had agreed to that the day before -

A. Yes.

Q. -- and then that's ultimately what you believe was settled on the following day?

A. That was settled the same evening.

Answers in Case 733,<sup>40</sup> there was a new agreement to the transfer of the Entire Estate Tutu as the second property. However, contrary to what Yusuf stated in Yusuf's Interrogatory Answers in Case 733, Yusuf testified at his January 22, 2020 deposition that he did not discuss the property at Estate Tutu with Hamed while they were in Jordan.<sup>41</sup>

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Q. Okay. But he had to come back to you the next day and tell you -

A. But telling me from there. From his house.

Q. Okay.

A. We don't agree to it.

Q. Okay. But he never told you that they didn't agree?

A. No.

**Q. You understood there was an agreement?**

**A. It is an agreement. It is an agreement.**

Q. Okay.

A. And Mohammad Hamed to go two months later and transfer the property from Jordan to me, it's certified. **The agreement is valid.**

Q. Okay. And then the only time the third property came into play was when you had discovered other issues, and you said, I'll -- for a third property, because the first two was already done, or would have -- was agreed?

A. Yes.

Q. Then the third property would resolve everything; is that correct?

A. I was taking the chance to resolve everything with the last property.

Q. Okay. But you guys never agreed to that?

**A. Never agreed.**

**Q. To the third property?**

**A. Yeah.**

**Q. Okay.**

**A. It was never agreed.** (Yusuf Dep., 212:22-213:23, 217:20-219:16, Jan. 22, 2020) (Emphasis added)

<sup>40</sup> In Yusuf's Interrogatory Answers in Case 733, Yusuf provided in relevant parts:

Shortly thereafter, Mohammed Hamed travelled to Jordan with his son Mufeed Hamed. Responding Party followed them to Jordan to complete the transfer of the property in Jordan. **Before Mohammed Hamed transferred the property, Responding Party made it clear, more than once, that his acceptance of the two (2) properties** were only for what he had discovered so far, the approximately \$300+Merrill Lynch deposits, the \$1.3 million (\$2million less the \$700K he had received) and an estimate of a \$1 million at least, to cover Wally Hamed's gambling habit. (Yusuf's Interrogatory Answers in Case 733, p. 9) (Empahsis added)

<sup>41</sup> At his January 22, 2020 deposition, Yusuf testified:

Q. So the first time you understood that Wally was not agreeing, or that the Hamed side was not agreeing, was after you got back from Jordan?

A. Yes.

Q. And you said, When are we going to handle the Tutu Park property?

A. And he said, We're not going to do it.

Q. Okay. All right. And at that point -

There is clearly a genuine dispute as to whether the Half Acre in Estate Tutu remained a Partnership asset after 2011. At this juncture, the Master concludes that Hamed has not satisfied his burden of establishing that there are no genuine disputes as to any material fact regarding Hamed Claim No. H-142. *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.’”); *see also, Todman*, 70 V.I. at 437 (In deciding a motion for summary judgment, the court’s role “is not to determine the truth, but rather to determine whether a factual dispute exists that warrants trial on the merits.”).

#### CONCLUSION

Based on the foregoing, the Master will deny Hamed’s motion in limine for Hamed Claim No. H-142 based on the limitations stated above and deny Hamed’s motion for summary judgment for Hamed Claim No. H-142. Accordingly, it is hereby:

**ORDERED** that Hamed’s motion in limine for Hamed Claim No. H-142 is **DENIED**. However, the Conversations are admissible only for the limited purpose of showing Parties’ intent. It is ordered:

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A. By the way.

Q. Yes.

A. When I left Mohammad Hamed, -

Q. Um-hum.

A. -- the only time I saw him is in Jordan.

Q. Um-hum.

A. And after I saw him in Jordan, I -- we never talked to each other. And he signed it, the property to me, and one of his sons was witness on his signature.

...

**Q. Did you and Mr. Hamed talk about the Tutu property at all when you were in Jordan?**

**A. No.** (Yusuf Dep., 214:5-21, 215:3-5, Jan. 22, 2020) (Emphasis added)

**ORDERED** that, within seven (7) days from the date of receipt of invoice, Yusuf and United shall pay for the reasonable fees and costs in connection with Hamed's motion in limine argument with regards to Rule 37 sanctions. **And** it is further:

**ORDERED** that Hamed's motion for summary judgment for Hamed Claim No. H-142 is **DENIED**.

**DONE** and so **ORDERED** this 3rd day of May, 2020.

  
EDGAR D. ROSS  
Special Master