

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

WALEED HAMED, as Executor of the)
Estate of MOHAMMAD HAMED,)
)
Plaintiff/Counterclaim Defendant,)

CIVIL NO. SX-12-CV-370

v.)

ACTION FOR INJUNCTIVE)
RELIEF, DECLARATORY)
JUDGMENT, AND)
PARTNERSHIP DISSOLUTION,)
WIND UP, AND ACCOUNTING)

FATHI YUSUF and UNITED CORPORATION,)
)
Defendants/Counterclaimants,)

v.)

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

Consolidated With

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

CIVIL NO. SX-14-CV-287

v.)

ACTION FOR DAMAGES AND)
DECLARATORY JUDGMENT)

UNITED CORPORATION,)
)
Defendant.)

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

CIVIL NO. SX-14-CV-278

v.)

ACTION FOR DEBT AND)
CONVERSION)

FATHI YUSUF,)
)
Defendant.)

FATHI YUSUF and
UNITED CORPORATION,

Plaintiffs,

v.

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

Defendants.

CIVIL NO. ST-17-CV-384

ACTION TO SET ASIDE
FRAUDULENT TRANSFERS

KAC357, INC., a USVI Corporation,

Plaintiff,

v.

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

Defendants.

CASE NO.: SX-18-CV-219

ACTION FOR DEBT AND
UNJUST ENRICHMENT

**FATHI YUSUF’S RESPONSE TO HAMED’S MOTION FOR PARTIAL SUMMARY
JUDGEMENT AS TO Y-10 – PAST PARTNERSHIP WITHDRAWALS**

Defendant/Counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”)(collectively, the “Defendants”) through their attorneys, Dudley Newman Feuerzeig, LLP hereby provide their Response to Hamed’s Motion for Partial Summary Judgment as to Y-10 – Past Partnership Withdrawals as follows:

I. Evolution of the Parties’ Proposed Accounting and Distribution Plans

In 2016, the parties were required to submit their proposed accounting and distribution plans to the Master. To that end, Yusuf prepared his original Proposed Accounting and

Distribution Plan (the “Original Yusuf Proposed Accounting”). As a framework, Yusuf first identified Partnership debts of the Partnership, contingent liabilities and debts owed to United. Yusuf’s proposal was for those amounts to be paid, set aside or removed from the Partnership assets before any distribution or ultimate allocation of the Partnership claims were to proceed. Next, Yusuf undertook a comprehensive categorization and proposed allocation of the various withdrawals or distributions by each of the families so as to provide proposed allocations and off-sets as between the partners. Specifically, Yusuf engaged the BDO Accounting Firm to wade thru the voluminous records to chart and account for the funds received by the various Yusuf and Hamed family members. All the funds, for which there were available records, were categorized and chronicled demonstrating what each partner, or members of their family received from the Partnership in the form of checks, receipts, payments made to third parties on their behalf (which were reflected by Yusuf as a partnership distribution). For each member, numerous tables were created as to each of the types of funds they had received. Further, BDO explained this process in its preliminary report attached to Yusuf’s Proposed Accounting and Distribution Plan. Hence, Yusuf was reflecting the funds received by him and his family and those off-setting funds received by Hamed and his family. This report and allocation were preliminary and subject to additional discovery.

At the same time, Hamed filed his accounting claims. Hamed’s approach differed from Yusuf’s, in that he simply made accounting claims against Yusuf as to specific accounting scenarios (checks, attorneys fees, etc.). Hamed did not set forth a proposed distribution or set forth the funds that he and his family members had received.

Given the volume of the open issues to be resolved, for ease of reference, Hamed proposed a numbering system that designated the Hamed claims as “H-__” and the Yusuf claims

as “Y-__.” In so doing, the extensive allocation and off-sets of funds received by both the Hamed and Yusuf families, which are embodied in the BDO Preliminary Report and extensive tables, were collectively grouped together as the “Y-10” claims.¹ Following the Court’s order limiting the timeframe for the Partner accounting “claims” to only those from September 2006 until the Partnership split, Yusuf requested BDO to eliminate those chronicled allocations prior to that timeframe. The attached Chart A is the BDO revised allocations from September 2006 forward. However, again, these are based upon the documents available and prior to the completion of the discovery on these matters and thus, remained preliminary allocations and off-sets, just revised as per the Court’s order relating to September 2006 forward.

Subsequently, various Hamed claims have been decided which relate to specific allocations and off-sets listed on the BDO revised allocations. Of course, Yusuf will abide by the prior decisions to the extent that they are dispositive.

A. The September 18, 2019 Order and Viable \$1,600,000 Set Off

However, the Master specifically made a distinction between a “claim” and an “off-set” in his September 18, 2019 Order when addressing the \$1,600,000.00 past withdrawals of the Hameds. The Master noted that Yusuf’s removal of the \$2,784,705.25 “will be subject to and entitled to any set offs not stated as an individual accounting claim that are established hereinafter, such as the alleged set off in the amount of \$1,600,000.00.” *See* September 18, 2019 Order, p. 15-16. The Mast further explained:

The Master must note that the Limitation Order only applies to ‘claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. §71(a).’ As such, Master’s prior finding that Yusuf’s claim for \$1,600,000.00 was barred by the Limitation Order does not automatically bar \$1,600,000.00 as a set off.

¹ Further, Yusuf made as part of this submission, a Lifestyle Analysis which was designated at Y-11.

Id. at nt. 9. Consequently, the off-set for \$1,600,000.00 is still viable and the draft chart properly reflects that amount as an off-set. Likewise, there may be additional off-sets applicable.

B. Attorney's Fees Limited and Still Pending

As to the attorney's fees claims, while the parties have resolved a significant portion of those claims, there remains a pending motion as to the \$332,000 in attorney's fees which may be allocated in some fashion as between the two families. Once those determinations are made, the allocation will be updated.

C. The Matching Wedding Allocation

As to the \$1,500,000 allocation on both sides as to Yusuf and Hamed, Yusuf shows that the allocation should properly remain until additional discovery on that issue is resolved.

D. Discovery Continues, Including Expert Discovery

Yusuf is entitled to be able to depose the witnesses on these issues and to then to discuss the matter with its expert witness and render a final expert report and allocation. The expert will then be questioned on the allocation and off-sets. While Yusuf recognizes that there exists some overlap as to the allocations in Y-10 and certain claims made by Hamed, this simply means that the depositions can be tailored to address those topics together in certain deposition sessions. That does not mean that Yusuf's Y-10 should be modified at this stage or required to be dealt with in the confines of Hamed's various claims.

Conclusion

In conclusion, Yusuf shows that there is no basis for a partial summary judgment as requested by Hamed at this stage as to Y-10. Discovery on these issues remains open and this will be the subject of expert testimony for which final reports have not been issued. Hence, Yusuf requests that Hamed's Motion be denied.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG, LLP

DATED: November 1, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of November, 2021, I caused the foregoing **Yusuf's Response to Hamed's Motion for Partial Summary Judgment as to Yusuf, Y-10 – Past Partnership Withdrawals**, which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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