

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,
MUFEEED HAMED, HISHAM HAMED,
AND PLESSEN ENTERPRISES, INC.,**

COUNTERCLAIM DEFENDANTS.

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

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

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 AND JUDGMENT

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

ORDERED, ADJUDGED, AND DECREED that Hamed Claim No. H-163 shall be and is hereby **DISMISSED**.

DONE and so ORDERED this 16th day of November, 2021.



EDGAR D. ROSS
Special Master

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MEMORANDUM OPINION

THIS MATTER came before the Special Master (hereinafter “Master”) for a hearing on April 15, 2021 in connection with Hamed Claim No. H-163: loss of assets due to wrongful dissolution, filed on November 18, 2019.

BACKGROUND

On September 17, 2012, Hamed¹ filed a complaint against Fathi Yusuf (hereinafter “Fathi Yusuf” or “Yusuf”) and United Corporation (hereinafter “United”) whereby Hamed sought, inter alia, “Declaratory Relief against both defendants to establish Hamed’s rights under his partnership with Yusuf...” (Compl.) Subsequently, Yusuf and United filed their counterclaim on December 23, 2013, followed by their first amended counterclaim on January 13, 2014 (hereinafter “Counterclaim”).

On September 22, 2014, the Court entered an order appointing the Honorable Edgar D. Ross to serve as the judicial master (hereinafter “Master”) “to direct and oversee the winding up of the Hamed-Yusuf Partnership.” (Sept. 22, 2014 Order.) On January 9, 2015, the Court entered an order adopting the parties’ proposed final wind up plan as the final wind up plan for the Partnership (hereinafter “Final Wind Up Plan”). The Final Wind Up Plan “is a liquidating plan” and requires as follows:

Upon conclusion of the Liquidation Process, the funds remaining in the Liquidation Expenses Account, if any, shall be deposited into the Claims Reserve Account. Within forty-five (45) days after the Liquidating Partner completes the liquidation of the Partnership Assets, Hamed and Yusuf shall each submit to the Master a proposed accounting and distribution plan for the funds remaining in the Claim Reserve Account. Thereafter, the Master shall make a report and recommendation for distribution to the Court for its final determination. Nothing herein shall prevent the Partners from agreeing to distribution of Partnership Assets between them rather than liquidating Partnership Assets by sale and distributing proceeds of such sale(s).²

¹ To clarify, in this memorandum opinion, whenever references are made to “Hamed,” the Master is referencing the plaintiff/counterclaim defendant party, and whenever references are made specifically to “Mohammad Hamed,” the Master is referencing the individual—Mohammad Hamed.

² Under the Final Wind Up Plan, the following relevant terms are defined as follows:

“Available Cash” means the aggregate amount of all unencumbered cash and securities held by the Partnership including cash realized from any Litigation Recovery or any Liquidation Proceeds.

“Claims Reserve Account” means one or more interest-bearing bank account(s), money market or securities account(s) to be established and held in trust by the Master for the purpose of holding the Available Cash

(Jan. 9, 2015 Order.)

In 2016, per the Master's order, the 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 for the loss of assets due to wrongful dissolution:

M. Loss of Assets due to Wrongful Dissolution

As plaintiff has repeatedly pled and stated, the dissolution was wrongful. It was conversion of all of the partner's assets. Under RUPA, that is to be held against the partner that acted wrongfully. This includes the right to continue the partnership.

(Hamed's Accounting Claims, Exhibit A, p. 11.)

until distributed in accordance with the Plan and any interest, dividends or other income earned upon the investment of such Claims Reserve Account. The Claims Reserve Account will be further funded from time to time by the Liquidating Partner with: (i) any Liquidation Proceeds realized, plus (ii) any Litigation Recovery realized, minus (iii) any amounts necessary to pay Wind Up Expenses.

"Criminal Case" means Case No. 1:05 -CR- 00015- RLF -GWB pending in the District Court of the Virgin Islands.

"Disputed Claim" means any Claim or portion of a Claim as to which an objection to the allowance thereof has been interposed, which objection has not been withdrawn or determined by Final Order.

"Encumbered Cash" means all of the cash and securities encumbered by a restraining order issued by the District Court in the Criminal Case.

"Liquidating Expenses Account" means one or more checking account(s) to be utilized by the Liquidating Partner for Wind Up Expenses based upon the Wind Up Budget and to satisfy debts of the Partnership.

"Liquidating Partner" means Yusuf.

"Liquidating Proceeds" means any cash or other consideration paid to or realized by the Partnership or the Liquidating Partner, as applicable, upon the sale, transfer, assignment or other distribution of the Partnership Assets.

"Litigation" means the interest of the Partnership or the Liquidating Partner, as applicable, in any and all claims, rights and causes or action that have ben or may be commenced by the Partnership or the Liquidating Partner including, without limitation, any action: (i) to avoid and recover any transfers of property determined to be avoidable pursuant to V.I. Code Ann. tit. 28, §§ 171 -212 or other applicable law; (ii) for the turnover of property to the Partnership or Liquidating Partner, as applicable; (iii) for the recovery of property or payment of money that belongs to or can be asserted by the Partnership or the Liquidating Partner, as applicable; and (iv) for compensation for damages incurred by the Partnership.

"Litigation Recovery" means any cash or other property received by the Partnership or the Liquidating Partner, as applicable, from all or any portion of the Litigation including, but not limited to, awards of damages, attorneys' fees and expenses, interest and punitive damages, whether recovered by way of settlement, execution on judgment or otherwise.

"Partnership Assets" means any and all property, assets, rights or interest of the Partnership whether tangible or intangible, and any Liquidation Proceeds realized therefrom, including without limitation, all Available Cash, Encumbered Cash, Litigation, and any Litigation Recovery.

"Wind Up Expenses" means the costs and expenses incurred by the Liquidating Partner for the purpose of: (i) operating the Plaza Extra Stores during the period required to liquidate the Partnership Assets; (ii) prosecuting or otherwise attempting to collect or realize upon the Litigation. (iii) assembling and selling any of the Partnership Assets or otherwise incurred in connection with generating the Liquidation Proceeds; (iv) resolving Disputed Claims and effectuating distributions to Creditors under the Plan; or (v) otherwise implementing the Plan and winding up the Partnership.

Subsequently, on July 25, 2017, the Court contemporaneously entered a memorandum opinion and order striking the jury demand (hereinafter “Striking the Jury Demand Order”) and a memorandum opinion and order limiting accounting (hereinafter “Limitations Order”). In the Striking the Jury Demand Order, the Court provided a detailed analysis of the nature of the claims presented by the parties in this action and explained that “despite the misleading form of the Complaint and Counterclaim, Hamed presents only a single action for dissolution, wind up, and accounting, while Yusuf presents an action for accounting, and an action for corporate dissolution, and United presents an action for debt/breach of contract for failure to pay rent.” (Limitations Order, p. 10, footnote 9.) In the Limitations Order, the Court noted that “[a]s explained in detail in the [Striking Jury Demand Order] entered contemporaneously herewith, both Hamed and Yusuf have presented in this matter competing equitable actions to compel the dissolution, winding up, and accounting of their partnership pursuant to 26 V.I.C. §75(b)(2)(iii)” and “[a]s an accounting in this context is both an equitable cause of action and an equitable remedy in itself, the Court is granted considerable flexibility in fashioning the specific contours of the accounting process.” (Limitations Order, pp. 13-14) (citations and footnote omitted.) As such, the Court “exercise[d] the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter and ordered, *inter alia*, that “the accounting in this matter, to which each partner is entitled under 26 V.I.C. §177(b), conducted pursuant to the Final Wind Up Plan adopted by the Court, shall be limited in scope to consider only those claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. §71(a), based upon transactions that occurred on or after September 17, 2006.” (Id., at pp. 32, 34.)

In light of the Limitations Order, the Master ordered the parties to file their amended accounting claims. Hamed’s claim for the loss of assets due to wrongful dissolution was again included in Hamed’s amended accounting claims, filed on October 30, 2017 (hereinafter

“Hamed’s Amended Accounting Claims”).³ (Hamed’s Amended Accounting Claims, Exhibit A, p. 14.)

On November 18, 2019, Hamed filed a motion for partial summary judgment for Hamed Claim No. H-163 whereby Hamed sought “only a determination of ‘wrongful dissociation’ of the Partnership by Yusuf [and] not...a determination of the damages or the amounts of such damages at this time” and argued that Yusuf’s dissociation was wrongful under Title 26 V.I.C. §122(b)(1) and Title 26 V.I.C. §122(b)(2)(i) because “the partnership had a specific term as to when it would end—Yusuf stated it would end if it began to lose money in excess of \$800,000” and “[the Partnership] did not lose money, but Yusuf ended the Partnership.” (Nov. 18, 2019 Motion, pp. 1, 15) (emphasis and footnotes omitted.) On April 19, 2021, Yusuf filed his opposition whereby Yusuf, inter alia, raised the issue that the Court already found, and the Virgin Islands Supreme Court affirmed, that the Partnership is an at-will partnership of indefinite duration and that Hamed’s current position contradicts with Hamed’s previous position, and made arguments thereto. On May 2, 2021, Hamed filed a reply whereby Hamed conceded that the Partnership “was an ‘at-will’ partnership and withdraws any inconsistent or contrary argument in its initial motion,” but also stated that the Partnership was “an at-will partnership that has a particular undertaking—the agreement to operate the Plaza Supermarkets until they lost \$800,000 if that event ever occurred.” (May 2, 2021 Reply, pp. 8-9, footnotes 2, 3.)

On June 2, 2020, the Master entered an order whereby the Master, based on Hamed’s representations in his briefs, treated Hamed Claim No. H-163 as wrongful dissociation accounting claim and ordered as follows: (i) denied Hamed’s motion for partial summary judgment for Hamed Claim No. H-163, (ii) granted summary judgment regarding the narrow issue that Hamed Claim

³ Hamed’s Amended Accounting Claims provided:

| New Claim No. | Previous Item No. | Description | ... | Amount Due to Partnership From Yusuf |
|---------------|-------------------|--|-----|--------------------------------------|
| 163 | Exhibit A-M | Loss of assets due to wrongful dissolution – attorney’s fees | | Pending discovery |

No. H-163 is not an action for damages and struck any damages sought pursuant to Hamed Claim No. H-163, (iii) in the event that the Master subsequently finds in favor of Hamed as to his wrongful dissociation accounting claim (Hamed Claim No. H-163), any relief sought thereto shall not include items that are already raised as independent Accounting Claims, and (iv) in the event that the Master subsequently finds in favor of Hamed as to his wrongful dissociation accounting claim (Hamed Claim No. H-163), any relief sought thereto must comply with the Court's Limitations Order.⁴

⁴ In the June 2, 2020 order, the Master explained:

B. The Court's Prior Rulings: The Striking the Jury Demand Order and the Limitations Order

Hamed argued that he is permitted damages for Yusuf's wrongful dissociation in this instance. The Master disagrees. In the Striking the Jury Demand Order and the Limitations Order, the Court made it abundantly clear that "both Hamed and Yusuf have presented in this matter competing equitable actions to compel the dissolution, winding up, and accounting of their partnership pursuant to 26 V.I.C. §75(b)(2)(iii)."²³ (Limitations Order, p. 13) Based on the Court's prior rulings, it follows that the Court did not find a separate cause of action on behalf of Hamed in the form of wrongful dissociation²⁴ and as a result, Hamed is raising Hamed Claim No. H-163 as an accounting claim for equitable relief and is foreclosed from seeking damages.²⁵ (Striking the Jury Order, p. 8) ("The Supreme Court of the United States has 'long recognized the distinction between an action at law for damages — which are intended to provide a victim with monetary compensation for an injury to his person, property, or reputation — and an equitable action for specific relief— which may include an order providing for the reinstatement of an employee with backpay, or for 'the recovery of specific property or *monies*, ejectment from land, or injunction either directing or restraining the defendant officer's actions.'"") As such, the Master will grant summary judgment regarding the narrow issue that, in the event that the Master subsequently finds in favor of Hamed as to his wrongful association accounting claim (Hamed Claim No. H-163), Hamed Claim No. H-163 does not include an action for damages. Accordingly, any damages sought pursuant Hamed Claim No. H-163 must be stricken.

In his motion, Hamed provided "an example of the amounts that will be sought at a later date."²⁶ (Motion, p. 16). It appears that some of these items were already raised, and some even adjudicated and/or resolved,²⁷ as separate claimed credits and charges to partner accounts (hereinafter "Accounting Claims," each, an "Accounting Claim").²⁸ Hamed himself noted in his motion that "[s]ome of these damages have already been partially recovered," such as Partnership funds in the amount of \$504,591.03 used to pay Yusuf's counsel, Fuerst Ittleman David & Joseph, PL. (Id., at p. 7) However, it appears that Hamed has mistaken the meaning of the Accounting Claims. As the Court stated in the Limitations Order, "under the RUPA framework, the "claims" to which the parties refer are, in fact, nothing more than the parties' respective assertions of credits and charges to be applied in ascertaining the balance of each partner's individual partnership account." (Limitations Order, p. 11) Thus, the resolution of an Accounting Claim should not be viewed as "damages" awarded against one partner and recovered by the other partner, and instead, it should be viewed as credits or charges to be applied in ascertaining the balance of each partner's individual partnership account. There is no reason to include an Accounting Claim twice in the calculation— once as an independent Accounting Claim and a second time as a relief for the wrongful dissociation accounting claim. As such, the Master will grant summary judgment regarding the narrow issue that, in the event that the Master subsequently finds in favor of Hamed as to his wrongful association accounting claim (Hamed Claim No. H-163), any relief sought thereto shall not include items that are already raised as independent Accounting Claims. Additionally, in the event that the Master subsequently finds in favor of Hamed as to his wrongful association accounting claim (Hamed Claim No. H-163), any relief sought thereto must comply with the Court's Limitations Order.²⁹

On April 15, 2021, the parties appeared for a hearing on Hamed Claim No. H-163. Hamed and Yusuf each presented witness testimony and exhibits. More specifically, the Master heard oral

²³ In the Striking the Jury Demand Order, the Court concluded “that Plaintiffs [Hamed] cause of action and accompanying prayers for relief are properly considered equitable in nature and, in any event, necessarily entail a detailed, complicated accounting such that they may only be adequately and justly resolved by a court of equity” and that, “with the exception of [United’s claim for rent-]Count XII (Rent), Defendants [Yusuf and United] have presented claims traditionally lying in equity and requesting exclusively equitable relief.” (Striking the Jury Demand Order, pp. 13, 18)

In the Limitations Order, the Court noted that “[a]s discussed in detail in the [Striking the Jury Demand Order] entered contemporaneously herewith, despite the misleading form of both Hamed’s Complaint and Yusuf’s Counterclaim, each part has presented in this matter only a single, tripartite cause of action for the dissolution, wind up, and accounting of the partnership pursuant to 26 V.I.C. §75(b)(2)(iii)” but “Count XII of Defendants’ Counterclaim also presents a separate cause of action on behalf of United for debt in the form of rent.” (Limitations Order, pp. 6-7)

²⁴ The Court found that the Counterclaim presented a separate cause of action on behalf of United for debt in the form of rent. *See supra*, footnote 10.

²⁵ *See supra*, footnote 23.

²⁶ *See supra*, footnote 4.

²⁷ For example, (i) Partnership funds in the amount of \$504,591.03 used to pay Yusuf’s counsel, Fuerst Ittleman David & Joseph, PL was raised in Hamed Claim No. H-3 (Hamed’s Amended Accounting Claims, Exhibit A, p. 1); and (ii) Payment of John Gaffney’s fees was raised in Hamed Claim No. H-9 and also stipulated to by Parties (*Id.*; Joint Discovery and Scheduling Plan, January 12, 2018). (June 2, 2021 Order, pp. 19-23.)

²⁸ In the Limitations Order, the Court stated:

Though the parties have submitted lengthy briefs presenting their respective positions on how the limited case law interpreting this section of RUP A affects the “claims” purportedly presented by Yusuf and United, there is significant confusion surrounding precisely what is meant by the term “claims.” As it is often used in legal parlance, the term “claim” is essentially synonymous with “cause of action.” Used in this sense, Hamed and Yusuf have each, in their respective pleadings, presented only a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. §75(b)(2)(iii). However, as used by both the Court and the parties in the context of this litigation, the term “claims” has also taken on an entirely different, and more specific meaning, by which the term “claims” refers not to the parties’ respective causes of action for accounting, but rather to the numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery, will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan.

Pursuant to 26 V.I.C. §71(a), “[e]ach partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner’s share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner’s share of the partnership losses.” **Thus, under the RUPA framework, the “claims” to which the parties refer are, in fact, nothing more than the parties’ respective assertions of credits and charges to be applied in ascertaining the balance of each partner’s individual partnership account.** (Limitations Order, pp. 10-11) (Emphasis added) (Footnotes omitted)

²⁹ Hamed conceded in his reply that “any such damages can only include damages [sic] September 7, 2006, under [the Limitations Order].” (Reply, p. 12)

(June 2, 2021 Order, pp. 23-26.)

testimony from Fathi Yusuf, Waleed Hamed, and Mafi Hamed.⁵ At the conclusion of the hearing, the Master took the matter under advisement and ordered Hamed and Yusuf to file their respective proposed findings of fact and conclusions of law. Thereafter, Hamed and Yusuf timely filed their post-hearing filings.

STANDARD OF REVIEW

Rule 52 of the Virgin Islands Rules of Civil Procedure provides:

In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

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

DISCUSSION

While Hamed described Hamed Claim No. H-163 as “loss of assets due to wrongful **dissolution**” in Hamed’s Accounting Claims and Hamed’s Amended Accounting Claims, Hamed described Hamed Claim No. H-163 as a wrongful **dissociation** claim at the April 15, 2021 hearing and in his post-hearing brief. (Hamed’s Accounting Claims, Exhibit A, p. 11; Hamed’s Amended Accounting Claims, Exhibit A, p. 14; Post-hearing Brief) (emphasis added.) However, “wrongful dissociation” and “wrongful dissolution” does not mean the same thing. Under the U.S. Virgin Islands Uniform Partnership Act (hereinafter “USVI UPA”),⁶ “dissociation” occurs when any partner ceases to be involved in the partnership⁷ and “dissolution” occurs when the USVI UPA

⁵ Mohammad Hamed’s sons and Yusuf’s sons were delegated the authority to operate the Plaza Extra stores under the supervision, directions, and control of Fathi Yusuf.

⁶ By Act No. 6205, the Revised Uniform Partnership Act (RUPA) was adopted in the U.S. Virgin Islands, effective May 1, 1998, the “Uniform Partnership Act.”⁶ Title 26 V.I.C. §1, et seq.

⁷ Title 26 V.I.C. §123 provides:

§123. Effect of partner’s dissociation

(a) If a partner's dissociation results in a dissolution and winding up of the partnership business, subchapter VIII of this chapter applies; otherwise, subchapter VII of this chapter applies.

(b) Upon a partner's dissociation:

(1) the partner's right to participate in the management and conduct of the partnership business terminates, except as otherwise provided in section 173 of this chapter;

requires the partnership to wind up and terminate;⁸ dissociation does not necessarily cause dissolution.⁹ The USVI UPA defines wrongful dissociation in Title 26 V.I.C. §122¹⁰ but it does

(2) the partner's duty of loyalty under section 1404, subsection (b), item (3) of this chapter terminates; and

(3) the partner's duty of loyalty under section 74, subsection (b), items (1) and (2) of this chapter and duty of care under section 74, subsection (c) of this chapter continue only with regard to matters arising and events occurring before the partner's dissociation, unless the partner participates in winding up the partnership's business pursuant to section 173 of this chapter.

⁸ Title 26 V.I.C. §171 provides:

§171. Events causing dissolution and winding up of partnership business

(1) in a partnership at will, the partnership's having notice from a partner, other than a partner who is dissociated under Section 121, subsections (2) through (10) of this chapter, of that partner's express will to withdraw as a partner, or on a later date specified by the partner;

(2) in a partnership for a definite term or particular undertaking:

(i) within 90 days after a partner's dissociation by death or otherwise under Section 121, items (6) through (10) of this chapter, or wrongful dissociation under Section 122, subsection (b) of this chapter, the express will of at least half of the remaining partners to wind up the partnership business for which purpose a partner's rightful dissociation pursuant to Section 122, subsection (b), item (2), subitem (i) of this chapter, constitutes the expression of that partner's will to wind up the partnership business;

(ii) the express will of all of the partners to wind up the partnership business; or
(iii) the expiration of the term or the completion of the undertaking;

(3) an event agreed to in the partnership agreement resulting in the winding up of the partnership business;

...

⁹ *Id.*

¹⁰ Title 26 V.I.C. §122 provides:

§122. Partner's power to dissociate; wrongful dissociation

(a) A partner has the power to dissociate at any time, rightfully or wrongfully, by express will pursuant to section 121, subsection (1) of this chapter.

(b) A partner's dissociation is wrongful only if:

(1) it is in breach of an express provision of the partnership agreement; or

(2) in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking:

(i) the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under section 121, subsections (6) through (10) of this chapter or wrongful dissociation under this subsection;

(ii) the partner is expelled by judicial determination under section 121, subsection (5) of this chapter;

(iii) the partner is dissociated by becoming a debtor in bankruptcy; or

(iv) in the case of a partner who is not an individual, trust other than a business trust, or estate, the partner is expelled or otherwise dissociated because it willfully dissolved or terminated.

(c) A partner who wrongfully dissociates is liable to the partnership and to the other partners for damages caused by the dissociation. The liability is in addition to any other obligation of the partner to the partnership or to the other partners.

not expressly define wrongful dissolution. Given that Hamed argued, and Yusuf in response similarly argued, Hamed Claim No. H-163 as a wrongful dissociation claim, the Master will address Hamed Claim No. H-163 as a wrongful dissociation claim and not a wrongful dissolution claim.¹¹

Regarding Hamed Claim No. H-163, Hamed claimed the Partnership is not an at-will partnership but a partnership for a definite term or particular undertaking—namely, Mohammad Hamed and Fathi Yusuf will remain partners and that the Partnership would continue until a loss of \$800,000—and that Yusuf wrongfully dissociated from the Partnership in 2012 under Title 26 V.I.C. §122(b)(2)(i) because there was no loss of \$800,000 by the Partnership.¹² Thus, Hamed concluded that he is entitled to relief from Yusuf personally for his wrongful dissociation in the total amount of \$1,377,573.60, which is half of \$2,755,147.20,¹³ for his leasehold improvements to the Plaza Extra Store-East building in the United Shopping Center. On the other hand, Yusuf argued that Hamed Claim No. H-163 is barred by the Limitations Order and that under the law-of-the-case doctrine and the judicial estoppel doctrine, Hamed is foreclosed from arguing that the Partnership is not an at-will partnership but a partnership for a definite term or particular undertaking. Yusuf also argued that even if the Master finds that Yusuf wrongfully dissociated,

¹¹ Furthermore, as noted above, the Court previously found that “both Hamed and Yusuf have presented in this matter competing equitable actions to compel the dissolution, winding up, and accounting of their partnership pursuant to 26 V.I.C. §75(b)(2)(iii).” (Limitations Order, p. 13.) Thus, given that both Hamed and Yusuf are compelling dissolution and that the Partnership is in the process of winding up with the Master’s oversight and supervision, Hamed Claim No. H-163 cannot be a wrongful dissolution claim. (Jan. 9, 2015 Order.)

¹² Title 26 V.I.C. §122(b)(2)(i) provides that “[a] partner's dissociation is wrongful only if: in the case of a partnership for a definite term or particular undertaking, before the expiration of the term or the completion of the undertaking: the partner withdraws by express will, unless the withdrawal follows within 90 days after another partner's dissociation by death or otherwise under section 121, subsections (6) through (10) of this chapter or wrongful dissociation under this subsection.” Although Hamed previously argued in his motion for partial summary judgment that Yusuf’s dissociation was wrongful under both Title 26 V.I.C. §122(b)(2)(i) and Title 26 V.I.C. §122(b)(1), which provides that “[a] partner's dissociation is wrongful only if: (1) it is in breach of an express provision of the partnership agreement,” Hamed only argued that Yusuf’s dissociation was wrongful under Title 26 V.I.C. §122(b)(2)(i) at the April 15, 2021 hearing and in his post-hearing brief.

¹³ Hamed arrived at this figure by dividing the assessed value of the United Shopping Center in 2012 (\$5,931,500) by the total square footage of the United Shopping Center (149,955 sq. ft.), which equals \$39.54 per square foot, and multiplying that rate by the square footage of Plaza Extra-East store (69,680 sq. ft.), which equals \$2,755,147.20.

the relief sought by Hamed for Hamed Claim No. H-163 is improperly based on Hamed's leasehold improvements to the Plaza Extra Store-East building in the United Shopping Center and therefore not recoverable.

In accordance with Rule 52(a) of the Virgin Islands Rules of Civil Procedure and having reviewed the entire record, the Master now makes the following findings of fact and conclusions of law.

Findings of Fact

1. Hamed Claim No. H-163 is not a claim brought by Hamed against the Partnership for an alleged individual debit and withdrawal from the Partnership funds made by Yusuf.
2. Hamed Claim No. H-163 is not Hamed's assertion of credits and charges to be applied in ascertaining the balance of each partner's individual Partnership account during the dissolution and winding up of the Partnership.
3. Hamed Claim No. H-163 is a separate cause of action brought by Hamed against his partner Yusuf for Yusuf's alleged wrongful dissociation from the Partnership under Title 26 V.I.C. §122(b)(2)(i)—to wit, Hamed claimed that he is entitled to relief from Yusuf personally for Yusuf's wrongful dissociation.
4. The resolution of Hamed Claim No. H-163 would not add to or detract from the asset of the Partnership.

Conclusions of Law

Here, although Hamed raised Hamed Claim No. H-163 as an accounting claim against the Partnership, Hamed Claim No. H-163 is a separate cause of action brought by Hamed against his partner Yusuf personally for Yusuf's alleged wrongful dissociation. In other words, Hamed Claim No. H-163 is not a claim brought by Hamed against the Partnership for an alleged individual debit and withdrawal from the Partnership funds made by Yusuf, and therefore, Hamed Claim No. H-163 is not Hamed's assertion of credits and charges to be applied in ascertaining the balance of each partner's individual Partnership account during the dissolution and winding up of the Partnership.¹⁴ In fact, Hamed made it abundantly clear that he is claiming that Yusuf personally,

¹⁴ In the Limitations Order, the Court explained:

and not the Partnership, is liable for Yusuf's alleged wrongful dissociation in Hamed Claim No. H-163. Thus, the resolution of Hamed Claim No. H-163 would not add to or detract from the asset of the Partnership. As such, given that Hamed Claim No. H-163 is an alleged debt owed by Yusuf personally to his partner Mohammad Hamed, the Master finds that Hamed Claim No. H-163 falls outside the scope of the Master's report and recommendation for the dissolution and winding up of the Partnership and that Hamed Claim No. H-163 is not a proper claim for the Master to adjudicate under the September 22, 2014 order appointing the Master and the Final Wind Up Order.

In light of the Master's conclusion, the Master will dismiss Hamed Claim No. H-163 without addressing the merits of Hamed Claim No. H-163. If Hamed wishes to proceed with a wrongful dissociation cause of action against Yusuf personally, then Hamed needs to file a separate lawsuit against Yusuf personally for Yusuf's alleged wrongful dissociation;¹⁵ Hamed

Though the parties have submitted lengthy briefs presenting their respective positions on how the limited case law interpreting this section of RUPA affects the "claims" purportedly presented by Yusuf and United, there is significant confusion surrounding precisely what is meant by the term "claims." As it is often used in legal parlance, the term "claim" is essentially synonymous with "cause of action." Used in this sense, Hamed and Yusuf have each, in their respective pleadings, presented only a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. §75(b)(2)(iii). However, as used by both the Court and the parties in the context of this litigation, the term "claims" has also taken on an entirely different, and more specific meaning, by which the term "claims" refers not to the parties' respective causes of action for accounting, but rather to the numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery, will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan.

Pursuant to 26 V.I.C. §71(a), "[e]ach partner is deemed to have an account that is: (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses." **Thus, under the RUPA framework, the "claims" to which the parties refer are, in fact, nothing more than the parties' respective assertions of credits and charges to be applied in ascertaining the balance of each partner's individual partnership account.**

(Limitations Order, pp. 10-11) (emphasis added) (footnotes omitted).

¹⁵ The Master is simply stating what needs to be done if Hamed wishes to pursue his wrongful dissociation cause of action against Yusuf personally and is not making any comment as to the timeliness of such a claim if subsequently brought by Hamed.

cannot interject his wrongful dissociation cause of action against Yusuf personally as part of his accounting claims against the Partnership for the dissolution and winding up of the Partnership.

CONCLUSION

Based on the foregoing, the Master will dismiss Hamed Claim No. H-163. An order and judgment consistent with this Memorandum Opinion will be entered contemporaneously herewith.

DONE this 16th day of November, 2021.



EDGAR D. ROSS
Special Master