

**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,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*

Defendants.

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

Defendant.

Case No.: SX-2012-CV-370

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

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

Consolidated with

Case No.: ST-18-CV-219

**HAMED REPLY
AS TO HIS MOTION FOR A SECOND RULE 53 REFERENCE
TO SPECIAL MASTER ROSS**

In his December 22, 2021 opposition, Yusuf makes three points:

1. Hamed failed to “adequately” plead “wrongful dissociation”,
2. The Court’s prior decision indicates that there was no damages claim made for wrongful dissociation in this action, and
3. Therefore, a separate action must be brought for damages for wrongful dissociation.

Hamed disagrees with each of these propositions, but particularly the third.

1. Notice Pleading

Rejecting the federal *Iqbal* and *Twombly* standard, the V.I. Supreme Court has adopted the broadest interpretation of the definition of “notice pleading.” See *Joseph v. Bureau of Corr.*, 54 V.I. 644, 650 (2011)

“in *Twombly* the [**8] Supreme Court ... expressly reaffirmed that Rule 8 requires only a short and plain statement of the claim and its grounds,” and thus did not abandon the liberal pleading procedure known as “notice pleading.” *Robles*, 49 V.I. at 500 (internal quotation marks omitted) (quoting *Phillips*, 515 F.3d at 232). Moreover, both this Court and the United States Supreme Court have recognized that there is a strong preference for trial courts to decide doubtful cases on their merits rather than dismiss them for a failure to strictly follow purely procedural rules. See, e.g., *Spencer v. Navarro*, S.Ct. Civ. No. 2007-0069, 2009 V.I. Supreme LEXIS 25, *10, [WL], at *2 (V.I. Apr. 8, 2009) (unpublished); *Conley v. Gibson*, 355 U.S. 41, 47-48, 78 S. Ct. 99, 103, 2 L. Ed. 2d 80 (1957).

This very liberal view that “sufficient notice of the claim” is the correct standard was affirmed in *Rennie v. Hess Oil V.I. Corp.*, 62 V.I. 529, 544 n.10 (2015) (There can be no doubt that by simply pleading that he was discharged in violation of that act, Rennie gave HOVIC sufficient notice of the claim he was bringing. See *Joseph v. Bureau of Corr.*, 54 V.I. 644, 650 (V.I. 2011) (“the Virgin Islands is a “notice pleading”

jurisdiction); *accord Percival v. People*, S. Ct. Crim. No. 2013-0083, 2015 V.I. Supreme LEXIS 2, *10 n.1, [WL], at *3 n.1 (V.I. Jan. 7, 2015).”)

Here, Hamed invoked the specific section of the specific act, and used the specific (highly technical) term of dissociation. While Hamed's focus at that early point of the proceedings was on removal when filing, it cannot be said that Yusuf lacked notice of the claim of wrongful dissociation and whatever statutory relief was available—or that the additional specificity as to both damages and equitable relief in the ad damnum clause mentioning wrongful dissociation was insufficient. Notice pleading does not require the Plaintiff to have a crystal ball as to all possible permutations of a cause of action or statute that might develop through the course of a matter.

2. This Court's Prior Statements as to Lack of Damage Claims

The claim made here is that Fathi Yusuf and his corporation were unjustly enriched when he wrongfully dissociated from the Partnership. It is undisputed they kept Hamed's initial contribution and the useful value of ongoing access to the East Store, even while being fully paid for rent—double-dipping by throwing the Hameds out. It also is undisputed that they were both named as proper defendants. The Court's preliminary determination that it would not remove Yusuf from the Partnership (or the alternative view that the Partnership was LATER terminated) does not stop already existing effects of that wrongful dissociation at the time it happened. By statute, the unjust enrichment and any possible “damages” occurred when Hamed and the partnership were denied use of the East Store with no compensation for the hundreds of thousands of dollars of value kept by Yusuf and United. The statute is clear that even in the absence of removal of a partner,

the actual effects of such a wrongful dissociation should be addressed: See RUPA, 26

V.I.C. 122(c):

(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. See also, the drafter's comments to the original of this section, RUPA section 602.

As the *Official Comments*¹ to Section 122(c) of RUPA make clear:

[3.] Subsection (c) provides that a wrongfully dissociating partner is liable to the partnership and to the other partners for any damages caused by the wrongful nature of the dissociation. That liability is in addition to any other obligation of the partner to the partnership or to the other partners. For example, the partner would be liable **for any damage caused by breach of the partnership agreement or other misconduct**. The partnership might also incur substantial expenses resulting from a partner's premature withdrawal from a term partnership, such as replacing the partner's expertise or obtaining new financing. The wrongfully dissociating partner would be liable to the partnership for those and **all other expenses and damages that are causally related to the wrongful dissociation**. (Emphasis added.)

That was not issue before the Court when removal of Yusuf was the sole issue, and the Court has never considered this portion of the statute or this issue.

3. A Separate Action Need Not Must Be Brought For Wrongful Dissociation.

Yusuf's opposition ignores and once again seeks to override the explicit changes made to RUPA when it was revised and adopted from the old UPA by the VI. The Act was expressly made simpler for pleading purposes by allowing all related claims to be brought in a single action. 26 V.I.C. § 47 Provides "[a]ctions by and against partnership and partners (a) A partnership may sue and be sued in the name of the partnership. (b) An action may be brought against the partnership and, to the extent not inconsistent with

¹ www.federal-litigation.com/_01%20Hamed%20Docket%20Entries/RUPA%20Text.pdf

2section 46 of this chapter, any or all of the partners in the same action or in separate actions.”)

Finally, if Yusuf believes that any additional pleading is necessary, the correct action would be for this Court to allow a Rule 15 amendment of the pleadings to conform with what has clearly been before the Master and the parties – without any contest or protest from Yusuf since the claims were first filed (and Hamed made protests about this very issue at the time of the claims filings as per the motion.) This would be so under Rule 15(c) (amendment back) as well as 15(B)(1) (conforming) and 15(B)(2) (issues tried with consent). It amends back, is conforming and has already been partially heard because, under RUPA, (1) all of the parties are already here, (2) all of their claims can be heard in the existing action, (3) all have had full and fair notice, and (4) all have, in fact, fully done discovery and briefing of the exact issue.

Moreover, in dealing with partnerships even situations where the time limit has passed, the statute of limitations can be deemed tolled the action was allowed if final judgment as to the partnership has not occurred. There is a split in authority as to this. See e.g., *Kingsbury v. Westlake Mgmt. Co.*, No. CIV-14-468-M, 2015 U.S. Dist. LEXIS 47849, at *5-6 (W.D. Okla. Apr. 13, 2015).

The courts that have addressed this issue are split. Some courts have found that a plaintiff must bring its claim against a general partner to hold it liable for a partnership's liability within the limitations period applicable to the underlying claims of wrongdoing against the partnership. See *Valley Nat'l Bank of Ariz. v. A.E. Rouse & Co.*, 121 F.3d 1332 (9th Cir. 1997); *Sunseri v. Proctor*, 487 F. Supp. 2d 905 (E.D. Mich. 2007), *aff'd*, 286 Fed. Appx. 930 (6th Cir. 2008); *Gutrich v. Cogswell & Wehrle*, 961 P.2d 1115 (Colo. 1998). Other courts have found that the limitations period against a partner does not commence until after final judgment against the partnership is entered. See *Evanston Ins. Co. v. Dillard Dep't Stores, Inc.*, 602 F.3d 610 (5th Cir. 2010); *Am. Star Energy and Minerals Corp. v. Stowers*, No. 13-0484, 457 S.W.3d 427, 2015 Tex. LEXIS 161, 2015 WL 859277 (Tex. Feb.

27, 2015); *In re Jones*, 161 B.R. 180 (Bankr. N.D. Tex. 1993). Having carefully reviewed the above cases, the Court finds the cases finding the limitations period does not commence until after final judgment against the partnership is entered are more persuasive.

Thus, at the very least, before the effective dismissal of this claim, the Court should allow a Rule 15 motion, and a Banks analysis of the issue set forth in *Kingsbury*.

Conclusion

Hamed gave notice of a claim of wrongful dissociation. Both equitable relief and damages at law were sought. The issues involved have been the subject of extensive written discovery, depositions and briefings. The action should be allowed to proceed, or Hamed should be allowed to amend pursuant to Rule 15.

The resultant claim should, as set forth in the motion, be referred to the Special Master. To do otherwise would unjustly enrich a party that violate RUPA and has had a windfall of over a million dollars—despite this Court having repeatedly provided equitable relief—and having made sure that the offending partner received full rent on the same premises, a double payment.

Dated: December 22, 2021

/s/Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820
Email: holtvi@aol.com
Tele: (340) 773-8709
Fax: (340) 773-8670

Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
2940 Brookwind Drive
Holland, MI 49424
Email: carl@carlhartmann.com
Tele: (340) 719-8941

CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of December 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

Charlotte Perrell

Stefan Herpel

Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
Cperrell@dnfvi.com
Sherpel@dnfvi.com

/s/Joel H. Holt, Esq.

CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).

/s/Joel H. Holt, Esq.