

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-278**

**ACTION FOR DEBT and  
CONVERSION**

**MEMORANDUM OPINION**

**THIS MATTER** came before the Special Master (hereinafter “Master”) for a hearing on September 28, 2021 in connection with 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”) is an asset of the Partnership.<sup>1</sup>

### **BACKGROUND**

Hamed<sup>2</sup> filed his complaint on September 17, 2012, followed by his first amended complaint on October 19, 2012, against Fathi Yusuf (hereinafter “Fathi Yusuf” or “Yusuf”) and United Corporation (hereinafter “United”) whereby Hamed sought, among other relief, “A full and complete accounting ... with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf ...” (Compl. p. 15, ¶1.) Subsequently, Yusuf and United filed their counterclaim on December 23, 2013, followed by their first amended counterclaim on January 13, 2014 (hereinafter “Counterclaim”).

In 2016, per the Master’s orders, 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 that the Half Acre in Estate Tutu belongs to the Partnership and was incorrectly titled in United Corporation and thus, Hamed claimed a total of \$500,000.00 is due to the Partnership.<sup>3</sup> (Hamed’s Accounting Claims, Exhibit B-1, p. 12.) Yusuf, in his

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<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 Hamed Claim No. H-142 falls within the scope of the Master’s report and recommendation given that Hamed Claim No. H-142 addresses an alleged asset of the Partnership.

<sup>2</sup> 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.

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

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

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 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.

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<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, on July 25, 2017, the Court entered a memorandum opinion and order limiting accounting (hereinafter “Limitations Order”). In the Limitations Order, 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.” (Limitations Order, pp. 32, 34.)

In light of the Limitations Order, the Master ordered the 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>4</sup> Yusuf’s claim that Mohammad Hamed agreed to transfer, *inter alia*, his interest 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.)

On November 20, 2019, Hamed filed a motion for partial summary judgment for Hamed Claim No. H-142. In response, Yusuf and United filed an opposition, and Hamed filed a reply thereto. On January 14, 2020, the Master entered an order whereby the Master, *inter alia*, denied Hamed’s motion for partial summary judgment in connection with 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.<sup>5</sup> (Jan. 14, 2020 Order.)

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<sup>4</sup> Hamed’s Amended Accounting Claims provided:

New Claim No.	Previous Item No.	Description	...	Amount Due to Partnership From Yusuf
142	490	Half acre in Estate Tutu		Sale or split of Property

<sup>5</sup> In the January 14, 2020 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

On February 7, 2020, Hamed filed a motion in limine and a motion for summary judgment in connection with Hamed Claim No. H-142. In his motion in limine, Hamed argued that all the witnesses to the alleged settlement negotiations and their testimony should be excluded. In his motion for summary judgment, Hamed argued that the Half Acre in Estate Tutu is an asset of the Partnership. In response, Yusuf and United filed oppositions, and Hamed filed replies thereto. On May 3, 2020, the Master entered an order whereby the Master: (i) denied Hamed's motion in limine but ordered that the Conversations<sup>6</sup> are admissible only for the limited purpose of showing the parties' intent; and (ii) denied Hamed's motion for summary judgment. More specifically, the Master indicated that "the Master will not preclude Yusuf and United from using Bakir Hussein's Affidavit..., Mohammad Hannun's Affidavit, and Suleiman Khaled's Affidavit but only for the limited purpose of show Parties' intent," (May 3, 2020 Order, p. 18), and made the following findings as to Hamed's motion for summary judgment: (i) Mohammad Hamed, Fathi Yusuf, and Waleed Hamed, at some time in 2010 or 2011, met to discuss Yusuf's discovery of Hamed's

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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.

(Jan. 14, 2020 Order, pp. 12-13.)

<sup>6</sup> In the May 3, 2020 order, the term "Conversations" was defined as the conversations among various people, including but not limited to Mohammad Hamed, Fathi Yusuf, Waleed Hamed, in their attempts to resolve the issue of Hamed's misappropriation of funds. (May 3, 2020 Order, p. 11.)

misappropriation of funds; (ii) While Fathi 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, which Mohammad Hamed agreed to, Fathi Yusuf ultimately agreed to take only one property—the Jordan Property—because Fathi Yusuf believed Mohammad Hamed “was being straight” with him (hereinafter “Original Agreement”); (iii) Fathi Yusuf entered the Original Agreement based on Mohammad Hamed’s representation that there was no other misappropriation of funds by Hamed; (iv) Fathi Yusuf subsequently rescinded the Original Agreement when he discovered additional misappropriation of funds by Hamed; and (v) Mohammad Hamed, Fathi Yusuf, and Waleed Hamed had subsequent discussions in their attempts to resolve the issue of Hamed’s misappropriation of funds.<sup>7</sup> (May 3, 2020 Order.)

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<sup>7</sup> In the May 3, 2020 order, the Master explained:

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; 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 Agreement”). 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 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. 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, and based on Waleed Hamed’s testimony at his January 22, 2020 deposition, the second property seems to refer to the Second Jordan Property; (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, Yusuf’s Amended Accounting Claims, Yusuf’s Interrogatory Answers in Case 733, and Yusuf’s testimony at his April 2, 2014 deposition, it seems like the Original Agreement was to resolve the issue of Hamed’s misappropriation known at the time. However, according to Waleed Hamed’s testimony at his January 22, 2020 deposition, 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 Agreement. According to Yusuf and United’s SOF, Yusuf testimony at his April 2, 2014 deposition, and Yusuf’s Interrogatory Answers in

Case 733, Yusuf rescinded the Original Agreement because he discovered additional misappropriation of funds by Hamed.

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 misappropriation of funds by Hamed. 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. 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 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. 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. But, based on Waleed Hamed’s testimony at his January 22, 2020 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 Estate Tutu. (ii) As to the new offers, whether Hamed accepted any of these new offers. According to Hamed’s MSJ and MSJ Reply, there were no new agreements between Hamed and Yusuf as Hamed did not accept Yusuf’s new offers. However, according to Waleed Hamed’s testimony at his January 22, 2020 deposition, it seems that there was an agreement to two 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, Yusuf’s testimony at his January 22, 2020 deposition, and Yusuf’s Interrogatory Answers in Case 733, 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.

On September 28, 2021, the parties appeared for a hearing on Hamed Claim No. H-142. At the beginning of the hearing, the Master heard Hamed's requests to take judicial notice, filed on September 24, 2021 and September 28, 2021.<sup>8</sup> Thereafter, Hamed and Yusuf each presented witnesses testimony and exhibits. More specifically, the Master heard oral testimony from Waleed Hamed and Fathi Yusuf. 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).

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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.”).

(May 3, 2020 Order) (footnotes omitted.)

<sup>8</sup> In his requests to take judicial notice, filed on September 24, 2021 and September 28, 2021, Hamed requested the Master to take judicial notice of the following: (1) “That the Special Master has already found [in the May 3, 2021 order] that the Half Acre of Estate Tutu belong to the Hamed-Yusuf Partnership even though titled in the name of United Corporation from 2008, with the issue of whether the partnership transferred the parcel to Fathi Yusuf in 2011 being the dispute currently before this Court.” (Sept. 24, 2021 Request.); (2) “That the Special Master has already found [in the May 3, 2021 order] 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; 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 Yusuf believed Mohammad Hamed “was being straight” with him” (hereinafter “Original Agreement”), but that it is further undisputed, per Yusuf’s admission and corroborated by Hamed, that Yusuf subsequently rescinded the Original Agreement.” (Id.); (3) “That Fathi Yusuf signed the attached interrogatory responses[, dated November 20, 2013,] in this case.” (Id.); and (4) “That the three affidavits the Parties have agreed to submit without having the witnesses to testify (Mohammad Hannun, Suleiman K[haleed] and Bakir Hussein) were obtained by Fathi Yusuf in 2014, but not produced in this matter until 2017.” (Sept. 28, 2021 Request.)



## DISCUSSION

Regarding Hamed Claim No. H-142, Hamed argued that there was never an agreement between Mohammad Hamed and Fathi Yusuf for Mohammad Hamed to transfer his interest in the Half Acre in Estate Tutu to Fathi Yusuf to resolve the issue of Hamed's misappropriation of funds, and therefore, Mohammad Hamed's interest in the Half Acre in Estate Tutu was never transferred to Fathi Yusuf<sup>9</sup> and the Half Acre in Estate Tutu remains an asset of the Partnership. On the other hand, Yusuf argued that there was an agreement between him and Mohammad Hamed for Mohammad Hamed to transfer Mohammad Hamed's interest in the Half Acre in Estate Tutu to Fathi Yusuf to resolve the issue of Hamed's misappropriation of funds, and therefore, the Half Acre in Estate Tutu is no longer an asset of the Partnership but an asset of United.<sup>10</sup>

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. Partnership funds in the total amount of \$330,000 were used to purchase the Half Acre in Estate Tutu, which is adjacent to a 9.3-acre<sup>11</sup> parcel of Estate Tutu that is owned by Plessen Enterprises, Inc. (hereinafter "Plessen").
2. The Hamed family and the Yusuf family each own 50% interest in Plessen.
3. Initially, Mohammad Hamed and Fathi Yusuf elected to have Plessen hold title to the Half Acre in Estate Tutu.
4. Plessen subsequently 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.

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<sup>9</sup> See *infra*, footnote 10.

<sup>10</sup> It appears that Fathi Yusuf considered himself and United to be one and the same in this instance—to wit, while Fathi Yusuf claimed that Mohammad Hamed transferred Mohammad Hamed's interest in the Half Acre in Estate Tutu to him, Fathi Yusuf did not claim the Half Acre in Estate Tutu as an asset of his but an asset of United, and there was no mention of Fathi Yusuf transferring his interest in the Half Acre in Estate Tutu to United. It appears that Hamed did not make such a distinction between Fathi Yusuf and United in this instance either.

<sup>11</sup> The Master notes that this property has been referenced throughout this proceeding as 9.3 acres, 9.4 acres, and 9.5 acres, which ultimately all referenced the same property.

5. Plessen subsequently transferred title of the Half Acre in Estate Tutu to United pursuant to a deed-in-lieu in 2008.
6. Since the inception of the business, United simultaneously operated as the Partnership and as a corporation solely owned by Fathi Yusuf that operated as a separate distinct entity from the Partnership.
7. United that operated as the Partnership held title to the Half Acre in Estate Tutu from 2008 to 2011, and therefore, the Half Acre in Estate Tutu was a Partnership asset from 2008 to 2011.<sup>12</sup>
8. Mohammad Hamed, as a partner of the Partnership, has a 50% interest in Partnership assets, and therefore, he had a 50% interest in the Half Acre in Estate Tutu from 2008 to 2011.
9. In 2010 or 2011, Fathi Yusuf discovered Hamed's misappropriation of funds.
10. In March 2011, Mohammad Hamed, Fathi Yusuf, and Waleed Hamed, met to discuss Fathi Yusuf's discovery of Hamed's misappropriation of funds.
11. At the March 2011 meeting, while Fathi Yusuf originally asked for two properties—with one of the two properties being the Jordan Property—to resolve the issue of Hamed's misappropriation of funds, which Mohammad Hamed agreed to, Fathi Yusuf ultimately agreed in the Original Agreement to take only one property—the Jordan Property—because Fathi Yusuf believed Mohammad Hamed “was being straight” with him.
12. Fathi Yusuf entered into the Original Agreement based on Mohammad Hamed's representation that there was no other misappropriation of funds by Hamed.
13. Shortly after the March 2011 meeting, Fathi Yusuf discovered additional misappropriation of funds by Hamed, which led Fathi Yusuf to rescind the Original Agreement by telling Waleed Hamed to convey to Mohammed Hamed that Fathi Yusuf wanted the second property after all.
14. Waleed Hamed conveyed Fathi Yusuf's message to Mohammad Hamed as requested and Mohammad Hamed said “okay” in response.
15. Waleed Hamed does not know what Mohammad Hamed meant when Mohammad Hamed said “okay” in response.
16. Thus, Mohammad Hamed knew in or about March 2011 that although Fathi Yusuf initially agreed in the Original Agreement to take only one property—the Jordan Property—Fathi Yusuf now wanted the second property as well.

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<sup>12</sup> In this memorandum opinion, whenever referenced are made to “United,” unless otherwise specified, the Master is referencing United, the corporation solely owned by Fathi Yusuf that operated as a separate distinct entity from the Partnership and not United that operated as the Partnership.

17. Subsequently, when asked by Fathi Yusuf, Waleed Hamed confirmed that he conveyed Fathi Yusuf's message to Mohammad Hamed.
18. In July 2011, Mohammad Hamed transferred to Fathi Yusuf the Jordan Property with the following description: No. (310), basin 6, Huwaijer, Tabarbour Village, of east Amman lands.
19. After July 2011, Mohammad Hamed, Fathi Yusuf, and Waleed Hamed had subsequent discussions in their attempts to resolve the issue of all of Hamed's misappropriation, known or unknown.

### **Conclusions of Law**

#### **1. Judicial Notice**

At the September 28, 2021 hearing, the parties agreed to have the Master take judicial notice that the Master entered an order on May 3, 2020 in connection with Hamed Claim No. H-142 and to have the Master take judicial notice of the Master's findings therein,<sup>13</sup> and Yusuf did not object to Hamed's request for the Master to take judicial notice that Fathi Yusuf signed the interrogatories attached as Exhibit C to Hamed's September 24, 2021 request to take judicial notice.<sup>14</sup>

Having been advised of the premises, the Master will take judicial notice that the Master entered an order on May 3, 2020 in connection with Hamed Claim No. H-142. *Cf. King v.*

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<sup>13</sup> At the September 28, 2021 hearing, counsel for Hamed and Yusuf stated:

ATTORNEY PERRELL: ...So I feel that the Court's order is very clear. I'm not so sure that these judicial notices are quite as comprehensive, but if the Court wants to just simply take judicial notice of its order and findings therein, we obviously accept those, of course.

ATTORNEY HOLT: And we would agree with her proffer, and the only reason we did this so we didn't have to start all over again --

...

ATTORNEY PERRELL: Your Honor, if we could, we would just simply ask that, I think it's the easiest way to go about this rather than picking snippets of the Court's prior orders, that the Court, you know, simply take judicial notice of its comprehensive orders, and they are the best evidence of what the Court's already found.

(Sept. 28, 2021 Hr'g Tr. 10:15-24, 11:7-14.)

<sup>14</sup> At the September 28, 2021 hearing, counsel for Yusuf stated:

ATTORNEY PERRELL: ...There is no dispute that Mr. Yusuf executed those discovery responses and the verifications there.

(Sept. 28, 2021 Hr'g Tr. 12:20-22.)

*Appleton*, 61 V.I. 339, 348 (V.I. 2014) (“[T]he Superior Court may take judicial notice of the existence of a document that has been filed with it in another proceeding.”) (quotation marks and citation omitted); *accord Cianci v. Chaput*, 64 V.I. 682, 690 n.2 (V.I. 2016) (recognizing that courts may take judicial notice of other courts' dockets and papers). The Master will also take judicial notice: (i) of the Master's findings therein since the findings therein were agreed upon by the parties at the September 28, 2021 hearing and deny Hamed's requests to take judicial notice as drafted in his September 24, 2021 requests and September 28, 2021 request, and (ii) that Fathi Yusuf signed the interrogatories attached as Exhibit C to Hamed's September 24, 2021 request to take judicial notice. The Master will deny Hamed's requests to take judicial notice as drafted in his September 24, 2021 request and September 28, 2021 request.

**2. Whether the Half Acre in Estate Tutu was an asset of the Partnership or an asset of United after 2011**

In determining whether the Half Acre in Estate Tutu was an asset of the Partnership or an asset of United after 2011, the threshold question for the Master to ascertain is whether there was an agreement between Mohammad Hamed and Fathi Yusuf for Mohammad Hamed to transfer his interest in the Half Acre in Estate Tutu to Fathi Yusuf. If there was such an agreement, then United that operated as a separate distinct entity from the Partnership, and not the United that operated as the Partnership, held title to the Half Acre in Estate Tutu after 2011, and the Half Acre in Estate Tutu became an asset of United after 2011.<sup>15</sup>

Although there are cases from the Virgin Islands Supreme Court, Third Circuit Court of Appeals, and the Appellate Division of the District Court of the Virgin Islands addressing the common law elements of contract formation, none of these cases performed a *Banks* analysis,<sup>16</sup>

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<sup>15</sup> For the purpose of this memorandum opinion, the Master will consider a transfer of Mohammad Hamed's interest in the Half Acre in Estate Tutu to United the same as a transfer to Fathi Yusuf. *See supra*, footnote 10.

<sup>16</sup> In the absence of binding Virgin Islands law, it is necessary to conduct a *Banks* analysis to determine the appropriate common law rule to apply to Plaintiff's claim. *Banks v. International Rental & Leasing Corp.*, 55 V.I. 967, 977-78 (V.I. 2011); *see also Gov't of the Virgin Islands v. Connor*, 60 V.I. 597 (V.I. 2014).

and the Master is not required to follow otherwise binding precedent that was predicated solely on Title 1 V.I.C. § 4. *See Connor*, 60 V.I. at 605 n.1 (“Given that this Court has elected not to perpetuate its own prior erroneous reliance on 1 V.I.C. § 4, we conclude that the Superior Court, too, should not be foreclosed from departing from those holdings in an appropriate case, provided that it thoroughly explains the reasoning for its decision.”). Nevertheless, the Virgin Islands Supreme Court acknowledged in *Walters v. Walters* that “the most basic prerequisite for the formation of a contract [is] that there was a mutual assent to a bargained-for-exchange in which one party made a promise in return for another promise.” 60 V.I. 768, 796-97 (V.I. 2014) (citing RESTATEMENT (SECOND) OF CONTRACTS §§ 18-23 (1981)). Thus, the Master finds it unnecessary to perform a *Banks* analysis on such basic common law elements of contract formation reflected in the Restatement (Second) of Contracts that our jurisdiction has long accepted: mutual assent and consideration. *Cf. Valentin v. Grapetree Shores*, 2015 V.I. LEXIS 76, \*6 (V.I. Super. Ct. June 30, 2015) (“[T]he basic elements for what constitutes a valid contract are so widely accepted and fundamental to the practice of law in the Virgin Islands and every other United States jurisdiction that maintaining these elements is unquestionably the soundest rule for the Virgin Islands. In the Virgin Islands, a valid contract requires a ‘bargain in which there is a mutual assent to the exchange, and consideration.’”). Furthermore, the Master will also adopt the Restatement (Second) of Contracts §§ 18-23—cited by the Virgin Islands Supreme Court in *Walters*—which expand upon and/or clarify the element of mutual assent. Under Restatement (Second) of Contracts §§ 18-19, mutual assent may be manifested by conduct of a party.<sup>17</sup>

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<sup>17</sup> § 18. Manifestation of Mutual Assent

Manifestation of mutual assent to an exchange requires that each party either make a promise or begin to render a performance.

§ 19. Conduct as Manifestation of Assent

(1) The manifestation of assent may be made wholly or partly by written or spoken words or by other acts or by failure to act.

(2) The conduct of a party is not effective as a manifestation of his assent unless he intends to engage in the conduct and knows or has reason to know that the other party may infer from his conduct that he assents.

After hearing the witnesses' testimony and due consideration of the evidence in the record, the Master finds that there was mutual assent and consideration to support Mohammad Hamed and Fathi Yusuf's agreement in or about March 2011, after Fathi Yusuf rescinded the Original Agreement, for Mohammad Hamed to transfer two properties to Fathi Yusuf to resolve the issue of Hamed's misappropriation of funds known at the time (hereinafter "Second Agreement"). As to the element of consideration for the Second Agreement: Fathi Yusuf promised to forego his pursuit of Hamed's misappropriation of funds and, in exchange, Mohammad Hamed promised to transfer two properties to Fathi Yusuf. As to the element of mutual assent for the Second Agreement: Mohammad Hamed, by saying "okay" followed by his conduct of transferring the Jordan Property to Fathi Yusuf in July 2011, when taken together, manifested his assent to the Second Agreement, and Fathi Yusuf manifested assent to the Second Agreement by spoken words and his conduct of accepting the transfer of the Jordan Property from Mohammad Hamed in July 2011. *See* RESTATEMENT (SECOND) OF CONTRACTS §§ 18-19. At the September 28, 2021 hearing, Waleed Hamed testified that there was never any agreement for Mohammad Hamed to transfer any property to Fathi Yusuf to resolve the issue of Hamed's misappropriation of funds, not even for the transfer of the first property "because Fathi never agreed to the first one."<sup>18</sup> However, Mohammad Hamed, by saying "okay" followed by his conduct of transferring the Jordan Property to Fathi Yusuf in July 2011, showed the contrary—namely, while the meaning of Mohammad Hamed's "okay" to Fathi Yusuf's proposal may have been ambiguous on its own, Mohammad Hamed's subsequent conduct of transferring the Jordan Property to Fathi Yusuf in

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(3) The conduct of a party may manifest assent even though he does not in fact assent. In such cases a resulting contract may be voidable because of fraud, duress, mistake, or other invalidating cause.

<sup>18</sup> At the September 28, 2021 hearing, Waleed Hamed testified:

Q. Okay. Now isn't it true that the parties never ultimately came to a resolution about any third property, correct?

A. There was no resolution for the second or the third or the fourth or the fifth because Fathi never agreed to the first one...

(Sept. 28, 2021 Hr'g Tr. 59:2-7.)

July 2011 clarified the ambiguity and solidified his assent to the Second Agreement. If Mohammad Hamed believed that there was no agreement between him and Fathi Yusuf after Fathi Yusuf rescinded the Original Agreement as Waleed Hamed testified, then why did Mohammad Hamed transfer the Jordan Property to Fathi Yusuf in July 2011? Furthermore, Waleed Hamed's testimony that there was no agreement must be discounted by the fact that he also testified at the September 28, 2021 hearing that he does not know whether Mohammad Hamed's "okay" meant Mohammad Hamed agreed or not agreed to the Second Agreement.<sup>19</sup> Mohammad Hamed's conduct of transferring the Jordan Property to Fathi Yusuf supports the conclusion that Mohammad Hamed assented to the Second Agreement when he said "okay."

Moreover, after hearing the witnesses' testimony and due consideration of the evidence in the record, the Master also finds that the Half Acre in Estate Tutu was transferred to Fathi Yusuf pursuant to the Second Agreement. Since United already held title to the Half Acre in Estate Tutu, although initially as United that operated as the Partnership from 2008 to 2011, no further action or paperwork was necessary for Mohammad Hamed to transfer his interest in the Half Acre in Estate Tutu to United, the corporation solely owned by Fathi Yusuf.<sup>20</sup> Although Hamed and Yusuf both presented evidence and made arguments as to the 9.3-acre parcel of Estate Tutu, the question of whether the 9.3-acre parcel of Estate Tutu was part of the second property included in the Second Agreement is outside the scope of the Master's report and recommendation for the dissolution and winding up of the Partnership and not a proper question for the Master to

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<sup>19</sup> At the September 28, 2021 hearing, Waleed Hamed testified:

A. ... My thing is, I told my dad. I told Fathi that my father said, *Okay*.

Q. Did he say, *Okay* –

A. Did he respond, *Okay*, he can have it? *Okay*, it's his? Or, *Okay*, we agree to the agreement? Nothing happen like that I remember. All I remember is, yes, I did tell my dad, and my dad said, *Okay*.

Q. And your dad said, *Okay*, meaning that he agreed?

A. I don't know what he meant, but that's what my understand is. I don't know what my dad meant.

(Sept. 28, 2021 Hr'g Tr. 55:4-16.)

<sup>20</sup> *See supra*, footnote 10.

adjudicate under the September 22, 2014 order appointing the Master and the Final Wind Up Order<sup>21</sup> because the 9.3-acre parcel of Estate Tutu is an asset of Plessen and neither Fathi Yusuf nor Mohammad Hamed alleged, and the records do not reflect, that it was ever an asset of the Partnership. Moreover, while Waleed Hamed testified at his January 22, 2020 deposition that the second property referred to another property in Jordan, he himself could only recall the Tabarbour property—which was the Jordan Property Mohammad Hamed transferred to Fathi Yusuf in July 2011—and could not recall the location of the alleged other property in Jordan, and there is nothing in the record that supports Waleed Hamed’s January 22, 2020 testimony.<sup>22</sup> In fact, at the September 28, 2021 hearing, Waleed Hamed testified that the second property was “the Tutu property.”<sup>23</sup> As such, after 2011, the Half Acre in Estate Tutu was no longer an asset of the Partnership but an asset of United.

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<sup>21</sup> *See supra*, footnote 1.

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

Q. Okay. All right. With regard to the -- what was the second property in Jordan that was discussed on the afternoon meeting?

A. I think it was called Taberpour.

Q. The second one?

A. Yes.

Q. Okay. So what was the one that was conveyed, ultimately?

A. I really don’t remember. Really don’t remember which one.

Q. And you’re absolutely certain that the Taberpour property was the one that was ultimately not part of the deal?

A. I could be mistaken, but I know there was two pieces of property: the one of them was Taberpour; and there was another one --

MR. HARTMANN: Do you know where it was?

A. I – I’m just -- I got a mind block. Sorry. Maybe --

(Waleed Hamed Dep. 168:115-25, 169:1-8.)

<sup>23</sup> At the September 28, 2021 hearing, Waleed Hamed testified:

Q. The other piece of property that your father was offering to Mr. Yusuf, wasn’t that the Tutu property that was both the half acre and the 9.4 that you’ve identified?

A. Specifically, they were talking about the Tutu property.

Q. Okay.

A. Whether it was both or one, it was specifically the Tutu property.

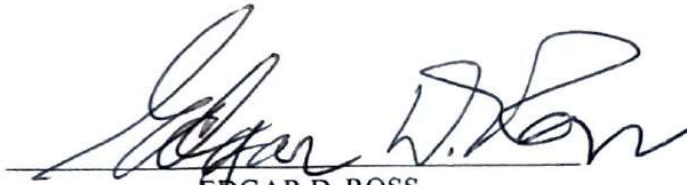
(Sept. 28, 2021 Hr’g Tr. 40:14-22.)



### CONCLUSION

Based on the foregoing, the Master finds that the Half Acre in Estate Tutu is an asset of United, the corporation solely owned by Fathi Yusuf. An order and judgment consistent with this Memorandum Opinion will be entered contemporaneously herewith.

**DONE this 11th day of January, 2022.**



EDGARD D. ROSS  
Special Master

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-278**

**ACTION FOR DEBT and  
CONVERSION**

**ORDER AND JUDGMENT**

**ORDER AND JUDGMENT**

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

**ORDERED, ADJUDGED, AND DECREED** that Hamed’s requests to take judicial notice, filed on September 24, 2021 and September 28, 2021, is **GRANTED IN PART AND DENIED IN PART** as follows:

Request 1: “That the Special Master has already found [in the May 3, 2021 order] that the Half Acre of Estate Tutu belong to the Hamed-Yusuf Partnership even though titled in the name of United Corporation from 2008, with the issue of whether the partnership transferred the parcel to Fathi Yusuf in 2011 being the dispute currently before this Court.” – **DENIED**.

Request 2: “That the Special Master has already found [in the May 3, 2021 order] 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; 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 Yusuf believed Mohammad Hamed “was being straight” with him” (hereinafter “Original Agreement”), but that it is further undisputed, per Yusuf’s admission and corroborated by Hamed, that Yusuf subsequently rescinded the Original Agreement.” – **DENIED**.

Request 3: “That Fathi Yusuf signed the attached interrogatory responses[, dated November 20, 2013,] in this case.” – **GRANTED**.

Request 4: “That the three affidavits the Parties have agreed to submit without having the witnesses to testify (Mohammad Hannun, Suleiman K[haled] and Bakir Hussein) were obtained by Fathi Yusuf in 2014, but not produced in this matter until 2017.” – **DENIED**.

**ORDERED, ADJUDGED, AND DECREED** that the Master takes judicial notice:

- (i) that the Master entered an order on May 3, 2020 in connection with Hamed Claim No. H-142;
- (ii) of the Master’s findings in the May 3, 2020 order; and
- (iii) that Fathi Yusuf signed the interrogatories attached as Exhibit C to Hamed’s September 24, 2021 request to take judicial notice.

**ORDERED, ADJUDGED, AND DECREED** that 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, is an asset of the Partnership, is **DENIED**. It is further:

**ORDERED, ADJUDGED, AND DECREED** that 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, is an asset of United, the corporation solely owned by Fathi Yusuf.

**DONE and so ORDERED this 11th day of January, 2022.**

  
EDGAR D. ROSS  
Special Master