



the Honorable Douglas A. Brady) ruled on July 21, 2017 that: “Counts II and III [of Hamed’s Amended Complaint] explicitly contemplate only declaratory and injunctive relief...,” and that “Hamed, despite the inclusion of a nominally, factually supported request for ‘compensatory damages,’ has presented only claims for equitable relief...” *Hamed v. Yusuf*, 2017 WL 3168458, p. \*2, n.1 and p. \*3 (V.I. Super. Ct. 2017).

2. The Court further explained in its ruling that Hamed’s request for dissociation in Count II had to be construed as a prayer for relief in the form of dissolution and wind up of the partnership, which is precisely the relief the Court had already granted in the Final Wind Up Plan:

Count II requests that “Yusuf’s partnership interests... be dissociated from the business, allowing Hamed to continue the Partnership’s business without him,” on the grounds that “it is not practicable to continue the Partnership.” Complaint ¶ 42. However, it makes little sense to speak of the “dissociation” of a partner in a partnership consisting of only two people, as any “dissociation” must necessarily result in the dissolution and wind up of the partnership. Thus, Count II of the Complaint is properly construed, not as a separate cause of action, but as a prayer for relief in the form of the dissolution and wind up of the partnership in the context of Hamed’s cause of action under 26 V.I.C. § 75(b)(2)(iii). In any event, the Court has already effectively entered judgment on Count II of Plaintiff’s Complaint, by dissolving the partnership and adopting the Final Wind Up Plan on January 7, 2015.

*Hamed v. Yusuf*, 2017 WL 3168458 at p. \*3, n. 2.

3. Hamed’s December 22, 2021 Reply in support of his motion does not even attempt to explain how his Motion can possibly succeed in the face of the clear holdings of this Court described above and in Yusuf’s Opposition. His reply does argue, however, that even if the claim for damages for wrongful dissociation was not pled in Count II, “the correct action would be for this Court to allow a Rule 15 amendment of the pleadings” to assert the claim, either under the liberal amendment and relation back provision of Rule 15 or its provision allowing amendments to conform to issues that were tried by consent. *See* Hamed’s December 22 Reply Brief at p. 5.

4. Because Hamed’s Reply seeks relief that was not mentioned in his original motion – i.e., leave to amend his Complaint – Yusuf requests the opportunity to file a short sur-reply showing why Hamed’s request to amend should be denied.<sup>1</sup> *See United States Virgin Islands Economic Development Authority v. Hypolite*, 2019 WL 451370, \*4 (V.I. Super. 2019) (leave to file a “sur-reply is justified...when a party raises a new argument in their reply”).

For all of the foregoing reasons, Yusuf requests that this Honorable Court grant his request to file a 4-page sur-reply in opposition to Hamed’s Motion for a Second Rule 53 Reference to Special Master Ross solely to address Hamed’s alternative request for leave to amend his Complaint. A proposed order is attached.

Respectfully submitted,

**DUDLEY NEWMAN FEUERZEIG LLP**

**DATED:** January 20, 2022

By: /s/ Charlotte K. Perrell

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<sup>1</sup>Leave to amend may be denied when a party has an unexplained delay in seeking leave to amend, and the amendment, if granted, would create an undue burden on the Court or unfair prejudice to a party. *See Schrader-Cooke v. Government of the Virgin Islands*, 2019 WL 4017894, \*3 (V.I. Super. 2019). Here, Hamed request to amend the Complaint to add a claim for damages for wrongful dissociation comes nearly 5 years after the Court’s determination that Hamed only pled equitable claims for an accounting and dissolution. Yusuf’s sur-reply would address Hamed’s request for leave to amend by arguing, *inter alia*, that the amendment would require this Court to determine which partner, Hamed or Yusuf, was more at fault in causing the dissolution of the partnership, and then determine whether any damages against that partner are recoverable over and above the “charges” previously submitted to Master Ross in the accounting and wind up. Yusuf’s sur-reply would also take issue with Hamed’s contention that an amendment should be allowed to conform the pleadings to issue tried by express or implied consent.

**CERTIFICATE OF SERVICE**

It is hereby certified that on this 20<sup>th</sup> day of January, 2022, I served a true and correct copy of the foregoing **YUSUF’S MOTION FOR LEAVE TO FILE SUR-REPLY**, which complies with the page and word limitations set forth in Rule 6-1(e), with the Clerk of the Court with the electronic filing system and served same upon opposing counsel by means of the electronic case filing system addressed to:

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