

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

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

v. )

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

v. )

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

Additional Counterclaim Defendants. )

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

v. )

UNITED CORPORATION, )  
 )  
Defendant. )

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

v. )

FATHI YUSUF, )  
 )  
Defendant. )

**CIVIL NO. SX-12-CV-370**

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

**Consolidated With**

**CIVIL NO. SX-14-CV-287**

**ACTION FOR DAMAGES AND  
DECLARATORY JUDGMENT**

**CIVIL NO. SX-14-CV-278**

**ACTION FOR DEBT AND  
CONVERSION**

**FATHI YUSUF’S SUR-REPLY REGARDING HAMED’S MOTION  
FOR A SECOND RULE 53 REFERENCE TO SPECIAL MASTER ROSS**

Hamed’s Reply argues that even if this Court has already concluded that Count II of his Amended Complaint only asserts a claim for the equitable relief of dissolution, “the correct action would be for this Court to allow a Rule 15 amendment of the pleadings” to assert a claim for damages for wrongful dissociation. Hamed’s December 22 Reply Brief at p. 5. As a threshold matter, a request to amend a complaint that is made in the abstract, without a proposed red-lined amended complaint, is not in a form that the Court may grant. But even if Hamed had filed a proper motion to amend, it is far too late in the day for Hamed to assert a brand new claim for damages. This case is nearly ten years old, and the Court’s ruling which construed Hamed’s Count II as having only pled an equitable claim for dissolution was issued nearly five years ago. Hamed’s undue delay in seeking an amendment forecloses this relief. *See Schrader-Cooke v. Government of the Virgin Islands*, 2019 WL 4017894, \*3 (V.I. Super. 2019) (stating that “undue” delay is a basis for denying a motion to amend, and that delay can become undue when it “plac[es] an unwarranted burden on the court” and the party has no “adequate explanation” for failing to “take advantage of previous opportunities to amend”).

Hamed has offered no adequate explanation for waiting nearly five years after the Court’s July 2017 ruling to seek a second amendment to his Complaint. In addition, adding a damage claim for wrongful dissociation to this case will put an unwarranted burden on this Court in at least three respects. First, it will force this Court to address the myriad of legal grounds for ruling that this claim is not cognizable in a motion to dismiss that Yusuf would file in response to an amendment. *See generally* Yusuf’s May 19, 2021 Proposed Findings of Fact and Conclusions of Law re: Claim H-163 (providing numerous legal grounds why the claim is not cognizable), pp. 14-

15, ¶¶ 40-42.<sup>1</sup> Second, even if the claim were somehow found to be cognizable, an amendment will unnecessarily increase the length and complexity of these proceedings, because it will require the Court to resolve the question of which partner was most responsible for the dissolution of the partnership. Finally, the nature of damages for wrongful dissociation has never been meaningfully articulated by Hamed, and there will have to be substantial motion practice regarding what damages, if any, are recoverable by any partner who can prove a wrongful dissociation.

Yusuf's position is that his desire to dissociate could not have been wrongful as a matter of law, because it was based on his discovery that Hamed had converted substantial sums of partnership money. In other words, if there was a wrongful dissociation, it was Hamed, and not Yusuf, who perpetrated it. *See* Yusuf's May 19, 2021 Proposed Findings of Fact and Conclusions of Law re: Claim H-163, *supra*, pp. 14-15, ¶¶ 40-42.<sup>2</sup> What Hamed is effectively asking through this amendment is that the Court decide which partner was more at fault in the breakup of the partnership, and then award damages to Hamed if that partner was Yusuf. This is completely contrary to the Court's decision several years ago to order the partnership dissolved without regard to fault, and to direct the Special Master as part of the wind up to determine the "credits and charges to be applied in ascertaining the balance of each partner's individual

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<sup>1</sup>Yusuf's May 19, 2021 Proposed Findings and Conclusions re: Claim H-163 were filed in the proceedings before Master Ross, in the CaseAnywhere docket that the parties and Judge Ross are using for those proceedings. That filing, which is cited several times in this sur-reply, can be accessed at the hyperlink provided in Hamed's Supplemental Exhibits in Support of His Motion for a Second Reference to Special Master Ross, which was filed in this Court on January 2, 2022.

<sup>2</sup>The Special Master has already found that Hamed engaged in misappropriations, and that Yusuf discovered them in 2011. *See* Special Master's May 3, 2020 Order, pp. 32-33, accessible at this hyperlink: [SuperSTX-Ross](#). Not long after that, in early 2012, Yusuf's then attorney (Nizar DeWood) sent Attorney Holt correspondence seeking dissolution of the partnership. *See* Yusuf's May 19, 2021 Proposed Findings of Fact and Conclusions of Law, *supra*, pp. 14-15, ¶ 42. *id.* at p. 14, ¶ 40.

partnership account.” *See Hamed v. Yusuf*, 2017 WL 113121008 \*7 (V.I. Super. 2017). But if the Court is going to allow an amendment to Hamed’s complaint that departs from this approach and allows a damage recovery to the partner found to be the least blameworthy in causing the dissolution, then fairness requires that Yusuf be given the same opportunity to amend his counterclaim to pursue the identical damage theory against Hamed.<sup>3</sup>

Another burden on the Court imposed by Hamed’s request for an amendment is that his briefs on his motion for partial summary judgment for wrongful dissociation have never been very clear or consistent about what damages he is seeking for this claim, and how or why they differ from the “charges and credits” already enumerated in his September 2016 partnership claims. His damage theories have changed almost at whim, and they seem to be based on the idea that if Yusuf did anything to harm Hamed’s partnership interest in some way, that means that Yusuf is guilty of a wrongful dissociation – and that the dollar value of any such harm is recoverable as damages.<sup>4</sup> Permitting an amendment will result in substantial motion practice regarding what amounts, if any,

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<sup>3</sup>This Court ruled in July 2017 that, like Hamed’s Amended Complaint, Yusuf’s Counterclaim only pleads an action for dissolution, wind up and an accounting of the partnership. *See Hamed v. Yusuf*, 2017 WL 113121008, *supra* at \*3.

<sup>4</sup>*See, e.g.*, Hamed’s November 18, 2019 Motion for Partial Summary Judgment as to Claim H-163, p. 5 [submitted to Master Ross via the CaseAnywhere filing system] (indicating that the damages for wrongful dissociation include a damage recovery against Yusuf for allegedly using partnership monies to build the Plaza Extra store at the United Shopping Center (it was completed in 1986). Those claimed damages, besides being without any factual basis, are foreclosed by this Court’s laches-based limitations order, which precludes recovery for any claim that predates September 17, 2006. *See Hamed v. Yusuf*, 2017 WL 113121008, *supra* at \*18 (ruling that “the accounting in this matter to which each partner is entitled...shall be limited in scope to...transactions that occurred on or after September 17, 2006”). In his Reply to the instant Motion, Hamed advances another damage theory under which he would supposedly be entitled to money damages from Yusuf’s alleged refusal to let Hamed and his sons into the East store for some unspecified period of time. *See Reply*, p. 3. Hamed does not say how this alleged denial of access led to dollar losses, or how he would quantify such losses if it did. Yusuf for his part denies that he ever barred any of the Hameds from entering and working in any of the Plaza Extra stores.

over and above the “charges and credits” enumerated in each party’s partnership claims, are legally recoverable.

Hamed also argues in his Reply that an amendment should be permitted under Rule 15(b)(2), which permits amendments after trial to conform to the proofs, because there has been “discovery and briefing of the exact issue.” Hamed’s Reply, p. 5. Yusuf argued first and foremost in his April 9, 2020 brief in opposition to Hamed’s Motion for Partial Summary Judgment on Claim H-163 that “Judge Brady’s ruling striking the jury demand makes it clear that no claim for damages for ‘wrongful dissociation’ was ever pled.” Yusuf’s April 9, 2020 Opposition to Hamed’s Motion for Partial Summary Judgment as to Claim H-163, p. 4.<sup>5</sup> That argument was ultimately successful, as is clear from the Master’s November 16, 2021 ruling indicating that this claim is not part of the instant case and must be pled, if at all, in a new case. The fact that Yusuf also argued in the alternative that even if the wrongful dissociation claim had been pled, it was not maintainable for other legal reasons hardly means that the wrongful dissociation claims was tried by consent and that an amendment should be allowed on that basis.

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<sup>5</sup>Yusuf’s April 9, 2020 Opposition was filed in the proceedings before Judge Ross, but it is hyperlinked in Hamed’s Supplemental Exhibits in Support of His Motion for a Second Reference to Special Master Ross, which was filed in this Court on January 2, 2020.

Respectfully submitted,

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**DATED:** February 14, 2022

By: /s/ Charlotte K. Perrell

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**CERTIFICATE OF SERVICE**

It is hereby certified that on this 14<sup>th</sup> day of February, 2022, I served a true and correct copy of the foregoing **FATHI YUSUF’S SUR-REPLY REGARDING HAMED’S MOTION FOR A SECOND RULE 53 REFERENCE TO SPECIAL MASTER ROSS**, 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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