

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.

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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.

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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**

**THIS MATTER** came before the Special Master (hereinafter “Master”) on Hamed’s motion for summary judgment for Yusuf Claim No. Y-11: reconciliation of past Partnership withdrawals and distributions based on the lifestyle analysis prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. (hereinafter Yusuf Claim No. Y-11”), filed on July 31, 2021.<sup>1</sup> In response, Yusuf filed an opposition and Hamed filed a reply thereto.

### **BACKGROUND**

In 2012, Hamed filed a complaint against 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”).

In 2016, per the Master’s order, the parties filed their respective accounting claims. Yusuf’s accounting claims, filed on September 30, 2016 (hereinafter “Yusuf’s Accounting Claims”), included Yusuf’s claim for the reconciliation of past Partnership withdrawals and distributions based on the lifestyle analysis prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. (Yusuf Claim No. Y-11). In support of the aforementioned claim, Yusuf attached to Yusuf’s Accounting Claims an accounting report of the Partnership prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C (hereinafter “BDO Report”).

On October 3, 2016, Hamed filed a motion to strike the BDO Report pursuant to Rules 702, 401, and 403 of the Federal Rules of Civil Procedure. Subsequently, this matter came

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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 that Hamed’s motion for summary judgment for Yusuf Claim No. Y-11 falls within the scope of the Master’s report and recommendation given that Yusuf Claim No. Y-11 involves an alleged debt the Partnership owes Yusuf.

before the Court for a hearing on the various pending motions, including a *Daubert* hearing on Hamed's fully briefed motion to strike the BDO Report.

On July 25, 2017, the Court entered an order whereby the Court denied without prejudice Plaintiff's motion to strike the BDO Report. In the order, the Court explained:

At the hearing, Hamed presented extensive testimony from several witnesses to the effect that the BDO report, supported by the report's own disclaimers, is unreliable as an expert accounting report and fails the test for admissibility under Virgin Islands Rule of Evidence 702 as defined in *Antilles School, Inc. v. Lembach*, 64 V.I. 400 (V.I. 2016) and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.D. 579 (1993). As such, Plaintiff [Hamed] asserts that the report must be stricken. Defendants [Yusuf and United] responded that the Motions are premature in that the reports were submitted to the Master only as part of Defendants' proposed accounting and distribution plan, and are not a part of the record. Further, Defendants state that the BDO report represents only a preliminary accounting based on information available at the time, and will be supplemented upon completion of additional discovery. Both parties agree that more discovery is required to adequately present their respective claims.

The primary purpose of conducting a *Daubert* hearing pursuant to V.I. R. Evid. 104 is to permit the trial court to act as gatekeeper to prevent a jury from hearing inadmissible testimony. Because of the Court, by Memorandum Opinion and Order entered contemporaneously herewith, strikes both Plaintiff's and Defendant's demands for trial by jury, that concern is not present. Further, the ability of the Master and the Court to evaluate the reports and ascribe to them only such weight as they deserve, militates against striking the reports at this stage of the litigation.

(July 25, 2017 Order) (footnotes omitted).

On July 25, 2017, the Court contemporaneously entered a memorandum opinion and order limiting accounting (hereinafter "Limitations Order"). The Court clarified in the Limitations Order that the term "claim" has taken on an entirely different and more specific meaning than "cause of action" in the context of this litigation—to wit: "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)" and that the "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 Plain.” (Limitations Order, pp. 10-11.) Furthermore, in addressing the “imprecision and inadequacy of the partners’ accounting practices,” the Court mentioned the BDO Report:

As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes “a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012.” See Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial “limitations,” resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership.<sup>25</sup> See Plaintiff’s Motion to Strike BDO Report, Exhibit 1, at 22. Additionally, the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of “known sources of income” constitute distributions from partnership funds to the partners’ § 71(a) accounts. Thus, even Yusuf’s own “expert report” acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.

Furthermore, in his Revised Notice of Partnership Claims (RNPC), filed October 17, 2016, Hamed expressly states that he “believes that it is clear that because of the state of the partnership records due to Yusuf’s acts and failures to act, no [accounting for the period from 1986-2012] is even arguably possible.” RNPC, at 6-7. Plaintiff’s belief appears to be based in large part on the Opinion Letter of Lawrence Shoenbach, presenting the “expert opinion of a criminal defense attorney with experience in federal criminal practice and so-called ‘white collar’ business crimes involving tax evasion, money laundering, and/or compliance.” See RNPC, Exhibit C (Op. Letter), at I.

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<sup>25</sup> These limitations include the following: 1) “Accounting records of Plaza Extra-East were destroyed by fire in 1992 and the information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993;” 2) “Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets’ accounts) provided in connection with Supermarkets were limited to covering the period from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012;” and 3) “Accounting records and/or documents provided to us for the periods prior to 2003 are incomplete and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, there is no Bank information available prior to 2007 and electronic transactions do not

generate any physical evidence as to regular deposits and/or debits." Plaintiff's Motion to Strike BDO Report, Exhibit I, at 22.

(Limitations Order, pp. 23-24.)

Ultimately, 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 response, on August 11, 2017, Yusuf filed a motion for reconsideration of the Court's Limitations Order and a motion to certify questions.

In light of the Limitations Order, the Master ordered the parties to file their amended accounting claims. Yusuf Claim No. Y-11 was again included in Yusuf's amended accounting claims, filed on filed on October 30, 2017 (hereinafter "Yusuf's Amended Accounting Claims") and, in addition to the BDO Report, a summary of withdrawals prepared by Yusuf's accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C (hereinafter "BDO Summary of Withdrawals") was attached to Yusuf's Amended Accounting Claims in support of Yusuf Claim No. Y-11.

On November 15, 2017, the Court entered an order whereby the Court denied both of Yusuf's August 11, 2017 motions. In the November 15, 2017 order, the Court noted that "[w]hile there is little doubt that a respected accounting firm such as BOO is capable of rendering an accurate accounting based upon the records provided, the Court's decision to impose an equitable limitation upon the scope of the partnership accounting is premised, not on the many tens of thousands of records that are available - to be expected in the context of a partnership spanning three decades - but rather on the many hundreds, if not thousands of

records that are demonstrably unavailable, such as any bank records predating 2007 (see BDO Report, at 22), and the unknown number of cash transactions left unrecorded that must be inferred from the known historical behavior and highly informal, if not deliberately misleading, accounting practices of the partners.” (Nov. 15, 2017 Order, p. 5.)

On December 27, 2017, Hamed filed a motion to strike the BDO Summary of Withdrawals, which was subsequently denied without prejudice in an order entered by the Master on October 2, 2018.

On July 31, 2021, Hamed filed this instant motion for summary judgment for Yusuf Claim No. Y-11.

### **STANDARD OF REVIEW**

Rule 56 of Virgin Islands Rules of Civil Procedure (hereinafter “Rule 56”) governs motions for summary judgment and sets forth the procedures thereto. Under Rule 56, “[a] party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought” and “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. CIV. P. 56; *see also Rymer v. Kmart Corp.*, 68 V.I. 571, 575 (V.I. 2018) (“A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record.”). “A factual dispute is deemed genuine if ‘the evidence is such that a reasonable jury could return a verdict for the nonmoving party[.]’” and a fact is material only where it “might affect the outcome of the suit under the governing law[.]” *Todman v. Hicks*, 70 V.I. 430, 436 (V.I. Super. Ct. April 17, 2019)(quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)). The reviewing court must view all inferences from the evidence in the light most favorable to the nonmoving party, and take the nonmoving party's conflicting allegations as

true if properly supported. *Kennedy Funding, Inc. v. GB Properties, Ltd.*, 2020 V.I. 5, ¶14 (V.I. 2020). “The movant may discharge this burden simply by pointing out to the ... court that there is an absence of evidence to support the nonmoving party's case.” *Id.* (internal quotation marks and citation omitted). Once the moving party meets this burden, “the non-moving party then has the burden of set[ting] out specific facts showing a genuine issue for trial.” *Id.* (internal quotation marks and citation omitted). The non-moving party “may not rest upon mere allegations, [but] must present actual evidence showing a genuine issue for trial.” *Rymer*, 68 V.I. at 576 (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)). “Such evidence may be direct or circumstantial, but the mere possibility that something occurred in a particular way is not enough, as a matter of law, for a jury to find it probably happened that way.” *Kennedy*, 2020 V.I. 5, ¶14. Moreover, the court “should not weigh the evidence, make credibility determinations, or draw ‘legitimate inferences’ from the facts when ruling upon summary judgment motions because these are the functions of the jury.” *Todman*, 70 V.I. at 437 (quoting *Williams*, 50 V.I. at 197); *see Kennedy*, 2020 V.I. 5, ¶14; *see also, Rymer*, 68 V.I. at 577 (“When considering a summary judgment motion, a trial judge may not weigh the credibility of evidence or witnesses.”). 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.” *Todman*, 70 V.I. at 437 (citations omitted); *see Kennedy*, 2020 V.I. 5, ¶14 (noting that the court “decide only whether there is a genuine issue for trial such that a reasonable jury could return a verdict for the non-moving party”). Accordingly, “if a credibility determination is necessary as to the existence of a material fact, a grant of summary judgment would be improper.” *Rymer*, 68 V.I. at 577. 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.” *Rymer*, 68 V.I. at 575-76 (quoting *Williams*, 50 V.I. at 194). The Court is required to “state on the record the reasons for granting or denying the motion.” V.I. R. Civ. P. 56(a).

## **DISCUSSION**

In his motion, Hamed argued that Yusuf Claim No. Y-11 “should be dismissed under the law of the case doctrine”—to wit, “the Court has already dealt with this claim – holding (in this proceeding) that ‘the analysis presented in the report rests on the unsupported assumption [about ‘lifestyle analysis’ as a theory] that any monies identified in excess of ‘known sources of income’ constitute distributions from partnership funds . . . .” —and that “[Yusuf Claim No. Y-11] should also be dismissed because (1) such an analysis of the lifestyles and spending of the Hameds that starts from the assumption that *all spending* after 2006 TENDS to come from the Partnership is ‘unsupported’ and idiotic because (2) as Judge Brady stated, ‘the body of the BDO Report itself contains a section detailing its own substantial ‘limitations,’ resulting from the absence or inadequacy of records. . . .’ and (3) because the Yusufs have never provided the matching discovery for a comparison despite requests, motions and orders.” (Motion, pp. 4-5) (emphasis in original.)

In his opposition, Yusuf argued that Hamed’s motion for summary judgment for Yusuf Claim No. Y-11 should be denied. (Opp., p. 10.) Yusuf made the following assertions in support of his argument: (i) “[C]ontrary to Hamed’s contentions, the concept of a ‘lifestyle analysis’ was not rejected by Judge Brady and it is hardly ‘idiotic.’” (Id., at p. 7); (ii) The BDO Report “contains expert opinions which Hamed is free to challenge with evidence or his own expert testimony, and which Yusuf is free to support with evidence.” (Id., at p. 9); (iii) The BDO Report “is not the final expert report as discovery on these issues is continuing.” (Id.); (iv) “Hamed has offered no legal basis for his attempt to argue that the law of the case precludes



Yusuf from relying on it or subsequent reports using the same analysis in trying to prove his Y-11 claims.” (Id.); (v) “Hamed has never made a claim that Yusuf engaged in undisclosed withdrawals.” (Id., at p. 10); (vi) “Judge Brady d[id] not specifically address BDO’s preliminary lifestyle analysis in his Limitations Order, and nothing stated in that opinion regarding the limitations in the accounting records that led to the 2006 cutoff for accounting claims bars Yusuf’s use of certain accounting methods for ascertaining the dollar amount of misappropriations for periods after September 17, 2006.” (Id.); and (vii) “The parties are free to use information obtained in the discovery that has been done or will be done on this subject to either support or challenge Yusuf’s experts’ final conclusions but Judge Brady plainly did not rule the methodology out of bounds.” (Id.)

In his reply, Hamed argued that Yusuf admitted in his opposition that the Court “has already found that the assumption necessary for this claim simply cannot be supported in this case” and that “Yusuf admits ‘there were gaps in the records.’”<sup>2</sup> (Reply, pp. 1, 7.)

The Master notes at the outset that Hamed’s motion failed to “include a statement of undisputed facts in a separate section within the motion” with “[e]ach paragraph stating an undisputed fact shall be serially numbered and each shall be supported by affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon regarding such fact” as required under Rule 56. V.I. R. CIV. P. 56(c)(1). While Hamed included a separate section for the statement of undisputed facts in his motion, Hamed simply stated therein:

There are no facts not already of record. The only facts relevant to this motion are the Brady decision and the admissions about the lack of (and impossibility of obtaining) necessary records by BDO that Judge Brady quoted.

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<sup>2</sup> In his reply, Hamed indicated that he construed Yusuf’s opposition as a second motion for reconsideration of the Court’s prior order and thus, Hamed dedicated the bulk of his reply to opposing the purported second motion for reconsideration. For the purposes of this Order, the Court will not consider the arguments Hamed made in connection with the purported second motion for reconsideration.

In other words, the facts of this are merely the basic statement of Yusuf’s own claim viewed in light of Judge Brady’s Order and the subsequent (lack of) discovery responses.

(Motion, p. 4.)

This, in turn, prevented Yusuf from addressing “each of the facts upon which the movant has relied pursuant to [Rule 56](c)(1), using the corresponding serial numbering, either: (i) agreeing that the fact is undisputed for the purpose of ruling on the motion for summary judgment only; or (ii) stating that the fact is disputed and providing affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon as evidence relating to each such material fact, by number” as required by Rule 56(c)(2)(B). The purpose of the statement of undisputed facts, and the opposing party’s response thereto, is to provide the Master with a road map of what undisputed material evidence should be considered in deciding the motion for summary judgment—to wit, Rule 56 requires the facts set forth in the statement of undisputed facts to be supported by the citations to the record that are given by the moving party and Rule 56 similarly requires the opposing party to do the same if stating that the fact is disputed. In other words, the statement of undisputed facts, and the opposing party’s response thereto, should allow the Master to rely on them to ascertain whether a fact is undisputed, rather than search through the parties’ respective briefs and attachments thereto. Nevertheless, the Master deems it appropriate to rule on Hamed’s motion at this juncture and will do so without the aid of Hamed’s statement of undisputed facts and Yusuf’s response thereto. *See* V.I. R. Civ. P. 56(e)(1)-(4) (“If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may: ...issue any other appropriate order.”).

The Master further notes that Yusuf did not directly address Yusuf Claim No. Y-11 in Yusuf’s Amended Accounting Claims. Instead, Yusuf Claim No. Y-11 was lumped together

with Yusuf's claim for the reconciliation of past Partnership withdrawals and distributions (Yusuf Claim No. Y-10)—to wit, Yusuf claimed that "Hamed received \$5,099,638.44 more than Yusuf for the defined period" and "[a]s a result, \$2,549,819.22 should be awarded to Yusuf to equalize the distributions between the Partners for the disparity in distributions from September 17, 2006 forward so that both Partners have equal distributions."<sup>3</sup> (Yusuf's Amended Accounting Claims, pp. 13-14.) Yusuf failed to include any specific information in Yusuf's Amended Accounting Claims to explain how he arrived at these dollar amounts.

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<sup>3</sup> More specifically, Yusuf's Amended Accounting Claims provided, in relevant part:

IV. Past Partnership Withdrawals and Distribution Reconciliation

Throughout the Partnership, the Partners and their agents (i.e., their sons) would withdraw cash from safes at the Plaza Extra Stores. Evidence of these withdrawals came in multiple forms including, inter alia, receipts, checks or ledger entries. In addition, the Partners and their agents used funds generated by the Plaza Extra Stores for personal expenses. These payments for personal expenses were to be counted against each Partner as a distribution. The withdrawals and payments for personal expenses were supposed to be done on the "honor system," which relied upon each Partner and their agents to disclose to the other Partner, via "tickets" or receipts left in the store safes, when withdrawals were made or personal expenses were paid from Partnership funds. Occasionally, the Partners would reconcile the various withdrawals and expenses between them. Upon review of the various accounting records as well as information regarding personal accounts and assets of the Partners and their agents, Yusuf submits that Hamed and his agents failed to fully disclose all of the funds they withdrew from the Partnership or personal expenses they paid with Partnership funds. Consequently, these previously undisclosed withdrawals and expenses are treated as distributions in the Original Claims and the Amended Claims. A full accounting of the Partnership withdrawals is set forth in the Expert Report of Fernando Scherrer of BDO Puerto Rico, P.S.C. ("BDO") attached as Exhibit J to the Original Claims<sup>14</sup>. Based on that report, Hamed's withdrawals/distributions exceeded Yusuf's withdrawals/distributions by \$19,341,350.72. See Exhibit J at p. 62-3. As a result, under the Original Claims, \$9,670,675.36 should be awarded to Yusuf to equalize the distributions between the Partners so that both Partners have equal distributions of \$18,820,989.98.

Subsequent to the Accounting Order limiting the accounting claims to those transactions occurring on or after September 17, 2006, BDO adjusted their calculations to reflect only transactions from that date forward. Their revised calculations are set forth in the attached Exhibit J-2. Hamed received \$5,099,638.44 more than Yusuf for the defined period. As a result of these amended calculations, \$2,549,819.22 should be awarded to Yusuf to equalize the distributions between the Partners for the disparity in distributions from September 17, 2006 forward so that both Partners have equal distributions.

**Disputed/Undisputed, Ripe for Determination or Discovery Needed:** The various transactions identified and allocated by BDO are in dispute. While not every single allocation will be in dispute, Hamed will need to identify which specific allocations he disputes. It is Yusuf's position that further discovery is needed as to these claims as well as any accounting claims that Hamed may assert involving transactions occurring on or after September 17, 2006.

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<sup>14</sup> The tables, schedules and supporting documentation for that report are voluminous and were submitted to the Master and counsel for Hamed via a flash drive or CD identified as Exhibit J-1.

(Yusuf's Amended Accounting Claims, pp. 12-14.)

However, Yusuf referenced both the BDO Report and the BDO Summary of Withdrawals in section “IV. Past Partnership Withdrawals and Distribution Reconciliation,” the section that indirectly addressed Yusuf Claim No. Y-11 when it addressed Yusuf Claim No. Y-10.<sup>4</sup> Both the BDO Report and the BDO Summary of Withdrawals provided additional information on Yusuf Claim No. Y-11—to wit, the BDO Report explained the methodology and process used in preparing the lifestyle analysis that formed the basis of Yusuf Claim No. Y-11<sup>5</sup> and the BDO Summary of Withdrawals assigned dollar amounts to various items that account for Yusuf Claim No. Y-11.<sup>6</sup> A review of the BDO Summary of Withdrawals revealed that the amount

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<sup>4</sup> See Id.

<sup>5</sup> Section 4.1.2 of the BDO Report provides:

4.1.2 Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership

Our examination was aimed to identify all other income received by the Partners, family members and/or their agents that could be construed to be partnership distributions, which otherwise had not been disclosed as a withdrawal. Mr. Mohammad Hamed testified that their only source of income was salaries and/or wages, and the distributions received from the Partnership since 1986.<sup>24</sup> Therefore, any excess of monies identified over the known sources of income during the period analyzed was assumed to be partnership distributions and/or partnership withdrawals.

Yusuf’s family has testified that their source of income was not only related to the supermarket activities, but also from United’s rental and other businesses not related to the supermarket operation. Any unidentified deposit was considered a withdrawal from the Partnership.

Lifestyle analysis is the most commonly used method of proving income for an individual in cases where records or documents are not fully available. This method considers the person’s spending patterns in relation to their known sources of funds.<sup>25</sup>

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<sup>24</sup> Refer to Case No. SX-12-CV370, Oral deposition of Mr. Hamed dated April 21, 2014, pages 43 to 44.

<sup>25</sup> Sources of income or funds can include wages, bonuses, stocks sold, bank loan proceeds, gifts, gambling winnings, among others.

(The BDO Report, pp. 15-16.)

There are other sections throughout the BDO Report that further addressed the lifestyle analysis: Section 4.1.2 “Lifestyle Analysis to Identify Undisclosed Withdrawals from the Partnership,” Section 5.1.1 “Lifestyle Analysis” – Mohammad Hamed, Section 5.1.2 “Lifestyle Analysis” – Waleed Hamed, Section 5.1.3 “Lifestyle Analysis” – Waheed Hamed, Section 5.1.4 “Lifestyle Analysis” – Mufeed Hamed, Section 5.1.5 “Lifestyle Analysis” – Hisham Hamed, Section 5.2.2 “Lifestyle Analysis” – Nejeh Yusuf, Section 5.2.3 “Lifestyle Analysis” – Maher Yusuf, Section 5.2.4 “Lifestyle Analysis” – Yusuf Yusuf, Section 5.2.5 “Lifestyle Analysis” – Najat Yusuf, and Section 5.2.6 “Lifestyle Analysis” – Zayed Yusuf.

<sup>6</sup> A simplified version of the BDO Summary of Withdrawals is reproduced here—to wit, the columns for the individual Hameds (Mohammad Hamed, Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed) and individual Yusufs (Fathi Yusuf, Nejeh Yusuf, Maher Yusuf, Yusuf Yusuf, Najat Yusuf, Zayed Yusuf, Syaid Yusuf, Amal Yusuf, Hoda Yusuf, and Yacer Yusuf) were not included and instead, only the columns with the total for the Hameds, the total for the Yusufs, and the differences are included. The six rows preceding the row

**ORDER**

“\$5,099,638.44” is derived from adding together the alleged differences between Hameds’ total withdrawals and Yusufs’ total withdrawals for Yusuf Claim No. Y-10 (\$3,133,020.88) and Yusuf Claim No. Y-11 (\$1,966,617.56) in the BDO Summary of Withdrawals.<sup>7</sup> Based on the foregoing, the Master finds that the BDO Report and the BDO Summary of Withdrawals, which were attached as exhibits to Yusuf’s Amended Accounting Claims, were both incorporated by reference into Yusuf Claim No. Y-11. With that in mind, the Court will address Hamed’s arguments in turn.

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“Total Partnership” account for Yusuf Claim No. Y-10 and the three rows preceding the row “Subtotal Lifestyle Analysis” account for Yusuf Claim No. Y-11.

<b>Description</b>	<b>Hameds Total</b>	<b>Yusufs Total</b>	<b>Difference</b>
Funds received from partnership through checks	\$1,500,000.00	\$4,284,706.25	(\$2,784,706.25)
Withdrawals from the partnership with a signed ticket/receipt	\$237,352.75	\$2,000.00	\$235,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike’s testimony these tickets were burned	\$1,778,103.00	-	\$1,778,103.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	\$20,311.00	-	\$20,311.00
Payments to Attorneys with partnership’s funds	\$4,121,651.43	\$237,691.05	\$3,883,960.38
Funds received by cashier’s check	-	-	-
<b>Total Partnership</b>	<b>\$7,657,418.18</b>	<b>\$4,524,397.30</b>	<b>\$3,133,020.88</b>
Deposits to bank and brokerage accounts	\$1,364,006.06	-	\$1,364,006.06
Payments to credit cards	\$602,611.50	-	\$602,611.50
Investments (cost) sold as per tax returns	-	-	
<b>Subtotal Lifestyle Analysis</b>	<b>\$1,966,617.56</b>	<b>-</b>	<b>\$1,966,617.56</b>
<b>Net Withdrawals</b>	<b>\$9,624,035.74</b>	<b>\$4,524,397.30</b>	<b>\$5,099,638.44</b>

(Yusuf’s Amended Accounting Claims, Exhibit J-2.)

<sup>7</sup> See Id.

### **1. Law-of-the-Case Doctrine**

In his motion, Hamed argued that there is no genuine dispute as to any material fact regarding Yusuf Claim No. Y-11 because of the law-of-the-case doctrine—to wit, “the Court has already dealt with this claim – holding (in this proceeding) that ‘the analysis presented in the report rests on the unsupported assumption [about ‘lifestyle analysis’ as a theory] that any monies identified in excess of ‘known sources of income’ constitute distributions from partnership funds . . . .” —and thus, he is entitled to judgment as a matter of law for Yusuf Claim No. Y-11. (Motion, p. 4.) The Master disagrees. The law-of-the-case doctrine, which is applicable in this jurisdiction, provides that “when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.” *Hodge v. Bluebeard's Castle, Inc.*, 62 V.I. 671, 688 (V.I. 2015); *see V.I. Taxi Ass'n v. V.I. Port Auth.*, 67 V.I. 643, 672 (V.I. 2017) (the Virgin Islands Supreme Court, after conducting a Banks analysis, concluded that the law-of-the-case doctrine represents the soundest rule of law for this jurisdiction). Here, unlike what Hamed claimed, the Court never ruled on Yusuf Claim No. Y-11 or the BDO Report in the Limitations Order. Instead, the Court simply pointed out that “the BDO Report, by its own terms appear to be anything but comprehensive” and “contains a section detailing its own substantial ‘limits.’” In fact, the Court entered an order contemporaneously with the Limitations Order whereby the Court pointed out that “[b]oth parties agree that more discovery is required to adequately present their respective claims” and denied Hamed’s motion to strike the BDO Report. As such, the Master concludes that the law-of-the-case doctrine is not applicable in this instance and Hamed failed to satisfy his burden of establishing that there is no genuine dispute as to any material fact regarding Hamed Claim No. H-11 based on the law-of-the-case doctrine.

## **2. The Limitations of the BDO Report**

In his motion, Hamed argued that there is no genuine dispute as to any material fact regarding Yusuf Claim No. Y-11 because of the limitations of the BDO Report—to wit, “such an analysis of the lifestyles and spending of the Hameds that starts from the assumption that all spending after 2006 TENDS to come from the Partnership is ‘unsupported’ and idiotic because...as Judge Brady stated, ‘the body of the BDO Report itself contains a section detailing its own substantial ‘limitations,’ resulting from the absence or inadequacy of records. . .’”—and thus, he is entitled to judgment as a matter of law for Yusuf Claim No. Y-11. (Motion, p. 4) (emphasis in original.) The Master disagrees. For the Master to conclude that there is no genuine dispute as to any material fact for Yusuf Claim No. Y-11 based on the limitations of the BDO Report as Hamed claimed, it would require the Master to weigh the evidence, make credibility determinations, and draw inferences from the facts, which are not permitted at the summary judgment stage. *See Todman*, 70 V. I. at 437 (noting that the court “should not weigh the evidence, make credibility determinations, or draw ‘legitimate inferences’ from the facts when ruling upon summary judgment motions because these are the functions of the jury”). As such, the Master concludes that Hamed failed to satisfy his burden of establishing that there is no genuine dispute as to any material fact regarding Hamed Claim No. H-11 based on the limitations of the BDO Report.

## **3. Yusuf’s Failure to Provide Matching Discovery for Comparison**

In his motion, Hamed argued that there is no genuine dispute as to any material fact regarding Yusuf Claim No. Y-11 because of Yusuf’s failure to provide matching discovery for comparison—to wit, “Yusufs have never provided the matching discovery for a comparison despite requests, motions and orders”—and thus, he is entitled to judgment as a matter of law for Yusuf Claim No. Y-11. (Motion, p. 4.) The Court disagrees. Contrary to what Hamed

claimed, the fact that Yusuf have not responded to Hamed's discovery requests in connection with Yusuf Claim No. Y-11 does not automatically lead to the conclusion that there is no genuine dispute as to any material fact regarding Yusuf Claim No. Y-11 and that Hamed is entitled to judgment as a matter of law; instead, it leads to the conclusion that there is not sufficient information at this juncture to determine whether there is a genuine dispute as to any material fact regarding Yusuf Claim No. Y-11.<sup>8</sup> Hamed's argument was perfunctory and made without supporting authority. *See* V.I. R. Civ. P. 11(b)(5) ("By presenting to the court a pleading, written motion, or other paper -- whether by signing, filing, submitting, or later advocating it -- an attorney or self-represented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:...(5) that the applicable Virgin Islands law has been cited, including authority for and against the positions being advocated by the party."); *see also*, *The Litwin Corp. v. Universal Oil Prods. Co.*, 69 V.I. 380, 387 (V.I. Super. Ct. Sept. 28, 2018) ("[I]t is not the Court's job to research and construct legal arguments open to parties. In order to develop a legal argument effectively, the facts at issue must be bolstered by relevant legal authority; a perfunctory and undeveloped assertion is inadequate.") (internal quotation marks and citation omitted). The Master declines to make such argument on Hamed's behalf. *See Joseph v. Joseph*, 2015 V.I. LEXIS 43, \*5 (V.I. Super. Ct. Apr. 23, 2015) ("[I]n general, the Court will not make a movant's arguments for him when he has failed to do so."). As such, the Master

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<sup>8</sup> In fact, Hamed acknowledged in his motion that there is not sufficient information at this juncture to have a meaningful comparison of Hamed's total withdrawals and Yusufs' total withdrawals for Yusuf Claim No. Y-11, and contemporaneously filed a motion to compel for Yusuf Claim No. Y-11 to obtain matching information from Yusuf. (Motion, p. 2, n.2.) Although Hamed claimed that "[t]his would be a huge and impossible discovery undertaking" and that "[s]uch discovery would fail, but in the attempt it would dwarf all prior discovery in this case combined," the fact that the discovery process may be "huge and impossible" also does not automatically lead to the conclusion that there is no genuine dispute as to any material fact regarding Yusuf Claim No. Y-11 and that Hamed is entitled to judgment as a matter of law; instead, it similarly leads to the conclusion that there is not sufficient information at this juncture to determine whether there is a genuine dispute as to any material fact regarding Yusuf Claim No. Y-11. The Master will address Hamed's motion to compel in a separate order.



concludes that Hamed failed to satisfy his burden of establishing that there is no genuine dispute as to any material fact regarding Hamed Claim No. H-11 based on Yusuf's failure to provide matching discovery for comparison.

**CONCLUSION**

Based on the foregoing, the Master finds that Hamed failed to satisfy his burden of establishing that there is no genuine dispute as to any material fact regarding Hamed Claim No. H-11 and is not entitled to judgment as a matter of law. Accordingly, it is hereby:

**ORDERED** that Hamed's motion for summary judgment for Yusuf Claim No. Y-11, filed on July 31, 2021, is **DENIED**.

**DONE and so ORDERED** this 6<sup>th</sup> day of March, 2022.

  
EDGARD. ROSS  
Special Master