

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.

**WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

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

THIS MATTER came before the Special Master (hereinafter “Master”) on Yusuf and Hamed’s concurrent motions regarding their respective claims against the Partnership for

attorney's fees and/or accounting fees, filed on October 4, 2021.¹ On November 11, 2021, Hamed filed a request to submit the October 4, 2021 concurrent motions without further oppositions or replies.

BACKGROUND

In 2003, the United States of America and Government of the Virgin Islands brought criminal charges against United, Fathi Yusuf, Maher Yusuf, NejeH Yusuf, Isam Yousuf, Waleed Hamed, and Waheed Hamed, *United States of America v. United, et al.*, Case No. 1:05-cr-00015 (hereinafter "Criminal Case").

On or about September 2004, the defendants of the Criminal Case entered into a Joint Defense Agreement (the "JDA") regarding their defense in the Criminal Case.

On February 26, 2010, the defendants entered into a plea agreement in the Criminal Case whereby United plead guilty to one count.² On March 19, 2010, the District Court entered an order whereby it dismissed all counts against Fathi Yusuf, Maher Yusuf, NejeH Yusuf, Isam Yousuf, Waleed Hamed, and Waheed Hamed. On February 7, 2011, the defendants entered into an addendum to the plea agreement in the Criminal Case.³

The JDA was terminated on or about September 19, 2012.

On April 17, 2014, the District Court entered a memorandum, orders, and recommendation (hereinafter "April 17, 2014 Order") whereby it approved the payment of attorney's fees and accounting fees in the total amount of \$332,900.42 by United in the Criminal Case, but that order was subsequently vacated per the joint motion of defendants.

¹ 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 Yusuf and Hamed's concurrent motions regarding their respective claims of each against the Partnership for attorney's fees fall within the scope of the Master's report and recommendation given that these motions involve an alleged debt the Partnership owes Yusuf and Hamed.

² The details of the plea agreement are not relevant to this Order.

³ The details of the addendum to the plea agreement are not relevant to this Order.

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”).

Per the Master’s order, the parties filed their respective accounting claims in 2016 and their respective amended accounting claims in 2017.⁴ On September 30, 2016, Yusuf filed his accounting claims and thereafter, on October 30, 2017, Yusuf filed his amended accounting claims (hereinafter “Yusuf’s Amended Accounting Claims”), whereby both filings included Yusuf’s claim for the reconciliation of past Partnership withdrawals and distributions (Yusuf Claim No. Y-10), which included Yusuf’s claim for a Partnership distribution equal to the amount of the attorney’s fees that the Partnership paid for the Hamed and his family’s attorney’s fees.⁵ (Yusuf’s

⁴ 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.

⁵ 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 Claims¹⁴. 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.

Amended Accounting Claims, pp. 13-14.) In support of the aforementioned claim, Yusuf attached the following documents to Yusuf's Amended 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") and a summary of withdrawals prepared by Yusuf's accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C (hereinafter "BDO's Summary of Withdrawals"). According to the BDO's Summary of Withdrawals, the Partnership paid \$4,121,651.43 in attorney's fees for Hamed and his family,⁶ and the Partnership paid \$237,691.05 in attorney's fees for Yusuf and his family.⁷ Yusuf noted in Yusuf's Amended Accounting Claims that "[t]hese payments for personal expenses were to be counted against each Partner as a distribution," and thus, within Yusuf Claim No. Y-10, Yusuf claimed that he should be awarded \$3,883,960.38, the difference between the "distribution" made to Hamed for him and his family's attorney's fees and the "distribution" made to Yusuf for him and his family's attorney's fees. On October 17, 2016, Hamed filed his accounting claims and thereafter, on October 30, 2017, Hamed filed his amended accounting claims (hereinafter "Hamed's Amended Accounting Claims"), whereby both filings included Hamed's claim for the Partnership funds used to pay for Yusuf's personal civil legal fees in this case in the amount of \$504,591.03 (Hamed Claim No. H-3) and Hamed's claim for

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.

¹⁴ 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.)

⁶ More specifically, according to the BDO's Summary of Withdrawals, this amount consists of \$3,749,495.48 (Waleed Hamed), plus \$372,155.95 (Waheed Hamed).

⁷ More specifically, according to the BDO's Summary of Withdrawals, this amount consists of \$183,607.05 (Fathi Yusuf), plus \$20,370.00 (Nejeh Yusuf), plus \$33,714.00 (Maher Yusuf).

reimbursement from the Partnership for the attorney's fees and accounting fees that Waleed Hamed and Waheed Hamed personally paid in the Criminal Case (Hamed Claim No. H-17).⁸

On May 30, 2018, Hamed, KAC357, Inc., Yusuf, and United's filed a joint stipulation, which was subsequently granted and deemed accepted by the Master. In the May 30, 2018 stipulation, Hamed, KAC357, Inc., Yusuf, and United jointly advised, inter alia:

As to Hamed's Claim H-3, Yusuf and United agree that, in exchange for the withdrawal of what Yusuf and United regard as expensive discovery over disputed issues regarding what legal services in the criminal case benefitted the partnership, Yusuf and United will concede the amount claimed by Hamed in H-3 (\$504,591.03)...

and jointly stipulated, inter alia:

The terms of this Stipulation shall remain confidential and not filed with the Superior Court unless and until such time as any party seeks the Superior Court's final determination of

⁸ Hamed's accounting claims filed on October 30, 2017 included the expert opinion of Jackson Vizcaino Zomerfield, LLP, which provided, in relevant part:

Wally Hamed's personal payment of accounting and attorneys' fees in *United States of America v. United Corp., et al.*, VI D.Ct. 2005-cr-015

Summary Description of Issue Identified:

Waleed Hamed paid from his personal Banco Popular account the criminal attorneys' fees in *United States of America v United Corp., et. al.*, VI D.Ct. 2005-cr-015. The accountant and attorneys' fees were incurred when all of the defendants were represented under the joint defense agreement. That joint defense agreement provided for the payment of attorneys' fees by the United Corporation, which subsequently was recognized as the Partnership (Exhibit 265-a).

Work performed:

We interviewed Waleed Hamed regarding his payments of the criminal attorneys' fees which benefitted the Partnership. Waleed advised he made these payments and was never reimbursed. We also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) asking whether these fees were reimbursed. Finally, we were provided a copy of the canceled checks for the payment (Exhibit 265-b).

We reviewed the general ledgers from 2012 to present provided by John Gaffney for any reimbursements to Waleed for these payments or payments made by the Partnership directly to Waleed Hamed for the same period. None were found. We also reviewed the April 17, 2014 Order by United States Magistrate Judge Geoffrey Barnard finding that "the subject invoices were reviewed in camera and the work performed by counsel and the accountants was in furtherance of the object of the Joint Defense Agreement. . . . Accordingly, the sum of \$332,900.42 is directed to be released . . . for distribution to counsel and experts in the sums approved pursuant to the Joint Defense Agreement."

Gaffney's response:

John Gaffney did not respond to our request.

Opinion as to the laws identified:

The work performed and documentation provided was sufficient and reliable audit evidence to conclude that the payment made by Waleed served a business purpose relating to the Partnership, as it dealt with the payment of legal and accounting fees in the criminal case against the Partnership (VI D. Ct, 2005-cr-015). As such, we concluded the payment should be reimbursed to the Hameds to satisfy ourselves of management's assertions: l. Completeness as described in AU-C 315.4128. The total amount of the claim is \$332,900.42.

(Hamed's Accounting Claims, Exhibit B-2.)

the Master's Report and Recommendation for distribution, under section 9, step 6 of the Final Wind Up Plain.
(May 30, 2018 Stip.)

On November 9, 2018, Hamed, KAC357, Inc., Yusuf, and United's filed a joint stipulation, which was subsequently granted and deemed accepted by the Master. In the November 9, 2018 stipulation, Hamed, KAC357, Inc., Yusuf, and United jointly stipulated, inter alia:

The only Hamed claims related to attorney, professional and accounting fees that survive this stipulation are those in H-17 relating to Hamed's claim for payment of attorneys' fees and expense incurred before termination of the Joint Defendant Agreement ("JDA") in the criminal case, which shall be limited to a maximum of \$332,900.42 with no entitlement to interest. This stipulation does not impact or alter the prior stipulation the parties entered into on May 30, 2018 regarding Hamed claim H-3, Partnership funds used to pay Fathi Yusuf's personal legal fees.

The only Yusuf claims related to attorney, professional and accounting fees that survive this stipulation are those included in the Y-10 claim for a maximum of \$332,900.42 with no entitlement to interest, which can be made up of any fees paid to attorneys, accountants or professionals in the criminal case from September 17, 2006 until termination of the JDA.

...

The terms of this Stipulation shall remain confidential and not filed with the Superior Court unless and until such time as any party seeks the Superior Court's final determination of the Master's Report and Recommendation for distribution, under section 9, step 6 of the Final Wind Up Plain.

(Nov. 9, 2018 Joint Stip.)

On October 4, 2021, Yusuf and Hamed filed these concurrent motions regarding their respective claims against the Partnership for attorney's fees and/or accounting fees.

DISCUSSION

In the introduction to their concurrent motions, Yusuf and Hamed indicated that before proceeding with their respective claims and undertaking additional discovery, "the Master is asked to determine whether: 1) Hamed is 'automatically barred' from seeking reimbursement from the Partnership for fees paid for services rendered from January 2012 to the termination of Joint Defense Agreement ("JDA") in September of 2012 in the amount of \$332,900.42; and 2) whether Yusuf is 'automatically barred' from claiming a credit against Hamed for attorneys' fees the

Partnership paid, up to the amount of \$332,900.42, from the time of the Amended Plea Agreement in 2010 forward.”⁹ (Motion, p. 2.)

A. Yusuf’s Motion

In his motion, Yusuf argued that he is entitled to a Partnership distribution equal to the amount of the attorney’s fees that the Partnership paid for Waleed Hamed and Waheed Hamed in the Criminal Case after the entry of the plea agreement on February 26, 2010.¹⁰ Yusuf made the following assertions in support of his argument for distribution: (i) The attorney’s fees that the Partnership paid for Waleed Hamed and Waheed Hamed in the Criminal Case after the entry of the plea agreement on February 26, 2010 “were clearly only related to their individual client’s interests as opposed to the ‘collective’ interest of all the defendants and for those fees that were clearly excessive”—e.g., a number of entries in the June 29, 2012 invoice of Andreozzi Fickess LLP dated June 29, 2012 and in the invoices of Law Offices of Pamela Lynn Colon, LLC reflected services rendered for Waleed Hamed’s individual interest.¹¹ (Motion, pp. 7, 10, 12-13, 16-17); (ii) “[T]he JDA did not create any agreement for the fees incurred by each attorney to be paid collectively from United or the Partnership (an entity which was not even acknowledged to exist at the time).” (Id., at p. 8); (iii) The District Court’s April 17, 2014 Order “was vacated” and “has no relevance to the arguments made by Hamed in the concurrent motions, and the Master should disregard it entirely in resolving these motions.”¹² (Id., at p. 9); (iv) “[O]nce the dismissal was procured in March of 2010, and once United paid the \$10,000,000 restitution for back taxes, and

⁹ Although Yusuf and Hamed initially claimed a different amount for their respective claims, they subsequently stipulated to amend the amount of their respective claims to \$332,900.42.

¹⁰ Yusuf also argued that, alternatively, the Partnership should be reimbursed for such fees, or such fees should be credited against Hamed as a distribution. (Motion, p. 12.)

¹¹ Yusuf referenced: Exhibit 11-Invoice of Andreozzi Fickess LLP for the period March 2, 2012 through June 29, 2012, dated June 29, 2012, Invoice of Andreozzi Fickess LLP for the period March 2, 2012 through March 31, 2012, dated June 13, 2012, and various documents; Exhibit 12-United check number 65358, dated May 2, 2012, paid to Andreozzi Fickess, LLP in the total amount of \$9,200.00; Exhibits 14-22-Invoices of Law Offices of Pamela Lynn Colon, LLC; and Exhibit 23-Table 18 to the BDO Report.

¹² Yusuf referenced: Exhibit 7-United’s appeal and objections to the April 17, 2014 Order in the Criminal Case, filed on April 30, 2014; Exhibit 8-The parties’ joint motion in the Criminal Case to, inter alia, vacate the April 17, 2014 Order as to the attorney’s fees, filed on August 21, 2014; and Exhibit 9-An order in the Criminal Case vacating the April 17, 2014 Order as to Attorney’s Fees.

the \$1,000,000 fine in 2011, the only major task that remained in the case was conducting the sentencing hearing for United, and ensuring that prior to sentencing United, and the Yusuf and Hamed individual defendants had filed their tax returns for the 2002 period forward, as required by the plea agreement.” (Id., at pp. 9-10); (v) “[B]y February 2012, the interests of United and the Yusuf defendants, on the one hand, and the Hamed defendants, on the other, had come into significant collision” and “[t]hus, by February 12, 2012 (at the latest), when Yusuf and Hamed split started, the attorneys for the Hameds had fiduciary duties to their clients that necessarily meant that the interests of their clients and United (and the Yusuf defendants, who were United shareholders) were no longer common, but had become antagonistic [a]nd work the Hamed lawyers were doing for their own clients regarding preparation of tax returns for the 2002 to 2012 tax years that would be accepted as accurate and complete by the United States and the Virgin Islands IRB is work that should not be charged to United or the Partnership.” (Id., at pp. 10-11); (vi) “[T]he bulk of the other time entries for all three attorneys on 2012 invoices are too cryptic to know whether the work was in direct conflict with United’s or Yusuf’s interest or solely for the benefit of one of the Hamed clients”—e.g., a number of entries in the June 29, 2012 invoice of Andreozzi Fickess LLP dated June 29, 2012 included cryptic descriptions; a number of entries in the invoices of Law Offices of Pamela Lynn Colon, LLC included cryptic description such as “file maintenance,” “file management,” or “document prep.”¹³ (Id., at pp. 11, 13-15); and (vii) As to Pamela L. Colon, Esq., she improperly included entries for “charges for posting time, something which courts evaluating fee petitions look at with a jaundiced eye.”¹⁴ (Id., at p. 15.)

In his motion, Yusuf also argued that Hamed should not be reimbursed by the Partnership for the attorney’s fees and accounting fees that Waleed Hamed and Waheed Hamed personally paid in the Criminal Case from February 2012 to September 2012 and made the following

¹³ See *supra*, footnote 11.

¹⁴ Yusuf referenced: *Coffey v. Bureau of Land Management*, 316 F. Supp. 3d 168, 172-73 (D. D.C. 2018).

assertions in support thereof: “1) the JDA contained no obligation to pay attorney fees; 2) after the entry of the plea agreement (in 2010), which resulted in dismissal of the individual defendants from the criminal case, there was little, if any, significant ‘collective’ work performed by Hamed’s attorneys, 3) the Partnership is not responsible for attorney’s fees for Hamed’s individual interests, and 4) by February, 2012, the Hamed’s and Yusuf’s relationship had deteriorated and become antagonistic, such that Hamed’s attorneys could not have been working for the ‘collective’ good, but rather had to be working solely for Hamed’s individual interests.” (Id., at p. 8.)

B. Hamed’s Motion

In his motion, Hamed argued that he is entitled to reimbursement from the Partnership for the attorney’s fees and accounting fees that Waleed Hamed and Waheed Hamed personally paid in the Criminal Case from February 2012 to September 2012. Hamed made the following assertions in support of his argument for reimbursement: (i) “Prior to the termination of the JDA, invoices were always paid for all of the attorneys and all of the accountants from Partnership funds regardless of the stated use of those funds for various of the parties” and “[t]here was no distinction made as to for whom or for what the work was done, as all of the lawyers were working for a common goal.”¹⁵ (Motion, p. 18) (emphasis omitted); (ii) There is no dispute that Waleed Hamed personally paid the attorney’s fees and accounting fees at issue here—to wit, “the common defense work was done by those same attorneys and accountants prior to the termination of the JDA.” (Id., at p. 19); (iii) “Hamed [paid] those fees prior to the September 25, 2014, end of the JDA.” (Id.) (emphasis omitted); (iv) The District Court’s April 17, 2014 Order found that the work performed by counsel and the accountants was “in furtherance of the object of the [JDA].”¹⁶ (Id.); (v) “Because Hamed agreed not to further pursue Yusuf’s counsel for past billings, on May 8, 2018, the Special Master held that fees paid by Defendants prior to the end of the [JDA] in the

¹⁵ Hamed referenced: Exhibit 24-Declaration of Gordon C. Rhea, Esq., dated March 2, 2017, and exhibits attached thereto.

¹⁶ Hamed referenced: Exhibit 6-The April 17, 2014 Order.

Criminal Case] are per se valid Partnership expenses.” (Id.); and (vi) “There is no basis for Fathi Yusuf’s refusal to block this claim—moreover his refusal violates both Jude Brady’s April 25th, 2013 Memorandum and Order placing the funds into joint hands.” (Id., at p. 22.)

C. Analysis

The Master must note at the outset that Yusuf essentially amended Yusuf Claim No. Y-10 via his motion by limiting it to the attorney’s fees that the Partnership paid for Waleed Hamed and Waheed Hamed: (i) after February 26, 2010 and (ii) for services rendered in connection with the Criminal Case. Yusuf Claim No. Y-10, as stated in the BDO Summary of Withdrawals, simply referred to the attorney’s fees as “Payments to Attorneys with partnership’s funds,” and did not specify the time period and did not specify the matter(s) associated with the attorney’s fees. In fact, according to Table 10A of the BDO Report, Yusuf Claim No. Y-10 included numerous attorney’s fees that the Partnership paid for Waleed Hamed before February 26, 2010¹⁷ and/or appears unrelated to the Criminal Case.¹⁸ The Master will grant such an amendment and limit Yusuf Claim No. Y-10 to the attorney’s fees that the Partnership paid for Waleed Hamed and Waheed Hamed in the Criminal Case after the entry of the plea agreement on February 26, 2010.

The Master must further note that Yusuf and Hamed failed to specify the rule under which they made their concurrent motions and thus, left the characterization of the motion to the Master’s speculation. V.I. R. CIV. P. 6-1(a) (“All motions must: ...(2) state with particularity the grounds

¹⁷ E.g., Check # 3319 to Richardson Patrick Westbrook & Brickman, LLC for “[s]ervices rendered from July 2009 related to US v. United Corporation-Forensic Accounting Work: work on draft of supplement to Motion for Specific Relief, review court orders re motion for specific relief” paid on September 29, 2009; Check #3253 to Richardson Patrick Westbrook & Brickman, LLC for “[s]ervices rendered were related to computation of various settlement penalty and interest scenarios and discussions with legal team, prepare defendant extensions meeting at stores with defendant to discuss various case issues” on July 2, 2009; and Check #3255 to Richardson Patrick Westbrook & Brickman, LLC for “[s]ervices rendered were related to assist [sic] counsel regarding preparation of numerous [sic] motions related to bonuses, selected credit card issues with monitors, show cause issues, review financial statements and respond to various inquires [sic] from Marshal” on April 6, 2009.

¹⁸ E.g., Check #3443 to Richardson Patrick Westbrook & Brickman, LLC for “[s]ervices rendered from April 16, through June 16, 2011 related to progress billing on assimilation of data and preparation of out year tax returns for 2001 thru 2009 related to settlement for Plaza Extra, Sixteen Plus, Peters Farm, Plessen Enterprises, Wally Hamed, Willie Hamed, and Yusuf Family” paid on October 4, 2010; Check #51193 to Eugene B. Benton for unspecified services on January 8, 2010; and Check #57053 to MRW Consulting Group, LLP-Professional Services for unspecified services on February 23, 2010.

ORDER

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for seeking the order, including a concise statement of reasons and citation of authorities...”).

Given that the stated purpose of the concurrent motions is for the Master to determine whether Yusuf and Hamed are automatically barred from their respective claims, the Master will construe Yusuf and Hamed’s concurrent motions as their respective motions for summary judgment¹⁹—Hamed’s motion for summary judgment for Yusuf Claim No. Y-10 and Yusuf’s motion for summary judgment for Hamed Claim No. H-17.²⁰ See *Rodriguez v. Bureau of Corr.*, 70 V.I. 924,

¹⁹ The standard of review for a motion for summary judgment is as follows:

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).

²⁰ The Master is cognizant that Yusuf and Hamed’s concurrent motions 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 Yusuf and Hamed included a jointly prepared statement of undisputed facts in the section prior to their respective motions, however, that statement was not specific to their respective motions. Not having statements of undisputed facts specific to their respective motions prevented the non-moving party 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).

928 n.1 (V.I. 2019) (citing *Joseph v. Bureau of Corr.*, 54 V.I. 644, 648 n.2 (V.I. 2011) (“[T]he substance of a motion, and not its caption, shall determine under which rule the motion is construed.”)). Here, for the Master to conclude that there is no genuine dispute as to any material fact that Hamed is automatically barred from seeking reimbursement from the Partnership in Hamed Claim No. H-17 or that there is no genuine dispute as to any material fact that Yusuf is automatically barred from seeking a Partnership distribution in Yusuf Claim No. Y-10, 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 Yusuf failed to satisfy his burden of establishing that there is no genuine dispute as to any material fact that Hamed is automatically barred from seeking reimbursement from the Partnership in Hamed Claim No. H-17 and Hamed failed to satisfy his burden of establishing that there is no genuine dispute as to any material fact that Yusuf is automatically barred from seeking a Partnership distribution in Yusuf Claim No. Y-10.

CONCLUSION

Based on the foregoing, the Master finds that Yusuf is not entitled to judgment as a matter of law that Hamed is automatically barred from seeking reimbursement from the Partnership in Hamed Claim No. H-17 and Hamed is not entitled to judgment as a matter of law that Yusuf is automatically barred from seeking a Partnership distribution in Yusuf Claim No. Y-10.

Accordingly, it is hereby:

Nevertheless, the Master deems it appropriate to rule on Yusuf and Hamed’s concurrent motions at this juncture and will do so without the aid of the statements of undisputed facts specific to their respective motions and their respective responses 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.”).

ORDERED that Yusuf's amendment to Yusuf Claim No. Y-10 is **GRANTED**. Yusuf Claim No. Y-10 as to the attorney's fees shall be limited to the attorney's fees that the Partnership paid for Waleed Hamed and Waheed Hamed in the Criminal Case after the entry of the plea agreement on February 26, 2010. **And** it is further:

ORDERED that Yusuf and Hamed's concurrent motions, filed on October 4, 2021, are **DENIED**. Hamed is not automatically barred from seeking reimbursement from the Partnership in Hamed Claim No. H-17 and Yusuf is not automatically barred from seeking a Partnership distribution in Yusuf Claim No. Y-10.

DONE and so ORDERED this 4th day of April, 2022.


EDGAR D. ROSS
Special Master