

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.

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 corrected renewed motion to compel for Yusuf Claim No. Y-10: reconciliation of past Partnership withdrawals and distributions (hereinafter “Yusuf Claim No. Y-10”),<sup>1</sup> filed on August 5, 2021.<sup>2</sup> As of the date of this order, no opposition has been filed.<sup>3</sup>

### **BACKGROUND**

On August 2, 2021, Hamed filed a motion to compel responses to discovery served in connection with Yusuf Claim No. Y-10. In response, Yusuf filed an opposition and Hamed filed a reply thereto. On August 1, 2022, the Master entered an order whereby the Master ordered, inter alia, that Hamed’s motion to compel as to his request for the BDO Summary of Withdrawals (as to Yusuf Claim No. Y-10) to be updated to comply with the Limitations Order is denied without prejudice. In the August 1, 2022 order, the Master explained:

As to Interrogatory 49 and RFPD 23, Hamed argued in the reply that the BDO Summary of Withdrawals did not comply with the Limitations Order and requested that the Master order the BDO Summary of Withdrawals to be updated to comply with the Limitations Order and to reflect the actual amount being claimed for Y-10 so Hamed knows what he is defending. (Opp., pp. 5, 7.) However, this request goes beyond the scope of Hamed’s motion to compel discovery responses and is therefore, improperly included in his reply without giving Yusuf an opportunity to respond. As such, the Master will deny without prejudice Hamed’s request, but Hamed may raise this request in a separate motion.

(August 1, 2022 Order, footnote 9.)

On August 5, 2022, Hamed filed this instant motion.

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<sup>1</sup> On August 5, 2022, Hamed filed an initial renewed motion to compel followed by a corrected renewed motion to compel. The Master will only address the corrected renewed motion to compel.

<sup>2</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 Yusuf Claim No. Y-10 falls within the scope of the Master’s report and recommendation given that Yusuf Claim No. Y-10 is related to the distribution of Partnership assets.

<sup>3</sup> The deadline for Yusuf to file a timely opposition has not expired. *See* V.I. R. Civ. P. 6(f)(1) (“Unless otherwise ordered by the court, a party shall file a response within 14 days after service upon the party of any motion -- except a motion filed pursuant to Rule 12 or Rule 56.”)

## DISCUSSION

In his motion, Hamed stated that “this instant motion is just Hamed raising the issue separately—it simply formalizes that identical issue based on the identical argument already made previously [in his November 20, 2021 reply]—so that Yusuf might have an opportunity to oppose:

Yusuf has not identified any transactions after the Limitation Order’s cut-off date that Hamed would owe to the Partnership and certainly not the \$1,778,103 listed on BDO exhibit J-2. Yusuf states “The amount reflects certain receipts which accompanied the August 15, 2012 letter. While these amounts were prior to the September 17, 2006 timeframe, they were kept in the chart as the withdrawal by Yusuf straddled the cut off date.” (Exhibit 11 at p. 3)(Emphasis added.) As with the first question, Hamed requests that the Special Master order that exhibit J-2 (Exhibit 9 to the motion) be updated to comply with Judge Brady’s Limitation Order and to reflect the actual amount being claimed for Y-10 so Hamed knows what he is defending—which should be nothing. Fathi Yusuf withdrew the \$2,784,706 in 2012— any justification for doing so based on Hamed Partnership withdrawals prior to the September 17, 2006 cut-off in the Limitation Order is moot. As Judge Brady noted in his Limitation Order at pp. 23-24, the project of reconstructing Partnership accounts “becomes proportionately more difficult and less reliable the farther back in time one goes.” Judge Brady ordered that “the accounting in this matter. . . shall be limited in scope to consider only those claimed credits and charges to partner accounts. . .based upon transactions that occurred on or after September 17, 2006. Id. at 34. This is the action Hamed seeks.

(Motion, pp. 2-3) (citing Nov. 20, 2021 Reply) (emphasis omitted.)

The Master must note at the outset that, although Hamed filed his motion as a motion to compel, this is not the usual motion to compel filed pursuant to Rule 37 of the Virgin Islands Rules of Civil Procedure,<sup>4</sup> and Hamed failed to cite any authority on which his motion to compel is based upon.<sup>5</sup> *See* V.I. R. CIV. P. 6-1(a)(2) (“All motion must state with particularity the grounds for seeking the order, including a concise statement of reasons and citation of authorities.”). Nevertheless, this is not a fatal error. Based on the substance of Hamed’s motion, which essentially requested the Master to summarily adjudicate the issue of whether the BDO

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<sup>4</sup> Rule 37 of the Virgin Islands Rules of Civil Procedure permits “[a] party seeking discovery [to] move for an order compelling an answer, designation, production, or inspection.” V.I. R. CIV. P. 37(a)(3)(B).

<sup>5</sup> In the August 1, 2022 order, the Master only stated that this request must be raised in a separate motion; the Master did not specify the type of motion.

Summary of Withdrawals (as to Yusuf Claim No. Y-10) complied with the Limitations Order, the Master will construe Hamed's motion as motion for partial summary judgment and not a motion to compel. *See Rodriguez v. Bureau of Corr.*, 70 V.I. 924, 928 n.1 (V.I. 2019) (“[T]he substance of a motion, and not its caption, shall determine under which rule the motion is construed.”) (quoting *Joseph v. Bureau of Corrections*, 54 V.I. 644, 648 n.2 (V.I. 2011)). More specifically, the Master will construe Hamed's motion as a motion for partial summary judgment as to the limited issue of whether the BDO Summary of Withdrawals (as to Yusuf Claim No. Y-10) complied with the Limitations Order. At this time, the Master will grant Hamed leave to supplement his motion with a statement of undisputed facts in compliance with Rule 56 of the Virgin Islands Rules of Civil Procedure. *See V.I. R. Civ. P. 56(c)(1)* (“Each summary judgment motion shall include a statement of undisputed facts in a separate section within the motion. Each 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.”). Additionally, the Master will also grant Hamed leave to supplement his motion with an additional brief if he wishes to expand on his argument as the result of the Master construing his motion as motion for partial summary judgment.

### **CONCLUSION**

Based on the foregoing, it is hereby:

**ORDERED** that, **within thirty (30) days from the date of entry of this Order**, Hamed **SHALL** supplement his motion with a statement of undisputed facts in compliance with Rule 56 of the Virgin Islands Rules of Civil Procedure. It is further:

**ORDERED** that, **within thirty (30) days from the date of entry of this Order**, Hamed **MAY** supplement his motion with an additional brief if he wishes to expand on his argument. It is further:

**ORDERED** that, **within thirty (30) days from the date Hamed files the statement of undisputed facts or the additional brief, whichever is later**, Yusuf may file an opposition thereto. It is further:

**ORDERED** that, **within fourteen (14) days from the date Yusuf files his opposition**, Hamed may file a reply thereto. **And** it is further:

**ORDERED** that Rule 56 of the Virgin Islands Rules of Civil Procedure shall apply to the opposition and reply filed in connection with Hamed's motion for partial summary judgment.

**DONE and so ORDERED** this 18<sup>th</sup> day of August, 2022.

  
EDGAR D. ROSS  
Special Master