

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 and
UNITED CORPORATION,**

Plaintiffs,

v.

**THE ESTATE OF MOHAMMAD HAMED,
WALEED HAMED,** as Executor of the Estate of
Mohammad Hamed, and **THE MOHAMMAD A.
HAMED LIVING TRUST,**

Defendants.

CIVIL NO. ST-17-CV-384

**ACTION TO SET ASIDE
FRAUDULENT TRANSFERS**

KAC357, INC., a USVI Corporation,

Plaintiff,

v.

FATHI YUSUF, a partner, and
THE HAMED-YUSUF PARTNERSHIP
a/k/a **THE PLAZA EXTRA SUPERMARKET
PARTNERSHIP,**

Defendants.

CASE NO.: SX-18-CV-219

**ACTION FOR DEBT AND
UNJUST ENRICHMENT**

**FATHI YUSUF’S RESPONSE TO
HAMED’S SUPPLEMENTAL BRIEFING AND STATEMENT OF FACTS AS TO
MOTION FOR PARTIAL SUMMARY JUDGEMENT AS TO Y-10 – PAST
PARTNERSHIP WITHDRAWALS**

Defendant/Counterclaimants Fathi Yusuf (“Yusuf”) and United Corporation (“United”)(collectively, the “Defendants”) through their attorneys, Dudley Newman Feuerzeig, LLP hereby provide their Response to Hamed’s Supplemental Briefing and Statement of Facts as to Motion for Partial Summary Judgment as to Y-10 – Past Partnership Withdrawals as follows:

I. Summary – Understanding as to Status of Y-10

As the Court is aware, Y-10, has been the subject of various motions and rulings. It is Yusuf's understanding that he has complied with the various rulings and revisions to the Chart per the Court's instructions and the parties' efforts to streamline the resolution of the open issues. Without chronicling the entire procedural history relating to Y-10, Yusuf calls to the Court's attention the following rulings and filings:

- **February 21, 2022 Order Denying Hamed's Motion for Partial Summary Judgment for Yusuf Claim Y-10.**

In its February 21, 2022 Order denying Hamed's Motion for Partial Summary Judgment as to Y-10, the Court made the following determinations:

The Master notes at the outset that, although Hamed filed his motion pursuant to Rule 56 of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 56"), which governs motions for partial summary judgment, Hamed indicated in his motion, and again in his reply, that this was more of a "ministerial request" to streamline the process to resolve Yusuf Claim No. Y-10.

See February 21, 2022 Order, p. 7. The Court also determined: "...Thus, based on the substance of Hamed's Motion, the Master will construct Hamed's Motion as a ministerial motion and not as a motion for partial summary judgment." *Id.* Further, the Court determined:

At this juncture, for the reasons provided below, the Master does not find it procedurally sound to amend Yusuf's Claim No. Y-10 as proposed by Hamed – namely, to remove all items in BDO's Summary of Withdrawals except for the three items he identified. First, as to the amount of \$2,784,706.25, Hamed incorrectly noted that the Master 'dismissed a \$2.7 million claim by Yusuf on 9/18/2019....the Master specifically stated that 'the judgment will be subject to and entitled to any set offs not stated as an individual accounting claim that are established hereinafter. (Sept. 18, 2019 Order, pp. 15-16). **Thus, given that there are set offs that remain in dispute,....and should not be removed from Yusuf Claim No. Y-10....**"

Id. at p. 8. (emphasis added). The Court then explained that:

Hamed failed to acknowledge the September 18, 2019 the Limitations Order only applies to 'claimed credits and charges to partner accounts....and 'as such, the

Master's prior finding that Yusuf's claim for \$1,600,000.00 was barred by the Limitations Order does not automatically bar \$1,600,000.00 as a set off... Thus, \$1,600,000 should not be removed from Yusuf's Claim No. Y-10 as suggested by Hamed.

Id. at 8-9. The Court denied Hamed's Motion and requested the parties get together to determine what were individual accounting claims versus a set off in Yusuf's Y-10. *Id.* at 10. The Court explained that if a charge is barred by the limitations order, it may proceed as a set off in Yusuf's Y-10. *Id.*

After meeting and conferring as to a means to streamline the process, the parties agreed to remove certain allocations in Y-10 to be dealt with as separate claims.

- **April 2, 2022 Joint Stipulation**

On April 2, 2022, the parties filed a Joint Stipulation. Therein Yusuf acknowledged that:

1. As to the \$2,784,706.25, none of the setoffs asserted by Yusuf against the \$2,784,706.25 withdrawal by Fathi Yusuf in 2012 (and identified in the Special Master's September 8, 2019 Order) shall be deemed to also constitute a separate accounting claim by Yusuf in his amended accounting claim.

See April 2, 2022 Stipulation.

- **July 13, 2022 Order**

On July 13, 2022, the Court memorialized those efforts to streamline the process and ordered various items to be removed from the Y-10 Chart and for it to be re-filed. *See* July 13, 2022 Order.

- **July 27, 2022 Yusuf Filing**

On July 27, 2022, Yusuf complied with the Court's July 13, 2022 Order and removed the items as specifically directed therein. However, in so doing, the July 13, 2022 Order did not address and Yusuf did not make any revisions to the \$237,352.75 allocation for Waleed relating

to receipts which were part of the August 15, 2012 letter which accompanied Yusuf's withdrawal of the \$2.7 million.¹ Yusuf understood that it would remain in Y-10 as it was deemed to be an off-set and not a separate claim, as contemplated by the Court in the February 21, 2022 Order and in the April 9, 2022 Stipulation. Consistent with the ruling of the Court that what was not a "claim" because it occurred prior to the September 17, 2006 cut-off date in the limitations Order, Yusuf understood it would remain on the Chart as an off-set.

- **August 19, 2022 Order**

Given all of the above, Yusuf is confused by the following:

"...the Master will construe whether the BDO Summary of Withdrawals (as to Yusuf Claim No. Y-10) complied with the Limitations Order." *See* August 19, 2022 Order, p. 4. Yusuf has removed what the Court directed him to remove and noted in his discovery responses that the \$237,352.75 relates to the receipts from Waleed Hamed that were part of August 15, 2012 Letter and thus, a set-off and therefore, properly maintained in Yusuf Y-10.

Therefore, Yusuf is unclear as to the relief sought by Hamed or what is at issue on this Motion for Partial Summary Judgment. Nonetheless, in an effort to comply with the directions of the Court and to properly respond, Yusuf responses as follows:

II. Yusuf's Response to Hamed' Statement of Undisputed Facts

Statement 1: Yusuf admits that Hamed filed suit in 2012 and that the Complaint speaks for itself as to the nature of the claims raised. Yusuf admits that he and United filed their Counterclaim and First Amended Counterclaim, which filings also speak for themselves as to

¹ In Yusuf's supplemental discovery responses he explained:

2. Waleed \$237,352.75.

As to the \$237,352.75 which remains in the Waleed column for receipts, that amount was left in the table because it relates to the overall accounting relating to Mr. Yusuf's removal of the \$2,784,706. 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 cutoff date. ...

the nature of the claims and defenses raised. Yusuf shows that the parties were directed to file their claims and proposed distributions in 2016 and that Yusuf filed same. Hamed appears to have simply filed claims.

Statement 2: Yusuf admits that he filed his “Accounting Claims and Proposed Distribution Plan” in September, 2016. The filing speaks for itself as to its contents. As part of that filing, Yusuf submitted a proposed reconciliation of past partnership withdrawals based upon the records and information available at that time. A portion of that preliminary reconciliation included known withdrawals based upon checks, cashier’s checks, receipts, payments as identified as part of the August 15, 2012 letter accompanying the Yusuf \$2.7 million withdrawal, payments to third parties and payments to attorneys. The remaining portion of that reconciliation was based upon undisclosed withdrawals of the Hameds based upon review of their financial information referred to as the “Lifestyle Analysis.” Yusuf admits that the “Lifestyle Analysis” was undertaken by Fernando Scherrer and his office at BDO Puerto Rico.

Statement 3: Yusuf admits that the BDO Report was submitted as a preliminary report in support of his September 2016 filing.

Statement 4: Yusuf admits that Hamed submitted a filing to strike the BDO Report, which motion was denied.

Statement 5: Yusuf admits that Hamed’s Motion to Strike the BDO Report was denied. Yusuf admits that on the same date the Court entered an Order limiting the claims and shows that the Order speaks for itself as to its contents.

Statement 6: Yusuf shows that the July 25, 2017 Order speaks for itself as to its contents.

Statement 7: Denied. Subsequent to the July 25, 2017 Order, the Court has elaborated upon the affirmative “claims” versus “set-offs” that the parties can present. As set forth above, inclusion of various withdrawals by members of the Hamed family prior to September 17, 2006 which Yusuf contends are set-offs relating to the withdrawal of the \$2.7 million by Yusuf are set forth in the chart relating to what has been labeled as Y-10, as contemplated by the Court in the various rulings, *inter alia*, on September 18, 2019 and February 21, 2022.

III. Argument

A. The September 18, 2019 and February 21, 2022 Orders and Viable Set Offs

The Master specifically made a distinction between a “claim” and an “off-set” in his September 18, 2019 Order when addressing the \$1,600,000.00 past withdrawals of the Hameds. The Master noted that Yusuf’s removal of the \$2,784,705.25 “will be subject to and entitled to any set offs not stated as an individual accounting claim that are established hereinafter, such as the alleged set off in the amount of \$1,600,000.00.” *See* September 18, 2019 Order, p. 15-16. The Master further explained:

The Master must note that the Limitation Order only applies to ‘claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. §71(a).’ As such, Master’s prior finding that Yusuf’s claim for \$1,600,000.00 was barred by the Limitation Order does not automatically bar \$1,600,000.00 as a set off.

Id. at nt. 9. Consequently, the off-set for \$1,600,000.00 remains viable and the draft chart properly reflects that amount as an off-set. The Court recognized this in its February 21, 2022 Order. The Court explained that:

Hamed failed to acknowledge the September 18, 2019 the Limitations Order only applies to ‘claimed credits and charges to partner accounts....and ‘as such, the Master’s prior finding that Yusuf’s claim for \$1,600,000.00 was barred by the Limitations Order does not automatically bar \$1,600,000.00 as a set off... Thus, \$1,600,000 should not be removed from Yusuf’s Claim No. Y-10 as suggested by Hamed.

Id. at 8-9.

B. The Updated Chart for Y-10 Complies with Court's Orders

Based upon the rulings as set forth above, Yusuf is entitled to demonstrate those amounts which he contends are off-sets. As to the \$237,352.75 in the allocation for Waleed Hamed, Yusuf has demonstrated that it (like the \$1.6 million that the Court ruled should not be removed) constitutes part of the off-set to the \$2.7 million check of Yusuf and consistent with the Court's Order of September 18, 2019, it was not removed from Yusuf's updated chart.

The Master specifically stated that 'the judgment will be subject to and entitled to any set offs not stated as an individual accounting claim that are established hereinafter. *See* September 18, 2019 Order, pp. 15-16. Again, in the February 21, 2022 Order, the Master, in denying Hamed's request to remove certain allocation from the chart in Y-10, held "**[T]hus, given that there are set offs that remain in dispute,....and should not be removed from Yusuf Claim No. Y-10....**" *See* February 21, 2022 Order, p. 8. This is also consistent with the Master's process whereby if a "claim" is determined to be after to the September 17, 2006 limitation date, it would proceed as a separate claim but if before, it would remain on Y-10 as a potential set off. *Id.* at 10.

Hence, as Yusuf is allowed to pursue set offs as explained by the Court in the various related rulings, nothing that Yusuf has filed or submitted with regard to the \$237,352.75 in the Hamed column on the updated Chart is improper as it is a set off as to the \$2.7 million withdrawal by Yusuf.

As to Hamed's contention that BDO as opposed to Yusuf was required to amend or update the Chart, Yusuf shows that the \$2.7 million check and accompanying letter and receipts are within the knowledge and purview of Yusuf and thus, an expert valuation is not necessary as to that

amount as the basis for the set off was provided directly by Yusuf to Hamed in 2012 as it accompanied his August 15, 2012 letter to Hamed.

Hence, Yusuf is uncertain as to the relief sought by Hamed as to this renewed Motion for Partial Summary Judgment but shows that Yusuf's delineation of the amount for Waleed Hamed as a set off for the amounts already identified by Yusuf is proper and consistent with the Court's ruling on the proper process and mechanism for resolution of these issues and should remain as part of Y-10.

Conclusion

In conclusion, Yusuf shows that there is no basis for a partial summary judgment as requested by Hamed at this stage as to Y-10. Discovery on these issues remains open. Hence, Yusuf requests that Hamed's Motion be denied.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG, LLP

DATED: September 19, 2022

By: s/Charlotte K. Perrell

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of September, 2022, I caused the foregoing **Yusuf's Response to Hamed's Supplemental Briefing and Statement of Facts as to Motion for Partial Summary Judgment as to Yusuf, Y-10 – Past Partnership Withdrawals**, which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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