

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

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

Counterclaim Defendants,

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

**ACTION FOR DECLARATORY
JUDGMENT**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**

JURY TRIAL DEMANDED

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

Plaintiff,

vs.

UNITED CORPORATION,

Defendant.

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

Plaintiff,

vs.

FATHI YUSUF,

Defendant.

Yusuf's Opposition avoids responding to, or is so obscure in responding to three points, that Hamed will address each one briefly.

1. Point 1 of 3: Yusuf's non-response to what the July 25th order states

At counterstatement of fact # 6, page 6 of the opposition, Yusuf blandly states: "Yusuf shows that the July 25, 2017 Order speaks for itself as to its contents." However, this is supposed to be in response to Hamed statements of fact 5 and 6:

5. On July 25, 2017, the Court entered an order whereby the Court denied without prejudice Plaintiff's motion to strike the BDO Report. More importantly, at the same time the Court contemporaneously entered a memorandum opinion and order limiting accounting (hereinafter "Limitations Order").

6. There 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.

Hamed's first point in reply is to make it clear that everyone agrees that the order stated **"the accounting in this matter. . . 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.**

2. Point 2 of 3: Yusuf erroneously denies that he proffered a chart where BDO failed to remove amounts prior to the cutoff date as represented

Hamed's statement of fact #7 is equally clear and incontestable:

7. In the instant matter, **Yusuf admits the use of amounts from before that cutoff date. In his November 20, 2021** Opposition to Hamed Motion to Compel Re Claim Y-10 – Past Partnership Withdrawals, Yusuf attached as an exhibit and agreed with his original discovery response in his Supplemental Responses to Hamed's Discovery. The Opposition and the attached Exhibit are appended here as Exhibit 1. Yusuf stated:

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 Table 8B and receipts relating thereto are again reproduced here (although previously produced in October 2016). These documents satisfy RTP 23 (Emphasis added.)

This is a fact. The amounts on Chart J-2 which are at issue here were proffered as being solely after the cutoff date. However, Yusuf's counterstatement of fact denies this:

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.

What Yusuf provides isn't actually a counterstatement of the fact asserted. It is totally unresponsive. It is half legal argument and half misstatement about what the underlying chart is being represented to show. The fact is that amounts prior to the 9/17/06 timeframe were supposedly removed and thus, the response should simply be "Admit."

Point 3 of 3: Chart J-2 is not a chart regarding potential offsets—it is what BDO and Yusuf described it as being

Chart J-2 was represented by Yusuf to be a revision of the prior BDO chart with all pre-cutoff amounts removed.¹ Period....end of story. Yusuf's October 30, 2017 filing proffering Chart J-2 stated:

Subsequent to the Accounting Order limiting the accounting claims to those transactions occurring on or after September 17; 2006, **BDO adjusted** their

¹ The original BDO Report was submitted August 31, 2016 as Exhibit J to Yusuf's claims filing. The Special Master described the "amendment" of the report in his October 2, 2018 order.

calculations **to reflect only transactions from that date forward**. Their revised calculations are set forth in the attached Exhibit J-2. (Emphasis added.)

It says “BDO adjusted” and “only transactions from that date forward.” So that is what the Chart **is**. It is a chart where “BDO adjusted their calculations to reflect only transactions from that date forward.” Again, it is what the *testifying expert*, BDO, altered the chart to be in an amendment to its Report—the report that is the actual evidence. Moreover, the initial explanation given by Yusuf’s counsel (not BDO) which has gotten us here--for leaving admittedly pre-cutoff amount on a chart (which BDO explicitly described as being intended to remove all pre-cutoff amounts) was that “they were kept in the chart as the withdrawal by Yusuf straddled the cutoff date.”² Clearly nonsensical in light of the Limitation Order. And there is no indication as to who is saying this or controlling the exhibits now. It does not appear that BDO (or, more specifically, its indicted and fired expert who testified here) are even working for Yusuf after all of that. If so, and if they are amending their Report and exhibits, they should say so.

Is Attorney Perrell going to be the *testifying expert*—and what will the chart be labeled? It will certainly not purport to be from “BDO” or “part of the BDO Report”--or to be “BDO’s adjusted calculations to reflect only transactions from that date forward.”

So, now Yusuf has altered the proffer and what it is. He argues, at page 7 of the opposition, that “[c]onsequently, the off-set for \$1,600,000.00 *remains viable* and the

On October 30, 2017, **Yusuf filed his amended accounting claims limited to transactions occurring on or after September 17, 2006** (hereinafter “Amended Accounting Claims”), and included, inter alia, Exhibit J-2: Revised schedules for BDO Report based on limitations of accounting order² (hereinafter “Exhibit J-2”). (Emphasis added.)

² Hamed has no idea whatsoever what “straddled” even means here or how that would obviate the Court’s Limitation Order.

draft chart properly reflects that amount as an off-set.” Not only is this a new and totally different explanation—it is equally nonsensical. The chart is not a chart used for calculating potential future offset corrections (at the time that is appropriate)—it represents itself to be, and was testified (by BDO) as being a REPORT, and within that Report, a chart of the amounts after all pre-cutoff amounts were removed as ordered.

Yusuf wants badly to be able to control this chart himself—to not have BDO do so. It appears this is what has happened. But, offsets are a legal argument after claims are initially established—this chart is a CPA statement of supposedly hard numbers about what is observable fact. Thus, first the Section 177 values of claims must be determined as ordered by the Court.

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.**

Conclusion

As noted above, BDO is the testifying expert and Yusuf’s October 30, 2017 filing proffering Chart J-2 as part of the Report that is in evidence, stated that

[s]ubsequent 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. (Emphasis added.)

Hamed asks that Chart J-2 be altered by BDO to be what it was proffered as -- BDO's “calculations **to reflect only transactions from [the limitations] date forward.**”

Dated: September 20, 2022



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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of September, 2022, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross
Special Master

Stefan Herpel
Charlotte Perrell
Kevin Rames and
Jeffrey B. C. Moorhead



CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).


