

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

**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,*

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

vs.

**UNITED CORPORATION**, *Defendant.*

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

vs.

**FATHI YUSUF**, *Defendant.*

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**FATHI YUSUF**, *Plaintiff,*

vs.

**MOHAMMAD A. HAMED TRUST**, *et al,*

*Defendants.*

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**KAC357 Inc.**, *Plaintiff,*

vs.

**HAMED/YUSUF PARTNERSHIP**,

*Defendant.*

**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**

Consolidated with

**Case No.: SX-2014-CV-278**

Consolidated with

**Case No.: ST-17-CV-384**

Consolidated with

**Case No.: ST-18-CV-219**

**HAMED'S REPLY AS TO HIS MOTION FOR SUMMARY JUDGMENT  
RE REVISED CLAIM H-146 – IMBALANCE IN CREDIT CARD POINTS**

## I. Reply as to Facts Yusuf does not dispute

The following facts are set forth in Hamed’s motion—with documentary support—and Yusuf does not refute them. Thus these facts are uncontested for the purpose of this motion.

—Starting in 2012, Hamed noted that this system broke down and credit card or the supporting exhibit that points went mainly to the Yusufs. The disparities intensified and by 2014, when the Master inquired to the parties about this, Hamed responded but could not even get the Yusuf credit card records to do calculations. (Exhibit 1 to the original motion.)

—On July 28, 2021, Hamed filed his motion to compel regarding this issue.

—On February 3, 2022, Yusuf filed the opposition to the motion to compel.

—On February 22, Hamed filed his reply.

—On April 21, 2022, the Special Master issued an order in which he required Yusuf to do two critical acts:

\*Provide the actual credit card statements for which points had been allocated, and

\*Provide a calculation showing Yusuf’s valuation of points – showing all references and work.

—Yusuf did neither. On May 24, 2022, Yusuf provided a “Supplementation” with calculations by John Gaffney.

—Yusuf did not *attach any actual credit card statements*.

—Yusuf did not provide any calculation of the value of points.

—Gaffney’s numbers did show the following mathematical results – and did not show any value or calculation of value per point.

<b>East</b>		
Yusuf	8,081,771.12	
Hamed	<u>6,375,102.62</u>	
Difference	<b>1,706,668.50</b>	
		Total Difference for 2 Stores West & East
		<b>10,582,226.85</b>
<b>West</b>		
Yusuf	12,695,951.83	
Hamed	<u>3,820,393.48</u>	
Difference	<b>8,875,558.35</b>	
<b>STT</b>		
Yusuf		
Hamed		
Difference	Unknown	
<b>Unknown</b>		Total Unknown for all stores
East	118,320.79	<b>12,015,372.24</b>
West	1,754,350.08	
STT	<u>10,142,701.37</u>	
	<b>12,015,372.24</b>	<b>Total 22,597,599.09</b>

Thus, Yusuf does not dispute that once this litigation began in 2012, he took more points than Hamed. He does not dispute that he was on written notice of the disparity. He does not dispute that he did not comply with the Special Master's order to supply credit card statements. He does not dispute that he failed to supply calculations as to point values. Instead, he now states that Yusuf had a legal right to take disproportionately and unilaterally for four reasons.

## **II. Reply as to Yusuf's Four New Legal positions**

Yusuf states, at the opening of his opposition, that there are four reasons that he could take a disproportionate share of the Partnership's assets. This is his verbatim statement:

- 1) there was never any partnership agreement for the redemption by either partner or their family members of credit card points, rather, whomever incurred the points, would have the ability to use those points,
- 2) there was never any partnership agreement for the two families to equalize the credit cards used in the business,
- 3) as there was no agreement for tracking or redeeming credit card points, the accounting systems tracked overall credit card payments to credit card vendors, but not necessarily by the individual family member who incurred the expense, and,
- 4) to the extent that the credit card points constitute a partnership asset subject to division, Hamed has failed to demonstrate how an allocation should be made as to the points, given the different credit capacities of the two families or the amount Hamed family members incurred.

Hamed will address each of these theories in turn.

**Argument 1:** There was never any partnership agreement,

Yusuf's points 1-3 amount to the same thing—that the Partnership Agreement terms can be gleaned from prior acts, and Yusuf did not change what was done. However, As Judge Brady pointed out in his series of three decisions defining the partnership, the two bedrocks of both the agreement and the prior

actions of that parties were that (1) all decisions about assets would be mutual, not unilateral, and (2) all assets would be divided 50/50. (All emphasis added.)

a. Court's Order of April 25, 2013

[Fact 11.] Yusuf and Hamed were the only partners in Plaza Extra by the time in 1986 when the supermarket opened for business and Hamed has remained a partner since that time. Pl: Ex. 28.2

[Fact 32.] It had been the custom and practice of the Yusuf and Hamed families to withdraw funds from the supermarket accounts for their own purposes and use (see Def. Ex, 1; Pl. Ex. 27), however such withdrawals were always made **with the knowledge and consent of the other partner**. Tr. 138:20- 139:8, Jan, 25, 2013: Tr.121:3- 123:9, Jan. 31, 2013.

[Fact 38.) Funds from supermarket accounts have also been utilized **unilaterally** by Yusuf, without **agreement of Hamed's** to pay the fees of defendants relative to this action and the Criminal Action, in excess of \$145,000 to the dates of the evidentiary' hearing. Tr. 76:5- 82 Jan. 25; 2013; Pl.Ex. 15, 16.5.

[Conclusion 5] A partnership agreement is defined as the agreement, whether written, oral, or implied among the partners concerning the partnership, including amendments- to the partnership agreement." 26 V.I. Code §2(7)....

[Conclusion 19, fn 9] With regard to the August 2012 diversion of more than \$2.7 million by Mahar Yusuf, president of United, from accounts inaccessible to Plaintiff, a real concern exists that **continuing diversions will not be traceable as** the Plaza Extra store have had no system of internal controls in existence and, to date accounting for the businesses is not completed beyond June 2012. (Testimony of accountant John Gaffney, Tr. 71:20 -72:3; 75:11 -21, Jan. 31, 2013.) **As such, the amount of any monetary loss suffered by Plaintiff may not be capable of ascertainment.**

[Conclusion 20] Plaintiff alleges recurring violations of his legal rights to **equal participation** in the management and conduct of the partnership business. In addition, Plaintiff claims that the diversion of partnership revenues to accounts inaccessible to Plaintiff without accounting or explanation constitutes a showing of irreparable harm because of the threat that similar diversions will occur in the future....

[Conclusion 22] Defendant's actions have deprived Plaintiff of his rights to **equal participation** in the management and conduct of' the business....

[Conclusion-Order of the Court]

The operations of the three Plaza Extra Supermarket stores shall continue as they have throughout the years prior to this commencement of this litigation, with Hamed, or his designated representative(s), and Yusuf, or his designated representative(s), jointly managing each store, **without unilateral, action by either party**, or representative(s), affecting the management, employees, methods procedures and operations.

No funds will disburse from the supermarket operating accounts without the **mutual consent** of Hamed and Yusuf (or designated representative(s)).

b. Court's Order of May 31, 2013 (Accounting Equality)

ORDERED that Defendants' Emergency Motion to Stay Preliminary Injunction Order is DENIED. . . .ORDERED that Defendant United Corporation shall provide revised financial statements for the three Plaza Extra Supermarket stores only within 30 days of the date of this Order. . . .and ORDERED that only **mutual access** of all sensitive financial data, records and financial statements shall be permitted according to a process **to be determined by the Parties**.

c. Court's Summary Judgment Decision of November 7, 2014

ORDERED that the Court finds and declares that a partnership was formed in 1986 by the oral agreement between Plaintiff and Defendant Yusuf for the ownership and operation of the three Plaza Extra Stores, with each partner having a **50% ownership interest in all partnership assets** and profits, and 50% obligation as to all losses and liabilities....(Emphasis added.)

Thus, by judicial order and the operation of the USVI implementation of RUPA, there exists a partnership with a 50/50 distribution of assets and funds. It is uncontested that after the litigation began in 2012, Yusuf wrongfully stopped both (1) Hamed's access to bank accounts and the financial records and (2) Hamed's equal participation in decisions as to the division and distribution of assets.

There is no dispute as to whether the credit card points were being earned with expenditures from Plaza Extra accounts. The points and the ability to earn them were

assets of the Partnership—and always treated as such by the parties. None of the cardholders have ever maintained that they spent their own money.

Yusuf argues that the historical record shows that whoever's card was used kept points. But the record also shows that up until the litigation in 2012, ALL such *decisions as to whose cards would be used*, ensuring a fair split were always unilateral. The Court's orders all stressed that such decisions should REMAIN unilateral.

Yusuf argues that because he wrongfully seized the accounting and thus the ability to decide which cards would be used to pay bills, the prior method of “distribution to the cardholder who paid” should stand. However, the “contractual agreement” as far as it could be gleaned by Judge Brady, was that there would be a 50/50 split of assets and that decisions would be unilateral. THAT is the contractual agreement that applies to the card points. Yusuf also argues that as the Dissolution Partner he could decide to take more than 50% of the points by assigning payment to his family members—but, first, he was not in that position in 2012-2013, and thereafter he was only in that position subject to the approval of any significant changes by the Special Master, and this multi-million point change in the means for designating whose cards would be used was NOT approved by the Special Master. To the contrary, on November 4, 2014, the Master inquired “What about the signing of the checks? And the use of credit cards?”

**From:** Edgar Ross <edgarrossjudge@hotmail.com>

**Sent:** Tuesday, November 4, 2014 12:21 PM

**To:** Christina Joseph <cjoseph@dewood-law.com>; 'Joel H. Holt' <holtvi@aol.com>; 'Mark Eckard' <mark@markeckard.com>; 'Carl Hartmann' <carl@carlhartmann.com>; 'Jeffrey B. C. Moorhead' <jeffreymlaw@yahoo.com>

**Cc:** 'Nizar DeWood, Esq.' <nizar@dewood-law.com>; Gregory H. Hodges <ghodges@dtflaw.com>; Charlotte Perrell <cperrell@dtflaw.com>; Stefan

B. Herpel <sherpel@dtflaw.com>; mbarber@dtflaw.com  
**Subject:** RE: Hamed v. Yusuf & United Corporation v. Hamed, Civil No. 370/12

What about the signing of the checks? And the use of credit cards?

To which Hamed responded two days later, stating:

**From:** Hisham (Shawn) Hamed <shawnhamed@yahoo.com>  
**Sent:** Thursday, November 6, 2014 2:26 PM  
**To:** Mike Yusuf; edgarrossjudge@hotmail.com  
**Reply To:** Hisham (Shawn) Hamed  
**Subject:** Credit Card Usage

Dear Mike and Judge Ross,

I am writing to both of you to see if we can work out how the division of credit card miles can be done in a practical manner based on what was agreed to. From the date of the meeting with Judge Ross I have calculated Mike's usage at \$276,930.98 while my card usage was \$33,723.94. I have attached the summary.

1. The total is 310,654.92.
2. One half of that is 155327.46
3. Thus, I need, and Mike needs to transfer 121603.52

Does this seem correct? If so, how will we proceed from here?

**Hisham (Shawn) Hamed**  
Plaza Extra West  
US Virgin Islands  
Tel: 340.719-1870  
Fax: 340.719-1874

Yusuf never clarified his position, never asked for permission to alter the way in which the ability to pay on these cards had always been handled—and thus, never received permission for any change.

**Argument 2:** to the extent that the credit card points constitute a partnership asset subject to division, Hamed has failed to demonstrate how an allocation should be made as to the points, given the different credit capacities of the two families or the amount Hamed family members incurred.

This is just doublespeak. Yusuf is the party that refused to provide the credit card statements. Yusuf is the party that refused Hamed access to the accounting practices and statements. Yusuf is the party that was on notice of this dispute but apparently chose not to account in a manner that would allow tracking. Yusuf is the party that refused the order to state the value of points. And, perhaps most importantly, Yusuf is the party that has provided the key, undisputed evidence—the Gaffney statement and computations as to the disparity.

Thus, if the right to use the cards to pay and thus to receive these millions of points was an asset, as Yusuf concedes for the sake of this point, then the

1. “different credit capacities of the two families” is totally irrelevant as either could surely afford to put these amounts on cards equally as they had done for 20 years, and
2. “the amount Hamed family members incurred” was, by court order, supposed to be supplied by Yusuf under the order to compel—and was, in any case supplied to the extent he says is possible by John Gaffney.

### **Conclusion**

Hamed will not re-recite the extensive efforts to get discovery on this from Yusuf as to this particular claim. It is a long, sad litany of delay, then obfuscation, then the order to compel and direct, explicit noncompliance. There is no doubt that Yusuf changed the system to provide a bounty of these assets to his family in plain view, and after specific notice was given and the master inquired. To now suggest that summary judgment cannot lie because of a lack of proof when Yusuf is in direct violation of both parts of the order compelling production and response is cynical. There is certainly sufficient evidence to allow partial summary judgment as to deficiency in points for the two stores—and if we are to proceed as to the third, Yusuf must be ordered to comply fully with the Master’s prior order compelling both documents and responses.

It is true that the Master must view all inferences from the evidence in the light most favorable to Yusuf and take the Yusuf’s conflicting allegations as true if properly



supported. *Kennedy Funding, Inc. v. GB Properties, Ltd.*, 2020 V.I. 5, ¶14 (V.I. 2020). Hamed may discharge his burden by pointing out to the court that there is an absence of evidence to support Yusuf's case. However, once the Hamed met this burden, Yusuf then had the burden of set[ting] out specific facts showing a genuine issue for trial. Yusuf "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)). Here there is no genuine issue given Gaffney's figures and Yusuf's refusal to provide evidence as ordered.

**Dated:** October 14, 2022



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### CERTIFICATE OF SERVICE

I hereby certify that on this 14<sup>th</sup> day of October, 2021, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross**  
Special Master  
edgarrossjudge@hotmail.com

**Charlotte Perrell**  
**Stefan Herpel**  
Law House, 10000 Frederiksberg Gade  
P.O. Box 756  
St. Thomas, VI 00802  
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Sherpel@dnfvi.com

A handwritten signature in blue ink, appearing to read "Carl J. Hamed", with a long horizontal flourish extending to the right.

### CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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

A handwritten signature in blue ink, appearing to read "Carl J. Hamed", with a long horizontal flourish extending to the right.