

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 Hamed’s motion for partial summary judgment for Yusuf Claim No. Y-10: reconciliation of past Partnership withdrawals and distributions, as to the limited issue that including the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” in the BDO Summary of Withdrawals (and thereby Yusuf Claim No. Y-10) is not compliant with the Limitations Order, filed on August 5, 2021.¹ In response, Yusuf filed an opposition and Hamed filed a reply thereto.²

BACKGROUND

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”).

In 2016, per the Master’s order, the parties filed their respective accounting claims. Yusuf’s accounting claims, filed on September 30, 2016, included Yusuf’s claim for the reconciliation of past Partnership withdrawals and distributions (Yusuf Claim No. Y-10). In support of the aforementioned claim, Yusuf attached to Yusuf’s Accounting Claims an

¹ On August 5, 2022, Hamed filed a corrected renewed motion to compel for Yusuf Claim No. Y-10, which the Master subsequently construed as a motion for partial summary judgment for Yusuf Claim No. Y-10 as to the limited issue of whether the BDO Summary of Withdrawals complied with the Limitations Order and ordered Hamed to supplement his motion accordingly. Thereafter, Hamed filed a supplemental briefing including a statement of undisputed facts.

In his motion, Hamed appeared to argue that all the amounts included in the BDO Summary of Withdrawals (and thereby Yusuf Claim No. Y-10) are not compliant with the Limitations Order. However, in his motion and his supplemental briefing, Hamed only addressed the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt”; no other amounts were addressed. Thus, this order will only address the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt.” See *Joseph v. Joseph*, 2015 V.I. LEXIS 43, *5 (V.I. Super. Ct. Apr. 23, 2015) (“[I]n general, the Court will not make a movant’s arguments for him when he has failed to do so.”).

² 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.

accounting report of the Partnership (hereinafter “BDO Report”) prepared by Yusuf’s accounting expert Fernando Scherrer of BDO Puerto Rico, P.S.C. (hereinafter “BDO”). Hamed’s accounting claims, filed on October 17, 2016, included Hamed’s claim for Partnership funds in the amount of \$2,784,706.25 that Yusuf unilaterally withdrew from the Partnership in 2012 (Hamed Claim No. H-2).

On July 25, 2017, the Court entered a memorandum opinion and order limiting accounting (hereinafter “Limitations Order”). The Court clarified in the Limitations Order that the term “claim” has taken on an entirely different and more specific meaning than “cause of action” in the context of this litigation—to wit: “Hamed and Yusuf have each, in their respective pleadings, presented only a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. § 75(b)(2)(iii)” and that the “the term ‘claims’ refers not to the parties’ respective causes of action for accounting, but rather to the numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery, will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan.” (Limitations Order, pp. 10-11.) The Court ultimately “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.)

In light of the Limitations Order, the Master ordered the parties to file their amended accounting claims. Yusuf Claim No. Y-10 was again included in Yusuf’s amended accounting claims, filed on October 30, 2017 (hereinafter “Yusuf’s Amended Accounting Claims”) and,

in addition to the BDO Report, a summary of withdrawals (hereinafter “BDO Summary of Withdrawals”) prepared by Yusuf’s accounting expert BDO was attached to Yusuf’s Amended Accounting Claims in support of Yusuf Claim No. Y-10. More specifically, in Yusuf’s Amended Accounting Claims, Yusuf claimed that “\$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.”³ (Yusuf’s Amended Accounting Claims, pp. 13-14.) Hamed Claim No. H-2 was again included in Hamed’s amended accounting claims, filed on October 30, 2017 (hereinafter “Hamed’s

³ 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.

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.)

Amended Accounting Claims”). More specifically, in Hamed’s Amended Accounting Claims, Hamed claimed that “[o]ne-half of this amount [of \$2,784,706.25] plus statutory interest should be paid to Hamed.”⁴ (Hamed’s Amended Accounting Claims, p. 4.)

It must be noted that Yusuf Claim No. Y-10 and Hamed Claim No. H-2 are intricately intertwined—to wit, the amount of \$2,784,706.25 Hamed claimed in Hamed Claim No. H-2 was included in Yusuf’s calculations in reaching the amount of \$2,549,819.22 Yusuf claimed in Yusuf Claim No. Y-10. Moreover, the intricacy does not stop there. On February 25, 2019, Hamed filed a motion for summary judgment for Hamed Claim No. H-2. In his February 25, 2019 motion, Hamed argued that Yusuf’s withdrawal of \$2,784,706.25 from the Partnership in 2012 was unjustified and thus, he is entitled to an equal withdrawal from the Partnership or the amount of \$2,784,706.25 should be returned to the Partnership.⁵ In his opposition to Hamed’s February 25, 2019 motion, Yusuf did not dispute the fact that he withdrew \$2,784,706.25 from the Partnership and instead argued that the withdrawal was an equal set off to the withdrawals allegedly made by the Hameds as set forth in a letter from Yusuf to Mohammad Hamed, dated August 15, 2012 (hereinafter “August 15, 2012 Letter”), which included \$1,600,000.00 (past confirmed withdrawals), plus \$1,095,381.75 (additional withdrawals), plus \$44,355.50 (withdrawal of 50% of St. Maarten bank account), and plus \$44,696.00 (withdrawal 50% of Cairo Amman bank account).⁶ (Sept. 18, 2019 Order; Hamed’s Feb. 25, 2019 Motion for

⁴ The Master must note that Hamed presented inconsistent proposals for the resolution for Hamed Claim No. H-2 in his December 20, 2017 motion as to Hamed Claim No. H-2 and his February 25, 2019 motion for summary judgment for Hamed Claim No. H-2—to wit, in his December 20, 2017 motion, Hamed argued that “\$2.7 million plus interest is a valid claim and must be returned to the Partnership” (Dec. 20, 2017 Motion, p. 3) and in his February 25, 2019, Hamed argued that “Hamed is entitled to an equal Partnership withdrawal plus prejudgment interest credited to his Partnership account.” (Feb. 25, 2019 Motion, p. 8.) Nevertheless, for the purposes of this Order, the Master need not address Hamed’s inconsistent proposals for the resolution for Hamed Claim No. H-2.

⁵ See *supra*, footnote 4.

⁶ The August 15, 2012 Letter stated:

Re: Notice of Withdrawal

Dear Mr. Hamed,

The amount of \$2,784,706.25 will be withdrawn from United's operating account effective August 15th, 2012. This amount equals the proceeds you previously withdrew through your agent Waleed

Summary Judgment regarding Hamed Claim No. H-2, Exhibit 2-August 15, 2012 Letter.). These various alleged withdrawals by the Hameds were also included in Yusuf's calculations in reaching the amount of \$2,549,819.22 Yusuf claimed in Yusuf Claim No. Y-10.⁷ On September 18, 2019, the Master entered an order (hereinafter "September 18, 2019 Order") whereby the Master ordered, inter alia, "that Hamed's motion for summary judgment regarding Hamed Claim No. H-2: Partnership fund in the amount of \$2,784,706.25 that Yusuf unilaterally withdrawn in 2012 is GRANTED subject to any set offs that are established hereinafter." (Sept. 18, 2019 Order) (emphasis in original.) In the September 18, 2019 Order, the Master noted that "the Limitations Order only applies to 'claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. § 71(a)'" and "[a]s 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." (Id., p. 16, n.9.)

On July 31, 2021, Hamed filed a ministerial motion for Yusuf Claim No. Y-10. In his motion, Hamed argued that, to "streamline this claim," Yusuf Claim No. Y-10 should be amended so that all the items in the BDO Summary of Withdrawals should be removed except the following three items: (1) \$237,352.75, alleged "withdrawals from the partnership with a signed ticket/receipt" by Waleed Hamed, (2) \$20,311.00, alleged "payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks" by Waleed

Harried. To ensure full accuracy, attached are the receipts you requested during mediation demonstrating the \$1,095,381.75 of withdrawals. The below itemized amounts are not in dispute.

Past Confirmed Withdrawals	\$1,600,000.00
Additional Withdrawals per the attached requested receipts	\$1,095,381.75
Fifty percent (50%) of St. Maarten Bank Account	\$44,355.50
Fifty percent (50 %) of Cairo Amman Bank	\$44,696.00

Should you have any concerns about these amounts, please provide the basis for your concerns in writing. Thank you.

(Aug. 15, 2012 Letter.)

⁷ In the BDO Summary of Withdrawal, the amount of \$1,778,103.00 listed under Waleed Hamed for the item "amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001..." included the following alleged withdrawals by the Hameds: \$1,600,000.00 (past confirmed withdrawals), \$88,711.00 (withdrawal of 100% of St. Maarten bank account), and \$89,392.00 (withdrawal of 100% of Cairo Amman bank account); and the amount of \$237,352.75 listed under Waleed Hamed for the item "Withdrawals from the partnership with a signed ticket/receipt" included a portion of the alleged additional withdrawals by the Hameds.

Hamed, and (3) \$2,000.00, alleged “withdrawals from the partnership with a signed ticket/receipt” by Maher Yusuf. (July 31, 2021 Motion, p. 2, Charts B, C.)

On February 21, 2022, the Master entered an order whereby the Master denied Hamed’s ministerial motion and ordered, inter alia, that “Hamed and Yusuf shall file a joint stipulated notice advising the Master as follows: (a) Which individual accounting claim is also stated as a set off in Yusuf Claim No. Y-10? and (b) As to the individual accounting claim(s) identified in (a), whether it is in dispute or not in dispute that the identified individual accounting claim is not barred by the Limitations Order. If there is a dispute, Hamed and Yusuf should provide support for their respective argument.” (Feb. 21, 2022 Order.)

On June 9, 2022, the Master entered an order whereby the Master addressed certain set offs stated in Yusuf Claim No. Y-10 that were also stated as individual accounting claims and ordered Hamed and Yusuf to file a supplemental brief addressing the following issues: (i) Why these account closure proceeds—\$88,711.00 and \$89,392.00—should not proceed as an individual accounting claim as part of Yusuf Claim No. Y-12 instead of as a set off as part of Yusuf Claim No. Y-10? and (ii) Why these weddings gifts—\$3,000,000—should not proceed as part of Hamed Claim No. Y-151 instead of as a set of as part of Yusuf Claim No. Y-10? (June 9, 2022 Order.)

On July 13, 2022, upon receipt of Hamed and Yusuf’s supplemental briefs, the Master entered an order whereby the Master ordered Yusuf to make certain revisions to the BDO Summary of Withdrawals. On July 27, 2022, Yusuf filed a revised BDO Summary of Withdrawals in accordance with the July 13, 2022 order.⁸

⁸ A simplified version of the revised BDO Summary of Withdrawals is reproduced here—to wit, (i) the “Lifestyle Analysis” portion of the summary is not included since it is not included in Yusuf Claim No. Y-10, (ii) the columns for the individual Hameds (Mohammad Hamed, Waleed Hamed, Waheed Hamed, Mufeed Hamed, and Hisham Hamed) and individual Yusufs (Fathi Yusuf, Nejah Yusuf, Maher Yusuf, Yusuf Yusuf, Najat Yusuf, Zayed Yusuf, Syaïd Yusuf, Amal Yusuf, Hoda Yusuf, and Yacer Yusuf) in the summary are not included and instead, only the columns with the total for the Hameds, the total for the Yusufs, and the differences are included:

Description	Hameds Total	Yusufs Total	Difference
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On August 5, 2022, Hamed filed this instant motion for partial summary judgment.

STANDARD OF REVIEW

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

Funds received from partnership through checks	-	\$2,784,706.25	(\$2,784,706.25)
Withdrawals from the partnership with a signed ticket/receipt	\$237,352.75	\$2,000.00	\$235,352.75
Amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001. As per Mike’s testimony these tickets were burned	\$1,600,000.00	-	\$1,600,000.00
Payments to third parties on behalf of Hamed/Yusuf with partnership funds either with tickets or checks	\$20,311.00	-	\$20,311.00
Payments to Attorneys with partnership’s funds	\$322,900.42	-	\$322,900.42
Funds received by cashier’s check	-	-	-
TOTAL PARTNERSHIP	\$2,180,564.17	\$2,786,706.25	\$606,142.08

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).

DISCUSSION

In his motion and supplemental briefing, Hamed argued that the Master should find that including the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” in the BDO Summary of Withdrawals (and thereby Yusuf Claim No. Y-10) is not compliant with the Limitations Order and grant his motion for partial summary judgment as to this limited issue.⁹ More specifically, Hamed argued that the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” is not compliant with the Limitations Order because Yusuf admitted that “the use of amounts from before the cut-off date” in Yusuf’s supplemental responses to Hamed’s Interrogatory 49—to wit, Yusuf’s supplemental responses provided in relevant part that “[w]hile these amounts[—\$237,352.75—]were prior to the September 17, 2006 timeframe, they were kept in the chart as the withdrawal by Yusuf straddled the cutoff date.”¹⁰ (Id.)

⁹ In his motion, Hamed indicated that “the purported BDO ‘supplementation’ recently filed by Yusuf on July 10, 2022 which was allegedly a update of BDO’s prior chart is not supported by either a declaration or anything else from BDO—indeed, it now appears to lack any reference to BDO” and requested that “if the Court grants the underlying motion, Hamed asks that BDO, as the testifying witness, provide declarative, signed support showing that it is the supplementing witness as the Master ordered.” (Motion, p. 3.) In his supplementation, Hamed also indicated that “it must be BDO, not Yusuf amending that information, as it is a BDO exhibit filed under BDO’s report and supporting statements.” (Supp., p. 7)

¹⁰ Hamed’s interrogatory and Yusuf’s supplemental response at issue are reproduced in the entirety here:

Hamed’s Interrogatory 49 of 50:

With regard to the post September 17, 2006 claims in Y-10, and more specifically your "J-2" Exhibit to Yusuf’s Amended Accounting Claims Limited to Transactions Occurring on or after September 17, 2006, dated October 30, 2017, explain in detail with reference to witnesses, documents, dates and amounts, why the claim and referenced exhibit reflect the following: there appears to be only one \$2,000 amount (Maher) for withdrawals from the Partnership with a signed ticket/receipt and payments to third parties on behalf of Hamed/Yusuf with partnership funds for the Yusufs during the entire eight year period between 2006 and 2014 – where are all of those amounts; also, with regard to the attorney’s fees in BDO Table 38A you list five attorney’s fees checks as credits to Hamed—explain in detail why did you not include the four checks in BDO Table 38B as similar credits; also, why is the amount listed as owed by Waleed Hamed \$1,778,103 rather than the \$1,600,000 that has always been discussed and is listed in the August 15, 2012 letter referenced on Exhibit J-2?

Yusuf’s Supplemental Response:

In his opposition, Yusuf argued that the Master should find that including the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” in the BDO Summary of Withdrawals (and thereby Yusuf Claim No. Y-10) is not noncompliant with the Limitations Order and the Master should deny Hamed’s motion for partial summary judgment as to this limited issue. Yusuf made the following assertions in support of his argument: (i) “[T]he 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 [and] 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 [and] [c]onsistent with the ruling of the Court that what was not

Yusuf provides this supplemental responses but shows that the original documentation was provided to Hamed on October 4, 2016, when Yusuf’s Amended Accounting Claims and exhibits were filed and as explained in Yusuf’s original responses to this discovery filed on May 15, 2018. To eliminate any confusion, the information is again reproduced here:

To eliminate any confusion, the information is again reproduced here:

1. Maher \$2,000

As to the \$2,000 listed in the BDO Revised Summary (J-2) under Maher Yusuf, a review of Tables accompanying the BDO Report reflect, as to funds received by the partners pursuant to a receipt or ticket, each was chronicled in a Table and a copy of the Supporting Documentation included in a series of folders, per family member. As to Maher, Table 50B – reflects a list of any funds received by Maher from the Partnership from October 2001 to 2012. (BDO had originally divided the tables into two timeframes according to years: Time Period 1 - 1994 -2001 (inception of the partnership to time of the FBI raid), and Time Period 2 - 2001 to 2012 (FBI Raid and period of the Federal Monitors until 2012 when the partnership ended). After 2012, the partnership accounting information was taken over by John Gaffney and provided to both partners. Table 50B – reflect that there was only one receipt in 2012 for Maher. The actual receipt was included in the folders for Maher. The actual receipt from that folder (also provided back in October of 2016) is attached hereto. Hence, this is the only information that BDO had as to any funds received from Maher after September 17, 2006 – the period designated by Judge Brady as the cut off point. The fact that there were minimal receipts after the 2001 FBI raid is not surprising because of the existence of the Federal Monitors at the Stores. As to other members of the Yusuf families, a review of the Tables provided indicates that after the FBI Raid there were no additional funds received via a “receipt.” The same is true for the Hamed families, no one has “receipts” after 2006. A review of their Tables indicates a few receipts in the year or so shortly after the raid (i.e. before the Monitors were in place), but almost none in 2003 and certainly none after 2006.

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.

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.” (Opp., pp. 4-5) (footnote omitted); (ii) “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,” and “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 [and] [t]herefore, Yusuf is unclear as to the relief sought by Hamed or what is at issue on this Motion for Partial Summary Judgment.” (Id., at p. 5); (iii) “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.” (Id., at p. 8); (iv) “[A]s 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.” (Id.); and (v) “[T]here is no basis for a partial summary judgment as requested by Hamed at this stage as to Y-10” and “[d]iscovery on these issues remains open.”¹¹ (Id., at 9.)

In his reply, Hamed made the following assertions: (i) “[E]veryone agrees that the order stated “the accounting in this matter...shall be limited in scope to consider only those claimed credits and changes to partner accounts, within the meaning of 26 V.I.C. SSS 71(a), based upon transactions that occurred on or after September 17, 2006.” (Reply, p. 2) (emphasis omitted);

¹¹ In his opposition, Yusuf noted that “[a]s 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.” (Opp., pp. 8-9.)

(ii) “Yusuf erroneously denies that he proffered a chart where BDO failed to remove amounts prior to the cutoff date as represented.” (Id.) (emphasis omitted); and (iii) The BDO Summary of Withdrawals “is not a chart regarding potential offsets—it is what BDO and Yusuf described it as being.”¹² (Id., at p. 3) (emphasis omitted.)

The Master must note at the outset that it was incorrect for Yusuf to interpret the fact that the Master did not order the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” to be removed from the BDO Summary of Withdrawals to mean that said amount “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.” (Opp., p. 5.) First, the February 21, 2022 order addressed Hamed’s July 31, 2021 ministerial motion for Yusuf Claim No. Y-10 and, as noted above, the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” was not one of the items Hamed requested to be removed from the BDO Summary of Withdrawals. Second, the June 9, 2022 order addressed whether any of the following set off stated in Yusuf Claim No. Y-10 was also stated as an individual accounting claim: (i) Waleed Hamed’s withdrawal of Partnership funds from the closure of a St. Martin bank account (\$88,711) and a Jordan bank account (\$89,392)—collectively listed under Waleed Hamed for the item “amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001...” in the BDO Summary of Withdrawals; (ii) wedding gifts to Hisham Hamed and his spouse (\$1,500,000) and Mufeed Hamed and his spouse (\$1,500,000)—with \$1,500,000 listed under Mohammad Hamed and \$1,500,000 listed under Fathi Yusuf for the item “funds received from partnership through checks” in the BDO Summary of Withdrawals; and (iii) Attorney’s fees and/or accounting fees (\$332,900.42)—listed under the Yusufs for the item “payments to Attorneys with partnership funds” in the

¹² In his reply, Hamed again indicated that BDO is the testifying expert and that the BDO Summary of Withdrawals must be revised by BDO.

BDO Summary of Withdrawals. (June 9, 2022 Order.) The Master neither contemplated nor addressed the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” since no information was provided by Hamed in his July 31, 2021 ministerial motion as to which individual accounting claim, if any, it could proceed as a part of.¹³ Thus, the fact that it was not addressed in the June 9, 2022 order should not be interpreted to mean that it was deemed a set off or otherwise. The Master simply has not ruled on whether the amount of \$237,352.75 is a set off or a claim, or whether it was properly included in Yusuf Claim No. Y-10. Third, the July 13, 2022 order addressed the June 9, 2022 order, which as noted above, neither contemplated nor addressed the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt.”

The Master must also note at the outset that Yusuf misquoted the August 19, 2022 order in his opposition. The August 19, 2022 order did not state “...the Master will construe whether the BDO Summary of Withdrawals (as to Yusuf Claim No. Y-10) complied with the Limitations Order” as Yusuf stated in his opposition. Instead, the August 19, 2022 order stated:

...Based on the substance of Hamed’s motion, which essentially requested the Master to summarily adjudicate the issue of whether the BDO 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.

¹³ In Hamed’s July 31, 2022 ministerial motion, Hamed provided the following information: (i) For Waleed Hamed’s alleged withdrawal of Partnership funds from the closure of a St. Maartin bank account (\$88,711.00) and a Cairo Amman bank account (\$89,392.00)—collectively listed under Waleed Hamed for the item “amount owed by Hamed family to Yusuf as per agreement before raid Sept 2001...” in the BDO Summary of Withdrawals—Hamed indicated that they should proceed as part of Yusuf Claim No. Y-12; (ii) For wedding gifts to Hisham Hamed and his spouse (\$1,500,000.00) and Mufeed Hamed and his spouse (\$1,500,000.00)—with \$1,500,000.00 listed under Mohammad Hamed and \$1,500,000.00 listed under Fathi Yusuf for the item “funds received from partnership through checks” in the BDO Summary of Withdrawals—Hamed indicated that this should proceed as part of Hamed Claim No. H-151; and (iii) For Attorney’s fees and/or accounting fees (\$332,900.42)—listed under the Yusufs for the item “payments to Attorneys with partnership funds” in the BDO Summary of Withdrawals—Hamed indicated they have been addressed by the parties’ prior stipulation.

(Aug. 19, 2022 Order, pp. 3-4.)

The Master must further note at the outset that Yusuf Claim No. Y-10 is Yusuf’s claim for the reconciliation of past Partnership withdrawals and distributions in the amount of \$2,549,819.22;¹⁴ it is not the BDO’s claim. In reaching the amount of \$2,549,819.22 Yusuf claimed in Yusuf Claim No. Y-10, Yusuf’s calculations were based on the numbers provided in the BDO Report and BDO Summary of Withdrawals. Thus, any revision to the BDO Summary of Withdrawals is a revision of Yusuf Claim No. Y-10. In fact, the July 13, 2022 order specifically stated that “the Master will order Yusuf to revise Yusuf Claim No. Y-10” and ordered Yusuf to make certain revisions to the BDO Summary of Withdrawals. To clear up any confusion caused by the revisions to the BDO Summary of Withdrawals, the Master will also order Yusuf to file a separate notice stating the amount claimed under the revised Yusuf Claim No. Y-10 pursuant to the July 13, 2022 order.

The Master will now address the issue raised in Hamed’s motion for partial summary judgment. Here, Hamed essentially argued that the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” is a claim for a withdrawal made prior to September 17, 2006, the cut-off date set forth in the Limitations Order and thus, including this amount in the BDO Summary of Withdrawals (and thereby Yusuf Claim No. Y-10) is not compliant with the Limitations Order. In response, Yusuf essentially argued that the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” is a set off and given the Master’s prior ruling—to wit, in the September 18, 2019 Order, the Master noted that “the Limitations Order only applies to ‘claimed credits and charges to partner accounts, within the meaning of 26 V.I.C. § 71(a)’” and “[a]s 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

¹⁴ See *supra*, footnote 3.

\$1,600,000.00 as a set off’ (Sept. 18, 2019 Order, p. 16, n.9)—including this amount in the BDO Summary of Withdrawals (and thereby Yusuf Claim No. Y-10) is not noncompliant with the Limitations Order. In other words, Hamed and Yusuf presented competing allegations as to whether the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” is a claim or a set off. In deciding a motion for summary judgment, the Master may not weigh the evidence and determine the truth of the competing allegations. *See Todman*, 70 V.I. at 437 (“[T]he 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. The Court’s role in deciding a motion for summary judgment is not to determine truth, but rather to determine whether a factual dispute exists that warrants trial on the merits.”) (internal quotation marks omitted). As such, the Master finds that Hamed failed to satisfy his burden of establishing that there is no genuine dispute as to any material fact that including the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” in the BDO Summary of Withdrawals (and thereby Yusuf Claim No. Y-10) is not compliant with the Limitations Order and the Master will deny Hamed’s motion for partial summary judgment as to this limited issue.

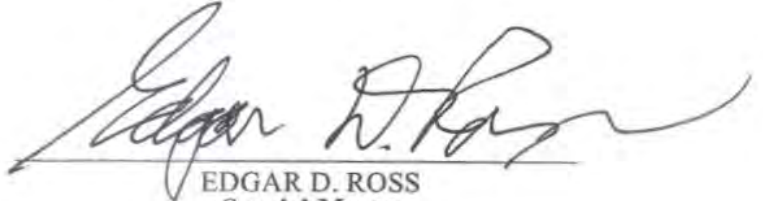
CONCLUSION

Based on the foregoing, it is hereby:

ORDERED that Hamed’s motion for partial summary judgment for Yusuf Claim No. Y-10 as to the limited issue that including the amount of \$237,352.75 listed under Waleed Hamed for the item “Withdrawals from the partnership with a signed ticket/receipt” in the BDO Summary of Withdrawals (and thereby Yusuf Claim No. Y-10) is not compliant with the Limitations Order, filed on August 5, 2021, is **DENIED**. **And** it is further:

ORDERED that, within ten (10) days from the date of entry of this Order, Yusuf SHALL file a notice stating the amount claimed under the revised Yusuf Claim No. Y-10 pursuant to the July 13, 2022 order.

DONE and so ORDERED this 24th day of October, 2022.


EDGAR D. ROSS
Special Master