

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 motion for summary judgment for Hamed Claim No. H-146: reimbursement of the credit card points earned by Fathi Yusuf (hereinafter “Fathi Yusuf” or “Fathi” or “Yusuf”) and his family members (hereinafter “Yusufs”) on purchases made/expenses paid on behalf of the Partnership on their personal credit cards in excess of the credit card points earned by Mohammad Hamed<sup>1</sup> and his family members (hereinafter “Hameds”) on purchases made/expenses paid on behalf of the Partnership on their personal credit cards in the amount of \$421,235, filed on September 8, 2022.<sup>2</sup> In response, Yusuf filed an opposition and Hamed filed a reply thereto.

### **BACKGROUND**

On February 16, 2016, Hamed directed a list of questions (hereinafter “Hamed’s February 16, 2016 Questions”) to the former Partnership accountant John Gaffney, which included a question regarding the credit card points earned by the Yusufs and the Hameds on purchases made/expenses paid on behalf of the Partnership on their personal credit cards.<sup>3</sup> On

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<sup>1</sup> To clarify, in this memorandum opinion, whenever references are made to “Hamed,” the Master is referencing the plaintiff/counterclaim defendant party, and whenever references are made specifically to “Mohammad Hamed,” the Master is referencing the individual—Mohammad Hamed.

<sup>2</sup> As Hamed explained in his July 28, 2021 motion to compel responses to discovery served in connection with Hamed Claim No. H-146 and reply thereto: (i) the Yusufs and the Hameds earned credit card points on their personal credit cards when they made purchases and paid expenses on behalf of the Partnership on their personal credit cards; (ii) the Yusufs and the Hameds then submitted the relevant credit card statements to the Partnership for reimbursement; (iii) the Partnership subsequently reimbursed the Yusufs and the Hameds for such purchases and expenses and therefore the credit card points belong to the Partnership and not the individual credit cardholders; and (iv) there was an imbalance of the credit card points earned between the Yusufs and the Hameds based on the purchases made/expenses paid on behalf of the Partnership—to wit, the Yusufs earned more credit card points than the Hameds. (Motion; Reply.) Thus, Hamed claimed in Hamed Claim No. H-146 that the credit card points earned by the Yusufs on purchases made/expenses paid on behalf of the Partnership on their personal credit cards in excess of the credit card points earned by the Hameds on purchases made/expenses paid on behalf of the Partnership on their personal credit cards belong to the Partnership.

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 Hamed Claim No. H-146 falls within the scope of the Master’s report and recommendation given that Hamed Claim No. H-146 involves an alleged debt Yusuf owes the Partnership.

<sup>3</sup> The February 16, 2016 Questions provided in relevant part:

Description: There is an imbalance in credit card points between Yusuf Yusuf and Mafi Hamed, NejeH Yusuf and Willie Hamed and Mike Yusuf and Shawn Hamed.

May 17, 2016, John Gaffney provided a response (hereinafter “Gaffney’s May 17, 2016 Response”) to Hamed’s February 16, 2016 Questions.<sup>4</sup>

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General Ledger-Store, Date, Entry No. & Description [as an example] (if applicable): East, 4/30/13, 29900, V.I.B.I.R - GROSS RECEIPT 3/30/13 PAID W/YUSUF 6073/3791 MIKE C/C 3940 NEJEH C/C5222, \$158,381.20

Question/Request for Info: Are the credit card points reflected in the general ledger and if so, please provide that information. If the credit card points are not reflected on the general ledger, for the years 2012-2015, would you please account for the amounts paid to each of the following individual's credit cards - Fathi Yusuf, Yusuf Yusuf, Mike Yusuf, NejeH Yusuf, Wally Hamed, Willie Hamed, Mafi Hamed and Shawn Hamed. Please provide the canceled checks showing payment of Fathi Yusuf, Yusuf Yusuf, Mike Yusuf, NejeH Yusuf, Wally Hamed, Willie Hamed, Mafi Hamed and Shawn Hamed credit cards.

(Hamed’s Feb. 16, 2016 Questions.)

<sup>4</sup> Gaffney’s May 17, 2016 Response provided in relevant part:

Response:

See objection to Item No. 3002. Without waiving that objection, credit card points are not reflected in the general ledger. You already know that because you were provided complete backups of Plaza accounting systems for all years and you loaded them into Sage software on your computers. You were given all rights to run not only complete general ledgers, but you also have the ability to run vendor reports showing all payments with credit cards.

This request to identify credit card points creates significant new work such that is its completely impractical. Regarding cancelled checks, copies of all cancelled checks were already provided for all accounts for all years in conjunction with the provision of all bank statements to the extent the banks provided them. We had several discussions about what our banks provided versus what they didn't provide and what information was withheld by Willie Hamed after the St. Thomas store auction.

More importantly, it is also irrelevant to request cancelled checks since ALL checks are dual signed by one member of the Yusuf family and one member of the Hamed family. If you can produce an instance where this isn't so, your request for cancelled checks might be warranted. But another point bears repeating. You already know from previous conversations that we don't have many cancelled checks as the banks refused to provide them.

ScotiaBank never even provided monthly bank statements for the Plaza St. Thomas operating account ending in 2010. While they provided monthly bank statements for the payroll and telecheck accounts, repeated requests for monthly statements for the operating account fell on deaf ears. Margie Soeffing first informed me of this issue in November 2012. Disbelieving her, I made repeated phone calls and visits to their Red Hook branch in early 2013 and only succeeded in getting their agreement to provide daily statements on a "Hold for Pickup" basis. Making matters worse, I could never rely on whether all days during a month were provided. When I picked up daily statements, there were always days missing which always took several more weeks to obtain. The process was so tedious and worthless that in frustration, I resorted to using online screen prints of activity to reconcile cash just as Margie had done before me. You were told this several times.

Humphrey Caswell was hired in March 2013 to first perform payroll processing. After training another new hire to perform payroll duties, he was assigned to improve the accounting and controls over in-store charges (i.e. Accounts Receivable). Humphrey had an accounting degree and demonstrated significant accounting skills from the start. As a result, he was promoted to Assistant Controller. Disbelieving my failure to get monthly statements from Scotia, he too attempted to get them during the last six months of 2013 and finally resigned himself to using online screen prints in lieu of monthly or daily bank statements. Despite not having monthly statements, Humphrey maintained excellent records of daily and monthly work in St. Thomas. Following the store auction on April 30, 2015, I attempted to obtain his monthly files from January 2013 through April 2015 and Willie Hamed refused to allow me or even Humphrey to enter the store to obtain those records which included cash reconciliations and the screen prints used to reconcile cash monthly.

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Banco Popular provided complete monthly bank statements with enclosures through July 2013. Then suddenly and without warning they stopped including copies of enclosures for the two operating accounts (Plaza East a/c ending in 8830 and Plaza Wes a/c ending in 6269). When we asked to restore the provision of cancelled checks, they pretended no knowledge and even challenged ever received cancelled checks. They remained very evasive and would never give a straight answer about why they stopped providing copies of cancelled checks.

Although neither ScotiaBank nor Banco Popular would ever clearly state why they wouldn't provide complete statements, it was clear neither wanted to be subjected to unnecessary liability. It was my belief that they felt the less we had the less they could be held responsible for. Of course, they were compelled to scrutinize so many checks to ensure two signatures (one from each family) that the service we received was severely lacking. There were instances when 50 checks were returned for no reason at all. These instances created tremendous accounting challenges and countless bank charges, too numerous to attempt recovery from due to lack of accounting resources.

Neither ScotiaBank nor Banco would open any new accounts for United Corporation. Furthermore, we suffered more than one instance where we were asked to close our accounts and take our business elsewhere. And indeed our accounts were involuntarily closed by ScotiaBank at the end of 2015. Fortunately, Banco Popular remains as trying as it was to open any new accounts.

Included herein are copies of vendor reports for credit cards used at Plaza East. These reports reflect all activity since January 1, 2013 (the accounting conversion date). Prior to 2013, it is impractical if not impossible to provide all credit card activity as vendor accounts for credit cards never reflected activity properly. Sample general ledgers for the months of December 2012 and January 2013 are provided to demonstrate the deficiencies prior to my employment. Note that in 2012 all freight activity was rolled into single journal entries for St. Croix and in one account for both stores. Note also that in St. Thomas most of the freight was paid using Banco Popular credit cards. However, these payments are not associated with a vendor account for the corresponding Banco Popular credit cards. Instead, the AP clerk would simply change the name on the true vendor's account (probably Tropical Freight) when he or she was making the payment. So while a vendor account might have first been created at Tropical Freight, there were countless payments to the various credit cards actually used to pay Tropical Freight. Add to this the confusion of constantly changing addresses so that a payment to Banco Popular didn't get mailed to Tropical Freight. This was complete circumvention of controls.

Note the difference beginning in 2013. There are no payments in Freight Expense with a description of "Banco Popular." In 2013 a true system of controls was implemented to show WHO the vender is. Furthermore, the control system was designed to ensure that any credit card payments appearing in the general ledger expense accounts were conspicuous. This assures system integrity and guards against the likelihood of payment of non- business items by anyone. Simple stated, if I see a Banco credit card voucher in the general ledger [sic] account for freight expense, I immediately know it's a posting error. And if the control account used to clear business expenses against payments with credit cards is anything other than zero, I am immediately alerted to a posting error.

I hope this lengthy dissertation establishes once and for all the limitations on providing cancelled checks as I thought that fact was established long ago.

List of documents provided:

2012 General Ledger detail of Freight Expense.

2013 General Ledger detail of Freight Expense to demonstrate controls in 2013 not in 2012.

37 Vendor Ledgers showing details of all purchase /payment activity from Jan 1, 2013 through various dates beyond the store split dates. These are all of the credit cards used one or more times at Plaza East and include cards owned by Yusuf family and Hamed family.

(Gaffney's May 17, 2016 Response.)

Subsequently, per the Master's order, the parties filed their respective accounting claims in 2016 and their respective amended accounting claims in 2017.<sup>5</sup> On October 17, 2016, Hamed filed his accounting claims and thereafter, on October 30, 2017, Hamed filed his amended accounting claims (hereinafter "Hamed's Amended Accounting Claims"), whereby both filings included Hamed's claim for the reimbursement of the credit card points earned by the Yusufs on purchases made/expenses paid on behalf of the Partnership on their personal credit cards in excess of the credit card points earned by the Hameds on purchases made/expenses paid on behalf of the Partnership on their personal credit cards in the amount of \$421,235 (Hamed Claim No. H-146, formerly known as Hamed Claim No. 3007).<sup>6</sup> In

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<sup>5</sup> On July 25, 2017, the Court entered a memorandum opinion and order limiting accounting (hereinafter "Limitations Order"). In the Limitations Order, 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." (Limitations Order, pp. 32, 34.) In light of the Limitations Order, the Master ordered the parties to file their amended accounting claims.

<sup>6</sup> In Hamed's accounting claims, Hamed included the expert opinion of Jackson Vizcaino Zomerfield, LLP, dated September 28, 2016, which provided in relevant part:

Item 3007 – Imbalance in credit card points

*Summary of Description of Issue Identified:*

Credit card points earned on purchases/expenses paid on behalf of the Partnership using personal credit cards should be split evenly between the Hameds and Yusufs.

*Work performed:*

We interviewed John Gaffney and the Hameds regarding the use of personal credit cards to pay purchases/expenses of the Partnership and the credit card points earned. We also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) requesting the detail of credit card payments for purchases/expenses from 2012-2015 and statements of credit card points earned on such purchases. In addition, we reviewed the general ledgers from 2012 to present provided by John Gaffney.

We are advised by Attorney Holt that further investigation through the legal process of discovery is need for the banks and credit card companies involved in this issue to provide documentation for transactions conducted with the Partnership from 2012-2015.

*Gaffney's response:*

John Gaffney's response dated May 17, 2016 (see Attachment IX) stated this request creates significant new work such that is its [sic] completely impractical. John Gaffney's response included detail of payments by vendor for the various credit cards used for Partnership transactions from the accounting records.

*Opinion as to the Issue Identified:*

We were advised that credit card points earned on purchases paid on behalf of the Partnership using personal credit cards belong to the Partnership and should be split evenly between the Hameds and Yusufs. We noted in the accounting records (general ledger) reimbursements to the Yusufs for purchases/expenses on behalf of the Partnership using personal credit cards. However, we found no

summary, Hamed claimed in Hamed Claim No. H-146 that the credit card points earned by the Yusufs and the Hameds on purchases made/expenses paid on behalf of the Partnership on their personal credit cards belong to the Partnership and therefore should be split evenly between Yusuf and Hamed.

The parties then proceeded with discovery.

On September 8, 2022, Hamed filed this instant motion for 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.

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evidence, nor were we provided any evidence upon request from John Gaffney, of credit card points earned being returned or used by the Partnership or divided between the Hameds and Yusufs. Additionally, there was no detail provided in the 2012 ledger.

The total amount we identified as reimbursements to the Yusufs for purchases/expenses paid on behalf of the Partnership using personal credit cards based on information obtained from John Gaffney was \$32,085,919.10 from 2013-2015. The total amount we identified as reimbursements to the Hameds for purchase/expenses paid on behalf of the Partnership using personal credit cards based on information obtained from John Gaffney was \$15,236,534.50 from 2013-2015. We identified a difference of \$16,849,384.60, in the Yusufs favor. We presume a 2.5% earning on credit card purchases.

Exhibit 3007-a contains a summary of the accounting (extracted from vendor detail provided by John Gaffney) of the payments posted as reimbursements for purchases/expenses on behalf of the Partnership using personal credit cards. The total amount of the claim is \$421,234.62, subject to further refinement after discovery is re-opened and completed.

(Hamed’s Accounting Claims.)

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 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,<sup>7</sup> Hamed argued that the Master should order Yusuf to transfer over 22,597,599.09 worth of points in any of the major credit cards, or enter judgment in favor of Hamed in the amount of \$316,366.38,<sup>8</sup> “[e]ven if this is not the case, there is no issue whatsoever as to the East/West differential of \$10,582,226.85,” so the Master should order Yusuf to transfer 10,582,226.85 worth of points in any of the major credit cards, or enter

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<sup>7</sup> In his motion, Hamed indicated that “[f]or the purpose of this motion only, Hamed accepts [John] Gaffney calculation that between the East and West stores, Hamed was deprived of 10,582,226.85 points” and that “12,015,373.24 points accumulated [at the Plaza Extra-Tutu Park store].” (Motion, p. 10.)

On May 24, 2022, Yusuf and United provided supplemental responses to Hamed’s discovery served in connection with Hamed Claim No. H-146, which provided in relevant:

Yusuf requested John Gaffney to review the accounting records of the Plaza Extra stores to secure the information requested. While records are not maintained as to the credit cards per se, they are maintained as to vendor payments and thus, were searched for vendor payments to credit cards used by the family members for business purchases and then paid by the partnership.

The information from the accounting systems for the three stores was compiled and then broken down by family member, either “Yusuf” or “Hamed” or if it was unclear, then it was listed as “Unknown”.

1. Plaza Extra East

For January 1, 2013 through March 9, 2015: a. Total Credit Card Payments for Yusuf family members was \$8,081,771.12. b. Total Credit Card Payments for Hamed family members was \$6,375,102.62. c. Total Credit Card Payments for which it is unknown which family member’s card it related was \$118,320.79.

2. Plaza Extra West

For January 1, 2013 through March 9, 2015: a. Total Credit Card Payments for Yusuf family members was \$12,695,951.83. b. Total Credit Card Payments for Hamed family members was \$3,820,393.48. c. Total Credit Card Payments for which it is unknown which family member’s card it related was \$1,754,350.08.

3. Plaza Extra St. Thomas Tutu

For January 1, 2013 through April 30, 2015: a. Total Credit Card Payments for which it is unknown which family member’s card it related was \$10,142,701.37.

(Motion, Exhibit 9.)

<sup>8</sup> 22,597,599.09 x \$0.014 = \$316,366.38. Hamed valued each point at 1.4 cents per point. (Motion, p. 10.)



judgment in favor of Hamed in the amount of \$148,151.17.<sup>9</sup> (Motion, p. 15.) Hamed made the following assertions in support of his argument: (i) There is no dispute that “Yusuf state[d] that he took \$10,582,226.85 worth of points more than Hamed from the East and West stores.” (Id., at p. 13); (ii) “[A]t a time when Fathi Yusuf was at (and controlling) the Tutu store, and totally in control of its financials, that store mysteriously is unable to show the division of points—but CAN say that \$12,015,372.24 worth of points were accumulated.”<sup>10</sup> (Id.) In his motion, Hamed also requested the Master to: (i) “take judicial notice of the fact that many of the website dealing with such matters, such as the one cited by Hamed, value each point at 1.4 cents per point” (Id., at p. 10); (ii) find Yusuf in contempt for failure to comply with the Master’s order to provide discovery responses (Id., at p. 14); and (iii) “find spoliation” since “Yusuf was on clear written notice of this accounting issue very early on—and failed to keep records that would allow differentiation.” (Id.)

In his opposition, Yusuf argued that the Master should deny Hamed’s motion. Yusuf made the following assertions in support of his argument: (i) “[T]here 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” and thus, “Yusuf’s role as managing partner left him with full discretion to decide how credit cards would be used for expenses...[and Yusuf] allowed the various family members to make the purchases as they were needed and to retain the points earned on their respective cards.” (Opp., pp. 2, 15-16); (ii) “[T]here was never any partnership agreement for the two families to equalize the credit cards used in the business.” (Id.); (iii) “[A]s 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

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<sup>9</sup>  $10,582,226.85 \times \$0.014 = \$148,151.17$ . Hamed valued each point at 1.4 cents per point. (Motion, p. 10.)

<sup>10</sup> See *supra*, footnote 8.

incurred the expense.” (Id.); (iv) “[T]o 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.” (Id.); (v) “Even assuming arguendo that Hamed had shown conclusively the existence of an agreement between Fathi Yusuf and Mohammed Hamed establishing the need for 50-50 use of credit cards (when actually he has adduced no facts to support that), the information provided by John Gaffney in the supplemental interrogatory answers of May of this year does not establish that Yusuf and his sons had \$10,582,226.856 more in credit card charges than the Hamed sons” because “the total unknown figure is larger than the known figure of \$10,582,226.85, it follows plainly that the \$10,582,226.85 number means very little, and that there are genuine issues regarding what the true breakdown is for the three stores in the relevant period”—to wit, “[t]hat sum [of \$10,582,226.856] is the difference between Yusuf and Hamed credit card usage for 2013 to 2015 for the Plaza Extra East and West stores only” and does not account for the unknown credit card payments for all three stores (\$118,320.79 for Plaza Extra-East store, \$1,754,350.08 for Plaza Extra-West store, and \$10,142,701.37 for Plaza Extra-Tutu Park) (Id., at pp. 16-17); and (vi) “[T]here remains a genuine issue of fact as to which family members incurred the \$12 million in credit card charges that were paid for by the partnership” since “Hamed cannot demonstrate that the \$12 million in credit card charges were made by the Yusufs to the exclusion of the Hameds [and] Hamed cannot demonstrate any percentage of the \$12 million credit card charges made by the Yusufs or the Hameds” or “that the points used by any of the Ysuufs were not for business obligations.” (Id., at p. 18.) Yusuf also disputed Hamed’s value of each point at 1.4 cents per point and indicated that “his research determined that at best a 1.0 cent valuation is supported for the purposes of this motion.” (Id., at p. 12.)

In his reply, Hamed rebutted Yusuf argument with the following assertions: (i) “[B]y judicial order and the operation of the USVI implementation of RUPA, there exists a partnership with a 50/50 distribution of assets and funds.”<sup>11</sup> (Reply, pp. 3-5); (ii) “Yusuf was not in that position [of Dissolution Partner] 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.” (Id., at p. 6); and (iii) “[D]ifferent 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 “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.” (Id., at p. 8.)

There are several issues that must be addressed before the Master turns to the merits of Hamed’s motion.

### **1. Procedures for Filing/Responding to Motions for Summary Judgment**

First, the parties are reminded that the movant’s section for statement of undisputed should only be used to state an undisputed fact 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,” V.I. R. CIV. P. 56(c)(1), and not for arguments or requests. For example, Hamed’s statement 18 of his undisputed fact<sup>12</sup> did not state an undisputed fact and improperly requested the Master to take judicial notice. Second, the parties are reminded that the opposing party has the option to include a section for statement of disputed facts, not a statement of

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<sup>11</sup> Hamed referenced: Court orders dated April 25, 2013, May 31, 2013, and November 7, 2014.

<sup>12</sup> Hamed’s statement of undisputed facts:

...

18. Finally, in the absence of Yusuf calculations (as ordered by the Special Master) as to the value per point, Hamed notes, and asks the master to take judicial notice of the fact that many of the website dealing with such matters, such as the one cited by Hamed, value each point at 1.4 cents per point.

(Motion, p. 10.)

undisputed facts. *See* V.I. R. CIV. P. 56(c)(2) (“In addition, a party opposing summary judgment may, if it elects to do so, state additional facts that the party contends are disputed and material to the motion for summary judgment, presenting one or more genuine issues to be tried.”). Here, Yusuf included in his opposition a section for his statement of undisputed facts. Lastly, the parties are reminded that in the event the opposing party included a section for statement of disputed facts, “the moving party shall respond to these additional facts by filing a response using the corresponding serial numbering of each such fact identified by the non-moving party and either (A) agreeing that the additional fact is disputed for the purpose of ruling on the motion for summary judgment only; or (B) stating that particular numbered facts are undisputed and providing affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon as evidence relating to each such material fact, by number.” V.I. R. CIV. P. 56(c)(3).

## **2. Judicial Notice**

In his motion, Hamed requested the Master to take judicial notice of the fact that many of the website dealing with such matters...value each point at 1.4 cents per point.” (Motion, p. 10.) “In this jurisdiction, the Superior Court may take judicial notice of a fact if it represents general knowledge in the territory or it is capable of being readily determined by relying on sources whose accuracy cannot be questioned reasonably.” *Slack v. Slack*, 69 V.I. 567, 573 (V.I. 2018) (citing V.I. R. EVID. 201). The Master finds that Hamed’s request was addressed in a perfunctory manner and unsupported by argument and citation to legal authority. *See Antilles Sch., Inc. v. Lembach*, 64 V.I. 400, 428 n.13 (V.I. 2016) (“[T]here is absolutely no basis in any of this Court’s precedents for the proposition that attorneys are not required to fully brief all questions of law relevant to the issues that are being litigated.”). The Master declines to make such argument on Hamed’s behalf. *See Joseph v. Joseph*, 2015 V.I. LEXIS 43, \*5 (V.I. Super. Ct. April 23, 2015) (“[I]n general, the Court will not make a movant’s

arguments for him when he has failed to do so.”). As such, the Master will deny Hamed’s request to take judicial notice.

### **3. Contempt**

In his motion, Hamed also requested the Master to find Yusuf in contempt for failure to comply with the Master’s order. (Motion, p. 10.) “‘The Superior Court has both statutory and inherent powers to compel obedience to its orders by way of contempt’ [and] [o]ne way the court exercises its compliance powers is by finding perpetrators guilty of either civil or criminal contempt.” *In re People of the V.I.*, 69 V.I. 769, 774 (V.I. 2018) (citations omitted). Again, the Master finds that Hamed’s request was addressed in a perfunctory manner and unsupported by argument and citation to legal authority. *See Antilles Sch., Inc.*, 64 V.I. at 428 n.13. The Master declines to make such argument on Hamed’s behalf. *See Joseph* 2015 V.I. LEXIS 43, \*5. As such, the Master will deny Hamed’s request to find Yusuf in contempt.

### **4. Spoliation Inference**

In his motion, Hamed also requested the Master to “find spoliation.” (Motion, p. 10.) “Before the spoliation inference can be applied it is essential that the evidence in question be within the spoliator’s possession or control, and it must appear that there has been an actual suppression or withholding of evidence. Such a presumption or inference arises, however, only when the spoliation or destruction of evidence was intentional, and indicates fraud and a desire to suppress the truth, and it does not arise where the destruction was a matter of routine with no fraudulent intent.” *Samuel v. United Corp.*, 64 V.I. 512, 518 (V.I. 2016) (citing *Bright v. United Corp.*, 50 V.I. 215, 226 (V.I. 2008)). Again, the Master finds that Hamed’s request was addressed in a perfunctory manner and unsupported by argument and citation to legal authority. *See Antilles Sch., Inc.*, 64 V.I. at 428 n.13. The Master declines to make such argument on Hamed’s behalf. *See Joseph* 2015 V.I. LEXIS 43, \*5. As such, the Master will deny Hamed’s request to “find spoliation.”

## **5. Merits of Hamed's Motion**

Hamed essentially argued that the credit card points earned by the Yusufs and the Hameds on purchases made/expenses paid on behalf of the Partnership on their personal credit cards belong to the Partnership and are therefore Partnership assets, that the Yusufs earned more credit card points during the period of January 1, 2013 through March 9, 2015, that the credit card points should be split evenly between the partners since the credit card points are Partnership assets, and that he is entitled to all the credits card points earned during the period of January 1, 2013 through March 9, 2015 from the unknown credit card payments (22,597,599.09), or alternatively, the difference between the credit card points earned between the Yusufs and the Hameds during the period of January 1, 2013 through March 9, 2015 for Plaza Extra-East store and Plaza Extra-West store (10,582,226.85).<sup>13</sup> In response, Yusuf essentially argued there was no agreement between Yusuf and Mohammad Hamed as to the credit card points and even if there was, those numbers do not accurately represent the credit card points earned between the Yusufs and the Hameds during the period of January 1, 2013 through March 9, 2015 because the difference between the credit card points earned between the Yusufs and the Hameds for Plaza Extra-East store and Plaza Extra-West store (10,582,226.85) does not take into account all the credits card points earned from the unknown credit card payments (22,597,599.09) for the same period, which could have been made by the Yusufs or the Hameds.

There are two questions raised in Hamed's motion: (i) whether the credit card points earned by the Yusufs and the Hameds on purchases made/expenses paid on behalf of the Partnership on their personal credit cards during the period of January 1, 2013 through March

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<sup>13</sup> In Hamed's accounting claims and Hamed's amended accounting claims, it appears Hamed Claim No. H-146 is for the period 2012-2015. *See supra*, footnote 6. Nevertheless, Hamed indicated that, for the purpose of this motion, Hamed accepts John Gaffney's calculation as set forth in Yusuf and United's May 24, 2022 supplemental responses. *See supra*, footnote 7.

9, 2015 are Partnership assets, and (ii) if yes, how many credit card points were earned by the Yusufs and the Hameds during the period of January 1, 2013 through March 9, 2015.

**A. Whether the credit card points earned by the Yusufs and the Hameds on purchases made/expenses paid on behalf of the Partnership on their personal credit cards during the period of January 1, 2013 through March 9, 2015 are Partnership assets**

The determination of what constitutes a partnership asset is a question of law for the courts, and by extension the Master, to decide. The Uniform Partnership Act provides that “[p]roperty acquired by a partnership is property of the partnership and not of the partners individually,” Title 26 V.I.C. § 23, and that “[p]roperty is presumed to be partnership property if purchased with partnership assets, even if not acquired in the name of the partnership or of one or more partners with an indication in the instrument transferring title to the property of the person's capacity as a partner or of the existence of a partnership,” Title 26 V.I.C. § 24(c). Here, it is undisputed that the Yusufs and the Hameds earned credit card points on purchases made/expenses paid on behalf of the Partnership on their personal credit cards during the period of January 1, 2013 through March 9, 2015 and that the Partnership reimbursed the Yusufs and the Hameds for such purchases and expenses. Thus, it follows that the credit card points earned during the period of January 1, 2013 through March 9, 2015 are Partnership assets because these purchases and expenses were ultimately paid with Partnership funds and not paid by any of the Yusufs or the Hameds. In other words, the Partnership “acquired” and “purchased” the credit card points when Partnership funds were used to pay for these purchases and expenses. While it is true that, since the inception of the business, Yusuf acted as the managing partner of the Partnership and had absolute control over the Partnership finances, but as soon as Yusuf advised Mohammad Hamed of his intent to dissolve the Partnership on February 10, 2012, the relationship became adversarial, which in effect terminated Yusuf’s absolute control over the

Partnership finances and terminated Yusuf’s total authorities over the Partnership.<sup>14</sup> Since the credit card points at issue were earned from credit card payments made during the period of January 1, 2013 through March 9, 2015, after the relationship became adversarial, Yusuf no

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<sup>14</sup> The Master had in previous orders discussed Yusuf’s position as the managing partner of the Partnership albeit in the context of doctrine of equitable estoppel. Nevertheless, the Master finds the discussion helpful in this instance. For example, in the order entered on May 5, 2021 regarding Yusuf Claim No. Y-2 and Yusuf Claim No. Y-4, the Master explained:

...Here, both partners and their respective sons were well aware from the inception of their involvement with the business that Yusuf acted as the managing partner of the Partnership and had absolute control over the Partnership finances. In *Hamed v. Yusuf*, the Court held:

To the extent it is not already established by admissions of the parties and previous Orders of the Court, the Court now confirms its preliminary factual finding — as detailed at ¶ 19 of the Memorandum Opinion and Order entered April 25, 2013 (58 V.I. 117, 124) — that since the inception of the partnership, Yusuf acted as the managing partner, such that Hamed was completely removed from the financial aspects of the business. See Defendants’ Brief in Opposition to Motion for Partial Summary Judgment Re Statute of Limitations Defense, filed June 6, 2014, at 11 (“Mr. Yusuf, as the partner admittedly in charge of all operations of the partnership ...”).

69 V.I. 168, 175, n. 4 (Super. Ct. 2017).

In the Limitations Order, the Court similarly held that “[a]s managing partner, Yusuf was not only intimately familiar with the methods of record keeping, or lack thereof, employed by the partnership, but was the one responsible for designing and implementing those procedures in the first place” and that “[i]t was Yusuf’s responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners.” (Limitations Order, p. 28.) In other words, since the inception of the business, Yusuf, as the managing partner of the Partnership, made all the financial decisions for the Partnership with Mohammad Hamed’s full knowledge and agreement...

...

...As soon as Yusuf or Mohammad Hamed advised the other partner of his intent to dissolve the Partnership, the relationship became adversarial, which in effect terminated Yusuf’s absolute control over the Partnership finances, terminated Yusuf’s total authorities over the Partnership and United, and terminated the treatment of the dealings between the Partnership and United as one unit. Once the relationship between the partners became adversarial, Hamed and the Partnership are no longer estopped from raising arguments, including the statute of limitations defense based on the premises that Mohammad Hamed did not agree and consent to Yusuf, the managing partner of the Partnership, having absolute control over the Partnership finances, to Yusuf, the president of United and the managing partner of the Partnership, having total authorities over the Partnership and United, and to the treatment of the dealings between the Partnership and United as one unit for actions taken by Yusuf thereafter, and the limitation period for claims based on Yusuf’s absolute control over the Partnership finances, Yusuf’s total authorities over the Partnership and United, and the treatment of the dealings between the Partnership and United as one unit—such as Yusuf Claim Nos. Y-2 and Y-4—began to accrue. See e.g., *Marsh-Monsanto*, 66 V.I. at 375 (the statute of limitations “begins to run on the first date that the injured party possesses sufficient critical facts to put [her] on notice that a wrong has been committed and that [she] need investigate to determine whether [she] is entitled to redress.”). On February 10, 2012, Attorney Nizar DeWood, Yusuf’s attorney, sent an email to Mohammad Hamed regarding the partnership dissolution with a corresponding letter regarding the same. Thus, the Master concludes that, after February 10, 2012, Hamed and the Partnership were no longer estopped from raising arguments, including the statute of limitations defense, based on the premises that Mohammad Hamed did not agree and consent to Yusuf’s absolute control over the Partnership finances, Yusuf’s total authorities over the Partnership and United, and the treatment of the dealings between the Partnership and United as one unit for actions taken by Yusuf thereafter, and the applicable statute of limitations for Yusuf Claim Nos. Y-2 and Y-4 began to accrue...

(May 5, 2021 Order, pp. 21-22, 27-29) (footnote omitted.)



longer had absolute control over the Partnership finances nor total authorities over the Partnership during that period. As such, the Master finds it unpersuasive for Yusuf to argue that his role “as managing partner left him with full discretion to decide how credit cards would be used for expenses...[and he] allowed the various family members to make the purchases as they were needed and to retain the points earned on their respective cards” during the period of January 1, 2013 through March 9, 2015. (Opp., pp. 15-16.) Accordingly, the Master finds that the credit card points earned by the Yusufs and the Hameds on purchases made/expenses paid on behalf of the Partnership on their personal credit cards during the period of January 1, 2013 through March 9, 2015 are Partnership assets and subject to equal distribution between the partners. *See* Nov. 7, 2014 Order (“[T]he 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.”).

**B. How many credit card points were earned by the Yusufs and the Hameds during the period of January 1, 2013 through March 9, 2015**

Here, Hamed and Yusuf presented competing allegations regarding the credits card points earned by the Yusufs and the Hameds during the period of January 1, 2013 through March 9, 2015 as presented by John Gaffney in Yusuf and United’s May 4, 2022 supplemental discovery responses. According to Hamed, all the credit card points earned from the unknown credit card payments (22,597,599.09) for all three stores were earned by the Yusufs during the period of January 1, 2013 through March 9, 2015 and therefore he is entitled to the same (22,597,599.09), or alternatively, disregard all the credit card points earned from the unknown credit card payments and just calculate the credit card points earned between the Yusufs and the Hameds for Plaza Extra-East store and Plaza Extra-West store during the period of January 1, 2013 through March 9, 2015 and therefore he is entitled to the difference (10,582,226.85). According to Yusuf, neither figure is accurate because the difference between the credit card


points earned by the Yusufs and the Hameds for Plaza Extra-East store and Plaza Extra-West store during the period of January 1, 2013 through March 9, 2015 does not account for all the credit card points earned from the unknown credit card payments (22,597,599.09) for all three stores during the period of January 1, 2013 through March 9, 2015, which could have been earned by the Yusufs or the Hameds. 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 regarding the credit card points earned by the Yusufs and the Hameds during the period of January 1, 2013 through March 9, 2015 and the Master will deny Hamed’s motion for summary judgment.

#### CONCLUSION

Based on the foregoing, it is hereby:

**ORDERED** that Hamed’s motion for summary judgment for Hamed Claim No. H-146, filed on September 8, 2022, is **DENIED**.

**DONE** and so **ORDERED** this 30<sup>th</sup> day of November, 2022.

  
EDGAR D. ROSS  
Special Master