

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

WALEED HAMED , as Executor of the)	
Estate of MOHAMMAD HAMED ,)	
)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.)	
)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE
	)	RELIEF, DECLARATORY
	)	JUDGMENT, AND
Defendants/Counterclaimants,	)	PARTNERSHIP DISSOLUTION,
v.	)	WIND UP, AND ACCOUNTING
)	
WALEED HAMED, WAHEED HAMED,)	
MUFEED HAMED, HISHAM HAMED, and)	
PLESSEN ENTERPRISES, INC.,)	
)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
WALEED HAMED , as Executor of the)	
Estate of MOHAMMAD HAMED ,)	
)	
Plaintiff,	)	CIVIL NO. SX-14-CV-287
v.)	
)	
UNITED CORPORATION,	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
)	
Defendant.)	
WALEED HAMED , as Executor of the)	
Estate of MOHAMMAD HAMED ,)	
)	
Plaintiff,	)	CIVIL NO. SX-14-CV-278
v.)	
)	
FATHI YUSUF,	)	ACTION FOR DEBT AND
	)	CONVERSION
)	
Defendant.)	

**FATHI YUSUF'S BRIEF IN OPPOSITION TO HAMED'S MOTION TO
PARTIALLY STRIKE YUSUF'S PROPOSED FINDINGS OF FACT AND
CONCLUSIONS OF LAW RE: CLAIM H-146 (CREDIT CARD POINTS)**

Hamed's Motion to Partially Strike Fathi Yusuf's March 21 Proposed Findings of Fact and Conclusions of Law submitted after the hearing on Claim H-146 seeks to strike two parts of that submission.

Hamed first argues that Fathi Yusuf (“Yusuf”) improperly asked the Special Master to reconsider a ruling in his November 30, 2022 Order Denying Hamed’s Motion for Summary Judgment as to Claim H-146. While Hamed doesn’t say so, what he is referring to is Yusuf’s proposed conclusion of law number 7, which requests the Special Master, on the basis of testimony given at the March 1 trial of these issues, to revisit his prior ruling that credit card points earned by the Hameds and Yusufs on their personal credit cards for purchases for the Plaza Extra stores are “partnership assets and subject to equal distribution between the partners.” *See* Yusuf’s March 21, 2023 Proposed Findings and Conclusions, p. 9, ¶ 7.

Hamed is quite mistaken in arguing that the rules of civil procedure prohibit the Special Master from revisiting a ruling in an interlocutory order such as the November 30, 2022 Order denying summary judgment to Hamed. It is well accepted that a court may reconsider an interlocutory ruling at any time before entry of judgment, based on evidence adduced at trial, or for any other reason before or after trial that the court deems sufficient. *See Warren v. Cardoza Publ'g Co.*, 2020 WL 8621421, *1 (D. Nev. 2020) (rescinding a pretrial grant of partial summary judgment to plaintiff after a trial because courts have “the ability to reconsider, rescind, or modify an interlocutory order at any time before judgment is entered if there is sufficient cause to do so,” and “the evidence at trial showed that granting partial summary judgment in [plaintiff’s] favor on this claim was error”) (internal marks omitted); *McKethan v. Texas Farm Bureau*, 996 F.2d 734, 738 n.6 (5th Cir. 1993) (“because the denial of a motion for summary judgment is an interlocutory order, the trial court is free to reconsider and reverse its decision for any reason it deems sufficient, even in the absence of new evidence or an intervening change in or clarification of the substantive law”) (citation omitted); *Bryant v. Jones*, 696 F. Supp. 2d 1313, 1320 (N.D. Ga. 2010) (rejecting argument that a motion for reconsideration was untimely because “[u]nder Rule 54(b) of the Federal Rules of Civil Procedure, a court may revise an interlocutory order prior to the entry of

final judgment”); *Bachicha v. Bd. of Educ. of Albuquerque Pub. Sch.*, 2012 WL 13080138, *7 (D.N.M. 2012) (rejecting a timeliness objection to a motion because “the Court can change its interlocutory rulings at any time during the pendency of the case,” and noting that the Court will not “stubbornly cling to an erroneous ruling”).

There is no procedural bar to Yusuf’s request that the Court reconsider its earlier ruling in light of the testimony given at the March 1 trial. The Special Master has broad discretion to amend his ruling in the November 30, 2022 Order that credit card points earned by the Hameds and the Yusufs are partnership assets subject to 50-50 division. Yusuf submits that the evidence presented at the March 1 trial, together with its legal implications, warrant reconsideration and revision of that ruling, as discussed in his Proposed Findings of Fact and Conclusions of Law.

Next, Hamed argues that certain unspecified portions of Yusuf’s Proposed Findings and Conclusions which supposedly rely on John Gaffney’s “expert testimony” should be struck. Hamed argues that “Yusuf’s attempt to use Mr. Gaffney as an expert...is vastly improper.” Hamed’s Motion, p. 2. Contrary to Hamed’s conclusory assertion, Gaffney’s testimony at the March 1 trial was in the nature of fact testimony based on his personal knowledge about the use of credit cards at Plaza Extra, or his use of the Plaza Extra accounting system to generate spreadsheets (previously produced in discovery) showing credit card expenditures by the two families. None of Gaffney’s testimony cited in Yusuf’s proposed findings and conclusions is in the nature of an impermissible expert opinion.

Counsel for Hamed raised only a single objection at the March 1 trial to a what he regarded as an attempt to elicit expert opinion testimony from Gaffney. Attorney Holt objected on that basis to a question on direct that sought Gaffney’s understanding of how much the Plaza Extra partnership saved in interest expense by being able to use credit cards, which provide the equivalent of a short term, interest-free loan, instead of procuring a credit facility that charged

interest. *See* Tr, p. 68, lines 21-25 and 69, lines 1-6. The Special Master overruled the objection, allowed the question, and indicated that he would decide what weight to accord Gaffney's answer. TR, 70, lines 7-9. Hamed has not asked the Special Master to reconsider his evidentiary ruling permitting the question in either his proposed findings and conclusions or in the motion to strike. Even more important, Gaffney, while acknowledging the fact the Plaza Extra partnership enjoyed some saving of interest expense by use of credit cards, testified in response to the question that he could not quantify the dollar amount saved. Tr, 70, lines 24-25. Insofar as Gaffney elucidated the obvious by acknowledging that using credit cards and timely paying off balances saves the interest expense that would be incurred with a bank loan or line of credit, that is not in the nature of expert testimony, but is instead testimony about an indisputable fact. Even if an opinion about the dollar amount of savings would have been in the nature of impermissible expert testimony, Gaffney never offered one.

The Motion to Strike any of Yusuf's proposed findings and conclusions because they impermissibly rely on expert opinions of John Gaffney should also be summarily denied.

Respectfully submitted,

DUDLEY NEWMAN FEUERZEIG LLP

DATED: April 13, 2023

By: /s/ Charlotte K. Perrell

CHARLOTTE K. PERRELL (V.I. Bar No. 1281)

STEFAN B. HERPEL (V.I. Bar No. 1019)

P.O. Box 756

St. Thomas, VI 00804-0756

1000 Frederiksberg Gade

St. Thomas, VI 00802-6736

Telephone: (340) 774-4422

E-Mail: cperrell@DNFvi.com

sherpel@DNFvi.com

Attorneys for Fathi Yusuf and United Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of April, 2023, I caused the foregoing **FATHI YUSUF'S BRIEF IN OPPOSITION TO HAMED'S MOTION TO PARTIALLY STRIKE YUSUF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: CLAIM H-146 (CREDIT CARD POINTS)**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

Joel H. Holt, Esq.
LAW OFFICES OF JOEL H. HOLT
Quinn House - Suite 2
2132 Company Street
Christiansted, St. Croix
U.S. Virgin Islands 00820

E-Mail: holtvi@aol.com

Carl J. Hartmann, III, Esq.
5000 Estate Coakley Bay – Unit L-6
Christiansted, St. Croix
U.S. Virgin Islands 00820

E-Mail: carl@carlhartmann.com

The Honorable Edgar D. Ross
E-Mail: edgarrossjudge@hotmail.com

and via U.S. Mail to:

The Honorable Edgar D. Ross
Master
P.O. Box 5119
Kingshill, St. Croix
U.S. Virgin Islands 00851

Alice Kuo
5000 Estate Southgate
Christiansted, St. Croix
U.S. Virgin Islands 00820

/s/ Charlotte K. Perrell