

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**

MEMORANDUM OPINION

THIS MATTER came before the Special Master (hereinafter “Master”) for a hearing on March 1, 2023, in connection with 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 Hamed¹ and his family members (hereinafter “Hameds”) on purchases made/expenses paid on behalf of the Partnership on their personal credit cards.²

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.³ On May 17, 2016, John Gaffney

¹ 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.

² 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 he is entitled to reimbursement of 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 because these credit card points are Partnership assets and should be split evenly between the partners.

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 the distribution of Partnership Assets.

³ 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.

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

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

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.)

⁴ 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.

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.

Subsequently, per the Master's order, the parties filed their respective accounting claims in 2016 and their respective amended accounting claims in 2017.⁵ On October 17, 2016, Hamed filed his accounting claims and thereafter, on October 30, 2017, and Hamed filed his amended accounting

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.)

⁵ 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.

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 from 2012 to 2015 in the amount of \$421,235 (Hamed Claim No. H-146, formerly known as Hamed Claim No. 3007).⁶

⁶ 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 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.)

The parties then proceeded with discovery.

On July 28, 2021, Hamed filed a motion to compel responses to discovery served in connection with Hamed Claim No. H-146. In his motion, Hamed indicated that, “[f]or purposes of this Motion to Compel only, Hamed limits this request to the time period from January 1, 2012-March 9, 2015, the date of the split of the East and West stores.” (Motion to Compel, p. 3.)

On April 21, 2022, the Master entered an order whereby the Master ordered that the discovery at issue—Interrogatory 22 and Request for Production of Documents 26—be revised, inter alia, to limit the time period to January 1, 2012 through March 9, 2015, and granted Hamed’s motion to compel.

On September 8, 2022, Hamed filed a motion for summary judgment. In his motion, Hamed indicated that, for purposes of this motion, Hamed accepts John Gaffney’s calculation for January 1, 2013 through March 9, 2015,⁷ as set forth in Yusuf and United’s May 24, 2022 supplemental responses,⁸ and argued that the credit card points earned by the Yusufs and the Hameds on purchases

⁷ More specifically, 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.)

⁸ On May 24, 2022, Yusuf and United provided supplemental responses to Hamed’s discovery served in connection with Hamed Claim No. H-146, which stated, in relevant part:

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.)

made/expenses paid on behalf of the Partnership on their personal credit cards are Partnership assets that should be split evenly between the partners and that he is entitled to all the credits card points earned from the unknown credit card payments plus 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 (22,597,599.09 credit card points, or \$316,366.38⁹), 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 credit card points, or \$148,151.17¹⁰).

On December 1, 2022, the Master entered an order whereby the Master found 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.”),¹¹ but denied Hamed’s motion for summary judgment because the

⁹ 22,597,599.09 x \$0.014 = \$316,366.38. Hamed valued each point at 1.4 cents per credit card point. (Motion, p. 10.)

¹⁰ 10,582,226.85 x \$0.014 = \$148,151.17. Hamed valued each point at 1.4 cents per credit card point. (Motion, p. 10.)

¹¹ 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.¹⁴ 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 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.)

¹⁴ 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

Master found “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.”¹²

On March 1, 2023, the parties appeared for a hearing on Hamed Claim No. H-146. Hamed and Yusuf each presented witnesses testimony and exhibits. More specifically, the Master heard oral testimony from Bracey Alexander, Mufeed Hamed, John Gaffney, and Fathi Yusuf. At the conclusion of the hearing, the Master took the matter under advisement and ordered Hamed and Yusuf to file their respective proposed findings of fact and conclusions of law. Thereafter, Hamed and Yusuf timely filed their post-hearing briefs.

STANDARD OF REVIEW

Rule 52 of the Virgin Islands Rules of Civil Procedure provides:

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.)

¹² In the December 1, 2022 order, the Master explained:

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).

(Dec. 1, 2022 Order, pp. 17-18.)

In an action tried on the facts without a jury or with an advisory jury, the court must find the facts specially and state its conclusions of law separately. The findings and conclusions may be stated on the record after the close of the evidence or may appear in an opinion or a memorandum of decision filed by the court. Judgment must be entered under Rule 58.

V.I. R. CIV. P. 52(a)(1)(A).

DISCUSSION

The Master must note at the outset that Hamed indicated in his post-hearing brief that “[t]his claim covers the time period between January 1, 2013 and March 9, 2015.” (Brief, p. 2.) As such, the Master will revise Hamed Claim No. H-146 as to the time period the claim covers and limit the time period to January 1, 2013 through March 9, 2015.¹³

Regarding Hamed Claim No. H-142, Hamed argued that the Yusufs earned more credit card points than 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 and Hamed is entitled to the reimbursement of credit card points earned by the Yusufs in excess of the credit card points earned by the Hameds during the relevant period to equalize the credit cards points earned by the Yusufs and the Hameds, which is valued at \$517,634.33 based on the valuation of 2.5 cents per credit card point.¹⁴ (Hamed’s Post-Hearing Brief.) On the other hand, Yusuf argued that Hamed is not entitled to any credit card points, but assuming arguendo that Hamed is entitled to credit card

¹³ 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.

¹⁴ This is based on the following calculation: $\$417,506.23 + \$15,605.59 + \$84,522.51 = \$517,634.33$.

In his post-hearing brief, Hamed explained:

5. Thus, the credit card imbalance for the Plaza East Store is \$210,617.30 ($.025 \times 8,424,962.30 = \$210,617.30$) and for Plaza West stores is \$206,888.93 ($.025 \times 8,275,557.35 = \$206,888.93$), for a total of \$417,506.23.

6. While there are no records breaking down the unallocated credit card payments for the Plaza East store or the Plaza West store or the entire Plaza Tutu store, using the percentage breakdown for the use of credit cards contained in Yusuf Ex-C, (66% Yusuf to 33% Hamed, or 2 to 1), the unallocated credit card imbalance for these stores requires the following payments to be made to Hamed to equalize that credit card imbalance as follows:

a) The value of the Plaza East and Plaza West unallocated points is \$15,605.59 ($.025 \times \$1,872,670.87 = \$46,816.77$), which is then divided by 3 to get \$15,605.59 needed to pay Hamed to equalize the 2 to 1 ratio).

b) The value of the Plaza Tutu’s unallocated points is \$84,522.51 ($.025 \times 10,142,701.73 = \$253,567.54$, divided by 3 to get \$84,522.51 needed to pay Hamed to equalize the 2 to 1 ratio).

(Hamed’s Post-Hearing Brief, p. 10.)

points, Hamed is only entitled to credit card points valued at \$73,337.27 based on the valuation of 1 cent per credit card point.¹⁵ (Yusuf’s Post-Hearing Brief.)

In accordance with Rule 52(a) of the Virgin Islands Rules of Civil Procedure and having reviewed the entire record, the Master now makes the following findings of fact and conclusions of law.

Findings of Fact

1. During the period of January 1, 2013 through March 9, 2015,¹⁶ the Yusufs and the Hameds earned credit card points on purchases made/expenses paid on behalf of the Partnership on their personal credit cards.
2. The Partnership subsequently reimbursed the Yusufs and the Hameds for these charges.
3. 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 relevant period are Partnership assets. (Dec. 1, 2022 Order.)
4. During the relevant period, John Gaffney’s (hereinafter “Gaffney”) role at the Partnership was to install an accounting system complete with internal controls (including training the personnel on use and upkeep) and he is familiar with the Partnership’s practice of using the personal credit cards of the Yusufs and the Hameds to pay for Partnership purchases/expenses and reimbursing the individual card holders.
5. According to Gaffney’s calculation, the total credit card charges for Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park during the relevant period are as follows:¹⁷

¹⁵ In his post-hearing brief, Yusuf explained:

22. The total credit card expenditures for the three stores for which Gaffney was unable to make an allocation are \$12,015,372.24. Applying the 67% figure to this sum to arrive at an estimated allocation of the \$12,015,372.24 sum would mean that \$8,050,299.40 would be attributable to the Yusufs and \$3,965,072.84, to the Hameds. To arrive at an equal (50/50) division of the total credit card would require the Yusufs to surrender \$7,333,726.70 in credit card points to the Yusufs...

...

14. Assuming *arguendo* that the Special Master concludes that the Hameds are entitled to the dollar value of any discrepancy in credit card points, the valuation should be 1 cent per point. If the discrepancy is 7,333,726.70, 1% of that amount comes to \$73,337.27.

(Yusuf’s Post-Hearing Brief, p. 6, 11.)

¹⁶ Unless otherwise specified, all reference to the “relevant period” hereinafter refers to the period of January 1, 2013 through March 9, 2015.

¹⁷ Even though Exhibit B-1 listed slight different periods for the credit cards charges used by Gaffney to calculate the total credit card charges for the relevant periods—to wit, January 1, 2013 through March 8, 2015 (Plaza Extra-East), January 1, 2013 through March 8, 2015 (Plaza Extra-West), and January 1, 2013 through April 13, 2015 (Plaza Extra-Tutu Park)—based on the testimony presented at the hearing and the parties post-hearing briefs, the Master will consider Gaffney’s calculations of the total credit card charges to be within the relevant period.

	Yusufs	Hameds	Unknown
Plaza Extra-East	\$8,081,777.12	\$6,375,102.62	\$118,320.79
Plaza Extra-West	\$12,695,951.83	\$3,820,393.48	\$1,754,350.08
Plaza Extra-Tutu Park			\$10,142,701.37

6. While some of the credit cards used by the Yusufs and the Hameds during the relevant period rewarded points for charges, some rewarded store credits, some rewarded airline miles, and some did not reward anything.
7. The credit cards used for Sam’s Club and BJ’s Wholesale Warehouses rewarded store credits directly to the Partnership and not the individual credit card holders.
8. Some of the credit cards used were issued by local banks and there are advantages to using locally issued credit cards, such as the ability to go to the local bank to pay off the credit card balance early and thereby making said credit card available for the full credit limit sooner.
9. The Yusufs had locally issued credit cards during the relevant period.
10. The Partnership benefitted from using credit cards to pay for purchases and expenses, such as gaining convenience, saving money, filling up vessels efficiently, and being able to pay for purchases and expenses when cash was not available.
11. During the relevant period, the Yusufs and the Hameds had different credit limits on their credit cards and the Yusufs had higher credit limits.
12. The Partnership’s accounts payable clerks had a list of the credit cards for the Yusufs and the Hameds and they selected which credit cards to use based on the expenditures and the available credit limits.
13. Hamed’s accounting expert, Bracey Alexander of Jackson, Vizcaino Zomerfled, LLP (hereinafter “Alexander”), prepared an expert report on the various accounting issues in this litigation, including Hamed Claim No. H-146 (hereinafter “Hamed’s Expert Report”).
14. Hamed’s Expert Report provided a different calculation of the credit card charges for the Partnership during the period 2013-2015:

Total Credit Card Charges	Yusufs	Hameds	Difference
\$47,758,634.04	\$32,085,919.10	\$15,236,534.50	\$16,849,384.60

15. Hamed’s Expert Report did not specify whether the calculation included credit card charges for the entire year of 2015.
16. The calculation in Hamed’s Expert Report included credit card charges that were not included in Gaffney’s calculation and vice versa.
17. Hamed’s Expert Report provided that “we presume a 2.5% earning on credit card purchases.”

Conclusions of Law¹⁸

Hamed Claim No. H-146 is based on several erroneous assumptions.

Erroneous Assumption #1

Hamed Claim No. H-146 is based on the assumption that Yusuf made the decision on which credit cards to use for Partnership expenditures and that Yusuf, after the commencement of this litigation, used the Yusufs' credit cards more than the Hameds' credit cards, resulting in more charges to the Yusufs' credit cards than to the Hameds' credit cards. However, Gaffney testified that it was the Partnership's accounts payable clerks, and not Yusuf, that made the decision as to which credit cards to use. (Tr. 47.) There is no evidence that Yusuf directed or influenced the Partnership's accounts payable clerks in selecting which credit cards to use. Furthermore, Gaffney testified that the Partnership's accounts payable clerks selected which credit cards to use based on the expenditures and the available credit limits. (Tr. 46.) Gaffney also testified that, during the relevant period, the Yusufs had higher credit limits and the Yusufs had locally issued credit cards where the credit card balance could be paid off early so the full credit limit for the credit card could be available sooner. (Tr. 47, 67-68.) There is no evidence that the credit cards were selected based on whether the credit cards belonged to the Yusufs or the Hameds. In other words, the Partnership's accounts payable clerks' decisions on which credit cards to use were business decisions made in the normal course of business. *Hamed v. Yusuf*, 62 V.I. 38, 47 (Super. Ct. July 22, 2014) ("Business decisions to maintain the status quo have passed the intrinsic fairness test in several circumstances."). As such, the assumption that Yusuf made the decision on which credit cards to use for Partnership expenditures was based on inaccurate information and is therefore erroneous.

¹⁸ Citations to the hearing transcript ("Tr.") refer to the volume for the March 1, 2023 hearing.

Erroneous Assumption #2

Hamed Claim No. H-146 is based on the assumption that all the credit cards used rewarded points—to wit, the numbers relied on by Hamed to calculate this claim did not differentiate between charges made to credit cards that rewarded points versus charges made to credit cards that rewarded airline miles/store credits or did not reward anything. However, this was directly contradicted by the testimonies of Hamed’s witnesses—to wit, Alexander testified that it is possible that some of the credit cards used by the Yusufs and the Hameds did not reward points or airline miles, (Tr. 16), and Mufeed Hamed confirmed that some of the credit cards used by the Yusufs and the Hameds rewarded points for charges, some rewarded store credits, some rewarded airline miles, and some did not reward anything. (Tr. 27-28.) In fact, Alexander admitted that he never determined which type of credit cards (i.e., rewarded points/airline miles/store credits or did not reward anything) were used by the Yusufs and the Hameds. (Tr. 18.) As such, the assumption that all the credit cards used rewarded points was based on inaccurate information and is therefore erroneous.

Erroneous Assumption #3

Hamed Claim No. H-146 is based on the assumption that the unknown credit card charges for all three stores were split between the Yusufs’ credit cards and the Hameds’ credit cards in the ratio of 2:1 in favor of the Yusufs’ credit cards, with 66% of the charges charged to the Yusufs’ credit cards and 33% of the charges charged to the Hameds’ credit cards. However, as noted above, there is no evidence that the credit cards were selected based on whether the credit cards belonged to the Yusufs or the Hameds. Furthermore, there is no evidence that the credit card charges were split between the Yusuf’s credit cards and the Hameds’ credit cards in an established predetermined ratio of 2:1 in favor of the Yusufs’ credit cards. In fact, Hamed admitted in his post-hearing brief that Hamed Claim No. H-146 was not based on any facts that the credit card charges were split between the Yusuf’s credit cards and the Hameds’ credit cards in an established predetermined ratio of 2:1 in favor of the Yusufs’ credit cards when he stated that “[s]ince the imbalance between the two stores

is 2-1 in favor of Yusuf, it can be reasonably assumed that the value this credit imbalance needed to compensate Hamed is \$15,605.59 ($.025 \times \$1,872,670.87 = \$46,816.77$, which is then divided by 3 to get \$15,605.59 to be paid to Hamed to equalize the 2 to 1 ratio)” and that “[w]hile there are no records breaking down the 10,142,701.73 points for Plaza Tutu, using the same percentage breakdown for the use of credit cards at that store over the same time period as occurred in the other two stores (66% Yusuf to 33% Hamed, or 2 to 1), the credit card imbalance at that store is \$84,522.51 ($.025 \times 10,142,701.73 = \$253,567.54$, divided by 3 to get \$84,522.51 to be paid to Hamed to equalize the 2 to 1 ratio).” (Hamed’s Post-Hearing Brief, p. 9.) As such, the assumption that the unknown credit card charges should be split between Yusuf and Hamed in the ratio of 2:1 in favor of the Yusufs’ credit cards was based on inaccurate information and is therefore erroneous.

Erroneous Assumption #4

Hamed Claim No. H-146 is based on the assumption that the value of credit card points and the value of airline miles are the same and that every credit card point has a valuation of 2.5 cents. As noted above, some of the credit cards used by the Yusufs and the Hameds rewarded points for charges, some rewarded store credits, some rewarded airline miles, and some did not reward anything. For the purposes of this specific assumption, the Master will only address the credit cards that rewarded points or airline miles. There is no evidence that the value of credit card points is equal to the value of airline miles during the relevant period. Yet, Hamed did not provide separate valuations for credit card points and airline miles for Hamed Claim No. H-146, and instead, only provided the valuation for credit card points. In fact, as noted above, Alexander never determined which type of credit cards (i.e., rewarded points/airline miles/store credits or did not reward anything) were used by the Yusufs and the Hameds. (Tr. 18.) Alexander testified that he came up with this valuation of 2.5 cents per credit card point in 2016, as stated in Hamed’s Expert Report, and that he verified his 2016 valuation by looking “at similar information as [he did] in 2016...[s]o basically, just doing research, googling credit card rewards and taking an average of very different points from

very different cards and in determining...what would be reasonable from that.”¹⁹ (Tr. 13-14.)

Alexander further testified that, while his recent research revealed a lower valuation per credit card point—1.5 cents per credit card point—the 2016 valuation of 2.5 cents per credit card point should be used for Hamed Claim No. H-146. (Tr. 14-15.)

In addressing the valuation of credit card points, the Master must first determine whether this issue requires scientific, technical, or specialized expert knowledge to be understood, or whether it is “within the common experience of ordinary people in everyday life.” *Aubain v. Kazi Foods of the V.I., Inc.*, 70 V.I. 943, ¶ 26 (V.I. 2019). “In parsing the sometimes-thin distinction between issues requiring expert testimony to understand ‘scientific, technical, or other specialized’ subject matter, versus those where lay testimony will suffice, we note that ‘[n]umerous cases have acknowledged that the line between expert and lay testimony is easily blurred.’” *Miller v. V.I. Wheel Estate, LLC*, 75 V.I. 331, ¶ 11 (V.I. 2021). Here, the Master finds that the valuation of credit card points—more specifically, not the valuation of credit card points for a particular credit card but the valuation of credit card points in general—is not “within the common experience of ordinary people in everyday life” and requires specialized expert knowledge to be understood because while the actual calculations may involve simple math, the identification and computation of the factors to be included requires specialized knowledge. *See Miller*, at ¶ 12 (“Therefore, due to the fact-intensive nature of these determinations [as to the particular facts of each case, including the complexity and technical nature of the evidence to be presented and the trial judge's understanding of a lay person's knowledge], what qualifies as scientific, technical, or other

¹⁹ Hamed’s Exhibit 4 revealed that Bracey Alexander looked at the following credit cards rewards:

POINTS	ORGANIZATION
1.88	Hyatt
1.05	Marriot
1.11	Amex
1.21	Citi
2.04	American
<u>1.44</u>	Delta
8.73	TOTAL
1.45	AVERAGE

specialized knowledge requiring expert testimony under Virgin Islands Rules of Evidence 701(c) and 702(a) is within the discretion of the trial judge, to be evaluated on a case-by-case basis.”²⁰

The Master must next determine whether Alexander’s expert testimony²¹ meets the standard articulated in *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579, (1993), and cases implementing that decision. *See Antilles School, Inc. v. Lembach*, 64 V.I. 400, 421 (V.I. 2016) (“[W]e join the vast majority of jurisdictions in holding that the more liberal *Daubert* standard should govern the admission of expert testimony in the Virgin Islands.). The Virgin Islands Supreme Court has adopted the non-exhaustive list of factors from *Daubert* to determine whether an expert’s opinion is based on reliable reasoning or methodology, such as “whether the opinion can be (and has been) tested, whether the theory or technique has been subjected to peer review and publication, what the known or potential rate of error is, and the existence and maintenance of standards controlling the technique’s operation.” *Id.*, 64 V.I. at 416 (citing *Daubert*, 590 U.S. at 593-94). Here, Hamed’s Expert Report simply stated, “we presume a 2.5% earning on credit card purchases,” (Hamed’s Exhibit 1), and did not explain the principles and methods Alexander used to come up with his 2016 valuation. At the most basic level, Alexander’s method for computing the 2016 valuation cannot be tested or subjected to peer review since there is no evidence as to the principles and methods Alexander used to come up with his 2016 valuation. For example, which credit cards did Alexander include in the computation of his 2016 valuation and why did he include these credit cards and excluded other credit cards. Thus, the Master finds Alexander’s expert opinion that every credit card point has a valuation of 2.5 cents unreliable under *Daubert*. Even assuming arguendo, that based on Alexander’s testimony that “we

²⁰ Virgin Islands Rules of Evidence 701(c) provides that “[i]f a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: . . . not based on scientific, technical, or other specialized knowledge within the scope of Rule 702” and Virgin Islands Rules of Evidence 702(a) provides that “[a] witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.” V.I. R. E. 701(c), 702(a).

²¹ Alexander’s qualifications were not challenged by Yusuf.

performed the same or similar procedure for 2016,” (Tr. 14), and that he recently verified the 2016 valuation by looking at similar information—even though there is no evidence that Alexander included the same credit cards as he did in 2016—by googling credit card rewards, that Alexander came up with his 2016 valuation by googling credit card rewards, the Master still finds Alexander’s expert opinion that every credit card point has a valuation of 2.5 cents unreliable under *Daubert* for the following reasons: (i) Alexander’s method of computing the 2016 valuation—googling credit card rewards—was tested recently by Alexander and it showed a different valuation per credit card point, (ii) there is no evidence that Alexander’s method has been subjected to peer review and publication, (iii) no evidence as to what the known or potential rate of error is, and (iv) no evidence as to the existence and maintenance of standards controlling the technique's operation. As such, the assumption that the value of credit card points and the value of airline miles are the same and that every credit card point has a valuation of 2.5 cents was based on inaccurate information and is therefore erroneous.

Erroneous Assumption #5

Fifth, Hamed Claim No. H-146 is based on the assumption that the Yusufs’ credit cards and the Hameds’ credit cards rewarded the same number of points for every dollar charged—to wit, Hamed calculated this claim based on the amount of money charged to the credit cards rather than based on the actual credit card points earned by the Yusufs and the Hameds. In other words, Hamed Claim No. H-146 assumed a scenario where if \$100,000 were charged to the Yusufs’ credit cards, then the Yusufs were rewarded 100,000 credit card points as a result, so then to equalize, the Hameds’s credit cards should also be charged \$100,000 so that the Hameds can also be rewarded 100,000 credit card points. However, there is no evidence that the Yusufs’ credit cards and the Hameds’ credit cards rewarded the same number of points for every dollar charged. This is not even taking into account that some of the credit cards rewarded store credit/airline miles or did not reward anything. As such, the assumption that the Yusufs’


credit cards and the Hameds' credit cards rewarded the same number of points for every dollar charged was based on inaccurate information and is therefore erroneous.

In summary, the Master finds that, based on the evidence and testimony presented, Hamed relied on erroneous assumptions for Hamed Claim No. H-146, and Hamed failed to introduce sufficient evidence to prove: (i) the Yusufs earned more credit card points than the Hameds on purchases made/expenses paid on behalf of the Partnership on their personal credit cards during the relevant period and (ii) that Hamed is entitled to the reimbursement of credit card points earned by the Yusufs in excess of the credit card points earned by the Hameds during the relevant period to equalize the credit cards 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 relevant period.²²

CONCLUSION

Based on the foregoing, the Master will dismiss Hamed Claim No. H-146 for insufficient proof of claim. An order and judgment consistent with this Memorandum Opinion will be entered contemporaneously herewith.

DONE and so ORDERED this ^{23rd} day of April, 2023.


EDGAR D. ROSS
Special Master

²² Given that the use of the Yusufs and the Hameds' personal credit cards to pay for Partnership purchases/expenses unquestionably benefitted the Partnership, (Tr. 32-33, 44-45, 84-89), the Master concludes that the credit card points and airline miles earned by the Yusufs and the Hameds as a result thereof—which the Master had determined belonged to the Partnership—were compensations given by the Partnership to the individual credit card holders for the benefits they provided to the Partnership by allowing the Partnership to use their personal credit cards.