

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

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

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants,

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

vs.

UNITED CORPORATION, *Defendant.*

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

vs.

FATHI YUSUF, *Defendant.*

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*

Defendants.

KAC357 Inc., *Plaintiff,*

vs.

HAMED/YUSUF PARTNERSHIP,

Defendant.

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

Case No.: SX-2014-CV-287

Consolidated with

Case No.: SX-2014-CV-278

Consolidated with

Case No.: ST-17-CV-384

Consolidated with

Case No.: ST-18-CV-219

HAMED'S REPLY AS TO CLAIM H-72

1. Yusuf's Obsession with the Issue of Whether there was a "Check"

Yusuf unilaterally wrote himself a check which had the extra funds in it. Everything after that is an effort to correct for that. It is totally immaterial whether the term "check" is used as the reference title or whether it is referred to as an imbalanced, "improper credit": Yusuf unilaterally changed the inventory calculations in his favor without a basis, contrary to the ordered, agreed process, and he got extra funds because of it. Period.

2. John Gaffney's Statement that Yusuf might have gotten more.

It is undisputed by John Gaffney that Yusuf unilaterally changed the agreed-on inventory method and the final amounts--solely on Yusuf's own self-serving guesstimate -- after that official inventory was formally completed. Gaffney admits Yusuf then rushed the process and, instead, wrote himself a **CHECK for more than he would have gotten under the agreed inventory method**. This is also undisputed.

The fact that other disputes about the inventory MIGHT have gone Yusuf's way—if only Yusuf had followed the correct process to its completion--is completely irrelevant. **He didn't**. Gaffney's unsubstantiated views on what might have occurred in such a hypothetical process under undocumented possibilities are inapplicable here because:

1. Yusuf didn't go through the full process as he should have—and thus, we will never know if he might have gotten more—and there is certainly no documentary support for this before the Master.
2. Yusuf never made a timely claim for those other amounts.
3. The nonsense about the Master and Holt meeting with Yusuf regarding the inventory is a smokescreen. At pp. 46-47, Gaffney's deposition reflects exactly what really happened—it is plain and simple.

Q. I guess the point I'm making is -- the point that I'm making is this: He proceeded to write himself a check. And when was that check written?

A. [Gaffney] It was written in July of 2015. July 10th, I think.

Q. And that check was already written before you had the meeting with Joel Holt, wasn't it?

A. [Gaffney] Yes.

The ONLY issue that has been preserved from that time, the only claim that was made on a timely manner is the instant question of *whether Yusuf unilaterally changed the inventory method without any basis, did so against the advice of Gaffney and did so against the procedures set out—and by doing so took extra funds in the agreed upon inventory process by changing it.*

Conclusion

At 19-20 of his deposition, we have Gaffney's statement about what Yusuf did.

A. Okay. What he did was, he reduced West's inventory by 1,158,000 and he reduced East's inventory by 1,318,000.

Q. Right. And so he created a net effect of about a \$250,000 credit in favor of Yusuf?

A. [Gaffney] Yes. (Emphasis added.)

Q. Okay. And the net effect would be that if that credit weren't there in favor of Yusuf, the total amount of the adjustment would be reduced by \$250,000?

A. Correct.

Holt then followed that up with the question as to whether an accountant would do such a thing:

Q. Okay. Okay. And is that a -- is that a correction that if you, as an accountant, would have made in doing an inventory and reporting it to the Court if you were the accountant doing that correction? That inventory?

A. Not unless I was asked to.

Thus, the opposition is just an untimely, hypothetical counterclaim. It seeks an OFFSET -- to avoid the simple, undisputed fact that Yusuf changed the ordered, already agreed on inventory process in his favor and then unilaterally wrote himself a check BEFORE discussing this with the Master or Holt. That resulted in a credit to Yusuf. The counterclaim is that there were other amounts which, IF YUSUF HAD FOLLOWED THE CORRECT PROCESS, he MIGHT have gotten. That process never happened. Because Yusuf stopped the process there were no documents, no record to support the possibility that he might have gotten more. Thus, there was no claim filed, there has been no discovery, and there have been no deposition examinations.

Yusuf improperly changed the process, he then wrote the check, took the money and owes the credit—whether that is called an excessive check, an improper credit to Yusuf, a needed adjustment for Hamed or something else—is equally irrelevant.

Dated: May 20, 2023

A handwritten signature in black ink, appearing to read "Carl J. Hartmann III". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

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CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of April, 2023, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross

Special Master

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CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

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

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