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, MUFEED HAMED, HISHAM HAMED, AND PLESSEN ENTERPRISES, INC.,** COUNTERCLAIM DEFENDANTS.	**Civil No. SX-12-CV-370** **ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, PARTNERSHIP DISSOLUTION, WIND UP, and ACCOUNTING**
WALEED HAMED, AS EXECUTOR OF THE ESTATE OF MOHAMMAD HAMED, PLAINTIFF, **V.** **UNITED CORPORATION,** DEFENDANT.	CONSOLIDATED WITH **Civil No. SX-14-CV-287** **ACTION FOR DAMAGES and DECLARATORY JUDGMENT**
MOHAMMAD HAMED, PLAINTIFF, **V.** **FATHI YUSUF,** DEFENDANT.	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-37: reimbursement to the Partnership for the credit Yusuf received in the amount of $186,819.33 from the Partnership in 2015, based on the document prepared by the Partnership accountant John Gaffney, titled "Summary of Remaining Partnership Items For the Period From Jan 1, 2013 to Sep 30, 2015."[1]

BACKGROUND

In 2015, the Partnership accountant John Gaffney prepared a document titled "Summary of Remaining Partnership Items For the Period From Jan 1, 2013 to Sep 30, 2015" (hereinafter "Gaffney Summary"). The Gaffney Summary included various accounting items for Plaza Extra-East, Plaza Extra-West, and Plaza Extra-Tutu Park. Upon review of the Gaffney Summary, Hamed disputed several items therein. The disputed item at issue here is the item labeled "due to/from Yusuf" under Plaza Extra-Tutu Park showing that the Partnership owed $186,819.33 to Yusuf,[2]

[1] 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.) According to Hamed's accounting claims and Hamed's amended accounting claims, for Hamed Claim No. H-37, Hamed indicated that the credit Yusuf received in the amount of $186,819.33 from the Partnership in 2015 was improper and therefore the Partnership should be reimbursed in the same amount—$186,819.33. (Hamed's Accounting Claims, Exhibit B-1-Summary of Hamed's accounting claims for January 1, 2012 to present, p. 4; Hamed's Amended Accounting Claims, Exhibit A-Summary of Hamed's post-September 17, 2006 claims, p. 2.) However, according to Hamed's post-hearing brief for Hamed Claim No. H-37, Hamed indicated that he should be credited in the same amount—$186,819.33—and made no mention of reimbursement to the Partnership in such an amount. Regardless of whether Hamed Claim No. H-37 sought for a reimbursement to the Partnership or for a credit to Hamed from the Partnership, the Master finds that Hamed Claim No. H-37 falls within the scope of the Master's report and recommendation because it is either an alleged debt owed by Yusuf to the Partnership or an alleged debt owed by the Partnership to Hamed.

[2] The disputed item in the Gaffney Summary at issue here is as follows:

Location	A/C	A/C Description	Yusuf	Hamed
STT	14000	Due from/to Yusuf	186,819.33	-

and as a result, this amount was credited to Yusuf when calculating the total net cash payout due to Yusuf and Hamed from the Partnership in the Gaffney Summary.

In 2016, per the Master's order, the parties filed their respective accounting claims. Hamed, in his accounting claim filed on October 17, 2016, included Hamed's claim for the reimbursement to the Partnership for the credit Yusuf received in the amount of $186,819.33 from the Partnership in 2015 based on the Gaffney Summary. Hamed attached the expert opinion of Jackson Vizcaino Zomerfield, LLP, dated September 28, 2016 (hereinafter "Hamed's Expert Report"), as Exhibit B-2 to his accounting claims.[3]

On July 25, 2017, the Court entered a memorandum opinion and order limiting accounting in this matter (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

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[3] Hamed's Expert Report provided in relevant part:

> Item 353 – Due to/from Fathi Yusuf
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> Summary of Description of Issue Identified:
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> We noted a balance of $186,819.33 in the due to/from Yusuf account recorded on Plaza STT accounting records as of June 30, 2015. This balance was carried over prior to January 1, 2013 according to the accounting records provided by John Gaffney. This amount was used in the calculation of a pay out in the Summary of Remaining Partnership Items.
>
> Work performed:
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> We interviewed the Hameds regarding payments due to Fathi Yusuf. We reviewed the summary of Summary of Remaining Partnership Items (Exhibit 353-a). We also provided John Gaffney a query dated February 15, 2016 (see Attachment VII) requesting an explanation of the business purpose and supporting documentation,
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> Gaffney's response:
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> John Gaffney did not respond to our request.
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> Opinion as to the Issue Identified:
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> We did not find any sufficient reliable audit evidence, nor were we provided any audit evidence from John Gaffney that these payments were for a valid business expense or served a business purpose. As such, we are not able to satisfy ourselves of management's assertions: 1. Occurrence 2. Accuracy or 3. Classification, as described in AU-C 315.4128.
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> The total amount of this claim is $186,819.33, subject to further refinement after discovery is re-opened and completed.
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> (Hamed's Accounting Claims, Ex. B-2.)

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."[4] (Limitations Order, pp. 32, 34.)

In light of the Limitations Order, the Master ordered the parties to file their amended accounting claims. Hamed, in his amended accounting claim filed on October 30, 2017, again included Hamed's claim for the reimbursement to the Partnership for the credit Yusuf received in the amount of $186,819.33 from the Partnership in 2015 based on the Gaffney Summary (Hamed Claim No. H-37, formerly known as Hamed Claim No. 353).

The parties then proceeded with discovery.

On August 17, 2022, Yusuf and Hamed filed a joint motion for the Master's final judgment on the briefs as to Hamed Claim No. H-37, which was subsequently denied by the Master in an order entered on September 14, 2022.[5]

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[4] Title 26 V.I.C. § 71 provides:

> (a) Each partner is deemed to have an account that is:
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> > (1) credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
> >
> > (2) charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.
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> Title 26 V.I.C. § 71(a).

[5] In the September 14, 2022 order, the Master explained:

> The Master must note at the outset that Yusuf and Hamed failed to specify the rule under which they made their joint motion and thus, left the characterization of the motion to the Master's speculation. V.I. R. CIV. P. 6-1(a) ("All motions must: …(2) state with particularity the grounds for seeking the order, including a concise statement of reasons and citation of authorities…"). On one hand, it appears that Yusuf and Hamed are asking the Master to summarily rule on the merits of Hamed Claim No. H-37, and thus, the joint motion could be construed as Yusuf and Hamed's respective motions for summary judgment for Hamed Claim No. H-37.

This is supported by the fact that Yusuf sought "either a determination by the Master that the credit to Yusuf in the amount of $186,819.33 is proper and warrants dismissal of Hamed's claim H-37, or, in the alternative, a determination that summary judgment is inappropriate as there are contradictory expert opinions important to resolution of a material factual dispute, thereby requiring a hearing." (Motion, pp. 11-12.) However, this joint motion is inherently incompliant with Rule 56 of the Virgin Islands Rules of Civil Procedure (hereinafter "Rule 56") which requires the movant to include a statement of undisputed facts and the opposing party to respond to the statement of undisputed facts, and if the opposing party elects to include a statement of disputed facts, then the movant was required to respond thereto. V.I. R. CIV. P. 56(c)(1)-(3). Nevertheless, even assuming arguendo that this joint motion was filed in compliance with Rule 56 or that the Master deems it appropriate to rule on the joint motion without the aid of the statements of undisputed facts specific to Yusuf and Hamed's respective motions and their respective responses thereto,[2] for the Master to conclude that there is no genuine dispute as to any material fact that the credit Yusuf received in 2015 from the Partnership in the amount of $186,819.33 for the period January 1, 2013 to September 30, 2015 is proper and therefore the Partnership does not need to be reimbursed, or improper and therefore the Partnership needs to be reimbursed, it would require the Master to weigh the evidence, make credibility determinations, and draw inferences from the facts, which are not permitted at the summary judgment stage. *See Todman v. Hicks*, 70 V.I. 430, 437 (V.I. Super. Ct. April 17, 2019) (quoting *Williams v. United Corp.*, 50 V.I. 191, 197 (V.I. 2008)) (noting that 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"). On the other hand, it appears that Yusuf and Hamed are asking the Master to rule on the merits of Hamed Claim No. H-37 based on the evidence and arguments presented in the joint motion, and thus, the joint motion could be construed as Yusuf and Hamed's request for a bench trial on Hamed Claim No. H-37 based on the parties' briefs in the joint motion. This is supported by the fact that Yusuf and Hamed sought for a final judgment on the briefs and indicated that: (i) "[t]he parties each present their evidence and arguments here," (ii) "the Master has far broader discretion to fashion conclusive determinations here both because of Judge Brady's instructing order and because this is an equitable process," and (iii) "on July 18, 2018, the parties stipulated as to the Master's conclusive determination on matters of fact in the 'Stipulation as to Special Master's Factual Findings.'" (Motion, at pp. 1-2.) However, in light of the conflicting position between Yusuf and Hamed as to Hamed Claim No. H-37,[3] the Master finds that it would be an impossible task to weigh the evidence, make credibility determinations, and draw inferences from the facts, solely on the basis of the written submissions and evidence. As such, based on the foregoing, the Master will deny Yusuf and Hamed's joint motion and schedule a bench trial for Hamed Claim No. H-37. For future filings, the parties are reminded to specify the rule under which they make their motions and comply with the applicable rules. *See* V.I. R. CIV. P. 6-1(a).

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[2] In the order addressing Yusuf and Hamed's concurrent motions regarding their respective claims against the Partnership for attorney's fees and/or accounting fees, entered on April 5, 2022, the Master deemed it appropriate to rule on the concurrent motions without the aid of the statements of undisputed facts specific to their respective motions and their respective responses thereto pursuant to Rule 56(e)(4). (April 5, 2022 Order, p.12, n.20.) Rule 56(e)(4) provides that "[i]f a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: …issue any other appropriate order." V.I. R. CIV. P. 56(e)(4).

[3] In the joint motion, Yusuf and Hamed indicated that the only mutually agreed-upon fact as to Hamed Claim No. H-37 is that "[o]n October 1, 2015, Yusuf was credited to have been owed $186,819.33 in Partnership funds based on a pre-2012 accounting entry." (Motion, p. 5.)

(Sept. 14, 2022 Order.)

On December 6, 2022, the parties appeared for a hearing on Hamed Claim No. H-37. Hamed and Yusuf each presented witnesses testimony and exhibits. More specifically, the Master heard oral testimony from Fathi Yusuf and John Gaffney. 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:

> 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

Regarding Hamed Claim No. H-37, Hamed argued that $186,819.33 should not have been credited to Yusuf in 2015 because (i) there is no reliable audit trail to validate this amount and (ii) this amount is time-barred because it was based on accounting matters before September 17, 2006. (Hamed's Post-Hearing Brief.) Thus, Hamed concluded that the Partnership should be reimbursed in the same amount or the same amount should be credited to Hamed.[6] On the other hand, Yusuf argued that this amount was correctly credited to Yusuf in 2015 because it was based on the information in the tax returns prepared by the accounting firm Freed Maxick. (Yusuf's Post-Hearing Brief.) Thus, Yusuf concluded that the Partnership should not be reimbursed in the same amount and the same amount should not be credited to Hamed.

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[6] *Supra*, footnote 1.

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. United is an S corporation.

2. For the years 2002 to 2012, United and the Partnership filed taxes as one unit—to wit, United's tax returns for the years 2002 to 2012 included the tax information for itself and the Partnership and represented the collective tax information as United's tax information.

3. For the years 2002 to 2012, the Partnership did not file its own separate tax returns.

4. The accounting firm Freed Maxick prepared United's tax returns for the years 2002 to 2012 based on its reconciliation of various books and records.

5. John Gaffney received a copy of United's 2002 to 2012 tax returns prepared by Freed Maxick and in turn, John Gaffney prepared an identical set of 2002 to 2012 tax returns for United but did not list Freed Maxick as the preparer and instead left the name of the preparer blank pursuant to the *Kovel* agreement.[7]

6. United's 2002 to 2012 tax returns prepared by John Gaffney were subsequently signed by an officer of United, filed with the V.I. Bureau of Internal Revenue, and accepted by the V.I. Bureau of Internal Revenue as complete.

7. United's 2012 tax return included an item labeled "loans from shareholders" showing $186,819.33 in loans from shareholders.

8. $186,819.33 was a stated liability from United to the shareholders on the books of Plaza Extra-Tutu Park, which was actually a stated liability from the Partnership to Yusuf that was carried over from previous years, but since United and the Partnership filed taxes as one unit for the years 2002 to 2012, $186,819.33 was originally reflected in United's accounting records as an item labeled "due to/from shareholders."

9. Subsequent to the retroactive establishment of the Partnership, John Gaffney changed the "shareholders" reference to Yusuf in the label of said item to avoid confusion over "shareholders" versus "partners"—to wit, the label of said item was changed from "due

[7] According to John Gaffney, under the *Kovel* agreement, the preparer of the tax returns remains anonymous.

to/from shareholders" to "due to/from Yusuf"—and John Gaffney also added an item labeled "due to/from Hamed."

10. According to John Gaffney, the balance due to shareholders as of December 31, 2010 reconciled perfectly to the item labeled "loans from shareholders" as reported in United's 2010 tax return.

11. In 2015, John Gaffney prepared the Gaffney Summary.

12. In the Gaffney Summary, there is an item labeled "due to/from Yusuf" under Plaza Extra-Tutu Park showing that the Partnership owed $186,819.33 to Yusuf, which corresponded to the amount listed for the item labeled "loans from shareholders" as reported in United's 2012 tax return.

13. $186,819.33 was credited to Yusuf when calculating the total net cash payout due to Yusuf and Hamed from the Partnership in the Gaffney Summary.

Conclusion of Law

I. Limitations Order

As noted above, the scope of the accounting in this matter was limited to "transactions that occurred on or after September 17, 2006." (Limitations Order, p. 34.) Thus, Hamed argued that the credit Yusuf received in the amount of $186,819.33 from the Partnership in 2015 was barred by the Limitations Order since said amount was based on accounting matters before September 17, 2006. Whether the credit Yusuf received in the amount of $186,819.33 from the Partnership in 2015 was barred by the Limitations Order is a threshold issue the Master will resolve first since it may moot Hamed's other argument as to the deficiency of records. *Cf. Hypolite v. Marriott Ownership Resorts (St. Thomas), Inc.*, 52 V.I. 175, 179 (V.I. Super. Ct. Oct. 5, 2009) ("Because the determination of the statute of limitations issue may moot the issues raised in the complaint, the question regarding the applicable statute of limitations should be addressed first.).

As explained in the Limitations Order, an accounting of the Partnership is both an equitable cause of action and an equitably remedy in itself, and thus, "the Court is granted considerable

flexibility in fashioning the specific contours of the accounting process." (Limitations Order, pp. 13-14) (citing *Isaac v. Crichlow*, 63 V.I. 38, 2015 V.I. LEXIS 15, at *39 (V.I. Super. 2015) ("An equitable accounting is a remedy of restitution where a fiduciary defendant is forced to disgorge gains received from the improper use of the plaintiffs [sic] property or entitlements.") (quoting *Gov't Guarantee Fund of Republic of Finland v. Hyatt Corp*., 5 F. Supp. 2d, 324, 327, 38 V.I. 431 (D.V.I. 1998)) (emphasis added). Additionally, "because '[a] court of equity has traditionally had the power to fashion any remedy deemed necessary and appropriate to do justice in [a] particular case,' a court has a great deal more flexibility in considering equitable remedies than it does in considering legal remedies." (Limitations Order, p. 13) (quoting *Kalloo v. Estate of Small*, 62 V.I. 571, 584 (V.I. 2015)). As an extension of the Court in this matter, the Master is granted the same flexibility "in fashioning the specific contours of the accounting process" and "in considering equitable remedies." (Limitations Order, pp. 13-14.)

A. Doctrine of Equitable Estoppel

In *Browne v. Stanley*, the U.S. Virgin Islands Supreme Court established that "[i]n the Virgin Islands, equitable estoppel requires an asserting party to demonstrate that (1) the party to be estopped made a material misrepresentation (2) that induced reasonable reliance by the asserting party and (3) resulted in the asserting party's detriment" and explained that this is the soundest rule "because it promotes equity and justice by preventing one party from taking unfair advantage of another." 66 V.I. 328 at 334 (V.I. 2017). A misrepresentation is "an assertion that is not in accordance with the facts" and a misrepresentation is material "if it would be likely to induce a reasonable person to manifest his assent, or if the maker knows that it would be likely to induce

the recipient to do so." *Wilkinson v. Wilkinson*, 70 V.I. 901, 914 (V.I. 2019).[8] Furthermore, in certain circumstances, misrepresentations may also include concealment or even nondisclosure. *See Id.*, 70 V.I. at 914, n.7 ("Actionable misrepresentations may also include, in certain circumstances, concealment or even non-disclosure."). With the elements of equitable estoppel in mind, the Master will begin his evaluation. *See Browne*, 66 V.I. at 336 ("The existence of reasonable reliance and detriment 'depends upon the facts of each particular case.'").

The first element of equitable estoppel concerns the conduct or language amounting to a material misrepresentation. 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 that:

> 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 …").
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> 69 V.I. 168, 175 n. 4 (V.I. Super. Ct. July 21, 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

[8] Although the *Wilkinson* court discussed misrepresentation and material misrepresentation in the context of a claim to rescind a contract, the Master nonetheless finds the *Wilkinson* court's definition of misrepresentation and material misrepresentation applicable in this instance.

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.[9] Moreover, both partners and their respective sons were also well aware from the inception of their involvement with the business that Yusuf, while he functioned as the managing partner of the Partnership, he also simultaneously functioned as the president of United, and that the dealings between the Partnership and United were treated as one unit. Simply put, since the inception of the business, by practice and usage, all authorities resided in Yusuf as he simultaneously functioned as the president of United and the managing partner of the Partnership, and since the inception of the business, the dealings between the Partnership and United were treated as one unit with Mohammad Hamed's full knowledge and agreement. For example, in the early phases of the Partnership, United and the Partnership filed taxes as one unit and United maintained the bank accounts for both the Partnership and United's own separate bank accounts, such as United's tenant account, all with Mohammad Hamed's full knowledge and acquiescence. In fact, Mohammad Hamed's action during the pendency of the criminal case—brought by the United States of America and the Government of the Virgin Islands against United, Fathi Yusuf, Waleed Hamed, Waheed Hamed, Maher Yusuf, Nejeh Yusuf, and Isam Yusuf in connection with their respective tax returns starting from 1996—further exemplified that Mohammad Hamed was fully aware and content that all authorities resided in Yusuf and that the dealings between the

[9] 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.

Partnership and United were treated as one unit. From the commencement of the prosecution and through the pendency of the criminal case, including the negotiation of the plea agreement and its ultimate execution, Mohammad Hamed, along with Yusuf and their respective sons, purposefully kept the façade that United and the Partnership were one unit by actively concealing, either by silence or action, the fact that United and the Partnership were actually separate entities. *See* October 21, 2020 order, n. 43.[10] In other words, the Hamed defendants and Mohammad Hamed—

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[10] On October 21, 2020, the Master entered an order whereby the Master addressed United's motion for summary judgment for Yusuf Claim No. Y-7: United's claim for advances United made on behalf of the Partnership in 1994, 1995, and 1998, in the total amount of $199,760.00 and Yusuf Claim No. Y-9: United's claim for advances United made directly to the Partnership in 1996, in the total amount of $188,132.00.

The October 21, 2020 order provided:

> In his motion, United stated:
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> > The criminal case brought by the United States against United Corporation for underreporting and failing to pay gross receipts taxes and income taxes owed on revenues from the supermarket business was filed in the District Court on September 18, 2003. The theory of that prosecution was that United, a corporation owned by Fathi Yusuf and his family members–and not a Hamed/Yusuf partnership–owned and operated the Plaza Extra supermarkets and was responsible for paying taxes on store revenues. The criminal defense lawyers instructed Yusuf and the other defendants not to take any action that would support the existence of a partnership, and thereby draw Mohammad Hamed (who was not named in the indictment) into the criminal case. (Motion, pp. 11-12; United's statement of facts ("SOF") ¶ 9)
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> United referenced: Exhibit 6-Declaration of Fathi Yusuf, dated April 15, 2020, ¶ 4 ("…In addition, the defense lawyers for me and the other defendants in the criminal advised us not to do or say nothing that would suggest the existence of a partnership between me and Mohammad Hamed, because that would hurt our defense and cause Mohammad Hamed to be added to the case.").
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> In his oppositions, Hamed neither agreed "that the fact is undisputed for the purpose of ruling on the motion for summary judgment only" nor "stated that the fact is disputed 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" as required by Rule 56. See V.I. R. CIV. P. 56(c)(2)(B). Instead, Hamed's responses to United's SOF ¶ 9 stated:
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> > Y-7 Opposition
> >
> > That was one of many alternate theories of the defense. This claims process is a matter of allocation of "real" amounts NOW in a "real amounts" claims process. Yusuf is arguing that because this was once one of MANY positions taken, Hamed is forever estopped from pointing out the actual facts or what really happened—and what is really owed. Fine. If this is to be the rule in this case, Yusuf repeatedly said he was not a partner in this Partnership, and is, therefore, forever barred from ANYTHING from the Partnership. But, seriously, it is a little late for these sorts of debating club semantics. On the other hand, Hamed would agree to this logic, thus case should end and all of the Partnerships remaining assets should go to Hamed. Otherwise, historical estoppel is not a real "thing" in a RUPA partnership division.

On a more practical level, the statute of limitations for the 1994 and 1995 claims expired in 2000 and 2001, before the 2003 criminal indictment, so United's purported reason for tolling the SOL with respect to these claims does not apply. (HCSOF ¶ 27)

Further, the federal monitors, brought in to provide oversight on United's financials during the pendency of the criminal case allowed expenditures to be made out of the Yusuf family-owned tenant account and the Partnership bank accounts, despite those accounts being under a court imposed injunction. For example, United was allowed to use the tenant bank account to fund the building of a home on St. Thomas for Fathi Yusuf's son, Nejeh Yusuf, to fund and open a laundromat in United's name. Plaza Extra also was allowed to make capital expenditures at the Plaza Extra East store for new shelves. (HCSOF ¶ 28) If the alleged 1998 debt was legitimate, there was no reason why United couldn't have requested authorization for repayment from the monitors prior to the expiration of the statute of limitations on that claim. (Y-7 Opp., p. 29-30)

Y-9 Opposition

That was one of many alternate theories of the defense. This claims process is a matter of allocation of "real" amounts NOW in a "real amounts" claims process. Yusuf is arguing that because this was once one of MANY positions taken, Hamed is forever estopped from pointing out the actual facts or what really happened—and what is really owed. Fine. If this is to be the rule in this case, Yusuf repeatedly said he was not a partner in this Partnership, and is, therefore, forever barred from ANYTHING from the Partnership. But, seriously, it is a little late for these sorts of debating club semantics. On the other hand, Hamed would agree to this logic, thus case should end and all of the Partnerships remaining assets should go to Hamed. Otherwise, historical estoppel is not a real "thing" in a real RUPA partnership division.

On a practical level, assuming the expenditures were legitimate, it was possible for United to seek reimbursement from the Partnership within the applicable statute of limitations period by requesting funds to be moved from the Plaza Extra bank accounts to the United tenant bank account. There is ample evidence that the federal monitors allowed funds to be expended from both the tenant account and Plaza Extra accounts for things such as purchasing new store shelving, starting a new laundromat business and completing construction of Nejeh Yusuf's home. (HCSOF ¶ 19) (Y-9 Opp., p. 25)

In its reply, United pointed out "Hamed does not and cannot dispute that '[t]he theory of the prosecution was that United Corporation, a corporation owned by Fathi Yusuf and his family members – and not an undocumented, oral Hamed/Yusuf partnership – owned and operated the Plaza Extra supermarkets and was responsible for paying income and gross receipts taxes on store revenues'" and that "Hamed's response to United's [SOF ¶ 9] is silent regarding Mr. Yusuf's account of the defense lawyers' instructions to the defendants." (Reply, pp. 20-21)

The Master agrees with United's assessment of Hamed's oppositions. In Hamed's responses to United's SOF ¶ 9, Hamed never disputed that Yusuf and the other defendants were instructed to not to take any action that would support the existence of a partnership nor that they complied with such instructions. Additionally, the oppositions failed to provide any affirmative assertion by Hamed objecting to Yusuf and the other defendants not taking any action that would support the existence of a partnership. Thus, Hamed, through his silent acceptance and affirmation of the others not taking any action that would support the existence of a partnership, actively concealed the fact that United and the Partnership were actually separate entities to the prosecutors. Furthermore, when the parties in the criminal case finally executed the plea agreement—to wit, United pled guilty to "Count Sixty of the Third Superseding Indictment, which charges willfully making and subscribing a 2001 U.S. Corporation Income Tax Return (Form 1120S), in violation of Title 33, Virgin Islands Code, Section 1525(2)" and all other counts of the indictment against the remaining defendants and all remaining counts of the indictment against United were dismissed with prejudice (The Plea Agreement in the Criminal Case, dated February 26, 2010)—neither Hamed nor Yusuf advised the prosecutors that United and the Partnership were actually separate entities, which would have resulted in more taxes due. Instead, Hamed and Yusuf continued to actively conceal, either by silence or action, the fact that United and the

who was able to remain unimplicated in the criminal case—never, not once during the pendency of the criminal case, objected to the treatment of United and the Partnership as one unit or took any action to clarify that United and the Partnership were actually separate entities. Take two prime examples. First, under the plea agreement in the criminal case (hereinafter "Plea Agreement"), which was agreed upon and executed on February 26, 2010, by all the defendants in the criminal case including Waleed Hamed and Waheed Hamed, United and the Partnership were treated as one unit and not as separate entities—to wit, under the Plea Agreement, United and the Partnership filed taxes as one unit since United and in turn United's shareholders[11] (both indicted and non-indicted)[12] were required to pay taxes on the Partnership's profits from the operation of the Plaza Extra stores for the relevant period or United and the Yusuf defendants faced criminal liabilities for failure to pay such taxes; on the other hand, under the Plea Agreement, the Hamed defendants (Waleed Hamed and Waheed Hamed) were not required to pay taxes on the Partnership's profits from the operation of the Plaza Extra stores for the relevant period and did not face criminal liabilities for failure to pay such taxes because the Hamed defendants were United's employees, not United's shareholders, and thus were only required to pay their individual income taxes. Waleed Hamed and Waheed Hamed did not object to such treatment of United and the Partnership

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> Partnership were actually separate entities. Hamed and Yusuf had a duty to tell the truth and avoid deception before the Court, yet, they failed to do so, and thus, their suppression of the truth was an affirmation of the fact that the Partnership and United were treated as one unit.
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> (October 21, 2020 Order, n. 43.)

[11] An S corporation under 26 U.S.C. § 1361, such as United, is not a separately taxable entity; rather, the corporation's profits pass through directly to its shareholders on a pro rata basis and are reported on the shareholders' individual tax returns. *See Edwards Family P'ship, LLP v. Robin Bay Realty, LLC*, No. SX-09-CV-351, 2013 V.I. LEXIS 97, at *8 n.5 (V.I. Super. Ct. Jan. 30, 2013) ("A Schedule K-1 is used by a Partnership or S-Corporation to report a partner/shareholder's distributed share of income. This return will distribute the net profit to the shareholder or partners based upon their percentage of stock or how the partnership agreement reads. Rather than being a financial summary for the entire group, the Schedule K-1 document is prepared for each partner or shareholder individually.").

[12] Not all of United's shareholders were indicted in the criminal case.

as one unit in the Plea Agreement and did not take any action to clarify that United and the Partnership were separate entities, that United and the Partnership should not be treated as one unit, and that the Partnership—not United—should pay taxes on the Partnership's profits from the operation of the Plaza Extra stores; instead, the Hamed defendants kept the façade that United and the Partnership were one unit, approved the terms of the Plea Agreement, executed the Plea Agreement, and let United and United's shareholders bear the burden of paying taxes on the Partnership's profits from the operation of the Plaza Extra stores for the relevant period or United and the Yusuf defendants faced criminal liabilities for failure to pay such taxes. Second, at the July 16, 2013 sentencing hearing in the criminal case, the prosecutor continued to treat United and the Partnership as one unit and not as separate entities—to wit, the prosecutor represented to the court that, under the Plea Agreement, United and United's shareholders were required to pay taxes on the Partnership's profits from the operation of the Plaza Extra stores for the relevant period[13] and that the Hamed defendants were not required to pay taxes on the Partnership's profits from the operation of the Plaza Extra stores for the relevant period because the Hamed defendants were United's employees, not United's shareholders, and thus were only required to pay their individual

[13] At the July 16, 2013 hearing, the prosecutor stated in relevant parts:

> …The paragraph meant that there would be a special condition of probation during United's probation, because United was the only entity that pleaded guilty. So the government had some leverage regarding making sure that individual filed returns, which would include United's profits. So that was kind of the, without trying to get two [sic] wordy in the plea agreement, that was our thinking, at the time, because the corporation was an S corporation. If individual tax returns weren't filed, the VIBIR would not received profits made based on United and Plaza Extra's operation.
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> …
>
> Yes. Again, because the main point of this was that taxes were paid on the profit of United, which would have been reported by individual shareholders. So that's why it has the individual income tax aspect in there, but the intent was really that the BIR got all the taxes due for United and Plaza Extra's operations, and they have received that money.
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> (July 16, 2013 Hr'g Tr. 44:7-19; 48:7-15.)

income taxes.[14] Again, Waleed Hamed and Waheed Hamed did not object to such treatment of United and the Partnership as one unit and did not take any action to clarify that United and the Partnership were separate entities, that United and the Partnership should not be treated as one unit, and that the Partnership—not United—should pay taxes on the Partnership's profits from the operation of the Plaza Extra stores; instead, the Hamed defendants continued to keep the façade that United and the Partnership were one unit and let United and United's shareholders pay taxes on the Partnership's profits from the operation of the Plaza Extra stores for the relevant period as directed under the Plea Agreement.

Nevertheless, Hamed now has changed his tune and claimed that he did not have knowledge and did not agree 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. However, Mohammad Hamed himself, either by deposition or otherwise, never denied that Yusuf had such absolute control over the Partnership finances or that Yusuf had total authorities over the Partnership and United or that the dealings between the Partnership and United were treated as one unit, nor presented any

[14] At the July 16, 2013 hearing, the prosecutor stated in relevant parts:

> …This other issue now with the Hameds and whether United pays for their individual income taxes, it's a separate issue and should not delay sentencing, because as Mr. Andreozzi said Waleed Hamed or Waheed Hamed are not partners or owners, they're employees, not managers.
>
> …
>
> Yes. Because it's not income directly related to the profits of United. Now, it may be some salary paid for working for United, but was not the actual profits that could have been reported and flowed through to the individual income tax returns.
>
> (July 16, 2013 Hr'g Tr. 46:5-11, 48:21-49:2.)

evidence showing that he never agreed nor consented to such an arrangement.[15] Thus, the Master finds Mohammad Hamed and Waleed Hamed's conduct of ongoing and repeated silence and acceptance of Yusuf, the managing partner of the Partnership, having absolute control over the Partnership finances, of Yusuf, the president of United and the managing partner of the Partnership, having total authorities over the Partnership and United, and of the treatment of the dealings between the Partnership and United as one unit, went beyond a miscommunication or single act and amounted to an ongoing and repeated material misrepresentation of the fact that Mohammad Hamed agreed and consented to Yusuf having absolute control over the Partnership finances, to Yusuf having total authorities over the Partnership and United, and to the treatment of the dealings between the Partnership and United as one unit.

The second element, reasonable reliance. The facts are clear that Yusuf reasonably relied on Mohammad Hamed's ongoing and repeated material misrepresentation—to wit, since the inception of the Partnership, Yusuf, as the managing partner of the Partnership and as the president

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[15] This lawsuit was filed prior to Mohammad Hamed's passing and thus, he knew that Yusuf asserted that Yusuf had absolute control over the Partnership finances and that Yusuf had all authorities over the Partnership and United. Mohammad Hamed had the opportunity to contradict Yusuf's assertion, yet no one had asked Mohammad Hamed any questions related to such an arrangement. In other words, Hamed only argued the absence of any evidence showing agreement or consent by Mohammad Hamed to Yusuf's absolute control over the Partnership finances and Yusuf's total authorities over the Partnership and United. In the December 9, 2020 order addressing United's motion for summary judgment as to Yusuf Claim No. Y-5 and Hamed Claim No. H-150, the Master similarly pointed out that Hamed only argued the absence of any evidence showing agreement or consent by Mohammad Hamed to Yusuf's absolute control over the Partnership finances and Yusuf's total authorities over the Partnership and United. *See* December 9, 2020 Order, p. 26 n. 52. More specifically, the Master explained in the December 9, 2020 order:

> …As noted above, Hamed essentially argued that there was never a valid agreement between the Partnership and United to use Partnership funds to pay for United Shopping Center's gross receipt taxes because Mohammad Hamed never agreed to such an arrangement between United and the Partnership and there was no consideration in exchange. However, while Hamed argued that Mohammad Hamed's silence should be interpreted as Mohammad Hamed's disagreement to such an arrangement between the Partnership and United, Hamed never discussed nor provided any affirmative assertion by Hamed that Yusuf did not have the control and authority to make such decisions for the Partnership and United.
>
> (December 9, 2020 Order, p. 26 n. 52.)

of United, made all the decisions in connection with the Partnership finances under the belief that he had absolute control over the Partnership finances, that he had total authorities over the Partnership and United, and that the dealings between the Partnership and United were treated as one unit, including but not limited to deciding to carry over the liabilities of the Partnership to the partners from year to year rather than perform regular reconciliation. *See* Limitations Order, p. 28 (holding 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"). There is no evidence that, prior to the partners' relationship becoming adversarial,[16] Mohammad Hamed objected to Yusuf's decision to carry over the liabilities from the Partnership to the partners from year to year rather than perform regular reconciliation. *See Hamed*, 69 V.I. at 175, n. 4 (holding that "Yusuf acted as the managing partner, such that Hamed was completely removed from the financial aspects of the business").

The final element, detriment. Here, Yusuf's reasonable reliance on Mohammad Hamed's ongoing and repeated material misrepresentations resulted in the credit Yusuf received in the amount of $186,819.33 from the Partnership in 2015 possibly being barred in part or in whole by the Limitations Order because Yusuf, as the managing partner of the Partnership, decided to carry over the liabilities from the Partnership to the partners from year to year rather than perform regular reconciliation. Under these circumstances, the Master is inclined to invoke the doctrine of

[16] 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.

equitable estoppel to ensure fairness in the relationship between the parties and find that Hamed, and in turn the Partnership, are estopped from taking a position inconsistent with their prior conduct and language. *See Browne*, 66 V.I. 328 at 334 ("because [equitable estoppel] promotes equity and justice by preventing one party from taking unfair advantage of another"). More specifically, Hamed and the Partnership are estopped from raising any arguments, including the 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. In other words, Hamed is estopped from arguing that he did not agree and consent to Yusuf's financial decisions—such as the decision to carry over the liabilities of the Partnership to the partners from year to year rather than perform regular reconciliation—and thereby, Hamed is also estopped from arguing that Yusuf was barred from receiving a credit in the amount of $186,819.33 from the Partnership in 2015 because that amount was based on accounting matters before the cutoff date since that amount—$186,819.33—was an accrued liability from the Partnership to Yusuf and did not arise until United's 2012 tax return was prepared. As such, the Master finds that the credit Yusuf received in the amount of $186,819.33 from the Partnership in 2015 was not barred by the Limitations Order.

II. Deficiency in Records

Hamed also argued that Yusuf should not have received a credit the amount of $186,819.33 from the Partnership in 2015 because the records are deficient to validate this amount. As explained above, the Master is an extension of the Court in this matter and therefore, the Master is granted

the same flexibility "in fashioning the specific contours of the accounting process" and "in considering equitable remedies." (Limitations Order, pp. 13-14.)

A. Doctrine of Equitable Estoppel

The first element of equitable estoppel concerns the conduct or language amounting to a material misrepresentation. Here, as the Court pointed out in the Limitations Order, both partners and their respective sons had, at all times, either actual or constructive knowledge, of the Partnership's notably informal and unreliable accounting and record keeping, including the deliberate destruction of a substantial amount of records prior to the FBI raid in 2001.[17] The Court

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[17] In the Limitations Order, the Court stated:

> …Here however, as a result of the questionable and highly informal financial accounting practices of the partnership, by which both partners and their respective family members unilaterally withdrew funds from partnership accounts as needed to cover various business and personal expenses, there exists no authoritative ledger or series of financial statements recording the distribution of funds between partners upon which the Master or the Court could reasonably rely in conducting an accounting. Instead the Court finds itself in the predicament of having to account for multiple decades' worth of distributions of partnership funds among the partners and their family members based upon little more than a patchwork of cancelled checks, hand-written receipts for cash withdrawn from Plaza Extra safes, and the personal recollections of the partners and their agents.
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> (Limitations Order, p. 11, footnote 10.)
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> …
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> Turning to the case at bar, there are both striking similarities and critical differences between the factual scenario presented in this matter and that before the court in Williams. Just as in Williams, this matter is best described as a battle between two partners, here former friends and brothers-in-law, over how the assets of the partnership were handled. Additionally, despite having, at all times, either actual or constructive knowledge of the alleged ongoing, repeated withdrawals of partnership funds, both Hamed and Yusuf ignored these issues year after year and allowed one another to continue conducting partnership business, each implying to the other that all was well.
>
> …As a result of the partnership's notably informal and unreliable accounting, as well as each partner's general lack of concern or attention toward each other's financial practices over the lifetime of the partnership, neither partner truly knows what he might uncover upon investigation.
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> …
>
> Here, the pleadings alone demonstrate the imprecision and inadequacy of the partners' accounting practices. Hamed's Complaint explains the partners' practice of unilaterally withdrawing partnership funds as needed for various business and personal expenses on the understanding that "there would always be an equal (50/50) amount [*30] of these withdrawals for each partner directly or to designated family members." See Complaint ¶ 21. Though Hamed alleges that the partners "scrupulously maintained" records of these withdrawals, the other pleadings and evidence of record in this matter fatally belie this unsupported assertion. For example, Yusuf's First Amended Counterclaim in SX-14-CV-278 (FAC 278) speaks of the need for reconciliation of

also pointed out that each partner "ignores issues year after year and allows the other partner to proceed along thinking everything is fine, [neither partner will] be heard to cry upon dissolution a

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> both "documented withdrawals" of cash from store safes, and "undocumented withdrawals from safes (i.e., all misappropriations)," in the § 177 accounting process. See FAC 278 ¶¶ 37-38.
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> …
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> As part of the accounting and distribution phase of the Wind Up, Yusuf submitted to the Master the report of accountant Fernando Scherrer of the accounting firm BDO, Puerto Rico, P.S.C. (BDO Report). Yusuf contends that this report constitutes "a comprehensive accounting of the historical partner withdrawals and reconciliation for the time period 1994-2012." See Opposition to Motion to Strike BDO Report, filed October 20, 2016. However, the BDO report, by its own terms, appears to be anything but comprehensive. Most tellingly, the body of the BDO Report itself contains a section detailing its own substantial "limitations," resulting from the absence or inadequacy of records for each of the grocery stores covering various periods during the life of the partnership. See Plaintiff's Motion to Strike BDO Report, Exhibit 1, at 22. Additionally, the analysis presented in the report rests on the unsupported assumption that any monies identified in excess of "known sources of income" constitute distributions from partnership funds to the partners' § 71(a) accounts. Thus, even Yusuf's own "expert report" acknowledges the insurmountable difficulties inherent in any attempt to accurately reconstruct the partnership accounts; a project which necessarily becomes proportionately more difficult and less reliable the farther back in time one goes.
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> …
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> In his April 3, 2014 deposition in this matter, Maher Yusuf recounted one instance, just prior to the FBI's raid of the Plaza Extra stores in 2001, in which Waheed Hamed advised Waleed Hamed of the impending raid, and Maher Yusuf and the Hameds mutually "decided to destroy some of the receipts, because they were all in cash." See Op. Letter, at 7 n.5. According to his deposition testimony, Maher Yusuf, together with Mufeed Hamed, "pulled out a good bit of receipts from the safe in Plaza East," and after roughly estimating the amount of withdrawals attributable to the Hameds and the Yusufs, each family destroyed their own receipts. Id. At the hearing on March 6-7, 2017, witnesses including Hamed's sons corroborated this account as well as many of the allegations of the Third Superseding Indictment. Evidence presented at the hearing included testimony concerning a cash diversion scheme involving cashier's checks, conflicting testimony regarding the ledger and receipt system for keeping track of cash withdrawals at each partnership store, and testimony that records documenting the withdrawals had been destroyed.
>
> Altogether, the allegations presented in the pleadings paint a clear picture of the partners' loose, "honor system" style accounting practices by which each partner and his sons freely and unilaterally withdrew partnership funds, either by check drawn upon partnership bank accounts or, apparently more often, by directly removing cash from store safes; the only apparent control being a general understanding between the partners that such withdrawals would be documented by hand-written receipts to be placed in the safe so that the partners, at some undetermined date, could reconcile their accounts if, and when, they deemed it appropriate. Additionally, evidence of record reveals one clear instance in which the partners, through their sons, deliberately destroyed a substantial amount of records evidencing such withdrawals, and further suggests a general pattern of negligent, if not willful, failure to record such withdrawals throughout the history of the partnership. At a bare minimum, the pleadings and record evidence establish that the partners and their sons had both unfettered access to large amounts of cash, deliberately kept off company books, and ample opportunity to secretly remove that cash, secure in the knowledge that no partner, accountant, or investigator would be able, after the fact, to ascertain the amount taken, as the total amount of cash kept in store safes was intentionally omitted from any record keeping.
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> (Limitations Order, pp. 21-27) (footnotes omitted.)

decade or more later, 'I'd like a do over.'"[18] (Limitations Order, p. 28) (citation omitted.) Thus, the Master finds Mohammad Hamed's conduct of ongoing and repeated silence and acceptance of the

[18] In the Limitations Order, the Court stated:

> Here, both partners and their respective sons were well aware from the beginning of their involvement with the business that any record keeping and accounting of distributions to the partners was highly informal and controlled only by the "honor system." As 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. It was Yusuf's responsibility to oversee, account for, and periodically reconcile the distributions of funds between the partners. And though Yusuf was content to dispense with the standard business accounting formalities for nearly the entire life of the partnership, upon Hamed's filing his Complaint in this matter, Yusuf changed course and now seeks to vindicate his right to a thorough and methodical partnership accounting.
>
> Hamed is no less to blame for this state of affairs and no less at fault for failing to seek any formal accounting of his interest until this late hour. Although Hamed was not the managing partner, he was undoubtedly aware of the absence of any formal record keeping from at least the date of the first and only true-up of the partnership business in 1993, if not from the very inception of the partnership. While Hamed may not have had the foresight to know that the 1993 true-up would be the last undertaken, the fact that the partners waited approximately seven years—since the founding of the partnership in 1986—to conduct the first and only complete reconciliation of the accounts between them demonstrates that Hamed was equally content with this practice of informal and sporadic accounting.
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> Furthermore, both partners were clearly aware, during the entire life of the partnership, of their mutual practice of making, either personally or through their sons, unilateral withdrawals of partnership funds documented by hand-written receipts and controlled only by the honor system. Additionally, by at least 2001 and likely before, Hamed and Yusuf were similarly aware that substantial monies deposited in the store safes were being deliberately kept off the partnership books, and that all involved acted without hesitation in destroying voluminous records of cash withdrawals thereby rendering any independently verifiable accounting or audit impossible. Certainly, by the time of the 2003 filing of the Third Superseding Indictment in the criminal case recounting the cash diversion scheme implemented by the officers of United, even the most trusting individual would have sufficient reason to suspect malfeasance, thereby putting both partners on inquiry notice.
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> Thus, on the basis of the pleadings and evidence of record, it is clear that both Hamed and Yusuf, personally and through their sons as agents, had actual notice of the informal and imprecise nature of the accounting practices of the partnership since at least 1993, as well as actual notice of the deliberate destruction of substantial accounting records in 2001. In turn, even if the partners were ignorant of any one withdrawal of partnership funds considered in isolation, they both had actual notice of the significant potential for abuse inherent in their chosen method of record keeping, and therefore constructive, if not actual, notice of the need to protect their respective partnership interests by action pursuant to 26 V.I.C. § 75(b).
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> Additionally, by his acquiescence to such inadequate record keeping and his inexcusable delay in seeking to enforce his rights under 26 V.I.C. §§ 71(a) and 75(b), each partner has irrevocably prejudiced the ability of the other to respond to the various allegations against him. Here, as in Williams "the passage of time puts [each partner] at an unfair disadvantage in responding to the merits of [the other partner's] claims." 2010 Conn. Super. LEXIS 2344, at *39-40. Similarly, "because many of [the] claims involve how transactions were or were not recorded… an analysis of those claims would likely involve testimony" from the partners and their sons, yet, how much they might remember concerning the details of a transaction completed a decade earlier "is questionable, at best." Id. Lastly, while the court in Williams concluded that the defendant was prejudiced despite the production of "substantial records," here, in the absence of complete or comprehensive records, the partners are even more so "at a distinct disadvantage" in any attempt to "recreate

inadequacy of the Partnership accounting over the years and the lack of record keeping either through failure to document or active destruction of documents went beyond a miscommunication or single act and amounted to an ongoing and repeated material misrepresentation of the fact that Mohammad Hamed agreed and consented to such inadequacy. For example, in the context of Hamed Claim No. H-37, prior to the partners' relationship becoming adversarial,[19] there is no evidence that Mahammad Hamed objected to United and the Partnership filing taxes as one unit in the early phases of the Partnership, which by its very nature commingled United and the Partnership's tax information and records of, and there is no evidence that Mohammad Hamed objected to carrying over the liabilities of the Partnership to the partners from year to year rather than performing regular reconciliation, which by its very nature risked the destruction or loss of United and the Partnership's tax information and records.

The second element, reasonable reliance. The facts are clear that Yusuf reasonably relied on Mohammad Hamed's ongoing and repeated misrepresentation—to wit, the inadequacy of the Partnership accounting and the lack of record keeping continued for years without any objections from Mohammad Hamed or any actions by Mohammad Hamed to rectify the situation.[20] In fact, as the Court noted in its Limitations Order, "Hamed is no less to blame for this state of affairs and no less at fault for failing to seek any formal accounting of his interest until this late hour." (Limitations Order, p. 28.)

> or find decades of accounting records." Id. at *40. Thus, the Court concludes that consideration of the principles underlying the doctrine of laches strongly supports the imposition of an equitable limitation on the submission of § 71(a) claims in the accounting and distribution phase of the Wind Up Plan.
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> (Limitations Order, pp. 28-31) (footnotes omitted.)

[19] *See supra*, footnote 16.

[20] *See supra*, footnotes 17, 18.

The final element, detriment. Here, Yusuf's reasonable reliance on Mohammad Hamed's ongoing and repeated material misrepresentations resulted in the credit Yusuf received in the amount of $186,819.33 from the Partnership in 2015 being disputed due to the unreliability and deficiency of the Partnership accounting and record keeping during the relevant period. Under these circumstances, the Master is inclined to invoke equitable estoppel to ensure fairness in the relationship between the parties and find that Hamed, and in turn the Partnership, are estopped from taking a position inconsistent with their prior conduct and language—to wit, the acceptance of the inadequacy of the Partnership accounting and record keeping. *See Browne*, 66 V.I. 328 at 334 ("because [equitable estoppel] promotes equity and justice by preventing one party from taking unfair advantage of another"). More specifically, Hamed is estopped from raising any defenses based on the argument that Yusuf was not entitled to a credit in the amount of $186,819.33 from the Partnership in 2015 because the records are deficient to validate this liability of the Partnership to Yusuf. As such, the Master finds that Yusuf was entitled to receive a credit in the amount of $186,819.33 from the Partnership in 2015.

CONCLUSION

Based on the foregoing, the Master will dismiss Hamed Claim No. H-37. An order and judgment consistent with this Memorandum Opinion will be entered contemporaneously herewith.

DONE and so ORDERED this 13th day of June, 2023.

EDGAR D. ROSS
Special Master