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

WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff/Counterclaim Defendant, v. FATHI YUSUF and UNITED CORPORATION, Defendants/Counterclaimants, v. WALEED HAMED, WAHEED HAMED, MUFEED HAMED, HISHAM HAMED, and PLESSEN ENTERPRISES, INC., Additional Counterclaim Defendants.	)	CIVIL NO. SX-12-CV-370 ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, AND PARTNERSHIP DISSOLUTION, WIND UP, AND ACCOUNTING Consolidated With
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, v. UNITED CORPORATION, Defendant.	)	CIVIL NO. SX-14-CV-287 ACTION FOR DAMAGES AND DECLARATORY JUDGMENT
WALEED HAMED, as Executor of the Estate of MOHAMMAD HAMED, Plaintiff, v. FATHI YUSUF, Defendant.	)	CIVIL NO. SX-14-CV-278 ACTION FOR DEBT AND CONVERSION
FATHI YUSUF and UNITED CORPORATION, Plaintiffs, v. THE ESTATE OF MOHAMMAD HAMED, Waleed Hamed as Executor of the Estate of Mohammad Hamed, and	)	CIVIL NO. ST-17-CV-384 ACTION TO SET ASIDE FRAUDULENT TRANSFERS

THE MOHAMMAD A. HAMED LIVING TRUST,)
)
Defendants.)
)

FATHI YUSUF'S MOTION FOR RECONSIDERATION OF
MASTER'S SEPTEMBER 24 ORDER

The Master's Order of September 24, 2018 (the "Order") granted in part Hamed's Motion to Preclude Yusuf's Claims Prior to September 17, 2006, by ruling that "Yusuf's claim for $1,600,000.00 of the $1,778,103.00 shall be and is hereby stricken." *See* Master's September 24, 2018 Order at p. 7. Yusuf had argued that "Judge Brady has already found that an oral acknowledgment of a debt tolls the 6-year statute of limitation for contract claims, so that the debt is deemed to have accrued on the date it was acknowledged—rather than the date the debt originally arose." *Id.* at p. 6.

The Master distinguished Judge Brady's grant of summary judgment on United's rent claim from the instant motion on the basis that the evidence of debt acknowledgment in the former motion consisted of "Hamed's own admission at [his] deposition that the Partnership owes United rent." *Id.* at 6. The Master stated that here, by contrast, "Yusuf did not provide any evidence of Waleed Hamed personally admitting to [the 1,600,000] debt," and, "this alleged admission is disputed by Waleed Hamed." *Id.* at 6.

In so distinguishing Judge Brady's rent ruling, the Master overlooked Walleed Hamed's sworn interrogatory answers that are tantamount to an admission by Waleed Hamed that the $1.6 million dollar debt to Mr. Yusuf was a real one (albeit one that Hamed contends is unenforceable). Specifically, in a May 15, 2018 answer to an interrogatory, Waleed Hamed stated that "it is true that in 1999 Mafi Hamed and Maher Yusuf met and reconciled the outstanding chits related to 50/50 distribution of the Sion Farm [Plaza Extra-East] grocery store profits, showing $1.6 million was due to the Yusufs to 'true up' the differences in the 50/50

profit withdrawals at that time for that store . . .." *See* **Exhibit A**, excerpt from Waleed Hamed's May 15, 2018 Answers to Interrogatories.

Waleed Hamed's interrogatory answer is every bit as much an acknowledgement of a debt as was Mohammad Hamed's deposition testimony an acknowledgement of the rent debt in the motion for summary judgment on United's rent claim. The Master should accordingly revisit his finding that Judge Brady's ruling on the rent claim is inapplicable to Yusuf's $1.6 million dollar debt claim.

The Master's Order next concludes that even if the statute of limitations has not run on a claim, the doctrine of laches may still bar it. What the Order fails to recognize, however, is that it is only "[i]n very rare cases" that "the doctrine of laches may be applied when the statute of limitations has not run." *Bouman v. Block*, 940 F.2d 1211, 1227 (9th Cir. 1991); *Federal Express Corporation v. United States Postal Service*, 75 F. Supp.2d 807, 811 (1999) ("In very rare cases ... the doctrine of laches may be applied when the statute of limitations has not run") (citations omitted). Moreover, regardless of whether a court decides a statute of limitations defense or a laches defense, it necessarily must determine when the claim in question accrued. *See Cooper v. Diamond M. Company*, 799 F.2d 176, 179 (5th Cir. 1993) (district court erred in finding that laches barred plaintiff's claim for "maintenance and cure" because it mistakenly found that her claim "accrued on the date that [Plaintiff] slipped and fell: April 4, 1979," rather than "April 27, 1983, when she became incapacitated to do a seaman's work"). *Id.* at 279 (internal marks omitted); *Weber v. Weinberger*, 651 F.Supp. 1379, 1382 (W.D. Mich. 1987) (determining when a claim accrued in order to decide whether it is barred by laches).

If the accrual date of a debt claim for statute of limitations purposes is the date the debt was acknowledged, as Judge Brady held, then the accrual date for laches purposes on a debt claim should be no different. There is no principled reason to have one accrual date for statute of

limitations purposes and another for laches. Here, the accrual date for laches purposes should be the date Waleed Hamed acknowledged the $1.6 million dollar debt. Whether that date is in 2012, when Bakir Hussein swore in his affidavit that he heard Waleed Hamed acknowledge the debt, or in 2013, when Waleed Hamed first acknowledged it in an interrogatory answer, or earlier this year, when he reaffirmed that acknowledgment in other interrogatory answers, the date of accrual is well after the September 17, 2006 date set by Judge Brady's laches-based limitation on the accounting claim.

CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, the Master should grant Yusuf's motion for reconsideration and rule that the acknowledgement of debt doctrine relied on in Judge Brady's order granting partial summary judgment on the rent claim applies here. The Master should find on reconsideration that Yusuf's $1.6 million dollar claim accrued at least by 2012 and hence that it is not covered by Judge Brady's order barring any claims that accrued before September 17, 2006. At the very least, the Master should find that there are genuine issues of material fact regarding the time of accrual that preclude a decision now on the $1.6 million dollar claim.

Respectfully submitted,

DUDLEY, TOPPER AND FEUERZEIG, LLP

DATED: October 15, 2018

By: ______________________________

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2018, I caused the foregoing **YUSUF'S MOTION FOR RECONSIDERATION OF SEPTEMBER 24 ORDER,** which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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