

SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

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 REPLY TO YUSUF'S OPPOSITION TO HAMED'S STATEMENT OF FACTS,
AND HAMED'S OPPOSITION TO YUSUF'S COUNTER STATEMENT OF FACTS:
RE HAMED'S REVISED CLAIMS
H-16—NEJEH YUSUF'S USE OF PARTNERSHIP RESOURCES AND
H-34—RENTS COLLECTED, BUT NOT DEPOSITED IN THE PARTNERSHIP ACCOUNT**

I. Introduction

Pursuant to the Special Master's Order of May 13, 2019, on May 28, 2019 Yusuf filed his *Opposition to Hamed's Motion and Memorandum for Summary Judgment Re Hamed Revised Claims as to H-16 – NejeH Yusuf's Use of Partnership Resources and H-34-Rents Collected, But Not Deposited in the Partnership Account*. However, Yusuf's 'revised' Opposition is almost exactly the same as his original Opposition – what was added is an Opposition and Counterstatement as to the facts. Accordingly, here Hamed responds only to Yusuf's new factual filings, but relies on his original Reply, filed on April 24, 2019.

II. Hamed's Reply to Yusuf's Opposition to Hamed's Statement of Facts

As will be discussed below, Yusuf largely fails to follow the Court's instructions that he revise his Opposition to respond to Hamed's *Statement of Facts* ("HSOF"). Although Yusuf makes repeated "surface level" statements that Yusuf "disputes" facts in the HSOF – there is no real effort to respond to the facts with evidence and facts of record as the applicable rule requires, *and, critically, the 'new' fact responses are not integrated into the 'revised' Opposition*, which remains substantially unchanged. Thus, this has largely been an exercise in Yusuf simply stating "NO" to the facts rather than really attempting to meet them with evidence as the rules require.

A. Yusuf is in agreement with Hamed regarding some of Hamed's statement of facts – and definitely with all of the "material" facts

In the Opposition, Yusuf concedes the following Hamed statement of facts: ¶¶ 2-3 & 5-7.

Moreover, as to HSOFs ¶¶ 2-3, Yusuf asserts that the statements are "undisputed," *but* then puts in a qualifier "[i]rrelevant to the issues addressed in this motion." Because Yusuf concedes these HSOFs are undisputed (and the qualifiers in no way conform to *V.I. R. CIV. P. 56(c)(1)(B)*) Hamed treats these as undisputed statements as well.

Finally, as will be discussed in detail below, Yusuf does not provide a proper denial to the following facts, so these facts *can be considered undisputed for the purposes of this motion under V.I.R. Civ. P. 56(e)(2)*: HSOFs ¶¶ 1, 4, 8-9, and 11-14.

Taken together, these 'admitted' and 'not-denied' facts are sufficient on this record to allow the Special Master to grant the relief sought.

B. Yusuf “disputes” some statements of facts, but offers no proof to contradict these HSOFs and therefore is deemed undisputed under V.I. R. CIV. P. 56(c)(1)(B)

Pursuant to *V.I.R. Civ. P. 56(c)(1)(B)*, actually “disputing” a statement of fact requires: (1) a cite to materials in the record contradicting the statement, (2) a showing that the materials cited do or do not establish a genuine dispute of fact or (3) there is not admissible evidence to support the fact, stating in relevant part:

(c) Procedures.

(1) **Supporting Factual Positions.** A party asserting that a fact cannot be or is genuinely disputed must. . .

(B) support the assertion by:

- (i) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
- (ii) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Yusuf merely “disputes” a number of Hamed’s statement of facts with conclusory denials that do not cite to any materials in the record. Under the rule, this is meaningless naysaying – not a proper denial. He also does not support his “disputes” of the facts by showing that the materials cited by Hamed somehow fail to establish the absence of a genuine dispute or that Hamed has not produce admissible evidence to support the fact.¹ *V.I.R. Civ. P. 56* then goes on to expressly provide a remedy in this situation, stating in *Rule 56(e)(2)* (emphasis added):

¹ This is hard, black letter law refined by the U.S. Supreme Court in two leading cases. Hamed’s counsel has located no cases where a mere denial, absent a reference to evidence of record,

(e) Failing to Properly Support or Address a Fact. If 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: . .

(2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; . . .

Thus, the facts Yusuf denied but failed to support with the materials required by *Rule 56(c)(1)(B)* can be deemed 'admitted facts' for the purpose of this motion *under Rule 56(e)(2)*, with summary judgment then an appropriate option under *Rule 56(e)(3)*.

Moreover, both Judge Brady and the V.I. Supreme Court have recognized that the Special Master, as the "trier of facts" here, has wide discretion to address and handle such disputes because, while this "looks" like a summary judgment, it is actually part of an equitable proceeding as to a Partnership accounting under RUPA. As Judge Brady noted previously:

However, as an accounting in this context is both an equitable cause of action and an equitable remedy in itself, the Court, upon consideration of the general principles underlying the affirmative defense of laches, together with the express policy goals of RUPA, exercised its considerable discretion in fashioning equitable remedies, to limit the scope of the partnership accounting.

Brady Order of November 15, 2017 at 3. As such, the Special Master, while conducting this "in the form" of a summary judgment has the same broad power, as the finder of fact, to determine

has been deemed sufficient. *See, e.g., Marsulex Env'tl. Techs. v. Selip S.P.A.*, No. 1:15-CV-00269, 2019 WL 2184714, at *2 (M.D. Pa. May 21, 2019) ("If the nonmoving party "fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden at trial," summary judgment is appropriate. *Celotex*, 477 U.S. at 322. Summary judgment is also appropriate if the nonmoving party provides merely colorable, conclusory, or speculative evidence. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 249 (1986). There must be more than a scintilla of evidence supporting the nonmoving party's claims and more than some metaphysical doubt as to the material facts. *Id.* at 252. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no 'genuine issue for trial.' " *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986)).

what facts are sufficiently understood by him without an additional evidentiary hearing or other proceedings/filings.

As just a few examples of Yusuf "disputing" a fact, but not doing so in accordance with *V.I. R. Civ. P. 56*, HSOFs ¶¶ 4, 8, 12 and 14 provide representative samples.

HSOF ¶ 4 states:

4. In late 2012, Nejeah Yusuf entered into a business arrangement with the Mansour brothers on St. Thomas, VI. Nejeah Yusuf testified in his deposition on January 22, 2019 that he was engaged in the following businesses with the Mansour brothers: Wala ice plants, Wala paintball, Sprint stores, Western Union, Wireless Tech, a restaurant, a Hookah bar and a kiosk in the mall.

Q. (Mr. Hartmann) Who's Mr. Mansour?

A. [NEJEH YUSUF] He's one of three brothers that I had some business relations with before.

Q. And could you describe those business relations?

A. We opened up a few stores in St. Thomas.

Q. And what stores were those?

A. We did Wala ice plants. Wala paintball. Some Sprint stores. A store in the mall. We did Western Union, and I joined them with a restaurant, a hookah bar.

* * * *

A. A kiosk in the mall.

Q. . . .And approximately what time periods were you in each of those businesses with him?

A. I think it started towards the end of 2012, maybe. I believe that's when I have a document signed, 2012.

Q. Okay. And what form were those businesses? Were they partnerships or corporations or LLCs?

A. I believe they were LLCs --

* * * *

A. -- mostly in their name. All of them in their names except the Sprint stores.

* * * *

A. Either myself or the Wireless Tech store in the mall, the electronic store in the mall.

Q. . . .Which you owned with the Mansours?

A. I was -- I had an agreement with them. (**Exhibit 4**, pp. 15;12-20, 25; 16:1-7, 9-10; 22:19-22)

Yusuf claims to "dispute" this statement by stating:

4. **Disputed** as written. Yusuf does not dispute the quoted testimony that Najeh Yusuf provided as to the nature of his business dealings.

Hamed's Response:

Yusuf throws out his stock, meaningless “[d]isputed as written” phrase. Thus, Yusuf’s objection fails to satisfy *Rule 56(c)(1)(B)*. Yusuf is not denying that NejeH Yusuf entered into a business arrangement with the Mansour brothers on St. Thomas, VI or that he was engaged in the following businesses with the Mansour brothers – Wala ice plants, Wala paintball, Sprint stores, Western Union, Wireless Tech, a restaurant, a Hookah bar and a kiosk in the mall. Yusuf does not point to evidence of record refuting Hamed’s statement of fact, he does not state or explain why Hamed Exhibit 4 does not support HSOF ¶ 4 and he does not claim that Hamed lacks admissible evidence to prove the statement. He even (oddly) states that “Yusuf does not dispute the quoted testimony that Najeh Yusuf provided as to the nature of his business dealings.” Thus, HSOF ¶ 4 is one of the material, undisputed facts in this motion. Yusuf uses the identical language for HSOF ¶ 8, so Hamed’s reasoning here is also applicable to Yusuf’s “dispute” regarding HSOF ¶ 8.

HSOF ¶ 9 states:

9. On January 22, 2019 in his deposition, NejeH Yusuf testified that he used Plaza Extra resources to ship security cameras from Miami, Florida to St. Thomas, VI.

Q. [Mr. Hartmann]. . . .Let's take the box of cameras, since everybody seems to agree that they exist.

The box of cameras were purchased by Plaza Extra or by you, personally?

A. [NEJEH YUSUF] I believe they were purchased by either me or Wireless Tech store in the mall from China.

Q. You or who?

A. Either myself or the Wireless Tech store in the mall, the electronic store in the mall.

Q.. . .Which you owned with the Mansours?

A. I was -- I had an agreement with them.

* * * *

A. They [cameras] got shipped to Plaza Extra, right. He paid the freight from China to Miami.

Q. Who paid the freight?

A. Wireless Tech paid the freight from China to Miami. And in return, I brought it from Miami down for a lower price. So he -- in China, you have to buy quantity to get the price.

* * * *

A. So I helped him by buying, because I needed cameras.

Q. And when you said, "I had them shipped," you mean you, Najeh, had them shipped, or, you, Plaza Extra, had them shipped?

A. I can't remember, but I agreed with him that it can come to Miami and I can ship it in my container.

* * * *

A. And when it gets there, I get the lower price. I get the cost of the -- of the units.

Q. Okay. So now the cameras have been shipped from Miami and they're sitting in the Plaza Extra store. Who do they belong to?

A. They belong to myself and Wireless Tech.

Q. And who is Wireless Tech?

A. The two Mansour brothers.

* * * *

A. We bought the cameras. I can't remember how it's situated, if it's in my name or Wireless Tech's name. To think about it now, it could have even been in Plaza Extra's name, because Willie was aware of it, that we were getting cameras from him, and we were paying roughly 30 bucks or 40 bucks a camera, versus \$169-\$170 a camera. So cameras came in. I made a deal with the guy, you pay it to Miami. Miami comes down in my container to Plaza St. Thomas. I take what's my share. I don't know if -- how it was taken. If it was delivered. If he picked it up. If it went -- if it went, you know, in the store, landed like right at the receiving inside and we opened it up, I opened it up and separated mine's, but the cameras came in. I bought it for the purpose of Plaza Extra saving funds, because we were buying it for over \$150 a camera from the local people. (**Exhibit 4**, pp. 22:12-22; 23:2-8,10-16,18-25; 27:2-17)

Yusuf claims to "dispute" this statement by stating:

9. **Disputed** as written. Najeh Yusuf testified that he was able to secure a deal from a supplier in China for security cameras for \$30-40 per camera. See **Exhibit A** – Depo. Najeh Yusuf, 27:15-20. The Plaza Extra-Tutu Park store would need to utilize over 40 such cameras. *Id.* The typical retail price for such cameras was \$170.00 per camera. *Id.* at 27:4-7. This is a cost saving to Plaza Extra-Tutu Park of between \$5,200 to \$5,600.2 Further arrangements were made to eliminate the shipping costs to Miami. *Id.* at 27:8-9. The cameras were then put in a Plaza Extra-Tutu Park container and delivered to the Plaza Extra-Tutu Park store. *Id.* at 27:9-10. Any cost associated with the shipping of the cameras in the Plaza Extra-Tutu Park container was *de minimus* (approximately \$4 per box and roughly 8 boxes for a total of \$24.00). See **Exhibit B**-Declaration of Najeh Yusuf - ¶2. The cost savings benefited the Plaza Extra-Tutu Park store as the cost savings remained significant.

Id. at ¶3. The bulk purchase (combining the Plaza Extra-Tutu Park cameras with others for Najeh Yusuf and Wireless Tech into a single purchase) benefitted the partnership as they were able to utilize the cost savings. *Id.* at ¶3. The cameras purchased for the Plaza Extra-Tutu Park store were installed. *Id.* at ¶4.

Hamed's Response:

Yusuf's objection once again fails to satisfy *Rule 56(c)(1)(B)*. He does not dispute the key fact that that he used Plaza Extra resources to ship security cameras from Miami, Florida to St. Thomas, VI for a business venture separate and distinct from the Partnership. The rest of the statement regarding the alleged cost savings or the "*de minimus*" shipping costs are irrelevant and are not supported by invoices or documentation of any kind. Accordingly, HSOF ¶ 9 is undisputed.

HSOF ¶ 11 states:

11. On January 22, 2019 in his deposition, NejeH Yusuf testified that he took a pressure washer that belonged to Plaza Extra Tutu and did not return it to the store.

A.[NEJEH YUSUF]. . . .There was a -- a issue with a pressure washer that was at my house that I borrowed before the -- the split, and the manager called me, Johnny Gumbs, and says, We want the pressure washer back. I said, It's at my house. You want it, you can come get it. I'm not bringing it.

* * * *

Q.. . . .And where's the pressure washer now?

A. I think it's still there probably rotten.

Q. At your house?

A. Probably. (**Exhibit 4**, p. 30:1-4; 15-18)

Yusuf claims to "dispute" this statement by stating:

11. **Disputed** at written. As to the pressure washer, Najeh Yusuf has always maintained that the Plaza Extra-Tutu Park store can retrieve the item. *Id.* at 30:1-14.

Hamed's Response:

Yusuf admits that NejeH Yusuf took a pressure washer that belongs to the Plaza Extra Partnership and has not returned it. That is a key uncontested fact. Thus, HSOF ¶ 11 is undisputed.

HSOF ¶ 12 states:

12. On January 22, 2019 in his deposition, Nejeih Yusuf testified that the rents from the Triumphant Church and an auto body shop belonged to Plaza Extra, but his father, Fathi Yusuf, told him to stop depositing the rents into the Plaza Extra account towards the end of the Partnership. At that point, Nejeih Yusuf stated he simply kept the rent payments. He said prior to his father's directive, the renters would come to the service desk at Plaza Extra to pay the rent, the service desk would call Nejeih to the desk, Nejeih would then write a receipt for the renter showing the rent was paid and then he would deposit the funds into the Plaza Extra account.

A.[Mr. Hartmann]. . . .Were the three businesses that you collected, you and Willie also collected rents from on a monthly basis?

A. [NEJEIH YUSUF] The rents wasn't coming in monthly.

Q. Well, did you collect the rents for them?

A. Yeah, we collected the rents from them.

Q. And what were the three businesses?

A. It was the -- well, it's mainly two businesses:

It was the church and the auto body shop.

* * * *

Q.. . .So just tell me about how the collection of the rents worked?

A. They would come into the service desk and they would drop off the payment. And then I would, in turn, give it to the girls upstairs to deposit in the account.

* * * *

Q. Okay. And did you ever -- any of the -- the money that came in for rent, did it ever go through your hands or did it always go through the desk?

A. They always called me. I handled it with the folks. I wrote them a receipt from the store. And I had it deposited in the accounts up until my dad told me stop depositing those funds in the -- in the store's account.

Q. And when did he tell you that?

A. Towards the end of the partnership.

Q. Okay. And from that point on, where did the rents go?

A. I just held onto it. It went -- either I held onto it or it went into the -- I think I held onto it, mainly. He said not to deposit into the account. . . .

(Exhibit 4, pp. 37:4-11; 18-22; 38:5-18)

Yusuf claims to "dispute" this statement by stating:

12. **Disputed** as written. The property for which rent was collected from Triumphant Church is comprised of a ½ acre lot titled in United's name. This particular property is the subject of related claims for Hamed in H-142 and relates to Yusuf Claim Y-12. See **Exhibit D**-Yusuf Amended Accounting Claims as to Y-12 and **Exhibit E**-Ninth Bi-Monthly Report. There is a dispute as to whether the property is a partnership asset.³ Najeh Yusuf does not dispute his deposition testimony but does dispute Hamed's characterization of his testimony.

[Footnote 3: The Master issued an Order on July 12, 2018 denying Yusuf's Motion to Strike Hamed Claim H-142 (half acre in Estate Tutu) as more discovery was required.]

Hamed's Response:

Yusuf's objection fails to satisfy *Rule 56(c)(1)(B)*. Yusuf does not provide any testimony or documentary evidence disputing the three key points of Nejeah Yusuf's testimony: 1) rents from the Triumphant Church and an auto body shop belonged to Plaza Extra, but his father, Fathi Yusuf, told him to stop depositing the rents into the Plaza Extra account towards the end of the Partnership; 2) Nejeah Yusuf kept the rent payments, rather than turning them over to the Partnership; and 3) that prior to his father's directive, the renters would come to the service desk at Plaza Extra to pay the rent, the service desk would call Nejeah to the desk, Nejeah would then write a receipt for the renter showing the rent was paid and then deposit the funds into the Plaza Extra Partnership account. The alleged dispute as to the ownership of the ½ acre lot is irrelevant to this claim. Further, Yusuf does not state or explain why Exhibit 4 does not support HSOF ¶ 12 and he does not claim that Hamed lacks admissible evidence to prove the statement. Thus, HSOF ¶ 12 is an undisputed, material fact.

HSOF ¶ 13 states:

13. Receipts left at the Plaza Extra-Tutu store showed that the Triumphant Church was paying rent of \$300 per month. A document summarizing the payments receipt showed the last collection date for the rent was April 2015. (**Exhibit 8**)

Yusuf claims to "dispute" this statement by stating:

13. **Disputed** as written. The property for which rent was collected from Triumphant Church is comprised of a ½ acre lot titled in United's name. This particular property is the subject of related claims for Hamed in H-142 and relates to Yusuf Claim Y-12. See **Exhibit D**-Yusuf Amended Accounting Claims as to Y-12 and **Exhibit E**-Ninth Bi-Monthly Report. There is a dispute as to whether the property is a partnership asset.⁴

[Footnote 4: The Master issued an Order on July 12, 2018 denying Yusuf's Motion to Strike Hamed Claim H-142 (half acre in Estate Tutu) as more discovery was required.]

Hamed's Response:

Yusuf's objection fails to satisfy *Rule 56(c)(1)(B)*. Yusuf does not provide any testimony or documentary evidence disputing the key points: 1) receipts left at the Plaza Extra-Tutu store showed that the Triumphant Church was paying rent of \$300 per month and 2) the last collection date for the rent was April 2015. Again, the alleged dispute as to the ownership of the ½ acre lot is irrelevant to this claim. Yusuf does not state or explain why Exhibit 8 does not support HSOF ¶ 13 and he does not claim that Hamed lacks admissible evidence to prove the statement. Accordingly, HSOF ¶ 13 is one of the material, undisputed facts in this motion.

HSOF ¶ 14 states:

14. On January 22, 2019, Waheed "Willie" Hamed testified that Nejah Yusuf continued to collect rents from the Triumphant Church, the body shop and a plastics cistern business after the store was sold to the Hamed's on May 1, 2015.

A. [WILLIE HAMED]. . .there were three businesses there: The church, a body shop, Cliff's Body Shop, and a guy that sells plastic containers for like septic and cisterns. And they were all paying rent. I've collected the rent twice and I gave it to Nejah. I wrote a receipt for that amount and I gave it to Nejah.

* * * *

Q. [Ms. Perrell]. . .Was there a point in time in which the rents were no longer collected on behalf of the partnership?

A. They were still collected, even after -- after we -- after we bought the sore, they came by and they were saying, Hey, we're looking for Nejah, we need to pay the rent.

* * * *

Q.. . .So there was, in your mind, never a point in time in which the rents from these three entities should not still be collected by the partnership?

A. They should still be collected by the partnership. (p. 70, lines 8-11) (**Exhibit 7**, 68:10-14, 69:20-25; 70:8-11)

Yusuf claims to "dispute" this statement by stating:

14. **Disputed** as written. Yusuf does not dispute that Waheed Hamed testified as set forth in SOF ¶14 but shows that the property for which rent was collected from Triumphant Church is comprised of a ½ acre lot titled in United's name. This particular property is the subject of related claims for Hamed in H-142 and relates to Yusuf Claim Y-12. See **Exhibit D**-Yusuf Amended Accounting Claims as to Y-

12 and **Exhibit E-Ninth** Bi-Monthly Report. There is a dispute as to whether the property is a partnership asset.⁵

[Footnote 5: The Master issued an Order on July 12, 2018 denying Yusuf's Motion to Strike Hamed Claim H-142 (half acre in Estate Tutu) as more discovery was required.]

Hamed's Response:

Yusuf's objection once again fails to satisfy *Rule 56(c)(1)(B)*. Yusuf is not denying that Nejeih Yusuf collected rents for the Partnership from the Triumphant Church, the body shop and the plastic cistern shop. Yusuf does not provide any contradictory evidence or testimony that Nejeih Yusuf testified that the rents collected were taken in by the Plaza Extra-Tutu staff and deposited in the Partnership account. HSOFs ¶¶ 12-13. As was stated previously, the alleged dispute as to the ownership of the ½ acre lot is irrelevant to this claim. Yusuf does not state or explain why Exhibit 7 does not support HSOF ¶ 14 and he does not claim that Hamed lacks admissible evidence to prove the statement.

Accordingly, HSOF ¶ 14 is one of the material, undisputed facts in this motion, and HSOFs ¶¶ 1, 4, 8-9, and 11-14 are undisputed.

C. Yusuf "disputes" a HSOF using materials as required by Rule 56, but the Special Master as "trier of fact" can decide the issue

HSOF ¶ 10 states:

10. On January 22, 2019, Willie Hamed testified that Nejeih Yusuf took security cameras, a laptop, a computer, a monitor and a TV belonging to Plaza Extra-Tutu shortly before the sale of the Tutu store. Willie Hamed said that only Nejeih Yusuf could have taken the items because no one else in the store had access to the items other than Yusuf and himself. He also stated that Fadi Mansour related his conversation with Nejeih Yusuf where Yusuf told him that he had stolen the cameras. Finally, when these missing items were brought to Special Master Ross's attention on the day of the Plaza Extra-Tutu store auction, he told Willie Hamed to put a claim in for the missing items.

A. [WILLIE HAMED] Well, we -- before the store was -- went up for bid, Nejeih went and took a lot of equipment, a lot of items that belonged to the store and sold them. . . . He took everything out of his office that was belonging to Plaza Extra Tutu, whether it's a computer, whether it's the laptop, whether it's the monitor, whether

it's the TV, whether it's numerous things
* * * *

A. I know there's equipment that was taken out of the store.

Q. [Ms. Perrell] What?

A. I can't recall in detail what it is. I know there was cameras, like a box of surveillance cameras. DVRs.
* * * *

Q. . . .Did you see those things being removed by Negeh?

A. No, but they were in his possession --
* * * *

A. -- at all times.
* * * *

A. Then when we were getting with our bidding process, all of a sudden, they disappeared.
* * * *

Q. [Ms. Perrell] If you didn't see him take the, let's take the box of cameras, how do you know it was him that took the box of cameras?

A. Because Fadi confirmed it.

A. Mansour confirmed it.
* * * *

Q. [Mr. Hartmann]. . . .If you didn't see, actually physically see Negeh take that stuff, how do you know it was him that took it, as opposed to Bob Smith, the guy who works in the bakery?

A. [WILLIE HAMED] Because Bob Smith does not have access.
* * * *

A. The only people who have access is myself and him.

Q. . . .So what you're saying is, one day the stuff was there, the next day the stuff was gone, and you inferred from that, that Negeh took it?

A. I actually mentioned it in front of Joel, my brother, and Judge Ross, the day that we made the bid, and in front of Yusuf, saying, Hey, some of the stuff was in his office and it's now gone. That was Plaza Extra property.
* * * *

A. . . .Then the judge stated, All right. Just put in a claim for it. (**Exhibit 7**, pp. 60:9-11, 14-17; 65:5-9, 13-20; 79:2-9, 14-25; 80:1-5)

Yusuf disputes this statement by stating:

10. **Disputed.** Najeh Yusuf did not take any cameras from the Plaza Extra-Tutu Park store that were for the store. See Exhibit A–Najeh Depo., 28:3-18. As to the alleged removal of any other items from the Plaza Extra-Tutu Park store by Najeh Yusuf, he testified that nothing was removed:

Q. And did you – at the time that the – the division –the sale of the Tutu

store occurred, did-did you remove certain objects from the store or the premises, such as a compressor?

A. No.

...

Q. Did you take any compressor?

A. No, never.

Q. Okay. Did you take any product?

A. No.

See Exhibit A–Najeh Depo., 29:10-14; 22-25. With regard to Hamed's allegation that Najeh Yusuf removed items from the Plaza Extra-Tutu Park store at or around the time of the sale of the store, Najeh Yusuf has testified to the contrary:

Q. After—after the date of the sale—

...

Q. —did you remove any assets of Plaza Extra?

A. The day of the sale happened, --

A. —I was allowed to only stay in the office area and the grocery side area, the showroom. I was told specifically by the mediator – by the – by the judge, you're not allowed in the warehouse. You're to stay in the store until the store ends, and that was it. So I didn't go anywhere. I didn't sell anything from the store after the sale.

Q. And –and would your answer be the same for the –for the, say, a month before the sale, in anticipation of a possible sale, did you remove anything out or did you sell anything?

A. No.

Id. at 31:21-32:14. If not otherwise clear, Najeh Yusuf affirmatively states that he did not take a monitor or a T.V. from the Plaza Extra-Tutu Park store. See Exhibit B–Declaration of Najeh Yusuf - ¶7. Both Willie Hamed and Najeh each had personal laptop computers that were purchased by Plaza Extra. See Exhibit B–Declaration of Najeh Yusuf - ¶7. On the day of the sale, Najeh Yusuf specifically asked Judge Ross about his personal laptop computer and Judge Ross advised that he could take it with him. *Id.*

Hamed's Response:

While it is true that there is a dispute as to HSOF ¶ 10, the Special Master, as the “trier of fact,” has wide discretion to address and handle such disputes because, while this “looks” like a summary judgment, it is actually part of an equitable proceeding as to a Partnership accounting under RUPA. Hamed notes four points regarding NejeH Yusuf's response to this SOF:

1. Willie Hamed specified that the area where some of the items were stolen was accessible only to Willie and NejeH Yusuf—other Plaza Extra staff, vendors, visitors, for example, were not allowed access to the area where the items were stolen.

2. NejeH Yusuf's declaration was written after his deposition, in an attempt to "clean up" his testimony. Interestingly, in his declaration he stated that he did not take a TV or a monitor. He did not say anything about not taking the other missing items, such as the compressor, surveillance cameras or DVRs.
3. NejeH Yusuf did admit to taking home a pressure washer that belonged to Plaza Extra and not returning it.
4. Willie Hamed brought up the missing items with the Master on the day of the auction, who advised that he file a claim.

III. Hamed's Reply to Yusuf's Counter Statement of Facts

A. Hamed disputes YCSOFs, but the disputes are also immaterial to Hamed's summary judgment motion

Hamed disputes Yusuf's Counter Statement of Facts ("YSCOFs"), but they are immaterial to Hamed's summary judgement motion.

YSCOFs ¶¶ 1-13 (H-16 – Najeh Yusuf's Alleged Use of Partnership Resources - *Surveillance Cameras and Shipping*)

Hamed's Response:

Hamed disputes Yusuf's YSCOFs ¶¶ 1-13, but notes they are irrelevant to this summary judgment motion. The relevant facts are as follows:

1. NejeH Yusuf used Partnership resources for his personal business venture and did not reimburse the Partnership for that use. (YSCOFs ¶¶ 4-5) and
2. NejeH Yusuf did not provide invoices or any documentation that would substantiate the cost of shipping the Wireless Tech security cameras from Miami to St. Thomas, the cost of the surveillance cameras, or any invoices and Partnership checks showing how many surveillance cameras Plaza Extra purchased for versus how many surveillance cameras were distributed to Wireless Tech.

YSCOFs ¶¶ 14-19, 24 (H-16 – Najeh Yusuf's Alleged Use of Partnership Resources - *Alleged Removal of other Equipment*)

Hamed's Response:

Hamed disputes Yusuf's YSCOFs ¶¶ 14-19. Hamed incorporates his response to Yusuf's dispute of HSOF ¶ 10 above.

YSCOF ¶ 20 (H-16 – Najeh Yusuf's Alleged Use of Partnership Resources – *Pressure Washer*)

Hamed's Response:

Nejeh Yusuf admits that he took a Partnership asset home – a pressure washer. He still has not returned the pressure washer in the condition it was in when it left the Plaza Extra – Tutu store, despite many requests that he do so.

YSCOFs ¶¶ 21-23 (H-16 – Najeh Yusuf's Alleged Use of Partnership Resources – *Undeposited Rent from Triumphant Church*)

Hamed's Response:

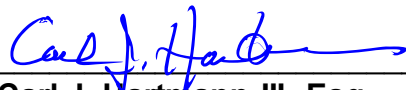
Hamed disputes Yusuf's CSOFs ¶¶ 21-23 and finds them irrelevant to Hamed Revised Claim H-34. Yusuf does not provide any testimony or documentary evidence disputing the three key points of Nejeh Yusuf's testimony (HSOFs ¶¶ 12-14):

1. Rents from the Triumphant Church and an auto body shop belonged to Plaza Extra, but Nejeh Yusuf's father, Fathi Yusuf, told him to stop depositing the rents into the Plaza Extra account towards the end of the Partnership;
2. Nejeh Yusuf kept the rent payments, rather than turning them over to the Partnership; and
3. Prior to his father's directive, the renters would come to the service desk at Plaza Extra to pay the rent, the service desk would call Nejeh to the desk, Nejeh would then write a receipt for the renter showing the rent was paid and then deposit the funds into the Plaza Extra Partnership account.

IV. Conclusion

Hamed requests that the following assets belonging to Plaza Extra-Tutu be returned: the power washer, the security cameras, monitor and TV missing from Plaza Extra-Tutu as they are Hamed's property. Hamed also requests that the rents collected by Nejeih Yusuf (or any other Yusuf family member or representative) for the Triumphant Church, the auto body shop and the plastic cistern business that were considered to be Partnership income before the litigation began be returned to the Partnership account and that any remaining rents collected be deposited in the Partnership account on an ongoing basis.

Dated: June 18, 2019



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CERTIFICATE OF SERVICE AND COMPLIANCE WITH RULE 6-1(e)

I hereby certify that the above document meets the requirements of Rule 6-1(e) and was served this 18th day of June, 2019. I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

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A handwritten signature in blue ink, appearing to read "Carl J. Haddad", with a long horizontal flourish extending to the right.