

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.

**WALEED HAMED, AS EXECUTOR OF THE
ESTATE OF MOHAMMAD HAMED,**

PLAINTIFF,

v.

UNITED CORPORATION,

DEFENDANT.

MOHAMMAD HAMED,

PLAINTIFF,

v.

FATHI YUSUF,

DEFENDANT.

Civil No. **SX-12-CV-370**

**ACTION FOR INJUNCTIVE
RELIEF, DECLARATORY
JUDGMENT, PARTNERSHIP
DISSOLUTION, WIND UP, and
ACCOUNTING**

CONSOLIDATED WITH

Civil No. **SX-14-CV-287**

**ACTION FOR DAMAGES and
DECLARATORY JUDGMENT**

CONSOLIDATED WITH

Civil No. **SX-14-CV-378**

**ACTION FOR DEBT and
CONVERSION**

ORDER

THIS MATTER came before the Special Master (hereinafter “Master”) on Yusuf and Hamed’s joint motion for the Master’s final judgment on the briefs as to Hamed Claim No. H-37: reimbursement to the Partnership of 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, 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

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

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 2015 from the Partnership in the amount of \$186,819.33 for the period January 1, 2013 to September 30, 2015 is improper and therefore the Partnership needs to 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.) Thus, the Master finds that that Hamed Claim No. H-37 falls within the scope of the Master’s report and recommendation given that Hamed Claim No. H-37 is an alleged debt owed by Yusuf to the Partnership.

important to resolution of a material factual dispute, thereby requiring a hearing.” (Motion, pp. 11-12.) However, this joint motion is inherently noncompliant 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

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).

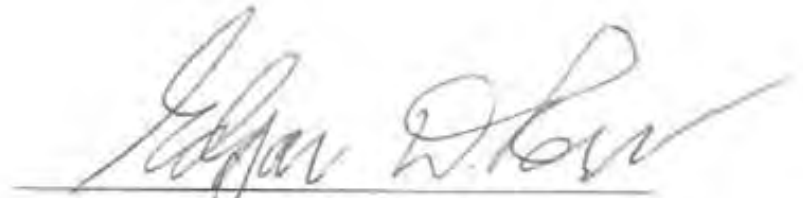
Hamed Claim No. H-37 based on the evidence and arguments presented in the joint motion, and thus, the joint motion could be construed as Yusuf and Hamed's request for a bench trial on Hamed Claim No. H-37 based on the parties' briefs in the joint motion. This is supported by the fact that Yusuf and Hamed 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). Accordingly, it is hereby:

ORDERED that Yusuf's joint motion for the Master's final judgment on the briefs as to Hamed Claim No. H-37, filed on August 17, 2022, is **DENIED**. And it is further:

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 \$186m819.33 in Partnership funds based on a pre-2012 accounting entry." (Motion, p. 5.)

ORDERED that, **within fifteen (15) days from the date of entry of this Order**, Yusuf and Hamed shall file a joint notice advising the Master of their availability for a bench trial in the next few months.

DONE and ORDERED this 14th day of September, 2022.



EDGAR D. ROSS
Special Master