

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,
MUFEEH 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 United’s revised motion for summary judgment as to Yusuf Claim No. Y-2: past rent due to United for Bay Nos. 5 and Bay 8 of the United Shopping Plaza (hereinafter “Bay 5” and “Bay 8” respectively, and collectively “Bays 5 and 8”), Yusuf Claim No. Y-3: prejudgment interest on the rent awarded by the Rent Order to United for Bay No. 1 of the United Shopping Plaza (hereinafter “Bay 1”), and Yusuf Claim No. Y-4: prejudgment interest on the past rent due to United for Bays 5 and 8.¹ In response, Hamed filed an opposition as to Yusuf Claim No. Y-2 and a separate opposition as to Yusuf Claim Nos. Y-3 and Y-4. Thereafter, United filed a single reply thereto. Subsequently, Hamed filed a notice of supplementation as to Yusuf Claim No. Y-2. For clarity, the Court will only address Yusuf Claim Nos. Y-3 and Y-4 in this order as United’s revised motion for summary judgment as to Yusuf Claim No. Y-2 has been previously denied on November 14, 2019.

BACKGROUND

Hamed filed his complaint on September 17, 2012, followed by his first amended complaint on October 19, 2012, seeking, among other relief, “A full and complete accounting ... with Declaratory Relief against both defendants to establish Hamed's rights under his Yusuf/Hamed Partnership with Yusuf ...” (Complaint, at 15, ¶1) Yusuf and United filed their first amended counterclaim on January 13, 2014, seeking, inter alia: Count X — Appointment of Receiver, Count XI — Rent for Retail Space Bay 1, and Count XII — Past Rent for Retail Spaces Bay 5 & 8.

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) The Master finds that that United’s instant motion for summary judgment falls within the scope of the Master’s report and recommendation given that Yusuf Claim Nos. Y-2 through Y-4 are alleged debt owed by the Partnership to United.

On May 17, 2013, United's attorney sent a letter to Hamed's attorney demanding rent for: "Bay No. 5, May 1, 1994 through October 31, 2001; 3,125 SQ. FT. at \$12.00, 6 years and 184 days, Balance Due \$243,904.00" and "Bay No. 8 April 1, 2008 through May 30, 2013; 6,250 SQ. FT. at \$12.00, 5 years and one month, Balance Due \$381,250.00." In response to United's May 17, 2013 letter, Hamed's attorney sent a letter stating that there never was an agreement to pay rent for Plaza-Extra-East's use of Bays 5 and 8. On September 9, 2013, United filed a motion to withdraw rent.² On May 13, 2014, Hamed filed a motion for partial summary judgment re the statute of limitations defense barring United and Yusuf's counterclaim damages prior to September 16, 2006. On August 12, 2014, Yusuf and United filed a motion for partial summary judgments on Counts IV, XI, and XII of their counterclaims regarding past rent for certain premises at United Shopping Plaza. On April 27, 2015, the Court entered a memorandum opinion and order as to United's September 9, 2013 motion and Hamed's May 13, 2014 motion (hereinafter "Rent Order") and ordered United's motion granted and Hamed's motion denied in part. In its Rent Order, the Court held, *inter alia*, that the statute of limitations does not bar United's claim for rent and United is entitled to past due rent for Bay 1 in the amount of \$3,999,679.73 from 1994-2004, plus past due rent in the amount of \$1,234,618.98 from January 1, 2012 through September 30, 2013, plus rent in the amount of \$58,791.38 per month from October 1, 2013 until Yusuf assumed sole possession of Plaza Extra-East store. (Rent Order, pp. 9-12) The Court explained that "[i]n this case, both the acknowledgement of the debt doctrine and the payment on account doctrine apply to toll the statute of limitations on United's rent claims." (Rent Order, p. 9)

In 2016, per the Master's orders, Parties filed their respective accounting claims. Yusuf, in his accounting claims filed on September 30, 2016, included United's claims for: (1)

² United's September 9, 2013 motion only sought back rent for Bay 1.

past rent payment for Bays 5 and 8 in the total amount of \$793,984.34, (2) prejudgment interest thereto, and (3) prejudgment interest on the rent awarded by the Rent Order to United for Bay 1. (Yusuf's accounting claims, pp. 7-8) Subsequently, in response to various pending motions, including Hamed's motion for partial summary judgment re the statute of limitations defense barring defendants' counterclaim damages prior to September 16, 2006, filed on May 13, 2014, and Yusuf and United's motion for partial summary judgments on Counts IV, XI, and XII of their counterclaims regarding past rent for certain premises at United Shopping Plaza, filed on August 12, 2014, the Court entered a memorandum opinion and order dated July 21, 2017 (hereinafter "Limitations Order"). In the Limitations Order, the Court addressed, *inter alia*, United's claim for rent for Bays 5 and 8:

By Memorandum Opinion and Order entered April 27, 2015, the Court denied Plaintiff's Motion for Partial Summary Judgment Re: Statute of Limitations as to United's Count XI for debt in the form of rent owed with respect to "Bay 1" and granted United's Motion to Withdraw Rent, filed September 9, 2013; authorizing the Liquidating Partner, under the supervision of the Master, to pay to United from partnership funds the total amount of \$5,234,298.71 plus additional rents that have come due from October 1, 2013 at the rate of \$58,791.38 per month. That Memorandum Opinion and Order also effectively, though not explicitly, granted in part Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent, filed August 12, 2014, as to Count XI, and entered judgment thereon in favor of United.

In Count XII of Defendants' Counterclaim, United seeks an award of \$793,984.38 for rent owed with respect to "Bay 5" and "Bay 8," which the partnership allegedly used for storage space in connection with the Plaza Extra-East store during various periods between 1994 and 2013. Counterclaim ¶¶ 179-84. United's arguments against the applying the statute of limitations to bar its claims for rent generally fail to distinguish between the rent owed for Bay 1 (Count XI) and the rent owed for Bays 5 and 8 (Count XII). Thus, the Court must infer that United opposes Hamed's statute of limitations argument as to Count XII on the same grounds as it opposed the argument with respect to Count XI. In denying Hamed's Motion for Partial Summary Judgment Re Statute of Limitations as to Count XI, the Court found that the limitations period had been tolled on the basis of Hamed's undisputed acknowledgement and partial payment of the debt.

However, in his August 24, 2014 Declaration, attached as Exhibit 1 to Plaintiff's Response to Defendants' Rule 56.1 Statement of Facts and Counterstatement of Facts, Waleed Hamed expressly states that "there was no agreement to use [Bays 5 and 8] other than on a temporary and periodic basis, nor was there any agreement to pay rent for this space, as United made it available at no cost." Declaration of Waleed Hamed

¶¶ 19-20. Mohammed Hamed's comments acknowledging the debt, which formed the basis of the Court's judgment as to Count XI, do not explicitly distinguish between the rent owed for Bay 1 and the rent owed for Bays 5 and 8. Yet, considered in light of the declaration of his son, the Court is compelled to conclude that a genuine dispute of material fact exists as to whether Hamed ever acknowledged any debt as to rent owed for Bays 5 and 8, and more basically, whether the partnership ever agreed to pay any rent for the use of Bays 5 and 8 in the first place. Accordingly, both Hamed's Motion for Partial Summary Judgment Re: Statute of Limitations and Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must be denied as to Count XII of Defendants' Counterclaim.⁵ (Limitations Order, pp. 7-8)

⁵ Defendants' Motion for Partial Summary Judgment on Counts IV, XI, and XII Regarding Rent must also be denied as to Count IV (Accounting). While Hamed and Yusuf are each entitled to an accounting of the partnership pursuant to 26 V.I.C. § 177, United's cause of action for rent is entirely unrelated to the partners' respective actions for accounting except insofar as each partner will ultimately be liable in the final accounting for 50% of whatever debt is found to be owing from the partnership to United.

Ultimately, the Court 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.” (Limitations Order, pp. 33-34)

In light of the Court's ruling, the Master ordered Parties to file their amended accounting claims. United's claims for rent for Bays 5 and 8 were again included in Yusuf's amended accounting claims, filed on October 30, 2017. (Yusuf's amended accounting claims, pp. 9-10) On June 22, 2019, United filed this instant revised motion for summary judgment for Yusuf Claim No. Y-2: past rent due to United for Bays 5 and 8, Yusuf Claim No. Y-3: prejudgment interest on the rent awarded by the Rent Order to United for Bay 1, and Yusuf Claim No. Y-4: prejudgment interest on the past rent due to United for Bays 5 and 8. On November 14, 2019, the Master entered an order (hereinafter “November 14, 2019 Order”) whereby the Master addressed United's revised motion for summary judgment only as to Claim No. Y-2, concluded that “a genuine dispute of material fact exists as to whether Hamed ever

acknowledged any debt as to rent owed for Bays 5 and 8, and more basically, whether the partnership ever agreed to pay any rent for the use of Bays 5 and 8 in the first place,” and denied United’s revised motion for summary judgment as to Yusuf Claim No. Y-2.

STANDARD OF REVIEW

Rule 56 of Virgin Islands Rules of Civil Procedure (hereinafter “Rule 56”) provides that “[a] party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought” and “[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” V.I. R. CIV. P. 56; *see also Rymer v. Kmart Corp.*, 68 V.I. 571, 575 (V.I. 2018) (“A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record.”). “Once the moving party has identified the portions of the record that demonstrate no issue of material fact, “the burden shifts to the non-moving party to present affirmative evidence from which a jury might reasonably return a verdict in his favor.” *Rymer*, 68 V.I. at 576 (citing *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013) (internal citations and quotation marks omitted). The non-moving party “may not rest upon mere allegations, [but] must present actual evidence showing a genuine issue for trial.” *Rymer*, 68 V.I. at 576 (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)). The reviewing court must view all inferences from the evidence in the light most favorable to the nonmoving party, and take the nonmoving party's conflicting allegations as true if properly supported. *Williams*, 50 V.I. at 194; *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 527 (V.I. 2013). Because summary judgment is “[a] drastic remedy, a court should only grant summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is

no genuine issue as to any material fact.” *Rymer*, 68 V.I. at 575-76 (quoting *Williams*, 50 V.I. 191, 194).

Rule 56 provides that “[e]ach summary judgment motion shall include a statement of undisputed facts in a separate section within the motion” and that “[e]ach paragraph stating an undisputed fact shall be serially numbered and each shall be supported by affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon regarding such fact.” V.I. R. CIV. P. 56(c)(1). Rule 56 also provides that “[a] party opposing entry of summary judgment must address in a separate section of the opposition memorandum each of the facts upon which the movant has relied pursuant to subpart (c)(1) of this Rule, using the corresponding serial numbering...” V.I. R. CIV. P. 56(c)(2)(B). Furthermore, under Rule 56, “a party opposing summary judgment may, if it elects to do so, state additional facts that the party contends are disputed and material to the motion for summary judgment, presenting one or more genuine issues to be tried” and “[t]he party shall supply affidavit(s) or citations specifically identifying the location(s) of the material(s) in the record relied upon as evidence relating to each such material disputed fact, by number.” V.I. R. CIV. P. 56(c)(2)(C). “If the non-moving party has identified additional facts as being material and disputed, as provided in subpart (c)(2)(C) of this Rule, the moving party shall respond to these additional facts by filing a response using the corresponding serial numbering of each such fact identified by the non-moving party...” V.I. R. CIV. P. 56(c)(3). Additionally, Rule 56(e) states 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: (1) give an opportunity to properly support or address the fact; (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; or (4) issue any other appropriate order.” V.I. R. CIV.

P. 56(e)(1)-(4). Finally, Rule 56 requires the court to “state on the record the reasons for granting or denying the motion.” V.I. R. Civ. P. 56(a).

DISCUSSION

In its motion, United argued that it “is entitled to recover prejudgment interest at 9% per annum, as provided by V.I. Code Ann. Tit. 11§ 951(a)(4), from the date it demanded payment – May 17, 2013.” (Motion, p. 19) In support of its argument, United cited to *Skretvedt v. E.I. Dupont de Nemours*, 372 F. 3d 193, 208 (3d Cir. 2004) (“As a general rule, prejudgment interest is to be awarded when the amount of the underlying liability is reasonably capable of ascertainment and the relief granted would otherwise fall short of making the claimant whole because he or she has been denied the use of money which is legally due. Awarding judgment interest is intended to serve at least two purposes: to compensate prevailing parties for the true costs of money damages incurred, and, where liability and the amount of damages are fairly certain, to promote settlement and deter attempts to benefit from the inherent delays of litigation. Thus, prejudgment interest should ordinarily be granted unless exceptional or unusual circumstances exist making the award of interest inequitable.”) (internal quotation marks and citation omitted), *Booker v. Taylor Milk, Co.*, 64 F.3d 860, 868 (3d Cir. 1995) (“To fulfill this make-whole purpose, prejudgment interest should be given in response to considerations of fairness and denied when its exaction would be inequitable.”) (internal quotation marks and citation omitted), and *Elbrecht v. Carambola Partners, LLC*, 2010 U.S. Dist. LEXIS 72158 (D.V.I. July 16, 2010). (Motion, p. 19) United further argued that “[h]ere, there are no exceptional or unusual circumstances that would make it unfair for United to recover prejudgment interest” and that “[t]o the contrary, it would be entirely unfair to United if the Partnership is allowed to have the uncompensated use of the United’s money after it made demand for payment in May of 2013.” (Id., at pp. 19-20) As such, United concluded that it is

entitled to “an award of prejudgment interest on the outstanding Bay [sic] 5 and 8 rents from the date demand for rent was made on May 17, 2013 to the date the Master renders his determination at a rate of \$195.78 per day”³ (Id., at p. 20) and “an award of prejudgment interest on the rent actually awarded by the Rent Order in the amount of \$881,995 as of May 11, 2015, when the rent was paid to United.”⁴ (Id., at pp. 20-21) Furthermore, United requested an evidentiary hearing “in the event that the Master determines there to be issues of fact as to the entitlement or amount of prejudgment interest due to United for Bays 5 and 8 as well as for the previously ordered rent as to Bay 1.” (Id., at p. 21)

In his opposition, Hamed argued that Yusuf’s claim for prejudgment interest on the rent awarded for Bay 1 and past rent for Bays 5 and 8 should be denied. Hamed pointed out that Yusuf’s claim for prejudgment interest on the rent awarded for Bay 1 should be denied for the following reasons: (1) “it is really just an attempt to seek reconsideration of [the Rent Order]” (Opp., p. 6) – (i) United did not seek prejudgment interest in the original counterclaim, the original motion to the Court or the reply thereto (Id.), (ii) the Rent Order did not award any prejudgment interest (Id.), (iii) United’s “failure to compute the requested interest damages and include them in his...motion and...reply make this motion for reconsideration” (Id., at p. 7), and (iv) United has “procedurally missed the time for filing a motion for reconsideration and further, [it] cannot meet the substantive requirements for requesting a motion to reconsider...” (Id., at p. 9); (2) “since there was no definite rate and no stated interest rate for late or non-payment in the alleged contract, the amount is in dispute and should not be awarded” (Id., at p.

³ According to United:

Yusuf has calculated the interest due from the demand through September 30, 2016, when the claims were filed is [sic] \$241,005.18. Such interest continues to accrue at the daily rate of \$195.78 until paid off. Upon a determination of the amount due for the unpaid rents for Bays 5 and 8, the Master can assess the additional interest due from September 30, 2016 to the date of such a determination. (Motion, p. 20)

⁴ According to United:

...the interest that accrued at 9% per annum on the rent actually awarded by the Rent Order (\$6,248,924.14) is \$881,955.08 as of May 11, 2015, when the rent was paid to United. (Id.)

6) – (i) United “seeks interest on the basis of the fourth option [under Title 11 V.I.C. section 951]” but “Judge Brady did not find a ‘contract [with] no interest specified’” (Id., at p. 10) (emphasis omitted), (ii) “[t]here was no finding as to what interest was agreed to by the parties from Judge Brady – nor can the Special Master now, retroactively, determine whether or not ‘no rate was specified’” (Id.), and (iii) “Judge Brady would have to consider this related argument” (Id.); (3) “even if such interest were to be awarded, it would only be from September 30, 2016 because no demand was made for prejudgment interest as to Bay 1 until September 30, 2016” (Id., at p. 6) – (i) “it is clear that pre-judgment interest runs from the date of demand [for interest]” and “[d]emand for interest on Bay 1 was never made in this case prior to the 2012 start of litigation, in the counterclaim or in the original rent motion” (Id., at p. 9); (ii) “[d]emand for interest on Bay 1 was never made in this case prior to the 2012 start of litigation, in the counterclaim or in the original rent motion” (Id.); (iii) “[t]hus, even if interest were said to run, it would only run from the date of the claim document on September 30, 2016—the first and only place Bay 1 interest is raised” (Id.); (iv) “the back payment of rent for Bay 1 occurred on May 11, 2015” (Id.); and (v) “this would be a matter for Judge Brady, not this claims process.” (Id.); and (4) “a demand for interest on Bay 1 is not within the statute” (Id., at p. 10) – (i) United “seeks interest on the basis of the fourth option ‘money due or to become due where there is a contract and no rate is specified’” but “Judge Brady did not find ‘a contract [with] no interest specified’” (Id.) (emphasis omitted); (ii) “[t]here was no finding as to what interest was agreed to by the parties from Judge Brady – nor can the Special Master now, retroactively, determine whether or not ‘no rate was specified’” (Id.); and (iii) “this is why Judge Brady would have to consider this related argument.” (Id.) Hamed pointed out that Yusuf’s claim for prejudgment interest on past rent for Bays 5 and 8 should be denied for the following reasons: (1) for the same reasons pointed out for prejudgment interest on the rent for

Bay 1 (Id., at p. 11); (2) “there was not even a verbal contract to pay rent, much less a specified amount of rent or even any specific period of time for which rent should be paid” (Id.); (3) “Yusuf repeatedly admits... that there never was any contemporaneous requests for rent” and “Wally and Willie both dispute that rent was ever requested for Bays 5 and 8” (Id., at p. 13) (emphasis omitted); and (4) “[t]he requirements of [under Title 11 V.I.C. section 951(a)(4) for awarding interest have not been met by [United]” (Id., at p. 18) As such, the Hamed requested the Master to deny United’s revised motion for summary judgment as to Yusuf Claim Nos. Y-3 and Y-4.

In its reply, United did not address the arguments raised in Hamed’s opposition as to Yusuf Claim Nos. Y-3 and Y-4.

A. Prejudgment Interest

Title 11 V.I.C. §951(a)(4) provides that “[t]he rate of interest shall be nine (9%) per centum per annum on — money due or to become due where there is a contract and no rate is specified.⁵ Title 11 V.I.C. §951(a)(4). “The grant or denial of prejudgment interest remains within the sound discretion of the trial court.” *Isaac v. Crichlow*, 63 V.I. 38, 69-70 (Super. Ct. Feb 10, 2015) In *Williams v. Edwards*, the court stated:

The assessment of prejudgment interest is permissible where the interests of justice so demand. Prejudgment interest is normally granted, except in exceptional or unusual circumstances that make the award for interest inequitable. As a general rule, prejudgment interest is to be awarded when the amount of the underlying liability is reasonably capable of ascertainment and the relief granted would otherwise fall short of making the claimant whole because he or she has been denied the use of the money which was legally due. *Williams*, 2017 V.I. LEXIS 105 *6 (Super. Ct. July 12, 2017) (internal quotation marks and citation omitted); *see also, Isaac*, 63 V.I. at 69.

The Master must note at the outset that United’s arguments failed to distinguish between prejudgment interest for rent awarded for Bay 1 and prejudgment interest for past rent

⁵ In its motion, United argued that it “is entitled to recover prejudgment interest at 9% per annum, as provided by V.I. Code Ann. Tit. 11§ 951(a)(4).”

for Bays 5 and 8. Thus, the Master must infer that United's arguments as to prejudgment interest for rent awarded for Bay 1 and United's arguments as to prejudgment interest for past rent for Bays 5 and 8 are on the same grounds.

1. Yusuf Claim No. Y-3: Prejudgment Interest on the Rent Awarded by the Rent Order to United for Bay 1

United argued that it is entitled to recovery prejudgment interest at the rate of 9% per annum on the rent awarded by the Rent Order pursuant to Title 11 V.I.C. §951(a)(4) because "there are no exceptional or unusual circumstances that would make it unfair for United to recover prejudgment interest" and that "[t]o the contrary, it would be entirely unfair to United if the Partnership is allowed to have the uncompensated use of the United's money after it made demand for payment in May of 2013." (Id., at pp. 19-20) The Master finds United's argument unpersuasive. United stated in its September 9, 2013 motion to withdraw rent:

The parties have settled in the past any rents owing to Defendant United Corporation once every seven to ten year period. That has been the customary practice between the parties: that United is entitled to make demands for rent as it sees fit. For example, the parties settled the rents due between 1986 and 1993, and between 2004 and 2011. In both periods, the parties settled the rent when requested by United. There was no dispute as to amount, and neither was there a dispute as to whether Statute of Limitations applied. As for the period of 1994 to 2004, United held off on the demand for rent because certain financial records were seized by the U.S. Government and were therefore unavailable to Defendant United to ensure proper calculation (as to the exact period of time) of the rents due. See, Affidavit of Fathi Yusuf, EXHIBIT A. At no time did Plaintiff Hamed ever contend that Defendant United was not entitled to any rents due as to trigger the running of the Statute of Limitations. It is only after the September 18th, 2012 action in this case was filed did Plaintiff Hamed decide to contest something as basic as the rent due. (United's September 9, 2013 motion, pp. 6-7) (Emphasis added)

The foregoing shows that it was common practice for the Partnership to make lump sum rent payments when United made rent payment demands, as opposed to monthly or even yearly rent payments, and that the construct of Parties' rent payment arrangement for Bay 1 throughout their relationship never provided for prejudgment interest. Thus, the Master finds it inequitable and unjust to award prejudgment interest in this instance. *Williams*, 2017 V.I. LEXIS 105 *6

(“The assessment of prejudgment interest is permissible where the interests of justice so demand. Prejudgment interest is normally granted, except in exceptional or unusual circumstances that make the award for interest inequitable”) (internal quotation marks and citation omitted). As such, the Master concludes that United has not satisfied his burden of establishing that there is no genuine dispute as to any material fact regarding Yusuf Claim No. Y-3.⁶ *See Rymer*, 68 V.I. at 575-76 (quoting *Williams*, 50 V.I. 191, 194) (“Because summary judgment is “[a] drastic remedy, a court should only grant summary judgment when the ‘pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.’”)

In fact, upon review of the record before the Master, the Master finds that Yusuf never addressed any of Hamed’s assertions in his opposition, such as Hamed’s assertion that “[d]emand for interest on Bay 1 was never made in this case prior to the 2012 start of litigation, in the counterclaim or in the original rent motion.” United’s failure to address Hamed’s assertions in its reply, coupled with United’s arguments in its September 9, 2013 motion to withdraw rent, make clear that there is no genuine dispute as to any material fact regarding the construct of Parties’ rent payment arrangement for Bay 1 throughout their relationship never provided for prejudgment interest. As such, pursuant to Rule 56(e),⁷ the Master will grant summary judgment in favor of Hamed as to the issue of prejudgment interest on the rent awarded by the Rent Order for Bay 1. *See Isaac*, 63 V.I. 38, 69-70 (“The grant or denial of prejudgment interest remains within the sound discretion of the trial court.”)

⁶ In light of the Master’s finding, the Master need not address the arguments raised by Hamed.

⁷ V.I. R. CIV. P. 56(e) provides that:

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: (1) give an opportunity to properly support or address the fact; (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; or (4) issue any other appropriate order. V.I. R. CIV. P. 56(e)(1)-(4).

2. Yusuf Claim No. Y-4: Prejudgment Interest on the Past Rent Due to United for Bays 5 and Bay 8

In light of the Master's November 14, 2019 Order denying United's revised motion for summary judgment as to Yusuf Claim No. Y-2: past rent due to United for Bays 5 and 8, there is no monetary award subject to prejudgment interest. As such, the Master cannot address United's request for prejudgment interest on the past rent due to United for Bays 5 and Bay 8 until a final assessment of United's request for past rent due to United for Bays 5 and Bay 8 is made. Thus, the Master concludes that United has not satisfied his burden of establishing that there is no genuine dispute as to any material fact regarding Yusuf Claim No. Y-4. *See Rymer*, 68 V.I. at 575-76 (quoting *Williams*, 50 V.I. 191, 194) ("Because summary judgment is "[a] drastic remedy, a court should only grant summary judgment when the 'pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.'")

CONCLUSION

Based on the foregoing, the Master will deny United's revised motion for summary judgment. Accordingly, it is hereby:

ORDERED that United's revised motion for summary judgment as to Yusuf Claim No. Y-3: prejudgment interest on the rent awarded by the Rent Order to United for Bay 1 is **DENIED**. It is further:

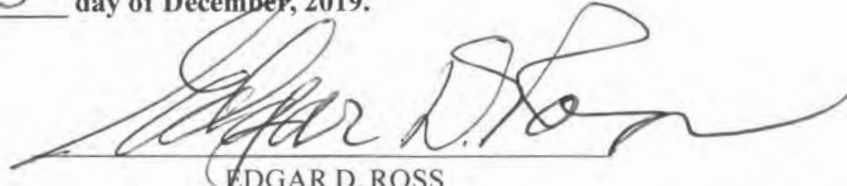
ORDERED that summary judgment in favor of Hamed as to the issue of prejudgment interest on the rent awarded by the Rent Order for Bay 1—the construct of Parties' rent payment arrangement for Bay 1 throughout their relationship never provided for prejudgment interest—is **GRANTED**. **And** it is further:

ORDER

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ORDERED that United's revised motion for summary judgment as to Yusuf Claim No. Y-4; prejudgment interest on the past rent due to United for Bays 5 and Bay 8 is **DENIED** **WITHOUT PREJUDICE**.

DONE and so **ORDERED** this 3rd day of December, 2019.



EDGAR D. ROSS
Special Master