

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

MOHAMMAD HAMED, by his
authorized agent **WALEED HAMED**,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and UNITED CORPORATION,

Defendants/Counterclaimants,

vs.

**WALEED HAMED, WAHEED HAMED,
MUFEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.**,

Additional Counterclaim Defendants.

CIVIL NO. SX-12-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF**

JURY TRIAL DEMANDED

MOTION TO STRIKE JURY DEMAND

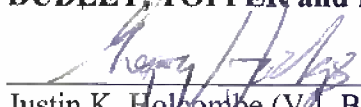
Defendants/counterclaimants Fathi Yusuf and United Corporation, through their undersigned attorneys, Dudley, Topper and Feuerzeig, LLP, respectfully submit this Motion to Strike Jury Demand. As more fully set forth in the accompanying memorandum of law, this Court should strike Plaintiff's demand for a jury trial because the claims set forth in the Amended Complaint are equitable.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: September 29, 2014

By:


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CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of September, 2014, I caused the foregoing **Motion to Strike Jury Demand** to be served upon the following via e-mail:

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CIVIL NO. SX-12-CV-370

ACTION-FOR-DAMAGES,
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

MEMORANDUM IN SUPPORT OF MOTION TO STRIKE JURY DEMAND

Defendants/counterclaimants Fathi Yusuf and United Corporation (collectively, the “Defendants”), through their undersigned attorneys, Dudley, Topper and Feuerzeig, LLP, respectfully submit this Memorandum in Support of Motion to Strike Jury Demand. In support, the Defendants state as follows:

I. ARGUMENT

A. THE AMENDED COMPLAINT ASSERTS ONLY EQUITABLE CLAIMS THAT ARE NOT TRIABLE BY JURY.

Section 3 of the Revised Organic Act of 1954 makes the Seventh Amendment right to a jury trial applicable to the Virgin Islands. However, the Seventh Amendment “protects a litigant’s right to a jury trial only if a cause of action is legal in nature and involves a matter of ‘private right.’” Granfinanciera, S.A. v. Norberg, 492 U.S. 33, 42 n.4 (1989); see also Ross v. Bernhard, 396 U.S. 531, 538 (1970). The Third Circuit, discussing Granfinanciera, has explained that the Supreme Court views the Seventh Amendment’s invocation of the phrase

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“suits at common law” to encompass actions at law, and not those in equity, and thus, “no jury right attaches to equitable claims.” Billing v. Ravin Greenberg & Zackin, P.A., 22 F.3d 1242, 1245 (3d Cir. 1994); see also Hatco Corp. v. W.R. Grace & Co. – Conn., 59 F.3d 400, 411-412 (3d Cir. 1995) (holding that a plaintiff seeking restitution was not entitled to a jury trial because “[r]estitution is based on substantive liability having its origins in unjust enrichment or the restoration to a party in kind of his lost property or its proceeds”).

As this Court has already determined, “Plaintiff maintains this action seeking equitable relief, and this Court may grant such equitable (i.e. injunctive) relief to enforce Plaintiff/partner's rights to an equal share of the partnership profits and equal rights in the management and conduct of the partnership, pursuant to 26 V.I. Code §75(b)(1) and (2)(i).” Hamed v. Yusuf, 58 V.I. 117, 134 (V.I. Super. Ct. 2013). This Court’s finding that Plaintiff’s claims are equitable is in line with numerous other decisions holding that “historically an accounting between partners has been exclusively an equity action.” Kline Hotel Partners v. Aircoa Equity Interests, Inc., 729 F. Supp. 740, 743 (D. Colo. 1990) citing Kirby v. Lake Shore & Mich. So. R.R. Co., 120 U.S. 130, 134 (1887); see also Phillips v. Kaplus, 764 F.2d 807, 813 (11th Cir. 1985) (“It has been said that a court of equity is the only forum in which partnership affairs can be settled”); Swift Bros. v. Swift & Sons, 921 F. Supp. 267, 272 (E.D. Pa. 1995) (Pennsylvania courts “routinely treat claims of partners' breach of partnership obligations as matters to be resolved in equity”).

While Plaintiff cites a few statutes in his Amended Complaint, this does not transform his claims into “legal” claims. See, e.g., Tranberg v. Maidman, 18 V.I. 556, 558 (D.V.I. 1981) (“It seems that the basis for this claim is that the cause of action here has a statutory basis, 28 V.I.C. § 209. It is not made clear why this should affect the equitable nature of the relief; and in fact it does not”). Indeed, each claim seeks relief based on the existence of a partnership and/or the

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accounting of funds held by a partnership. See, e.g., Am. Comp. at ¶¶35-37, 41-42, 44-46.

Thus, it is clear that these claims can only be adjudicated in a bench trial.

II. CONCLUSION

Since the Amended Complaint seeks equitable relief, this Court should strike Plaintiff's demand for a jury trial and grant such further relief as is just and proper.

Respectfully submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: September 29, 2014

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I hereby certify that on this 29th day of September, 2014, I caused the foregoing **Memorandum in Support of Motion to Strike Jury Demand** to be served upon the following via e-mail:

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–ACTION FOR DAMAGES, –
INJUNCTIVE RELIEF
AND DECLARATORY RELIEF

JURY TRIAL DEMANDED

ORDER

Upon consideration of Defendants’ Motion to Strike Jury Demand (the “Motion”) and for good cause shown, it is hereby

ORDERED that the Motion is **GRANTED**; and it is further

ORDERED that that the demand for jury trial in the First Amended Complaint is hereby **STRICKEN**; and it is further

ORDERED that Plaintiff’s claims shall be tried in a bench trial.

Dated: _____

Douglas A. Brady
Judge of the Superior Court

ATTEST:

Estrella George
Acting Clerk of the Court

By: _____
Court Clerk Supervisor