

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 and Counterclaimants.

vs.

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

Counterclaim Defendants.

Case No.: SX-2012-cv-370

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

JURY TRIAL DEMANDED

MOHAMMAD HAMED,

Plaintiff,
vs.

FATHI YUSUF,

Defendant.

Case No.: SX-2014-CV-278

**ACTION FOR DEBT AND
CONVERSION**
JURY TRIAL DEMANDED

**PLAINITFF HAMED'S
NOTICE OF SUPPLEMENTAL AUTHORITY**

On May 13, 2014, Plaintiff Hamed filed a *Motion For Partial Summary Judgment as to Statute of Limitations*. The matter was fully briefed.

Thereafter, on January 12, 2016, the V.I. Supreme Court issued a decision in the related case of *United v. Waheed Hamed*, 2016 WL 154893 (2016). That Court held as follows:

United Corporation appeals from two Superior Court orders holding that its claims against Waheed Hamed were barred by the statute of limitations. Because there was a genuine issue of material fact regarding when the statute of limitations began to run in this case, we reverse and remand the case for further proceedings.

* * * *

III. DISCUSSION

On appeal, United urges us to reverse the Superior Court's orders granting Hamed judgment on the pleadings and summary judgment because United's statute-of-limitations defense was an issue of fact that must be decided by a jury. We agree.

* * * *

In Hamed's motion for judgment on the pleadings, he asserted only that United's claims were barred by the statute of limitations. While Hamed is correct that United's claims are subject to a six-year statute of limitations under 5 V.I.C. § 31(3), United argued in its opposition to Hamed's motion that the statute of limitations was tolled because—as alleged in the complaint—United did not discover Hamed's conduct until 2011. United's opposition further argued that it also had no reason to suspect that Hamed had engaged in any misconduct before that time.

“The discovery rule tolls the statute of limitations when, despite the exercise of due diligence, the injury or its cause is not immediately evident to the victim.” *Santiago v. V.I. Hous. Auth.*, 57 V.I. 256, 273 (V.I. 2012). “Under the discovery rule, the focus is not on the plaintiff's actual knowledge, but rather whether the knowledge was known, or through the exercise of diligence, knowable to the plaintiff.” *Id.* (internal quotation marks and alterations omitted). Because the application of the discovery rule rests on when a party knew or should have known of its injury, it is typically a question of fact. *Joseph v. Daily News Publ'g Co.*, 57 V.I. 566, 590 (V.I. 2012) (a party's “knowledge” is a question of fact); *In re Estate of Small*, 57 V.I. 416, 430 (V.I. 2012) (“actual notice” or “actual knowledge” are questions of fact). Because “the statute of limitations is an affirmative defense” involving issues of fact, *Rennie*, 62 V.I. at 536, it typically cannot be decided on the pleadings alone. See *Gen. Conference Corp. of Seventh–Day Adventists v. Seventh–Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir.1989) (“[I]f the defendant raises an affirmative defense in his answer it will usually bar judgment on the pleadings.”); but see *Int'l Mktg., Ltd. v. Archer–Daniels–Midland Co.*, 192 F.3d 724, 731 (7th Cir. 1999) (“[I]n some cases a complaint so clearly reveals the existence of [a] defense that judgment on the pleadings is possible.”).

* * * *

the Superior Court entered summary judgment in Hamed's favor on September 2, 2014. In granting summary judgment, the Superior Court held that because United failed to file the affidavit as directed—or to respond at all to the order—it would rule on the merits of Hamed's summary judgment motion. In doing so, the Superior Court held that there was “no genuine issue of material fact ... because, even construing the facts in a light most favorable to [United], no reasonable jury could find that [Hamed's] 1992 tax returns were not among the documents available for review in 2003” in the federal prosecution. The Superior Court then held that United “should have discovered [Hamed's] alleged conduct by at least 2003 by exercising reasonable diligence.”

* * * *

even if access to these documents had been relevant to the summary judgment analysis, **the nonmoving party cannot be required to definitively prove its case at summary judgment, or to even provide the most convincing evidence supporting its case. Its only burden is to submit sufficient evidence to create a genuine issue of material fact for a jury to resolve.** Machado, 61 V.I. at 379.

Thus, there can be no determination of a statute of limitations defense by a trial court on motions where a nonmoving party has met its sole burden – the “burden [] to submit sufficient evidence to create a genuine issue of material fact” whereupon the trial court **MUST** submit the factual issues to “a jury to resolve.”¹

Dated: November 15, 2016



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¹ The holding applies identically to the Court's decision as to back rent dated April 27, 2015. Notice is hereby given as to that determination as well.

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CERTIFICATE OF SERVICE

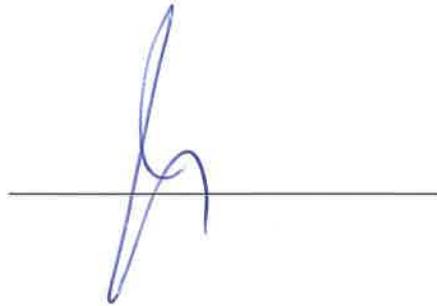
I hereby certify that on this 15th day of November, 2016, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross
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A handwritten signature in blue ink is positioned above a horizontal line. The signature is stylized and appears to be the initials 'CJH'.