

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

**PLAINTIFF HAMED'S OPPOSITION TO YUSUF'S MOTION TO STRIKE
HAMED'S NOTICE OF SUPPLEMENTATION OF RECORD
AS TO THE EXPERT REPORT OF DAVID JACKSON**

On October 17, 2016, Plaintiff Hamed filed his revised *Notice of Partnership Claims and his Objections*. On page 6, at footnote 7, he referenced the *Expert Report of David Jackson* in support of his contention as to "Yusuf's exclusive control of the business accounting" and the impossibility of a valid pre-2012 partnership accounting.

⁷ See, Expert Report of Lawrence Schoenbach, attached as Exhibit C. This is a report done pursuant to the Court's scheduling order - **as was the Expert Report of David Jackson filed on August 1, 2014**. See also the extensive averments of the parties and detailed findings of this Court of record **as to Yusuf's exclusive control of the business accounting** recited in that Expert Report at footnote 7, pages B-9.

Because he had not attached it as an exhibit to that filing, on December 1, 2016, Hamed filed a supplementation of the record to provide the Court with a copy of the Jackson Expert Report referenced therein.

On December 12, 2016, rather than replying to what is now an uncontested motion -- Yusuf elected only to file a motion to strike with two procedural points:

1. A re-hash of the erroneous argument that Hamed should not file anything with the Court, but instead should be directing all pleadings in this action to the Master – which has been repeatedly addressed and will therefore be ignored, and,
2. The startling and bizarre position that Hamed cannot put an expert report, to which he has directed the court's attention to in a motion, before the Court in support of a motion.

At about the same time (December 7th and 12th), Yusuf, after previously suggesting that Hamed cannot supplement HIS claims filings after September 30, 2016, also filed a supplementation to Yusuf's claims – which will be briefly discussed as it relies on a similarly twisted and incomprehensible argument.

A. Jackson Report is the same as BDO, JVZ and Schoenbach Reports

CPA David Jackson, the CPA firm of Jackson Vizcaino Zomerfeld, and Lawrence Schoenbach provided three expert reports which each state that under Yusuf's exclusive control of the partnership accounting, (1) there are no requisite pre-2012 contemporaneous accounting of the value of the partnership accounts, and (2) because most of the underlying financial records are missing, **any RUPA accounting of the**

value of the respective partners' prior to 2012 is impossible.¹ All of these expert reports are in total, 100% agreement with the expert report Yusuf submitted from BDO – which expressly stated that (1) no contemporaneous accountings of the value of partnership shares had been kept for 1986-2011, and that the underlying records that would allow a sufficient reconstruction were mostly missing -- at page 22:

Our report and the findings included herein have been impacted by **the limitation of the information available in the Case**. Following is a summary of the limitations we encountered during the performance of the engagement.

Accounting records of Plaza Extra-East were destroyed by fire in 1992 and the **information was incomplete and/or insufficient to permit us to reconstruct a comprehensive accounting of the partnership accounts before 1993**. (Emphasis added).

Accounting records and/or documents (checks registers, bank reconciliations, deposits and disbursements of Supermarkets' accounts) provided in connection with Supermarkets **were limited to covering the period** from 2002 through 2004, East and West from 2006 through 2012, and Tutu Park from 2009 through 2012. (Emphasis added).

Accounting records and/or documents provided to us for the **periods prior to 2003 are incomplete** and limited to bank statements, deposit slips, cancelled checks, check registers, investments and broker statements, cash withdrawal tickets/receipts and cash withdrawal receipt listings. For example, the retention policy for statements, checks, deposits, credits in Banco Popular de Puerto Rico is seven years; therefore, **there is no Bank information available prior to 2007 and electronic transactions do not generate any physical evidence** as to regular deposits and/or debits." (Emphasis Added").

And:

At page 2: "Nevertheless, certain investments bought and sold by Mr. Waleed Hamed, **which Mr. Yusuf understands were not included** in the initial reconciliation were taken into consideration in our analysis. (Emphasis added)

¹ Hamed again notes that there is a procedure under USVI law for dealing with RUPA partnerships when this occurs – and that once the Court acknowledges that such an accounting is impossible as all experts have stated, this case can move on to deal with the post-2012 issues.

At page 13: "In order to identify all monies withdrawn from the Partnership through checks we identified available checks . . . Our examination included **available** Partnership bank accounts. . ." (Emphasis Added).

At page 14: "Our examination included reviewing **any available supporting documentation** of such disbursements in order to determine whether such withdrawals/disbursements constituted partnership distributions." (Emphasis Added).

At page 16: "Therefore, any excess of monies identified over the **known sources** of income during the period analyzed was assumed to be partnership distributions and/or partnership withdrawals." (Emphasis Added).

At page 16: ". . .when books and records are **incomplete, inadequate, or not available, such as in this case.**" (Emphasis Added).

All of the other expert reports – both from Yusuf and Hamed -- are part of the record here, as is the expert report of Integra supplied by Yusuf. **All Hamed did was include the Jackson report along with the other four, for the Court's review.**

There is no factual dispute among these reports. It is incomprehensible that Yusuf now contends that his BDO and Integra expert reports SHOULD be considered – but the Jackson report should not.

B. The “Yusuf Supplementations of Claims” of December 7th and 12th

Similarly bizarre are Yusuf's supplementations filed on December 7th and 12th – particularly in light of Yusuf's own October 24, 2016 "*Motion to Strike Hamed's First Supplemental Claims.*" In that motion, Yusuf complained that absolutely NO supplementation of the September 30th partnership claims could be allowed. Yet in the new filings he seeks to submit a claim that is singularly strange and incomprehensible:

1. It pertains solely to real property in a foreign country (Jordan).
2. Property that is in Mohammad Hamed's sole title – and with Hamed being dead is clearly subject to probate-type procedures in that country,

3. Property that Yusuf now claims was subject to an unwritten settlement contract with the deceased, which would be unenforceable here.

4. And a settlement contract that was never performed while Hamed was alive.

In any event, clearly disputes as real property in Jordan must be resolved in Jordan with Jordan's equivalent of probate court.

In summary, if Yusuf is taking the position that there should be no supplementation of the record, this is a strange and peculiar place to start – and seems to be directly contradictory to the instant motion.

CONCLUSION

The Court should consider the Jackson Report, like all of the other expert Reports – no more or less.

Dated: December 19, 2016



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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of December, 2016, I served a copy of the foregoing by email, as agreed by the parties, on:

Hon. Edgar Ross

Special Master
% edgarrossjudge@hotmail.com

Gregory H. Hodges

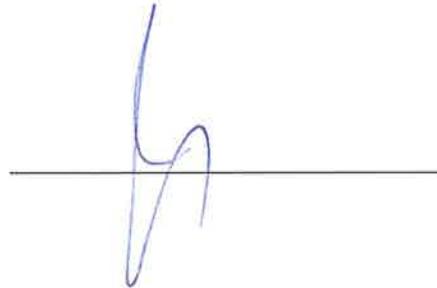
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A handwritten signature in blue ink is positioned above a horizontal line. The signature is stylized and appears to be the initials 'JBC'.