**IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

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| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, | **Case No.: SX-2012-CV-370** |
| *Plaintiff/Counterclaim Defendant*, |  |
|  vs.**FATHI YUSUF** and **UNITED CORPORATION** | **ACTION FOR DAMAGES, INJUNCTIVE RELIEF AND DECLARATORY RELIEF** |
|  |  |
| *Defendants and Counterclaimants*. vs. **WALEED HAMED, WAHEED** **HAMED, MUFEED HAMED, HISHAM HAMED,** **and PLESSEN ENTERPRISES, INC.**,  *Counterclaim Defendants*, | JURY TRIAL DEMANDED |
|  | Consolidated with |
| **WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff,* vs.  | **Case No.: SX-2014-CV-287** |
| **UNITED CORPORATION,** *Defendant.* |  |
| *­­­­­­*­­**WALEED HAMED**,as the Executor of the Estate of MOHAMMAD HAMED, *Plaintiff*  vs.  **FATHI YUSUF**, *Defendant.* | Consolidated with**Case No.: SX-2014-CV-278** |
| *­­­­­­*­­**FATHI YUSUF**, *Plaintiff*, vs. **MOHAMMAD A. HAMED TRUST***, et al,* *Defendants.* | Consolidated with**Case No.: ST-17-CV-384** |
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**HAMED'S MOTION AS TO HAMED CLAIM H-167:**

**UNDOCUMENTED PAYMENTS TO AN UNKNOWN VENDOR FROM PARTNERSHIP FUNDS DURING THE PERIOD WHEN HAMED WAS EXCLUDED FROM ACCOUNTS**

**I. Introduction**

 Hamed's claim H-167 alleges the Yusufs' wrongful spending of two Partnership checks, apparently approved by Nejeh Yusuf, in the total amount of $19,500. There is no supporting documentation, and the two checks were to a vendor unknown to Hamed. CPAs discovered this took place just after Judge Brady's TRO, in the Spring of 2013, while Hamed was illegally (under RUPA) excluded from reviewing Partnership Accounts.

**II. Facts**

 This matter began on August 20, 2012, when Fathi and Mike Yusuf unilaterally stated that Hamed was not a partner in the three supermarkets and took $2,784,706.25 from a Partnership account, transferring it to the *United Tenant Account,* where the Hameds could not see what was happening. Yusuf and United then spent that Partnership money for non-supermarket, non-United investments. Those acts were the issue in Hamed's September 17, 2012 complaint here—and a central focus during Spring of 2013.

 Hamed then filed for a TRO, alleging at paragraph 17, that "Yusuf unilaterally and wrongfully converted $2.7 million from the Plaza Extra supermarket accounts. . . ." Thereafter, because Hamed had the temerity to press a TRO to stop this, Yusuf called the police to the store, asserted a criminal charge against the Hameds and demanded the police remove them from the stores or he would "shut them down". In response, Judge Brady granted an emergency evidentiary TRO hearing on January 25th and 31st, 2013.

 While excluding Hamed from the ability to see what was being spent during Spring of 2013,Yusuf also began paying out Partnership funds to his personal lawyer[[1]](#footnote-1)and, as is the case here, to his sons' business associates unknown to the Hameds—persons and entities with whom the Partnership had never previously done business, and never again did so after Hamed regained the ability to see transactions. Nor has Hamed's counsel been able to locate such a business on St. Croix or elsewhere. **Exhibit 1**, *Dec. of Counsel*.

 However, on April 25, 2013, this Court ruled for Hamed. Judge Brady found the following at paragraph 38 of that Order: "Funds from supermarket accounts have also been utilized unilaterally by Yusuf, without agreement of Harmed. . . ." *Id*. at 11, para. 38; and at page 10, footnote 9, "a real concern exists that continuing diversions will not be traceable as the Plaza Extra store have had no system of internal controls in existence...." Finally, Judge Brady found that not only had the Yusufs taken money out of the Partnership Accounts, but, at 5, ¶ 36, he stated that they then lied to the Court under oath about the funds—about *non-Partnership, non-United entities* to which the funds were provided.[[2]](#footnote-2)

36. On the first hearing day, [under cross-examination with documents] Mahar Yusuf, President of United Corporation testified under oath that he used the $2,784,706.25 withdrawn from the Plaza Extra operating account to buy three properties on St. Croix in the name of United. On the second hearing day, **Mahar Yusuf contradicted his prior testimony and admitted** that those withdrawn funds had actually been used to invest **in businesses not owned by United, including a mattress business**. . . .

 Thus, when Hamed's CPAs examined the books of the Partnership, they explicitly were looking for "unknown vendors". See *Exhibit 2* at ¶ 5(d), *CPA's* *Declaration.*

d. [The CPAs] Reviewed the general ledger for **strange or unusual transactions (transactions such as duplicate payments, payments to parties in interest, *payments to unknown vendors***, large or unusual adjustments and unexplained journal entries). (Emphasis added.)

 This is how, in the RUPA 'winding-up' review of the books, Hamed was able to determine that *just a month after Judge Brady's decision but before Hamed regained access*, Yusuf was writing Partnership Account checks to several "unknown vendors", Claim H-167 being just one example, as Yusuf wrote a check to Daytona for $15,000 on May 27th. This is the entry as it appears in the Partnership's books, and (as discussed below) this and the cancelled checks are the ONLY information Hamed has *ever* received in the financials, Sage50 computer accounting system, Bi-Monthly Reports or elsewhere:

295456, PJ, Daytona Beach Market And Deli, $15,000 5/27/13, 37866, Cdj, Daytona Beach Market And Deli - Invoice: 295456[[[3]](#footnote-3)]

 Moreover, Yusuf was unable to provide any contract, invoice, receipt, correspondence, vendor identification or other documentation in discovery—filing what is an obviously evasive response—a REALLY, improper, evasive response.

**RFPD 18 of 50**: H-167 "Checks to Daytona Beach Market & Deli."

With respect to H-167, please provide all documents which relate to, support and explain all [two] of the 2013 general ledger entries "checks to Daytona Beach Market & Deli," including, but not limited to **documents identifying that entity**, invoices, bank statements, credit card statements, and canceled checks. **This is an unfamiliar vendor to the Hameds**. (Emphasis added.)

**Response:** Defendants object on the grounds that the responsive information cannot be readily obtained by making reasonable inquiries as these inquiries require the skilled and detailed attention and focus of John Gaffney, former Partnership accountant, to revisit his accounting and work papers. Yusuf is no longer being paid to function as the Liquidating Partner to answer questions on behalf of the Partnership and the accounting that took place during the liquidation process. Likewise, John Gaffney is no longer employed by the Partnership to function in the role as Partnership accountant. To respond to these questions, the expertise and knowledge of John Gaffney is necessary, which diverts him away from his employment with United. Rather, if Hamed seeks information from John Gaffney for questions as to the accounting efforts he undertook as the Partnership accountant, Hamed should be required to compensate John Gaffney for his time in researching and preparing those responses. Furthermore, many of these inquiries as to the Partnership accounting are duplicative of questions Gaffney has previously addressed at or near the time that the transactions took place. **Reorienting now as to transactions from years ago constitutes an undue burden and causes unnecessary time and expense.**[[[4]](#footnote-4)] If Hamed seeks to revisit these issues, Hamed should bear the cost Without waiving any objection, Defendants show that the documentation relating to same has been provided previously as part of the documentation provided with the Bi-Monthly report. Hence, **Yusuf objects to further reproducing information that *has already been provided* as the burden to secure the information is equally borne by Hamed**.[[[5]](#footnote-5)]

**III. Applicable Law**

 "Property acquired by a partnership is property of the partnership and not of the partners individually." 26 V.I.C. § 23 (the "Revised Uniform Partnership Act" or "RUPA"). "Property is partnership property if acquired in the name of the partnership." RUPA §24(a)(1). "A partner may use or possess partnership property *only on behalf of the partnership*." RUPA § 71(g). Most importantly, RUPA § 74(a)(2) imposes a partner's duty:

(2) to refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership.

Thus, when the Yusuf's provided funds to Daytona for the benefit of United or Nejeh's other business interests or themselves, he created a debit to the Yusuf section 71(a) partnership account. In the context of RUPA, taking funds from your partner when denying him the ability to see the books is not tortious conversion, fraud or embezzlement—it is simply a 'RUPA wind-up' claim for a credit to the partner's account. Hamed makes that claim here.

**IV. Argument**

 No doubt Yusuf will magically "find" documents not provided in discovery that attest that Daytona was a really well-known and legitimate supplier of purple widgets—and that for two weeks in the Spring of 2013, unbeknownst to Willie Hamed (who was at the St. Thomas store all the time) purple widgets were *all the rage with the kids* and $15,000 of them sold like hotcakes making a splendid profit. (They were, no doubt, so popular, another $4,000 of them were purchased in October.) But, having refused to produce those documents in discovery because they were 'irrelevant', 'too old to bother with', 'something only Gaffney would know about' or 'that Hamed should pay for'—and lying to the Court by attesting in the discovery response that those documents HAD been provided in the Bi-Monthly Reports, Sage50 or otherwise—**Yusuf cannot now rely on such documents** **in opposition**. Any attempt to sandbag Hamed with documents previously withheld in direct contravention of Rule 34 will be met with an immediate motion to strike them.

 Thus, these are two totally unknown and unidentified payments of Partnership funds to folks only the Yusufs knew—with no contracts, no invoices, no identification of the vendor, no surrounding communications, no receipts, no knowledge of the Hameds about the vendor and no other documentary support. Absent any documentation with supporting detail, the entries are bogus—just something Yusuf told his bookkeeper to write. Just ink.

**V. Conclusion**

 In the Spring of 2013, the Yusufs directly and openly *lied* to this Court about taking funds and for what they were used. They only admitted this was a lie on a second day of the hearing a week later—in a brutal cross-examination where Mike Yusuf was confronted with documents *showing* he had lied. Similarly, just this week, Yusuf has (belatedly) admitted that during *that same 2013 period* he took almost $400,000 out of the Partnership to pay his lawyers to litigate against his partner. During *that same 2013 period*, when he denied Hamed the ability to see what was happening in Partnership accounts, and just after Judge Brady wrote an opinion saying that he couldn't unilaterally control Partnership accounts, Yusuf quickly paid out thousands of dollars to an unknown vendor before Hamed could again gain access. Finally, in the past two weeks, Yusuf *stonewalled* any discovery responses as to *this claim which arose in that same 2013 period*, and lied in those discovery responses about having given such supporting documents to Hamed.

 What more can possibly be said? This claim should be allowed.

**Dated:** May 26, 2018 A

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**CERTIFICATE OF SERVICE**

 I hereby certify that on this 26th day of May, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

**Hon. Edgar Ross** (w/ 2 Mailed Copies)

Special Master

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**CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)**

This document complies with the page or word limitation set forth in Rule 6-1(e).

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1. In the May 23, 2018 "Objection to Subpoena" Yusuf and United (belatedly) conceded that they took almost $400,000 to pay their lawyer to litigate against Hamed here:

United Corp. and Fathi Yusuf...agree that any amounts from the $504,590.50 that paid for legal work on the civil case and other matters unrelated to the criminal case [from the Partnership Account] **was not for the benefit of the partnership**, that amount is not in dispute....(Emphasis added.) [↑](#footnote-ref-1)
2. The denial of access to Partnership information, and lying about how such funds are spent and to whom they are going violates RUPA section 26 V.I.C. § 73(c)(1):

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability:

(1) without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter [↑](#footnote-ref-2)
3. A second check was written to Daytona just before Hamed recovered full access to the books—by filing motions to compel access to these accounts over the Summer of 2013.

**Stt,** 10/18/2013, 2751, PJ, Daytona Beach Market And Deli, $4,500/ 10/19/13, 38691, Cdj, Daytona Beach Market And Deli - Invoice: 275 [↑](#footnote-ref-3)
4. It is unexplained how 2013 transactions here are just 'too old to bother with' or 'unduly burdensome' as to just two transactions.

 As for *only* John Gaffney knowing who these guys are and what this was for: (1) Mr. Gaffney is not a party here. RFPDs cannot be directed to non-parties. Rule 34(a) ("A party may serve on any other party a request within the scope of Rule 26(b)") and (2) Mr. Gaffney did not do business with them, did not sign the contracts or invoices, did not receive the goods or service, did not sign the receipts and was not in charge when this was done. This is a *management activity*, an 'alleged' vendor transaction interaction for good or services

 As for these documents being "information that has already been provided"—that is simply a lie. Hamed has gone through ALL information provided. There are no invoices, vendor identifications, correspondence, contracts with Daytona or detail *on either transaction*. This detailed review included the Sage50 system and all Bi-Monthly Reports and attachments. See Exhibit 1. Yusuf should be forced to stand before the Special Master and explain under oath when, how and *on what date* this happened. [↑](#footnote-ref-4)
5. Although Hamed sent a detailed Rule 37.1 letter to Yusuf on May 16th, and has since sent several emails trying to set up a time/date for the conference, no responses have been received—and Hamed is under no duty to play such games with opposing counsel—or to force Yusuf to supplement his improper answers. One of the possible negative effects of filing such blank and evasive responses in response to RFPDs and then fooling around about rectifying them is that if the other side simply files its motion, you are just plain *stuck* with your non-production. This is particularly true where the time for written inquiries and responses has run out under the applicable *Discovery Plan*. [↑](#footnote-ref-5)