

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,
MUFEEED 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 Hamed’s motion to preclude Yusuf’s claims prior to September 17, 2006.¹ Yusuf filed an opposition and Hamed filed a reply thereafter.

BACKGROUND

In a memorandum opinion and order dated July 21, 2017, 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. *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *44-45 (V.I. Super. Ct., July 21, 2017) (hereinafter, “Limitation Order”). The Court noted that:

Yusuf has argued that certain § 71(a) claims are effectively undisputed, and that “if it is undisputed that payments were made to a partner, even without authorization, then to exclude them from an accounting for that reason would be entirely arbitrary.” First, it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed. But, even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006. *Id.*, 2017 V.I. LEXIS 114 at *44, fn. 35.

DISCUSSION

In his motion, Hamed pointed out that despite the Court’s “clear directive, Yusuf repeatedly and improperly still attempts to reintroduce such claims using carious ‘tricks’ to avoid that date.” (Motion, p. 2) As an example, Hamed pointed out that “Yusuf had [Fernando

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 Hamed’s instant motion to preclude Yusuf’s claims prior to September 17, 2006 falls within the scope of the Master’s report and recommendation given that Yusuf claims are alleged debt owed by Yusuf to the Partnership (or in other words, potential Partnership Assets).

Scherrer of BDO Puerto Rico, P.S.C] include a claim that admittedly pre-dated 2001 as part of the revised [Fernando Scherrer of BDO Puerto Rico, P.S.C] report” (Id.)—more specifically, “\$1,778,103.00: Account owed by Hamed family to Yusuf as per agreement before raid Sept. 2001. As per Mike’s testimony these tickets were burned. (Refer to Letter dated August 15, 2012).” (Id., Exhibit 2) Thus, Hamed argued that “this claim should be stricken” and that “Yusuf should be instructed (again) not to re-assert any such pre-September 17, 2006 claims.” (Id., at p. 3)

In his opposition, Yusuf claimed that \$1,778,103.00 has three components: (1) “the amount taken by Waleed Hamed from a partnership account at a St. Martin Bank when he closed it in 2011 or 2012 (i.e., \$88,711.00)”; (2) “the amount taken by Waleed Hamed from a partnership account at a Jordanian Bank when he closed it in 2011 or 2012 (i.e., \$89,392.00)”; and (3) “a debt of \$1.6 million owed to Yusuf by Hamed that was tabulated in October 2001 but acknowledged by Waleed Hamed to be owed in 2012.” (Opp., p. 2) Yusuf argued that “[t]he portion of the \$1,778,103.00 represented by the two bank account withdrawals by Hamed – namely, \$178,103.00 – is plainly a debt that arose after September 17, 2006, and therefore one that falls within the scope of Judge Brady’s limitation on the accounting claim” and “[a]s for the \$1,600,000 portion that was acknowledged to be owed by Hamed as late as 2012, the legal analysis in Judge Brady’s order limitation the parties’ accounting claims, together with a prior ruling by him recognizing oral acknowledgement of a debt as basis for equitable tolling, bring that debt within the scope of the limitation on the accounting claim too.” (Id., at p. 3) Yusuf further argued that “Judge Brady has already found in a prior ruling that an oral acknowledgement of a debt tolls the 6-year statute of limitation for contract claims, so that the debt is deemed to have accrued on the date it was acknowledged – rather than the date the debt originally arose.” (Id., at p. 4) In support of his argument, Yusuf attached, *inter*

alia, a copy of Bakir Hussein's Affidavit, dated August 10, 2014, and a copy of the Court's order re payment of rent, dated April 27, 2015. (*Id.*, Exhibits A and C) Thus, Yusuf concluded that Hamed's motion should be denied. (*Id.*, at p. 5)

In his reply, Hamed reiterated his argument that pursuant to the Court's July 21, 2017 order, "claims prior to September 17, 2006, are barred regardless of whether the claims are described as 'disputed' or 'undisputed' by Yusuf." (Reply, p. 2) (Emphasis omitted) Hamed pointed out that "Yusuf's attempt to use an affidavit of a close friend of his clients to describe a conversation in a mediation to reach a global settlement (an alleged admission Hamed denies) is exactly the type of evidence that Judge Brady sought to avoid." (*Id.*) (Emphasis omitted) Hamed also pointed out that "Yusuf's reference to a prior Brady opinion on the SOL is off-base, as Brady's July 24th opinion is based on laches, not the SOL." (*Id.*)

The Master must note at the outset that while Hamed's motion is titled "motion to preclude Yusuf's claims prior to September 17, 2006," the motion only addressed Yusuf's claim for \$1,778,103.00. Hamed's motion moved to have the Master: (1) strike Yusuf's claim for \$1,778,103.00; and (2) instruct Yusuf to not re-assert any such pre-September 17, 2006 claims. The Master will certainly instruct Parties to comply with the Court's Limitation Order. However, at this juncture, the Master cannot make a general, sweeping determination as to which claims are pre-September 17, 2006 claims. If Parties wishes to argue that a specific claim is a pre-September 17, 2006 claim and therefore should be stricken, Parties should file a separate motion specific to that claim. This order will only address whether the claim raised in Hamed's motion—Yusuf's claim for \$1,778,103.00—is a pre-September 17, 2006 claim.

Yusuf claimed that \$1,778,103.00 has three components: (1) \$88,711.00, the amount Waleed Hamed withdrew from a partnership account at a St. Martin Bank in 2011 or 2012; (2) \$89,392.00, the amount Waleed Hamed withdrew from a partnership account at a Jordanian

Bank in 2011 or 2012; and (3) \$1,600,000.00, the amount of debt owed by Hamed to Yusuf tabulated in October 2001. The Master will address each component in turn, with the first two components—totaling \$178,103.00—addressed jointly.

A. \$178,103.00

Hamed did not dispute that Yusuf’s claim for \$1,778,103.00 has three components. Hamed also did not dispute that two of the components—totaling \$178,103.00—is based on Waleed Hamed’s withdrawals from partnership accounts in a St. Martin Bank and a Jordanian Bank in 2011 or 2012. As such, this portion—\$178,103.00—of Yusuf’s claim for \$1,778,103.00 is not a pre-September 17, 2006 claim because it was based upon transactions that occurred after September 17, 2006. As such, the Master will deny Hamed’s motion as to \$178,103.00 of Yusuf’s claim for \$1,778,103.00.

B. \$1,600,000.00

Here, Yusuf admitted that the debt of \$1,600,000.00 owed by Hamed to Yusuf was tabulated in 2001. The Court clearly ordered in its Limitation Order that only claims “based upon transactions that occurred on or after September 17, 2006” will be considered, regardless of whether it is disputed or undisputed since “it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed” and “even if some claims were, in fact, undisputed, because of the dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006”. *Hamed*, 2017 V.I. LEXIS 114 at *44. Thus, this portion—\$1,600,000.00—of Yusuf’s claim for \$1,778,103.00 is a pre-September 17, 2006 since it was tabulated in 2001.

Yusuf argued that because Waleed Hamed acknowledged this debt in 2012, it should not be stricken pursuant to the Court's April 27, 2015 order re payment of rent (hereinafter "Rent Order") because "Judge Brady has already found in a prior ruling that an oral acknowledgement of a debt tolls the 6-year statute of limitation for contract claims, so that the debt is deemed to have accrued on the date it was acknowledged – rather than the date the debt originally arose." (Opp., at p. 4) The Master finds Yusuf's argument unpersuasive. First, when the Court ruled on the issue of payment of rent, the Court cited specifically to Hamed's own admission at Hamed's deposition that the Partnership owes United rent. (Rent Order, p. 4) Here, Yusuf merely submitted a copy of Bakir Hussein's Affidavit, dated August 10, 2014, whereby Bakir Hussein declared that he heard Waleed Hamed admitting to this debt;² Yusuf did not provide any evidence of Waleed Hamed personally admitting to this debt. Additionally, this alleged admission is disputed by Waleed Hamed. Second, this is exactly the type of claims the Court ordered to bar by its Limitation Order—claims based upon transactions that occurred before September 17, 2006. Finally, in its Limitation Order, the Court "conclude[d] that consideration of the principles underlying the doctrine of laches strongly supports the imposition of an equitable limitation on the submission of § 71(a) claims in the accounting and distribution phase of the Wind Up Plan" and explained that "the Court exercise[d] the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions

² Bakir Hussein's Affidavit provided, in relevant part:

9. In several open meetings, Mr. Yusuf said that the Hameds took \$1.6 million more than the Yusufs. Waleed Hamed admitted that he took the excess \$1.6 million dollars, which is the difference between the \$2.9 Million taken by the Hameds and the \$1.3 Million taken by the Yusufs. In addition to the \$1.6 million dollars which I heard Waleed Hamed admit to, both Waleed Hamed and Fathi Yusuf both agreed to additional withdrawals by the Yusufs provided that the Yusufs produced receipts to show proof of the additional withdrawals.

10. I personally heard Waleed Hamed admission to owing \$1.6 million dollars to the Yusufs as a result of excess withdrawals by the Hameds, and that the receipts for that amount were not available because they were destroyed prior to the raid by the U.S. Government.

occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint." *Hamed*, 2017 V.I. LEXIS 114 at *41, 44. Thus, because the Court's ruling was based on the doctrine of laches, regardless of whether the applicable statute of limitations has or has not expired, Yusuf's claim for \$1,600,000.00 is barred by laches. *See In re the Suspension of Joseph*, 60 V.I. 540, 558-59 (V.I., 2014) (citations omitted) ("[l]aches ... may be found even if the applicable statute of limitations has not yet run"). As such, the Master will grant Hamed's motion as to \$1,600,000.00 of Yusuf's claim for \$1,778,103.00.

CONCLUSION

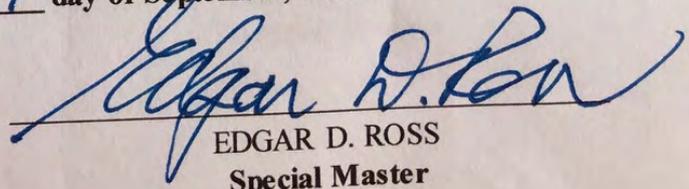
Based on the foregoing, the Master will grant in part and deny in part Hamed's motion to preclude Yusuf's claims prior to September 17, 2006—Yusuf's claim for \$1,778,103.00. Accordingly, it is hereby:

ORDERED that Hamed's motion to preclude Yusuf's claims prior to September 17, 2006—Yusuf's claim for \$1,778,103.00—shall be **DENIED** as to \$178,103.00 (\$88,711.00, the amount Waleed Hamed withdrew from a partnership account at a St. Martin Bank in 2011 or 2012; plus \$89,392.00, the amount Waleed Hamed withdrew from a partnership account at a Jordanian Bank in 2011 or 2012). It is further:

ORDERED that Hamed's motion to preclude Yusuf's claims prior to September 17, 2006—Yusuf's claim for \$1,778,103.00—shall be **GRANTED** as to \$1,600,000.00. Yusuf's claim for \$1,600,000.00 of the \$1,778,103.00 shall be and is hereby **STRICKEN**. And it is further:

ORDERED that Parties shall comply with the Court's Limitation Order.

DONE and so **ORDERED** this 24th day of September, 2018.


EDGAR D. ROSS
Special Master