

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 on Hamed’s motion to strike Yusuf Claim No. Y-6 on procedural grounds.¹ United filed an opposition and Hamed filed a reply² thereafter.

BACKGROUND

Yusuf Claim No. Y-6 is based on a 1994 reconciliation of entries made in a black ledger book (hereinafter “Black Book”) that allegedly left a balance due to United. In his original accounting claims, filed on September 30, 2016, and his amended accounting claims limited to transactions occurring on or after September 17, 2006,³ filed on October 30, 2017 (hereinafter “Yusuf’s Amended Accounting Claims”), Yusuf asserted, *inter alia*, Yusuf Claim No. Y-6 and explained:

A black ledger book (the “Black Book”) was used by the Partners to track spending and withdrawals as between the Partners and their families as well as by United on behalf of the Plaza Extra Stores. Certain entries from the Black Book are accounted for in the BDO Report discussed in §IV below, to the extent they represent historical withdrawals as between the Partners and their families. Adjustments have been made as to BDO’s allocation of those partnership withdrawals prior to September 17, 2006. However, as to funds which United paid on behalf of the Plaza Extra Stores, the Black Book entries reveal that the Partnership owes United \$49,997.00 for various expenses it paid on behalf of the Partnership. *See* Exhibit G to the Original Claims, Relevant Black Book Entries.

On December 18, 2017, Hamed filed a motion to deny United Claim Nos. Y-6, Y-7, and Y-9⁴ due to applicable statutes of limitations. United filed an opposition and Hamed filed

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 strike Yusuf Claim No. Y-6 falls within the scope of the Master’s report and recommendation given that Yusuf Claim No. Y-6 is an alleged debt owed by the Partnership.

² On June 12, 2018, Hamed filed a notice as to his inability to file his reply re Yusuf Claim No. Y-6, but this issue was subsequently resolved and Hamed filed a reply.

³ 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” (“Limitation Order”). *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *44-45 (V.I. Super. Ct., July 21, 2017).

⁴ Although Hamed addresses these claims as United Claim Nos. Y-6, Y-7, and Y-9, they are actually listed as Yusuf Claim Nos. Y-6, Y-7, and Y-9 in Yusuf’s original accounting claims and amended accounting claims.

a reply thereafter. On February 8, 2018, the Master entered an order whereby the Master pointed out that “it is evident that genuine issues of material fact exist as to whether the statute of limitation should be equitably tolled as to United Claims Y-6, Y-7, and Y-9” and thus, denied without prejudice Hamed’s motion at that juncture (“February 8, 2018 Order”). Subsequently, Parties engaged in discovery and on May 21, 2018, Hamed filed this instant motion to strike Yusuf Claim No. Y-6.

DISCUSSION

In his motion, Hamed argued that Yusuf Claim No. Y-6 is barred by the applicable statute of limitation for actions for debt, breach of contract and conversion of property—6 years—and should be stricken. (Motion, p. 4) First, Hamed pointed out that Yusuf and United admitted in their discovery response to Hamed’s second request for production of documents dated, May 15, 2018, that “[t]he complete Black Book bate-stamped FY 004411 – 004477 was previously produced”⁵ and thereby, Hamed argued that Yusuf and United admitted that “all ‘Black Book’ claims were in or before 1994.” (Id., at p. 2) Second, Hamed pointed out that Yusuf and United admitted in their discovery response to Hamed’s second request to admit, dated May 15, 2018, “that claims listed in Exhibit G to Yusuf’s Original Claims, Relevant Black Book Entries, occurred in 1994 or earlier, and occurred more than six years before the FBI seized document”⁶ and thereby, Hamed argued that “all these claims were already more

⁵ Hamed’s second request for production of documents 7 of 50:

Request for the production of documents, number 7 of 50, relates to Claims Y-6 and Y-7 – as described in Hamed’s November 16, 2017 Motion for a Hearing Before Special Master as “Y-6 – Black Book Balances Owed United” and “Y-7 – Ledge Balances Owed United.

Please provide the complete Black Book referenced in Yusuf Exhibits to the Original Claims...

Yusuf and United’s Response:

The complete Black Book bate-stamped FY0044111-004477 was previously produced.

⁶ Hamed’s second request to admit 4 of 50:

Request to admit number 4 of 50 relates to Claim Y-6 – as described in Hamed’s November 16, 2017 Motion for a Hearing Before Special Master as “Y-6 – Black Book Balances Owed United.”

Admit or deny that claims listed in Exhibit G to Yusuf’s Original Claims, Relevant Black Book Entries, occurred in 1994 or earlier, and occurred more than six years before the FBI seized document.

than six years old before the FBI or DOJ raided the stores and took documents.” (Id., at p. 3) Third, Hamed pointed out that even if Yusuf Claim No. Y-6 was an equitable claim, Title 5 V.I.C. §32(a) provides that “[a]n action of an equitable nature shall only be commenced within the time limited to commence an action as provided in this chapter.” (Id., at p. 4) Hamed cited to *James v. Antilles Gas Co.*, 2000 WL 1349233 (V.I. 2000), where the court held that “the statute of limitations governing counterclaims relates back to the time the original complaint was filed,” and argued that “the statute of limitations for the damage claims asserted in Defendants’ counterclaim...are all barred to the extent they arose prior to 6 years before the complaint was filed, which was on September 17, 2012.” (Id., at p. 5) Fourth, Hamed pointed out that “[i]n all prior filings, Yusuf has alleged that the FBI/DOJ seizure of documents in 2001-2002 tolled the SOL” but “Yusuf has now admitted that all Black Book entries were before 1994 and, thus, outside of the FIRST running of the SOL” and “[t]hus, the SOL applies and no additional law is necessary or applicable.” (Id.) Finally, Hamed pointed out that Yusuf asserted two new arguments for the tolling of the statute of limitation—(i) “[a]t the time that these United debts were incurred, the grocery store at the Plaza Extra East location was not operation as a result of a fire” and (ii) Yusuf had the discretion to determine when the reconciliation would take place—but failed to provide any legal support, and thus, is “without

Yusuf and United’s Response:

Admit. Further responding, Defendants [Yusuf and United] state [sic] shows that in Yusuf s earlier declaration he explained that "[u]nder the business agreement between Hamed and me that I now describe as a partnership, profits would be divided 50-50 after deduction for rent owed to United, among other expenses" and that "[u]nder our agreement, I was the person responsible for making all decisions regarding when the reconciliation would take place" and that Yusuf had the discretion to determine when the reconciliation would take place. *See* August 12, 2014 Yusuf Declaration, p.2. At the time that these United debts were incurred, the grocery store at the Plaza Extra East location was not operating as a result of a fire at that store and the Plaza Extra Tutu Park Store was not yet open. Such circumstances constitute extraordinary circumstances, which operate to trigger an equitable tolling as to the pursuit of such debts.

legal effect.”⁷ (Id., pp. 5-7) Thus, Hamed requested the Master to strike Yusuf Claim No. Y-6.

In its opposition, United argued that Hamed’s motion to strike should be denied for the following reasons: (1) Hamed’s motion to strike is “a thinly disguised and untimely motion for reconsideration of the Master’s Order of February 8, 2018 denying Hamed’s earlier motion to strike Claim Y-6 (and two other claims, Y-7 and Y-9) on statute of limitation grounds.” (Opp., p. 2); (2) Hamed’s motion to strike is “styled as a motion to deny Claim Y-6 ‘on procedural grounds,’ but the motion makes it clear that those grounds are precisely the same statute of limitations grounds advanced in prior motion” which was denied by the Master’s February 8, 2018 order. (Id.); (3) “[T]he fact that the \$49,997.00 entry was made in 1994 was never in dispute” and “United conceded that in its January 11, 2018 brief [in opposition to Hamed’s motion to deny United Claim Nos. Y-6, Y-7, and Y-9 due to applicable statutes of limitations]...” and thus, “[a]dmitting what was already undisputed by United and accepted as fact in the Master’s prior denial of the motion to strike Y-6 on limitations grounds is hardly a basis for revisiting the Master’s February 8, 2018 Order.” (Id., at p. 3); and (4) Hamed’s motion to strike is “simply a rehash of arguments previously made by him regarding Claim Y-6 in his December 18, 2017 motion and in his January 17, 2018 reply brief seeking to strike that claim on statute of limitations grounds – arguments which have already been rejected by the Master.” (Id.) Thus, United requested the Master to deny Hamed’s motion to strike.

In his reply, Hamed pointed out that the Master denied his previous motion to deny United Claim Y-6, Y-7, and Y-9 due to applicable statutes of limitations without prejudice. Hamed also pointed out that “[d]iscovery has been open since February 29, 2018” and “[a]ll written discovery ended on May 15, 2018.” (Reply, p. 2) Hamed further pointed out that “[s]ix

⁷ See *supra*, footnote 6.

days after written discovery ended, based on Yusuf’s concessionary discovery responses, Hamed renews his procedural motion just as to Claim Y-6 – asserting that Yusuf has now conceded a sufficient factual basis as to SOL with regard to just Y-6.” (Id.)

1. The Master’s February 8, 2018 Order

The Master finds United’s arguments to deny Hamed’s instant motion to strike unpersuasive. As noted above, the Master pointed out in his February 8, 2018 Order that “it is evident that genuine issues of material fact exist as to whether the statute of limitation should be equitably tolled as to United Claims Y-6, Y-7, and Y-9” and thus, **denied without prejudice** Hamed’s motion to deny United Claim Y-6, Y-7, and Y-9 due to applicable statutes of limitations at that juncture. (February 8, 2018 Order) (Emphasis added) Hamed’s aforementioned motion was not denied with prejudice. Thus, it is not improper for Hamed to file this instant motion to strike after he served Yusuf and United with relevant discovery requests and obtained discovery responses thereto.

2. Statute of Limitations

Parties have disputed whether Yusuf Claim No. Y-6 is a Yusuf’s claim—with the implication that it is a partner’s accounting claim against the Partnership and falls within the scope of the Limitation Order—or a United’s claim—with the implication that it is a third-party’s accounting claim against the Partnership and thus is not within the scope of the Limitation Order.⁸ The Limitation Order provided that “the accounting in this matter, **to which**

⁸ In his motion, Hamed stated that:

At times, Yusuf has described this claim as belonging to different persons/entities. As can be seen below, whether this is a debt to Yusuf as Mike Yusuf has testified (Exhibit 1), or a United claim as Yusuf asserts at times, and seems to assert here, is totally irrelevant. (Motion, p. 2) (Emphasis omitted).

In his notice as to his inability to file his reply re Yusuf Claim No. Y-6, filed on June 12, 2018, Hamed again stated that:

As Yusuf now clearly states, this is NOT a Hamed-Yusuf accounting claim—it is strictly a claim by United, as a third-party, for amounts due to United from the Partnership. (Notice, p. 2) (Emphasis omitted).

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 at *44-45 (Emphasis added). However, the statute of limitations applies to Yusuf Claim No. Y-6 regardless of whether it falls within the scope of the Limitation Order. Thus, for the purpose of this order, the Master need not make such a determination.

Title 5 V.I.C. § 31 applies to bar causes of action that are commenced outside of the relevant limitations period—“Civil actions shall only be commenced within the period prescribed below after the cause of action shall have accrued...” Title 5 V.I.C. § 31. Title 5 V.I.C. § 31(3)(A), the applicable statute of limitation for Yusuf Claim No. Y-6, provides that the statute of limitation for “[a]n action upon a contract or liability, express or implied” is six years. Even if Yusuf Claim No. Y-6 was an equitable claim, the six years statute of limitations period applies because Title 5 V.I.C. § 32(a) provides that “[a]n action of an equitable nature shall only be commenced within the time limited to commence an action as provided in this chapter [3 – Limitations of Actions (§§ 31-41)].” Here, Hamed argued that Yusuf Claim No. Y-6 is based upon transactions that took place more than six years prior to the filing of Hamed’s initial Complaint on September 17, 2012, and therefore, is barred under Title 5 V.I.C. § 31(3)(A). Hamed pointed out that Yusuf and United admitted in their discovery response to Hamed’s second request to admit, dated May 15, 2018, “that claims listed in Exhibit G to

In his reply to United’s opposition to his previous motion to deny United Claim Nos. Y-6, Y-7, and Y-9 due to applicable statutes of limitations, Hamed also stated that:

For the purpose of this motion, it is assumed that Claims Y-6, Y-7, and Y-9 are Claims of the landlord, United Corporation, even though Hamed believes these are really partnership claims barred by the “Laches” opinion. Each of these claims (attached to Yusuf’s motion as exhibits G, H and I (also attached to Hamed’s motion as D, E and G) are still not recoverable even if they belong to United, as they are barred by the applicable statute of limitations (“SOL”).

Yusuf’s Original Claims, Relevant Black Book Entries, occurred in 1994 or earlier, and occurred more than six years before the FBI seized document”⁹ and thus, barred by the applicable statute of limitations. (Motion, p. 3) Hamed also pointed out that since “Yusuf has now admitted that all Black Book entries were before 1994” and thus, Yusuf and United cannot argue that the FBI/DOJ seizure of documents in 2001-2002 tolled the statute of limitations. (Id., at pp. 2-5) Hamed further pointed out that Yusuf and United failed to provide any legal support to their argument that tolling should apply in this instance.

While it is true that United had already conceded that Yusuf Claim No. Y-6 is “based on a 1994 reconciliation of entries made in [the Black Book]” in its January 11, 2018 brief in opposition of Hamed’s motion to deny United Claim Nos. Y-6, Y-7, and Y-9 due to applicable statutes of limitations, United had also argued in its January 11, 2018 opposition that the applicable statute of limitations does not bar these claims—for example, United argued that: (1) “[c]onsistent with Yusuf’s declarations submitted in [Defendants United and Yusuf] briefing on the statute of limitations defense asserted in connection with the rent claim, the evidence will show that Yusuf and Hamed agreed that any Partnership expenses advanced by United from revenues earned in rents paid by third party tenants for space at the United Shopping Center would be reconciled with the Partnership **whenever Yusuf in his exclusive discretion determined that they should be reconciled**” and that “Hamed understood and agreed that United would not be entitled to reimbursement for those expenses until Yusuf determined that it made economic sense for the supermarket business to make that reimbursement”; and (2) “even if [Yusuf] had been inclined to declare reimbursement for United’s advances due at an earlier time, the pendency of the criminal case precluded him from doing so until late 2011” because “all of the Plaza Extra accounts were frozen by an injunction

⁹ See *supra*, footnote 6.

entered contemporaneously with the filing of the criminal case in September 2003” and “**both the Black Book and the ledger had been seized by the FBI in the October 2001 raid**...which made calculations of the amounts owed to United very difficult.” (January, 11, 2018 Opp., p. 4) (Emphasis added). Thus, at that juncture, the Master pointed out that “it is evident that genuine issues of material fact exist as to whether the statute of limitation should be equitably tolled as to United Claims Y-6, Y-7, and Y-9” and denied Hamed’s motion to deny United Claims Y-6, Y-7, and Y-9 due to applicable statutes of limitations.

As noted above, Hamed filed this instant motion to strike Yusuf Claim No. Y-6 after he served Yusuf and United with relevant discovery requests and obtained discovery responses thereto. The Master finds Hamed’s argument that Yusuf Claim No. Y-6 is barred by the applicable statute of limitations persuasive and that Yusuf and United’s discovery responses, dated May 15, 2018, support such a finding. Although Yusuf and United’s discovery responses seemed to imply that the statute of limitations “clock” should have started on a later reconciliation date as determined by Yusuf, and/or that tolling should be applicable in this instance even if a later date did not apply, United never addressed these arguments in its opposition. In fact, United’s opposition focused solely on its argument that Hamed’s instant motion to strike should be denied due to the Master’s February 8, 2018 Order and never addressed any of the arguments raised in Hamed’s motion. As such, the Master will grant Hamed’s motion to strike Yusuf Claim No. Y-6 there being no genuine issues of material fact after Yusuf admitted in its discovery responses that the claim existed in 1994 or earlier and no evidence has been presented to support tolling of the statute of limitations.¹⁰

¹⁰ Furthermore, regardless of whether the Limitation Order is applicable in this instance, the Court’s reasoning in its Limitation Order holds true and Yusuf Claim No. Y-6—a claim that existed in 1994 or earlier—is exactly the type of claims that should be barred. The Court stated 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 great dearth of accurate records there exists such an element of chance in any attempt

CONCLUSION

Based on the foregoing, the Master will grant Hamed's motion to strike Yusuf Claim No. Y-6 on procedural grounds. Accordingly, it is hereby:

ORDERED that Hamed's motion to strike Yusuf Claim No. Y-6 on procedural grounds is **GRANTED**. Yusuf Claim No. Y-6 shall be and is hereby **STRICKEN**.

DONE and so **ORDERED** this 19th day of December, 2018.


EDGAR D. ROSS
Special Master

that any claim submitted by either party would truly be undisputed" and "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." *Hamed v. Yusuf*, 2017 V.I. LEXIS 114 at *44.