

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. CROIX

WALEED HAMED, as Executor of the	)	
Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff/Counterclaim Defendant,	)	CIVIL NO. SX-12-CV-370
v.	)	
	)	
FATHI YUSUF and UNITED CORPORATION,	)	ACTION FOR INJUNCTIVE
	)	RELIEF, DECLARATORY
Defendants/Counterclaimants,	)	JUDGMENT, AND
v.	)	PARTNERSHIP DISSOLUTION,
	)	WIND UP, AND ACCOUNTING
	)	
WALEED HAMED, WAHEED HAMED,	)	
MUFEED HAMED, HISHAM HAMED, and	)	
PLESSEN ENTERPRISES, INC.,	)	
	)	
<u>Additional Counterclaim Defendants.</u>	)	Consolidated With
WALEED HAMED, as Executor of the	)	
Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-287
v.	)	
	)	
UNITED CORPORATION,	)	ACTION FOR DAMAGES AND
	)	DECLARATORY JUDGMENT
	)	
<u>Defendant.</u>	)	
WALEED HAMED, as Executor of the	)	
Estate of MOHAMMAD HAMED,	)	
	)	
Plaintiff,	)	CIVIL NO. SX-14-CV-278
v.	)	
	)	
FATHI YUSUF,	)	ACTION FOR DEBT AND
	)	CONVERSION
	)	
<u>Defendant.</u>	)	

**YUSUF'S OPPOSITION TO HAMED'S MOTION TO COMPEL RELATING TO  
CLAIM H-1-FATHI YUSUF'S FAILURE TO PAY FUNDS RE SALE OF THE  
DOROTHEA CONDO**

Although Hamed appears to be filing the makings of what he anticipates will be a dispositive motion on his claim H-1, what Hamed requests in this Motion to Compel is additional

supplementation of Yusuf's responses to Hamed's questions—not a ruling on whether the claim is barred. Hence, much of the Motion does not go to the issue of the information sought or the sufficiency of the information provided.

**I. Yusuf's Supplemental Response is sufficient and consistent with prior testimony and discovery.**

Hamed sought information as to the various payments that were made relating to the Dorothea property/sale of Y&S stock which occurred prior to 2006 and whether or not there is additional documentation relating to said payments. Yusuf provided a supplemental response in which he stated:

Yusuf supplements his earlier response and confirms that proceeds from the sale were paid and completed before 2006. Yusuf has no records of the payments. Interest was paid directly to a charity as part of the agreement to donate any interest.

Yusuf has consistently maintained that claims relating to the Dorothea property/sale of Y&S stock occurred prior to September 17, 2006—the deadline imposed by the Court in the Limitations Order. Hence, Yusuf has consistently maintained that Hamed's Claim H-1 should no longer remain as an active and open claim but is barred by the Limitations Order, just as various claims Yusuf originally made were eliminated as a result of the Limitations Order. However, regardless of whether these claims survive, Yusuf provided information that there was no written documentation as to the payments he received and that those payments, in fact, were made before 2006.

This information provided by Yusuf is consistent with the documents attached to Exhibit 1 of Hamed's Motion and with Yusuf's prior testimony which states:

Question: Okay. When did you get that money?

Yusuf Ans.: I get that money, I don't have a date. But I get that money maybe, I can guarantee you, it's not 3 years. It's less than 3 years. I sold this property many, many years ago.

See Hamed's Exhibit 1, Yusuf Depo., 105:8-12.

Hence, while Yusuf may not have the specific dates that he received the payments, he has confirmed that payments were received within a few years (“it’s not three years”, “[I]t’s less than 3 years”) of the sale, which occurred in 2000 (“many, many years ago”). See Hamed’s Exhibit 1, Yusuf Depo., 105:8-12. Contrary to Hamed’s assertion that “Yusuf **now ALLEGES** that the contract and all payments were received prior to the 2006 cutoff date,” (Hamed Motion, p. 3) Yusuf’s response to the question in his deposition “when did you get that money” that “it’s not 3 years” and that “it’s less than 3 years” from the sale, which occurred in 2000 would have been sometime before 2006. Therefore, Yusuf’s supplemental response which has confirmed that, in fact, the payments were received before 2006 is not new. If received before 2006, then these payments would not be subject to a claim at this point as a result of the Limitations Order. Whether this claim survives a dispositive motion is not at issue in this Motion to Compel. The issue is the sufficiency of Yusuf’s response. Yusuf’s response is sufficient and reflects the timing of the payments he received and that Yusuf has no documentation as to the receipt of the payments. Hence, Yusuf shows that there is no basis to compel further response to the discovery.

**II. There was no attempt to avoid a Rule 37 Conference or ignore counsel and the missed meeting was not a reflection of a failure to cooperate or a need to be compelled to otherwise respond.**

As the Master is aware, counsel for the parties have engaged in numerous weekly (or bi-weekly meetings), which have resulted in the resolution of a significant number of claims. In

addition, these regular communications have resulted in cooperation and shifting of discovery relating to certain claims to John Gaffney for his response and input as the person with the most knowledge on various open questions. The parties also have agreed to shift the timing relating to certain claims pending Gaffney's responses. At the same time, counsel for the parties engaged in extensive Rule 37 conferences, which took place on November 2, 2018 and November 12, 2018. During those conferences, the parties discussed supplementation of documents relating to certain discovery, if any additional information could be located.

Regarding the allegation that counsel ignored the timeframe set for yet another Rule 37 conference the latter part of December, counsel for Yusuf shows two things:

a) Counsel for Yusuf did not anticipate that the meeting would be considered a Rule 37 conference, but instead, understood it to be another weekly meeting. Counsel for the parties had been participating in a standing meeting every week or every other week to continue to work together to resolve open and outstanding issues. Typically, these meetings have been scheduled for Fridays—although sometimes they were set for Thursdays, if there was scheduling conflict.


b) Counsel for Yusuf mis-calendared the meeting and understood it to be on the following day, Friday, December 20, 2018 (as this had been the typical practice to meet on Fridays). Hence, when the meeting was supposed to occur on December 19, 2018 (a Thursday), counsel for Yusuf was in another meeting and did not recognize the mistake. Counsel for Yusuf immediately upon learning of the issue, communicated the error in scheduling and offered to meet again, if needed, on Friday, December 20. Counsel for Hamed declined and advised that they would be proceeding with a motion to compel.

Hence, counsel for Yusuf clarifies that the failure to meet was not an attempt to ignore opposing counsel. Rather, counsel have spent significant time working together and cooperating to move the matter forward. This has included discussions as to discovery concerns and these communications have been open and respectful. The failure to attend the meeting was a function of a calendaring error, not avoidance and is not a reflection of a failure to cooperate or a need to be compelled to otherwise further respond.

Respectfully submitted,

**DUDLEY, TOPPER AND FEUERZEIG, LLP**

**DATED:** December 30, 2018

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 30<sup>th</sup> day of December, 2018, I caused the foregoing **YUSUF'S OPPOSITION TO HAMED'S MOTION TO COMPEL RELATING TO CLAIM H-1-FATHI YUSUF'S FAILURE TO PAY FUNDS RE SALE OF THE DOROTHEA CONDO** which complies with the page and word limitations of Rule 6-1(e), to be served upon the following via the Case Anywhere docketing system:

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