

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 expedited motion to compel responses to discovery served in connection with Yusuf Claim No. Y-2:¹ past rent due to United for Bay Nos. 5 and Bay 8 of the United Shopping Plaza and Yusuf Claim No. Y-4:² interest for the past rent due to United for Bay Nos. 5 and Bay 8 of the United Shopping Plaza.³ Yusuf did not file an opposition.

In his motion, Hamed stated that he served, *inter alia*, one interrogatory—Interrogatory 29—and two requests for production of documents—RFPD 21 and RFPD 34—in connection with Yusuf Claim Nos. Y-2 and Y-4. (Motion, p. 1) Hamed also stated that because Yusuf’s responses thereto did not provide “any information or documents, two Rule 37 letters were sent” and “Yusuf agreed to supplement the responses.” (Id., at p. 2) (Emphasis omitted) Hamed further stated that “[a]fter two requests for extensions of time in which to answer, on December 18, 2018 (two days before this motion to compel was due) Yusuf responded only with this: “There are no additional documents responsive to this request beyond the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendant’s Motion for Partial Summary Judgment on Counts IV, IX and XII Regarding Rent.” (Id.) Hamed explained that, as a result, another Rule 37 conference was set but “Yusuf’s counsel did not appear and did not provide any prior written or other notice of non-appearance (but did send an email more than an hour later requesting a change of date...)” (Id., at p. 5) Hamed argued that he “cannot

¹ Yusuf Claim No. Y-2: The amount of outstanding rent due to United for Bay Nos. 5 and 8 was “not adjudicated in the Rent Order¹ and they remain an outstanding rent claim against the Partnership.” Yusuf claimed that the “total amount due to United for unpaid rent for [Bay Nos.] 5 and 8 is \$793,984.34. See the Yusuf Declaration at ¶¶ 21-25.” (Yusuf’s Amended Accounting Claims, filed Oct. 30, 2017, p. 9)

² Yusuf Claim No. Y-4: “The interest due for the unpaid rent on [Bay Nos.] 5 and 8 is also claimed by United. The total interest calculated at 9% per annum for the period from May 17, 2013 through September 30, 2016 is \$241,005.18. Such interest continues to accrue at the daily rate of \$195.78 until paid. See calculations of interest on Bay [Nos.] 5 and 8 rent attached as Exhibit E to the Original Claims.” (Yusuf’s Amended Accounting Claims, filed Oct. 30, 2017, pp. 9-10)

³ 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 compel falls within the scope of the Master’s report and recommendation given that Yusuf Claim Nos. Y-2 and Y-4 are alleged debt owed by the Partnership to United.

defend against [Yusuf Claim Nos. Y-2 and Y-4] without information” and thus, requested the Master to compel Yusuf to respond to discovery served in connection with Yusuf Claims No. Y-2 and Y-4 (*Id.*, at p. 9).

DISCUSSION

1. Motion to Compel

Rule 37 of the Virgin Islands Rules of Civil Procedure (hereinafter “Rule 37”) governs the scope and procedure of motion for an order compelling disclosure or discovery. Rule 37 provides that “[a] party seeking discovery may move for an order compelling an answer, designation, production, or inspection...if (iii) a party fails to answer an interrogatory submitted under Rule 33; or (iv) a party fails to produce documents or fails to respond that inspection will be permitted – or fails to permit inspection – as requested under Rule 34. V.I. R. CIV. P. 37(a)(3)(B)(iii)-(iv). Rule 37 also provides that “[f]or purposes of this subpart (a), an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond.” V.I. R. CIV. P. 37(a)(4).

A. Hamed’s Interrogatory

Hamed’s Interrogatory 29, relates to Yusuf Claim No. Y-2:

Please describe all facts related to this claim with reference to dates, documents, witnesses and **what facts, conversations, writings, communications or other information or documents that leads United to believe and assert that it had an agreement with Hamed to pay rent for Bays 5 and 8**. Include in your description the dates of the conversations, writings, communication or other documents, the place where these discussions or meetings took place and identify the participants to the discussions or meetings. Include in your response, but not limit to what facts, conversations, writings, communications or other information or documents that leads Yusuf to believe and assert that any consent for such an arrangement survived the bringing of a suit in September of 2012. (Motion, p. 3) (Emphasis added.)

Yusuf’s Response:⁴

⁴ On December 18, 2018, Yusuf supplemented his response to Interrogatory 29, Requests for Production of Documents 21 and 34 with the following: “There are no additional documents responsive to this request beyond the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendant’s Motion for Partial Summary Judgment on Counts IV, IX and XII Regarding Rent.” (Motion, p. 4)

Defendants object to this Interrogatory because it is compound such that the total number of interrogatories together with their sub parts and other discovery exceeds the maximum allowable number of interrogatories under the JDSP and violates both the spirit and the terms of the JDSP limiting the number of interrogatory questions. Without waiving any objection to this Interrogatory, Defendants incorporate the Declaration of Fathi Yusuf dated August 12, 2014 attached as Exhibit 3 to the Defendants' Motion for Partial Summary Judgment on Counts IV, IX, and XII Regarding Rent, particularly paragraphs 21-25 thereof, as their response to this Interrogatory. (Motion, p. 3)

Upon review of the Declaration of Fathi Yusuf, dated August 12, 2014,⁵ the Master finds that Yusuf's response to Interrogatory 29 is deficient. Under Rule 37(a)(4), "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond." V.I. R. CIV. P. 37(a)(4) Thus, the Master will grant Hamed's motion to compel as to Interrogatory 29.

B. Hamed's Requests for Production of Documents

Hamed's RFPD 21, relates to Yusuf Claim No. Y-2:

With respect to Y-2, please provide all documents demonstrating a written agreement that Hamed or the Partnership agreed to pay rent for Bays 5 & 8, including any documents establishing the amount of rent, a signed lease agreement and any prior payments of rent on Bays 5 & 8, include but do not limit this to any writings after Hamed brought suit in September of 2012, that would show any such consent or agreement continued after that suit. (Motion, p. 3)

⁵ The Declaration of Fathi Yusuf, dated August 12, 2014 provides in relevant part:

21. At periodic points in time, additional space was used by Plaza Extra -East for extra storage and staging of inventory. United has made demand for the rent covering the additional space actually occupied by Plaza Extra -East, but no payment has been received to date.

22. For the period from May 1, 1994 through July 31, 2001, Plaza Extra-East has occupied and owes rent for Bay 5 ("Bay 5 Rent"). The Bay 5 Rent is calculated by multiplying the square feet actually occupied (3,125) by \$12.00 for 7.25 years. The total due for Bay 5 Rent is \$271,875.00.

23. For the period from May 1, 1994 through September 30, 2002, Plaza Extra -East has occupied and owes rent for Bay 8 ("First Bay 8 Rent"). The First Bay 8 Rent is calculated by multiplying the square feet actually occupied (6,250) by \$6.15 for 8 years, 5 months. The total due for First Bay 8 Rent is \$323,515.63.

24. For the period from April 1, 2008 through May 30, 2013, Plaza Extra -East has occupied and owes rent for Bay 8 ("Second Bay 8 Rent"). The Second Bay 8 Rent is calculated by multiplying the square feet actually occupied (6,250) by \$6.15 for 5 years, 2 months. The total due for Second Bay 8 Rent is \$198,593.75.

25. The total amount due for Bay 5 Rent, First Bay 8 Rent, and Second Bay 8 Rent is \$793,984.38.

Yusuf's Response:⁶

Defendants submit that information responsive to this Request for Production is set forth in Fathi 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. (Motion, p. 4)

Hamed's RFPD 34, relates to Yusuf Claim No. Y-2: SUBSTANTIALLY THE SAME AS YUSUF RFPD 9. Please produce all documents relating to your claim that rent is due from the Partnership to occupying Bay 5 and Bay 8. (Motion, p. 4)

Yusuf's Response:⁷

See Exhibit D - Declaration of Fathi Yusuf, attached to Yusuf's original Accounting Claims and Proposed Distribution previously served upon counsel for Hamed on September 30, 2016. (Motion, p. 4)

The Master finds that Yusuf's responses to Hamed's Requests for Production of Documents 21 and 34 are deficient and that Yusuf failed to produce the requested documents. Under Rule 37(a)(4), "an evasive or incomplete disclosure, answer, or response must be treated as a failure to disclose, answer, or respond." V.I. R. CIV. P. 37(a)(4) Thus, the Master will grant Hamed's motion to compel as to Hamed's Requests for Production of Documents 21 and 34.

CONCLUSION

Based on the foregoing, the Master will grant Hamed's motion to compel. Accordingly, it is hereby:

ORDERED that Hamed's motion to compel is **GRANTED**. It is further:

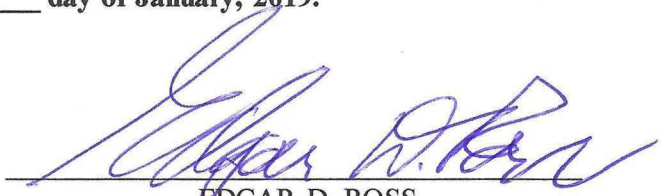
ORDERED that, **within seven (7) days from the date of entry of this order**, Yusuf shall file supplemental responses to Hamed's Interrogatory 29 and Hamed's Requests for Production of Documents 21 and 34. **And** it is further:

⁶ See *supra* footnote 4.

⁷ *Id.*

ORDERED that Yusuf's supplemental responses shall be in compliance with Rules 33 and 34 of the Virgin Islands Rule of Civil Procedure.

DONE and so **ORDERED** this 7th day of January, 2019.



EDGAR D. ROSS
Special Master