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, MUFEED HAMED, HISHAM HAMED, AND PLESSEN ENTERPRISES, INC.,** COUNTERCLAIM DEFENDANTS.	**Civil No. SX-12-CV-370** **ACTION FOR INJUNCTIVE RELIEF, DECLARATORY JUDGMENT, PARTNERSHIP DISSOLUTION, WIND UP, and ACCOUNTING**
WALEED HAMED, AS EXECUTOR OF THE ESTATE OF MOHAMMAD HAMED, PLAINTIFF, **V.** **UNITED CORPORATION,** DEFENDANT.	CONSOLIDATED WITH **Civil No. SX-14-CV-287** **ACTION FOR DAMAGES and DECLARATORY JUDGMENT**
MOHAMMAD HAMED, PLAINTIFF, **V.** **FATHI YUSUF,** DEFENDANT.	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 for summary judgment regarding Hamed Claim No. H-2: Partnership fund in the

amount of $2,784,706.25 that Yusuf unilaterally withdrawn in 2012.[1] Yusuf filed an opposition and Hamed filed a reply thereafter.

BACKGROUND

On August 15, 2012, check #1154 from United Corporation d/b/a Plaza Extra's Scotiabank account to "United Corporation" in the amount of $2,784,706.25 was issued and cleared on August 20, 2012. (Motion, Exhibit 1-Check #1154, dated August 15, 2012; Exhibit 4-United Corporation d/b/a Plaza Extra's Scotiabank account printout from August 1, 2012 through August 24, 2012) In a letter Yusuf addressed to Mohammad Hamed, dated August 15, 2012, Yusuf stated:

> The amount of $2,784,706.25 will be withdrawn from United's operating account effective August 15th, 2012. This amount equals the proceeds you previously withdraw through your agent Waleed Hamed. To ensure full accuracy, attached are the receipts you requested during mediation demonstrating the $1,095,381.75 of withdrawals. The below itemized amounts are not in dispute.
>
> Past Confirmed Withdrawals……..$1,600,000.00
> Additional Withdrawals per the attached requested receipts…..$1,095,381.75
> Fifty percent (50%) of St. Maarten Bank Account…….$44,355.50
> Fifty percent (50%) of Cairo Amman Bank……$44,696.00.

Yusuf attached a plethora of handwritten accounting recordation and receipts to his letter. (Motion, Exhibit 2-August 15, 2012 letter) In response, Waleed addressed a letter to Yusuf, dated August 16, 2012, and stated:

> In response to your August 15th letter re "Notice of Withdrawal", these figures have not been agreed to. Indeed there were no attachments as indicated and there are numerous other funds that have to be included in any such calculations before any disbursements can be made. For example, all withdrawal receipts have to be reviewed before any withdrawals are paid, no mention or indication of the amounts that the Yusuf family has previously withdrawn, [sic] By way of another example, the $800,000 plus due the Hamed family for the sale of the condo property in St. Thomas would have to be included. In short, while these are just a few examples, no withdrawals will be issued until a full accounting is done and agreed to in writing. (Motion, Exhibit 5-August 16, 2012 letter)

[1] The Master was appointed by the Court to "direct and oversee the winding up of the Hamed-Yusuf Partnership" (September 18, 2015 order: Order Appointing Master) and "make a report and recommendation for distribution [of Partnership Assets] to the Court for its final determination." (January 7, 2015 order: Final Wind Up Plan) The Master finds that that Hamed's instant motion for summary judgment falls within the scope of the Master's report and recommendation given that Hamed Claim No. H-2 is an alleged debt owed by the Partnership to Hamed.

In response, Yusuf addressed a letter to Mohammed Hamed, dated August 22, 2012, and stated:

> Re: Set-Off
>
> Your response letter, through your agent Waleed Hamed, does not deny the validity of any of the amounts stated as owing and outstanding to United Corporation. Your letter requests that an accounting be done for other matters, which is a separate issue. Please reduce to writing those other matters you contend are owed, and provided the supporting documentation.
>
> Accordingly, the amount requested will be withdrawn. (Motion, Exhibit 5-August 22, 2012 letter)

In response, Waleed Hamed sent Yusuf an email, dated August 25, 2012, and stated:

> Your suggestion that the Hamed family agreed to your calculations of any sums due you is incorrect. The Hamed family dispute those calculations and insists on a full accounting.
>
> Moreover, any unilateral withdrawal of funds by you would violate the Court's Order currently in place. It would also violate the agreement between our families. If you attempt to take any funds as threatened, we will instruct our counsel to advise the District Court Judge of this violation of its Order, as well as to take any other appropriate action he deems appropriate. (Motion, Exhibit 6-August 25, 2012 email)

On September 17, 2012, Hamed commenced an action against Yusuf and United in connection with the three Plaza Extra stores—case no. SX-12-CV-370—whereby Hamed claimed, inter alia, that Yusuf "unilaterally and wrongfully converted $2.7 million from the Plaza Extra supermarket accounts used to operate the partnership's three stores, place the funds in a separate United account controlled only by him." (Motion, Exhibit 7-Hamed's complaint in SX-12-CV-370) Thereafter, Hamed filed a motion for a temporary restraining order and/or a preliminary injunction on September 18, 2012, and an emergency motion and memorandum to renew application for a temporary restraining order on January 9, 2013. The Court, after reviewing Parties' respective briefs and the voluminous filings attached thereto, evidence and argument of counsel presented at hearing, the Court converted the matter to a preliminary injunction and made the following findings of facts in its memorandum opinion dated April 25, 2013 (hereinafter, "April 25, 2013 Memorandum Opinion"):

> 35. On or about August 15, 2012, Yusuf wrote a check signed by himself and his son Mahar Yusuf and made payment to United in the amount of $2,784,706.25 from a segregated Plaza Extra Supermarket operating account, despite written objection to Waleed Hamed on behalf of Plaintiff and the Hamed family, who claimed that, among other objections, the unilateral withdrawal violated the terms of the District Corut's restraining order in the Criminal Action. *Tr. 246:1-250:14, Jan. 25, 2013; Pl. Group Ex. 13.*
> 36. On the first hearing day, 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 owed by Untied, including a mattress business, but that none of the funds were used to purchase properties overseas. *Tr. 250:2-251:15, Jan. 25, 2013; Tr. 118:12-120:2, Jan. 31, 2013.*

Thereafter, the Court considered the four factors required for the issuance of a preliminary injunction and the Court granted the preliminary injunction and set forth the details of the acts restrained. (April 25, 2013 Memorandum Opinion, p. 22-23)

On November 7, 2014, the Court entered an order whereby the Court granted Hamed's renewed motion for partial summary judgment as to the existence of a partnership, found and declared "that partnership was formed in 1986 by the oral agreement between Plaintiff [Hamed] and Defendant Yusuf for the ownership and operation of the three Plaza Extra Stores, with each partner having a 50% ownership interest in all partnership assets and profits, and 50% obligation as to all losses and liabilities" and that Plaintiff [Hamed] may properly maintain this action against Defendant Yusuf for legal and equitable relief to enforce his rights under the parties' partnership agreement and the Uniform Partnership Act." (November 7, 2014 order, p. 3)

In 2016, per the Master's orders, Parties filed their respective accounting claims. Hamed, in his accounting claims, dated October 17, 2016, included a claim for Partnership fund in the amount of $2,784,706.25 that Yusuf unilaterally withdrawn in 2012—which included $1,600,000.00 (past confirmed withdrawals), plus $1,095,381.75 (additional withdrawals), plus $44,355.50 (fifty percent (50%) of St. Maarten bank account), and plus $44,696.00 (fifty percent (50%) of Cairo Amman bank account). (Hamed's accounting claims)

Meanwhile, Yusuf, in his accounting claims, dated September 30, 2016, included a claim for $1,778,103.00 for "amount owed by Hamed family to Yusuf as per agreement before raid Sept. 2001"—which included $1,600,000.00 (debt owed to Yusuf by Hamed), plus $88,711.00 (amount Hamed withdrew from St. Maarten bank account), plus $89,392.00 (amount Hamed withdrew from Cairo Amman bank account),[2] a claim for "Past Partnership Withdrawals and Distribution Reconciliation," and a claim for "Foreign Accounts and Jordanian Properties." (Yusuf's accounting claims)

Subsequently, in response to various pending motions, including Hamed's motion for partial summary judgment re the statute of limitations defense barring defendants' counterclaim damages prior to September 16, 2006, filed May 13, 2014, the Court entered a memorandum opinion and order dated July 21, 2017 (hereinafter "Limitation Order"). In the Limitation Order, the Court noted that "there is significant confusion surrounding precisely what is meant by the terms 'claims.'" (Limitation Order, p. 10) The Court pointed out that if used synonymous to "cause of action," the "Hamed and Yusuf have each, in their respective pleadings, presented only a single, tripartite cause of action, or claim, for an equitable partnership dissolution, wind up, and accounting under 26 V.I.C. § 71(b)(2)(iii)"; however, if used under the RUPA framework, "the "claims" to which the parties refer are, in fact, nothing more than the patties' respective assertions of credits and charges to be applied in ascertaining the balance of each partner's individual partnership account." (Id., pp. 10-11) The Court concluded that "by its own terms, 5 V.I.C. § 31 applies to bar, in their entirety, *causes of action* that are commenced outside of the relevant limitations period" and thus, "the statute of limitations, by its plain language, has no direct applicability to individual, claimed credits and charges presented within the accounting process" but that "the Court is nonetheless moved to consider whether the various issues raised and arguments presented in Plaintiff's Motion,

[2] *See infra* footnote 3.

among other concerns, justify the imposition of some equitable limitation on the presentation of claimed credits and charges in the accounting process." (Id., at pp. 12-13) (Emphasis in original) Ultimately, the Court exercised "the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter" and 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, pp. 33-34)

In light of the Court's ruling, the Master ordered Parties to file their amended accounting claims. The aforementioned accounting claims were again included in Parties' respective amended accounting claims. On December 20, 2017, Hamed filed a motion as to Hamed Claim No. H-2 whereby Hamed requested the Master to order Yusuf to reimburse the Partnership in the total amount of $2,784,706.25, plus statutory interest at the rate of 9% from August 15, 2012 (the date of the unilateral withdrawal from the Partnership fund by Yusuf) until paid. (Hamed's motion as to Hamed Claim No. H-2, dated December 20, 2017) On December 27, 2017, Hamed filed a motion to preclude Yusuf's claims prior to September 17, 2006 whereby Hamed requested the Master to strike Yusuf's claim for $1,778,103.00. (Hamed's motion to preclude Yusuf's claims prior to September 17, 2006, dated December 27, 2017)

On September 14, 2018, the Master entered an order in response to Hamed's motion as to Hamed Claim No. H-2 (hereinafter, "September 14, 2018 Order") whereby the Master ordered Hamed's motion as to Hamed Claim No. H-2 to be held in abeyance and permitted Parties to continue with discovery in connection with Hamed Claim No. H-2 in accordance with the joint discovery and scheduling plan. (September 14, 2018 Order, p. 9) Thereafter,

Hamed filed a motion for reconsideration of the Master's September 14, 2018 Order. In his motion for reconsideration, Hamed argued that the Master's September 14, 2018 Order "is based solely and completely on a single error of law" — "He misreads the Court's April 25, 2013 order as to the use to which Yusuf put the $2.8 million at issue – and thus, mistakes that Court's clear an [sic] unequivocal holding" and that "Judge Brady EXPLICITLY FOUND AND HELD that Yusuf both took and personally used the funds for his own totally unrelated businesses." (Hamed's motion for reconsideration, dated September 14, 2019, p. 2) (Emphasis in original). On September 14, 2018, the Master entered an order whereby the Master denied Hamed's motion for reconsideration and explained:

> The Master finds Hamed's argument unpersuasive. First, in its April 25, 2018 memorandum opinion, the Court did not address the issue of Partnership distribution calculation. In other words, the Court did not address the issue as to whether $2,784,706.25 was a proper Partnership distribution to Yusuf. Instead, the Court merely acknowledged that Yusuf unilaterally withdrew $2,784,706.25 from the Partnership. The Court never made a ruling as to the appropriateness of Yusuf's withdrawal of $2,784,706.25 from the Partnership Fund as a distribution. Thus, it is incorrect for Hamed to argue that the Court made a ruling in his favor as to $2,784,706.25 in the Court's April 25, 2018 order. Second, as to what Yusuf did with $2,784,706.25 thereafter, it is of no consequence here because assuming, arguendo, that $2,784,706.25 was a proper Partnership distribution to Yusuf, then it becomes the personal funds of Yusuf and Yusuf is free to spend his personal funds however he sees fit. As the Master pointed out in his September 14, 2018 order, Yusuf did not use Partnership money to fund personal expenses, like Yusuf's personal attorney's fees, etc. (Sept. 14, 2018 Order, p. 8) The distinction here is that $2,784,706.25 was a Partnership distribution to Yusuf, and was, therefore, Yusuf's personal fund, and not Partnership fund. The Master would like to point out that he has yet to rule on whether this amount—$2,784,706.25—is the correct calculation of Partnership contribution to Yusuf. The Master simply found in its September 14, 2018 order that it is premature to grant or deny Hamed's motion as to Hamed Claim No. H-2 at this juncture. (Id., at pp. 8-9) Lastly, unlike what Hamed argued, the alleged offsetting claims have not been ruled on on their own merits. As the Master also pointed out in his September 14, 2018 order, "[t]here currently a few other motions pending that may bring forth more evidence regarding Partnership distributions, including but not limited to Hamed's motion to preclude Yusuf's claims prior to September 17, 2006, including but not limited to Yusuf's claim for Hamed's withdrawal of $1.6 million from the Partnership fund and Hamed's motion to strike Yusuf' "revised BDO report" claims." (Id., at p. 9) Accordingly, the Master will deny Hamed's instant motion for reconsideration. (September 14, 2018 order, pp. 4-5)

On September 24, 2018, the Master entered an order in response to Hamed's motion to preclude Yusuf's claims prior to September 17, 2006[3] (hereinafter, "September 24, 2018 Order") whereby the Master denied Hamed's motion to preclude Yusuf's claims prior to September 17, 2006—Yusuf's claim for $1,778,103.00—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;[4] plus $89,392.00, the amount Waleed Hamed withdrew from a partnership account at a Jordanian Bank in 2011 or 2012[5]), granted Hamed's motion to preclude Yusuf's claims prior to September 17, 2006—Yusuf's claim for $1,778,103.00—as to $1,600,000.00 ($1,600,000.00, a debt owed by Hamed to Yusuf that was tabulated in 2001),[6] and struck Yusuf's claim for $1,600,000.00 of the $1,778,103.00. (September 24, 2018 Order, pp. 5-7) Thereafter, Yusuf filed a motion for reconsideration of the Master's September 24, 2018 Order which the Master subsequently denied

On February 25, 2019, Hamed filed this instant motion for summary judgment regarding Hamed Claim No. H-2.

STANDARD OF REVIEW

Rule 56 of Virgin Islands Rules of Civil Procedure (hereinafter "Rule 56") provides that "[a] party may move for summary judgment, identifying each claim or defense – or the part of each claim or defense – on which summary judgment is sought" and "[t]he court shall

---

[3] The Master noted in the September 24, 2018 Order 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." (September 24, 2018 Order, p. 4)

The Master also noted in the September 24, 2018 Order that "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." (Id., at pp. 4-5)

[4] Based on Yusuf's August 15, 2012 letter to Hamed, fifty percent (50%) of this withdrawal—$44,355.50—was included in the $2,784,706.25 he withdrew in 2012. (Motion, Exhibit 2-August 15, 2012 letter)

[5] Based on Yusuf's August 15, 2012 letter to Hamed, fifty percent (50%) of this withdrawal—$44,696.00—was included in the $2,784,706.25 he withdrew in 2012. (Motion, Exhibit 2-August 15, 2012 letter)

[6] Based on Yusuf's August 15, 2012 letter to Hamed, $1,600,000.00 was included in the $2,784,706.25 he withdrew in 2012. (Motion, Exhibit 2-August 15, 2012 letter)

grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.I. R. CIV. P. 56; *see also Rymer v. Kmart Corp.,* 68 V.I. 571, 575 (V.I. 2018) ("A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record."). "Once the moving party has identified the portions of the record that demonstrate no issue of material fact, "the burden shifts to the non-moving party to present affirmative evidence from which a jury might reasonably return a verdict in his favor." *Rymer*, 68 V.I. at 576 (citing *Chapman v. Cornwall*, 58 V.I. 431, 436 (V.I. 2013) (internal citations and quotation marks omitted). The non-moving party "may not rest upon mere allegations, [but] must present actual evidence showing a genuine issue for trial." *Rymer,* 68 V.I. at 576 (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (V.I. 2008)). The reviewing court must view all inferences from the evidence in the light most favorable to the nonmoving party, and take the nonmoving party's conflicting allegations as true if properly supported. *Williams,* 50 V.I. at 194; *Perez v. Ritz-Carlton (Virgin Islands), Inc.*, 59 V.I. 522, 527 (V.I. 2013). Because summary judgment is "[a] drastic remedy, a court should only grant summary judgment when the 'pleadings, the discovery and disclosure materials on file, and any affidavits, show there is no genuine issue as to any material fact.'" *Rymer,* 68 V.I. at 575-76 (quoting *Williams,* 50 V.I. 191, 194).

Rule 56 provides that "[e]ach summary judgment motion shall include a statement of undisputed facts in a separate section within the motion" and that "[e]ach paragraph stating an undisputed fact shall be serially numbered and each shall be supported by affidavit(s) or citations identifying specifically the location(s) of the material(s) in the record relied upon regarding such fact." V.I. R. CIV. P. 56(c)(1). Rule 56 also provides that "[a] party opposing entry of summary judgment must address in a separate section of the opposition memorandum each of the facts upon which the movant has relied pursuant to subpart (c)(1) of this Rule, using

the corresponding serial numbering…" V.I. R. CIV. P. 56(c)(2)(B). Furthermore, under Rule 56, "a party opposing summary judgment may, if it elects to do so, state additional facts that the party contends are disputed and material to the motion for summary judgment, presenting one or more genuine issues to be tried" and "[t]he party shall supply affidavit(s) or citations specifically identifying the location(s) of the material(s) in the record relied upon as evidence relating to each such material disputed fact, by number." V.I. R. CIV. P. 56(c)(2)(C). "If the non-moving party has identified additional facts as being material and disputed, as provided in subpart (c)(2)(C) of this Rule, the moving party shall respond to these additional facts by filing a response using the corresponding serial numbering of each such fact identified by the non-moving party…" V.I. R. CIV. P. 56(c)(3). Additionally, Rule 56 states that "[i]f a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may: (1) give an opportunity to properly support or address the fact; (2) consider the fact undisputed for purposes of the motion; (3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or (4) issue any other appropriate order." V.I. R. CIV. P. 56(e). Finally, Rule 56 requires the court to "state on the record the reasons for granting or denying the motion." V.I. R. CIV. P. 56(a).

DISCUSSION

In his motion, Hamed argued that "[i]t is undisputed that Fathi Yusuf withdrew $2,784,706.25 from Partnership funds on August 15th, 2012" and "[a]ccordingly, Mohammad Hamed's estate is entitled to an equal Partnership withdrawal." (Motion, p. 3) Hamed further argued that "[o]ther offsets and amounts have been raised here by Yusuf separately, and do not affect this claim." (Id.) In support of his arguments, Hamed pointed to the following: (1) "On January 13, 2013, in a hearing before Judge Brady, Waleed Hamed testified under oath that prior to Fathi Yusuf's withdrawal of $2.78 million, neither the Hameds nor the Yusufs ever

withdrew funds from Partnership accounts without prior agreement of both families." (Id., at p. 4); (2) "Fathi Yusuf unilaterally removed the $2.78 million, despite Waleed Hamed's assertion on August 16th and 25th, 2012 that the removal was inappropriate because a full accounting had not occurred." (Id.); (3) "On January 25, 2013, Maher Yusuf testified in a hearing before Judge Brady that he moved the $2,784,706.25 from a Plaza Extra United bank account to a United Corporation Shopping Center bank account that the Hameds could not access. (Id.); (4) "On April 25, 2013, Judge Brady agreed that the funds were moved outside of the Hameds' control…and Judge Brady also noted in his April 25, 2013 opinion that, not only was the $2.78 million outside of the reach of Hamed, but '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…" (Id., at p. 5); (5) "On April 25, 2013, Judge Brady agreed in his Findings of Fact that Maher Yusuf reversed his testimony regarding what Maher Yusuf actually did with the $2.78 million in Partnership funds." (Id., at p. 6); and (6) "It is undisputed that the $2.78 million was not a proper Partnership distribution to Yusuf because the underlying justification for withdrawing the funds was faulty"—(i) $1,600,000.00 (past confirmed withdrawals): in his September 24, 2018 Order, the Master granted Hamed's motion to preclude Yusuf's claims prior to September 17, 2006—Yusuf's claim for $1,778,103.00—as to $1,600,000.00 and the Master subsequently denied Yusuf's motion for reconsideration as to $1,600,000.00; (ii) $1,095,381.75 (additional withdrawals): it is the subject of an independent claim, Yusuf Claim No. Y-10: past partnership withdrawals and distribution reconciliation; and (iii) $44,355.50 (fifty percent (50%) of St. Maarten bank account) and $44,696.00 (fifty percent (50%) of Cairo Amman bank account): they are the subject of an independent claim, Yusuf Claim No. Y-12: foreign accounts and Jordanian properties. (Id., at pp. 7-8) Hamed also argued that prejudgment interest should be awarded pursuant to Title 11 V.I.C. §951(a)(1) of the Virgin Islands prejudgment interest statute—"(a) The rate of interest shall be nine (9%) per

centum per annum on — (1) all monies which have become due." (Id., at p. 3) As such, Hamed concluded that he is "entitled to an equal Partnership withdrawal plus prejudgment interest credited to his Partnership account." (Id., at p. 8)

In his opposition, Yusuf made the following arguments against Hamed's motion for summary judgment regarding Hamed Claim No. H-2. First, Yusuf argued that the relief requested by Hamed is improper because genuine issues of fact exist as to off-sets and a final reconciliation remains unknown. (Opp., p. 2) Second, Yusuf argued that he "does not dispute that the $2.78 million dollar check was removed but does dispute that it was unjustified as it was a corresponding matching withdrawal." (Id., at p. 3) In support of his argument, Yusuf pointed to Exhibit J-2 of his amended accounting claims[7] (hereinafter "Exhibit J-2"), which "accounted for and listed the $2.78 million dollar withdrawal from the partnership on his side of the ledger in the category of 'funds received from the partnership through checks' along with any other checks from the partnership he received from the cut-off date forward" and "[c]orresponding previous withdrawals are listed on the Hamed side of the ledger broken down into the various forms in which they were received (be it 'withdrawals from the partnership with a signed ticket/receipt' or documented as set forth in the category for 'amount owed by Hamed Family to Yusuf as per agreement before raid Sept. 2001 (Letter dated August 15, 2012)'). (Id.; Opp., Exhibit A-Yusuf's amended accounting claims and Exhibit J-2 (attached thereto)) Third, as to $1,095,381.75 (additional withdrawals), $44,355.50 (fifty percent (50%) of St. Maarten bank account), and $44,696.00 (fifty percent (50%) of Cairo Amman bank account), Yusuf argued that "[t]hese claims are embodied in Yusuf [Claim Nos.] Y-10 (relating to various off-sets some of which occurred after the 2006 bar date as updated by Yusuf in his Amended Accounting Claims at Exhibit J-2) and Y-12 (relating to funds from foreign accounts

[7] Exhibit J-2 is a summary of withdrawals prepared by Yusuf's accounting expert, Fernando Scherrer of BDO Puerto Rico, P.S.C.

due to Yusuf - $44,355.50 for an account in St. Maarten closed by Hamed (after the 2006 bar date) but not paid to Yusuf and $44,696.00 for an account at Cairo Aman Bank closed by Hamed (after the 2006 bar date) but not paid to Yusuf)." (Opp., p. 3) Fourth, as to $1,600,000.00 (past confirmed withdrawals), Yusuf argued that he could not have anticipated that it would be barred by the Court's Limitation Order and thus, "does not render the withdrawal improper." (Id., at p. 5) In support of his argument, Yusuf pointed out that the claim in connection with $1,600,000.00 was barred "because it was tabulated prior to the September 17, 2006 bar date for accounting claims imposed by the Limitation Order not necessarily because it was not acknowledged." (Id.) Fifth, Yusuf argued that "[t]hrougout the history of their partnership, the parties would regularly take a matching withdrawal and this is the same circumstance" and "[c]onsequently, all of the facts set forth by Hamed relating to Yusuf's removal are irrelevant, as the removal was not done in a manner that was kept secret or undisclosed" (Id., at p. 4) Sixth, Yusuf argued that "Hamed's request for 'an equal Partnership withdrawal plus prejudgment interest credited to his Partnership account' is not the proper remedy or manner in which to address Hamed Claim No. H-2." (Id., at p. 3) In support of his argument, Yusuf pointed to the fact that, "as part of the Wind Up process, there will be a full reconciliation in which all of the adjudicated withdrawals from Hamed will be compared to all of the adjudicated withdrawals from Yusuf" and that "[t]o the extent that one partner has received an amount greater than the other, a reconciliation will be had so that each partner will have received an equal amount" and thus, at this juncture, "the relief sought by Hamed for a corresponding 'credit' is improper, when the full balance of the claims have not been resolved." (Id., at pp. 3-4) Yusuf also pointed to the Court's Limitation Order whereby the Court stated that that "the nature of the 'claims' are not claims for damages but rather 'claims' for debits [sic] and credits in an equitable accounting between partners" and explained:

> …as used by both the Court and the parties in the context of this litigation, the term "claims" has also taken on an entirely different, and more specific meaning, by which

> the term "claims" refers not to the parties' respective causes of action for accounting, but rather to the numerous alleged individual debits and withdrawals from partnership funds made by the partners or their family members over the lifetime of the partnership that have been, and, following further discovery, will continue to be, presented to the Master for reconciliation in the accounting and distribution phase of the Final Wind Up Plan. (Opp., pp. 5-6) (quoting the Limitation Order, pp. 10-11)

Lastly, Yusuf argued that Hamed's request for prejudgment interest should be denied because "Hamed appears to present Hamed Claim No. H-2 as a claim for damages which may give rise to the possibility of an award of interest." (Opp., p. 7) In support of his argument, Yusuf pointed out that Hamed Claim No. H-2 "is not one for damages which may give rise to the possibility of an award of interest." (Id.) As such, Yusuf requested the Master to deny Hamed's motion for summary judgment regarding Hamed Claim No. H-2 and Hamed's request for prejudgment interest. (Id.)

In his reply, Hamed made the following arguments in response to Yusuf's opposition. First, Hamed argued that "[t]he time for determining the various accounting claims is now" and that "[t]here is no logical reason for Yusuf's assertion that [Yusuf Claim No.] Y-10 has to be, for some vague reason, determined before Hamed's claim can be determined" because "[e]ach claim can be evaluated in isolation and then a final truing up of the accounting can be accomplished at the end of the process." (Reply, pp. 2-3) Second, Hamed argued that "[i]t is undisputed that Fathi Yusuf withdrew $2,784,706.25 from Partnership funds on August 15th, 2012" thus, "Mohammad Hamed's estate is entitled to a decision that when the 'Master [makes] a report and recommendation for distribution to the Court for its final determination,' it will include the $2.78 million on Hamed's side of the ledger" (Id., at p. 3) (Emphasis omitted); Hamed pointed out that he "is not asking for a check to be cut as each claim is decided." (Id.) Third, Hamed reiterated his argument that "[t]he $2.78 million was not a proper Partnership distribution to Yusuf because the underlying justification for withdrawing the funds was faulty." (Id., at p. 4) Finally, Hamed reiterated his argument that he is "entitled to interest pursuant to Title 11 V.I.C. §951(a)(1) of the Virgin Islands prejudgment interest statute." (Id.,

at p. 7) As such, Hamed argued that he is "entitled to an equal Partnership withdrawal plus prejudgment interest credited to his Partnership account." (Id., at p. 8)

A. Yusuf's Withdrawal of $2,784,706.25

In summary, Hamed argued that Yusuf's withdrawal of $2,784,706.25 from the Partnership was unjustified and thus, he is entitled to an equal withdrawal from the Partnership.[8] Yusuf does not dispute the fact that he withdrew $2,784,706.25 from the Partnership in 2012; instead, he argued that the withdrawal was an equal set off to withdrawals made by Hamed, more specifically it included $1,600,000.00 (past confirmed withdrawals), plus $1,095,381.75 (additional withdrawals), plus $44,355.50 (fifty percent (50%) of St. Maarten bank account), and plus $44,696.00 (fifty percent (50%) of Cairo Amman bank account). *See* Opp., at p. 3 ("Yusuf does not dispute that the $2.78 million dollar check was removed but does dispute that it was unjustified as it was a corresponding matching withdrawal.") As such, the Master concludes that Hamed has satisfied his burden of establishing that there are no genuine dispute as to any material fact regarding Hamed Claim No. H-2: Partnership fund in the amount of $2,784,706.25 that Yusuf unilaterally withdrawn in 2012, and thus, Hamed is entitled to judgment as a matter of law. *See Rymer,* 68 V.I. at 575 ("A summary judgment movant is entitled to judgment as a matter of law if the movant can demonstrate the absence of a triable issue of material fact in the record."). However, the

[8] The Master must note that, while Hamed has been consistent with his claim that Yusuf's 2012 withdrawal was unjustified, Hamed has made various inconsistent requests for the resolution of $2,784,706.25 in the event that the Master finds Yusuf's 2012 withdrawal unjustified. In Hamed's amended accounting claim, Hamed included Hamed Claim No. H-2: Partnership fund in the amount of $2,784,706.25 that Yusuf unilaterally withdrawn in 2012, and claimed that "**[o]ne-half of this amount plus statutory interest should be paid to Hamed**." (Hamed's amended accounting claim, dated October 30, 2017, p. 4) (Emphasis added) In his December 20, 2017 motion as to Hamed Claim No. H-2, Hamed argued, inter alia, that "there is no doubt that the Yusufs took the money and (as Judge Brady's memorandum makes clear) that **$2.7 million plus interest is a valid claim and must be returned to the Partnership**" and requested the Master to order Yusuf to reimburse the Partnership in the total amount of $2,784,706.25, plus statutory interest at the rate of 9% from August 15, 2012 (the date of the unilateral withdrawal from the Partnership fund by Yusuf) until paid. (Hamed's motion as to Hamed Claim No. H-2, dated December 20, 2017, p. 3) In this instant motion for summary judgment regarding Hamed Claim No. H-2, Hamed argued, inter alia, that "**Hamed's estate is entitled to an equal Partnership withdrawal**" and requested "**an equal Partnership withdrawal plus prejudgment interest credited to his Partnership account**." (Motion, pp. 3, 8) (Emphasis added) Since Hamed's motion for summary judgment is the motion before the Master, this order will only address Hamed's request for the resolution as stated in Hamed's motion for summary judgment.

judgment will be subject to and entitled to any set offs not stated as an individual accounting claim that are established hereinafter, such as the alleged set off in the amount of $1,600,000.00.[9] V.I. R. CIV. P. 56(e)(4) ("If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:...(4) issue any other appropriate order.")

B. Prejudgment Interest

The Master finds that prejudgment interest should not be awarded for money that the partners owe each other and thus, the Master will deny Hamed's request for prejudgment interest. *See Williams v. Edwards*, 2017 V.I. LEXIS 105, *6 (Super. Ct. July 12, 2017); *Isaac v. Crichloaw*, 63 V.I. 38, 69-70 (Super. Ct. Feb. 10, 2015) ("The grant or denial of prejudgment interest remains within the sound discretion of the trial court.").

CONCLUSION

Based on the foregoing, the Master will grant in part Hamed's instant motion for summary judgment regarding Hamed Claim No. H-2 subject to any set offs hereinafter established, and deny Hamed's request for prejudgment interest. Accordingly, it is hereby:

ORDERED that Hamed's motion for summary judgment regarding Hamed Claim No. H-2: Partnership fund in the amount of $2,784,706.25 that Yusuf unilaterally withdrawn in 2012 is **GRANTED** subject to any set offs that are established hereinafter. **And** it is further:

ORDERED that Hamed's request for prejudgment interest is **DENIED**.

DONE and so ORDERED this 18 day of September, 2019.

EDGAR D. ROSS
Special Master

[9] The Master must note that the Limitation Order only applies to "claimed credits and charges to partner accounts within the meaning of 26 V.I.C. § 71(a)." As such, Master's prior finding that Yusuf's claim for $1,600,000.00 was barred by the Limitation Order does not automatically bar $1,600,000.00 as a set off.