

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

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED,

Plaintiff/Counterclaim Defendant,

vs.

FATHI YUSUF and **UNITED CORPORATION**

Defendants and Counterclaimants.

vs.

**WALEED HAMED, WAHEED HAMED,
MUFEEED HAMED, HISHAM HAMED, and
PLESSEN ENTERPRISES, INC.,**

Counterclaim Defendants,

Case No.: SX-2012-CV-370

**ACTION FOR DAMAGES,
INJUNCTIVE RELIEF AND
DECLARATORY RELIEF**

JURY TRIAL DEMANDED

Consolidated with

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff,*

vs.

UNITED CORPORATION, *Defendant.*

Case No.: SX-2014-CV-287

Consolidated with

WALEED HAMED, as the Executor of the
Estate of MOHAMMAD HAMED, *Plaintiff*

vs.

FATHI YUSUF, *Defendant.*

Case No.: SX-2014-CV-278

Consolidated with

FATHI YUSUF, *Plaintiff,*

vs.

MOHAMMAD A. HAMED TRUST, *et al,*
Defendants.

Case No.: ST-17-CV-384

**HAMED'S MOTION SEEKING GUIDANCE AS TO DEPOSITION SUBPOENAS
TO BE ISSUED FROM THE SUPERIOR COURT TO PRIOR DEFENSE COUNSEL—
AND FOR ENLARGEMENT OF TIME TO TAKE TESTIMONY IF THEY ARE DELAYED**

Introduction

This 3-page Motion is filed pursuant to the Special Master's *May 8, 2018 Order*, in which: (1) the parties were allowed to commence discovery as to *Revised Claim H-3*, the \$504,591.03 in funds paid in 2012-2013 directly from Partnership accounts to prior defense counsel, *Fuerst Ittleman David & Joseph* ("Fuerst Firm" or "the Firm") and (2) the parties were directed to complete that discovery by June 1, 2018. As the Master stated, at 8:

At this juncture, the Master will. . .allow for Parties to proceed with discovery as to the \$504,591.03 paid to Fuerst Ittleman David & Joseph, PL to **determine whether the fees charged was for work performed in this instant lawsuit, in the criminal lawsuit, and for whom**. (Emphasis added.)

The Fuerst Firm and two of its lawyers¹ appeared as counsel in this action,² and it is their 2012-2013 work and billings at issue. Hamed will take their video-taped depositions *duces tecum* to ascertain (1) the identity of their client(s) and (2) whether and which fees at issue were for work performed in this instant lawsuit, or in the Criminal Action.

Hamed seeks guidance as to the issuance of these VI Superior Court deposition subpoenas to prior counsel. Although no permission is necessary,³ to save many motions and much time, Hamed seeks *pre-issuance* instructions or limitations as to the place,⁴ time and manner of inquiry: (1) so the parties, opposing counsel and prior Yusuf counsel have notice and can be heard before issuance; and (2) because of the short time allowed in the Special Master's Order, it is anticipated that if the deponents or opposing counsel are not available, or if they file protective motions, Hamed will require an enlargement of time.

¹ Joseph Diruzzo, III, Esq. and Christopher David, Esq. (Atty. David is a Firm partner.)

² See February 11, 2013, *Notice of Appearance* submitted by Joseph Diruzzo, III, Esq. (a member of the USVI Bar) and Christopher David, Esq., February 11, 2013.

³ Thus, this is a firm and two lawyers who appeared in this VI case. They were present at the TRO hearing for which the Partnership was charged. The Firm was paid with VI funds from a VI Partnership account for VI work done partially in the VI. Obviously, VI GR taxes were paid on VI-sourced income and the clients identified in the underlying accounting.

⁴ If this motion is granted, Hamed agrees to depositions at the deponents' Florida offices.

Issue Presented

In his motions that led up to the May 8, 2018 order, Yusuf took the position that some of the Fuerst Firm's half-million dollars in invoices were paid either (1) pursuant to the *Joint Defense Agreement* in the Criminal Action ("JDA" and "Criminal Action" respectively) or (2) for work after the JDA ended (on September 19, 2012) *but* 'on behalf of the Partnership operating under United's name, in the criminal case.'

To make this motion clearer and easier *Hamed has stipulated elsewhere that he relinquished any claim to the small amount of these fees paid for the Firm's work prior to the end of the JDA*. Thus, the sole remaining issue in H-3 pertains to funds: (1) that paid for the Fuerst Firm's work, (2) after the JDA ended on September 19, 2012, (3) were paid by the Partnership (4) were spent despite the written objections from Hamed as a partner.

Facts

On May 8, 2018, Hamed sent emails to Attorney David at the Fuerst Firm (**Exhibit 1**) and Attorney DiRuzzo (**Exhibit 2**), who has left the Firm. Hamed requested dates convenient for their depositions *duces tecum*—and suggested to the Firm that Hamed would be amenable to taking the depositions in Florida and otherwise accommodating the deponents. While Attorney DiRuzzo asked for copies of documents, he has not responded further. Attorney David, for the Fuerst Firm, responded (**Exhibit 1**) only that:

I do not see the referenced “waiver of the privilege” in any of the attachments. **I have further not been advised by our former client that the privilege has been waived.** If there has been such a finding or written waiver, please forward the same along with a valid subpoena. Christopher M. David, Esq., Fuerst Ittleman David & Joseph. . . .(Emphasis added.)

Argument

First, Hamed does not believe there is any attorney-client privilege as to work Yusuf alleges was done by the Fuerst Firm on behalf of the Partnership⁵ or that was paid for with

⁵ Much of the work was clearly done for Yusuf alone, such as the TRO proceedings.

Partnership funds in the Criminal Action after the JDA ended (when Hamed refused to allow such work or payments, and there was no written waiver of conflict). Second, and more importantly, the assertion of privilege can be dealt with at the depositions in the context of actual questions, and there are other clearly non-privileged, relevant questions to be asked pursuant to the May 8th Order. Third, unless Yusuf and DTF⁶ wish to certify that they received every document, workpaper, and communication from the Fuerst Firm from the period September 19, 2012 through April 2013, there is no other source for such information—nor can Yusuf or DTF testify to what the Firm knew and did.⁷

Conclusion

Hamed desires to take a deposition of a firm and two lawyers that appeared in this case and whose actions and fees are at the center of this H-3 Claim. Hamed has less than two weeks to do so. There have been no responses with dates and times in response to the written request for a deposition that must be completed by June 1, 2018. Either a deposition must take place within those two weeks, or more time must be allowed. Thus, Hamed seeks guidance from the Special Master on the issuance of such subpoenas,⁸ and wishes to provide all parties and (past and present) counsel an opportunity to be heard.

Dated: May 15, 2018



Carl J. Hartmann III, Esq.
Co-Counsel for Plaintiff
5000 Estate Coakley Bay, L6
Christiansted, VI 00820
Email: carl@carlhartmann.com

⁶ DTF was not counsel, nor was it involved in the action at the times relevant to this work.

⁷ Hamed has served an interrogatory, a request to admit and three requests for documents; as well as a subpoena to the DTF firm's custodian of records.

⁸ If such guidance is not received by noon on March 22nd, or the deponents do not provide acceptable dates and times by then, subpoenas will issue with dates, times and locations as follows: May 31st at 10 am (DiRuzzo) and 1 pm (David), at the Office of Joel H. Holt.

Joel H. Holt, Esq.
Counsel for Plaintiff
Law Offices of Joel H. Holt
2132 Company Street,
Christiansted, VI 00820

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of May, 2018, I served a copy of the foregoing by email (via CaseAnywhere), as agreed by the parties, on:

Hon. Edgar Ross (w/ 2 Mailed Copies)
Special Master
% edgarrossjudge@hotmail.com

Gregory H. Hodges
Stefan Herpel
Charlotte Perrell
Law House, 10000 Frederiksberg Gade
P.O. Box 756
St. Thomas, VI 00802
ghodges@dtflaw.com

Christopher David
(Courtesy, by email only)

Joseph DiRuzzo
(Courtesy, by email only)

Mark W. Eckard
Hamm, Eckard, LLP
5030 Anchor Way
Christiansted, VI 00820
mark@markeckard.com

Jeffrey B. C. Moorhead
CRT Brow Building
1132 King Street, Suite 3
Christiansted, VI 00820
jeffreymlaw@yahoo.com



CERTIFICATE OF COMPLIANCE WITH RULE 6-1(e)

This document complies with the page or word limitation set forth in Rule 6-1(e).



#3

From: carl@hartmann.attorney <carl@hartmann.attorney>
Sent: Monday, May 14, 2018 5:03 PM
To: 'Christopher David' <CDavid@fuerstlaw.com>
Cc: 'Joel Holt' <holtvi@aol.com>; 'Kim Japinga' <kim@japinga.com>; 'Cperrell@dtflaw.com' <Cperrell@dtflaw.com>
Subject: RE: Re Subpoena of your firm in Hamed v. Yusuf, SX-2012-CV-370 (V.I. Superior Court, Div. St. Croix, Brady, J.)
Importance: Low

Attorney David:

Thank you for the response. As you will note, your ex-client has now stated that the work in dispute was done for the Partnership and there is no dispute that the work was paid for with unreimbursed Partnership funds. I am attaching the summary judgment decision by which my client was determined to be a 50% partner. I have copied Attorney Perrell on this, and I am sure she will confirm this if you contact her.

In addition, I would like to examine on the payment of 2012 and 2013 USVI gross receipts tax for this work done in the USVI – to see how that income was sourced.

I assure you that delay will not avoid the deposition, only make matters more involved and complex.

Carl Hartmann

#2

From: Christopher David <CDavid@fuerstlaw.com>
Sent: Monday, May 14, 2018 4:24 PM
To: 'Carl@hartmann.attorney' <Carl@hartmann.attorney>
Cc: Joel Holt <holtvi@aol.com>; Kim Japinga <kim@japinga.com>; Gregory Hodges <Ghodges@dtflaw.com>; Charlotte Perrell <Cperrell@dtflaw.com>
Subject: RE: Re Subpoena of your firm in Hamed v. Yusuf, SX-2012-CV-370 (V.I. Superior Court, Div. St. Croix, Brady, J.)
Importance: Low

Mr. Hartmann,

I have your email and the documents attached. I have been unable to review them until today due to other matters. I do not see the referenced “waiver of the privilege” in any of the attachments. I have further not been advised by our former client that the privilege has been waived. If there has been such a finding or written waiver, please forward the same along with a valid subpoena.

EXHIBIT 1

Christopher M. David, Esq.
Fuerst Ittleman David & Joseph
1001 Brickell Bay Drive, Suite 3112
Miami, Florida 33131
Telephone: 305-350-5690
Facsimile: 305-371-8989
Direct: 786-364-7991
Cell: 305-979-5203
E-mail: cdavid@fuerstlaw.com
www.fuerstlaw.com

****Please Take Note of New Suite Number**

NOTICE OF CONFIDENTIALITY

This e-mail is subject to the Electronics Communications Privacy Act, 18 U.S.C. §§2510-2521, and contains information which is or may be confidential and/or privileged. The information contained in this e-mail message, together with any attachments or links contained herein, is strictly confidential and intended only for the use of the recipient named above. If the reader of this email is not the intended recipient, you are notified that any use, distribution, or copying of this communication is STRICTLY PROHIBITED. If you have received this email in error, please immediately advise Christopher M. David by replying to this email (or reply to cdavid@fuerstlaw.com), or call Christopher M. David at 305-350-5690, and please delete this email (and all attachments thereto) from your system. Thank you.

#1

From: Carl Hartmann [<mailto:carl@carlhartmann.com>]

Sent: Tuesday, May 08, 2018 6:11 PM

To: Christopher David <CDavid@fuerstlaw.com>

Cc: Joel Holt <holtvi@aol.com>; Kim Japinga <kim@japinga.com>; Gregory Hodges <Ghodges@dtflaw.com>; Charlotte Perrell <Cperrell@dtflaw.com>

Subject: Re Subpoena of your firm in Hamed v. Yusuf, SX-2012-CV-370 (V.I. Superior Court, Div. St. Croix, Brady, J.)

Dear Attorney David:

Today Judge Edgar Ross, sitting as Special Master, has ordered expedited (by June 1, 2018) discovery as to the claim by your prior clients, Fathi Yusuf and United Corporation, that work your firm did that was paid for from Hamed/Yusuf Partnership funds was "for the Partnership" – thus waiving privilege as to any and all such materials. See the appended order and four items of discovery filed today for some background on the transactions between September 2012 and April of 2013.

We would like to arrange the deposition of a firm representative – primarily to obtain the file documents.

If you will agree to one of the alternatives, we would be amenable:

1. Turn a copy of all file documents over to your clients' present counsel in the USVI. We would pay for the reproduction.
2. I could come and review the documents, with a representative of your clients' present counsel present.

3. You can give a telephonic deposition regarding the number, scope and status of the file.

Please feel free to contact Atty. Hodges or Atty. Perrell at the DTF firm, present counsel, and let me know your thoughts at your earliest convenience.

Carl Hartmann

Ps. Our condolences on the passing of Attorney Fuerst.

Carl J. Hartmann III, Attorney

5000 Estate Coakley Bay, L6

Christiansted, VI 00820

Website: www.CarlHartmann.com

Email: Carl@Hartmann.Attorney

Telephone: (340) 642-4422

Facsimile: (212) 202-3733

From: Carl Hartmann <carl@carlhartmann.com>

Sent: Tuesday, May 08, 2018 6:15 PM

To: 'JD@DiRuzzoLaw.com' <JD@DiRuzzoLaw.com>

Cc: 'Joel Holt' <holtvi@aol.com>; 'Kim Japinga' <kim@japinga.com>; 'Gregory Hodges' <Ghodges@dtflaw.com>; 'Charlotte Perrell' <Cperrell@dtflaw.com>; 'cdavid@fuerstlaw.com' <cdavid@fuerstlaw.com>

Subject: RE: Re Subpoena of Joseph DiRuzzo in Hamed v. Yusuf, SX-2012-CV-370 (V.I. Superior Court, Div. St. Croix, Brady, J.)

Dear Attorney DiRuzzo:

Today Judge Edgar Ross, sitting as Special Master, has ordered expedited (by June 1, 2018) discovery as to the claim by your prior clients, Fathi Yusuf and United Corporation, that work your firm did that was paid for from Hamed/Yusuf Partnership funds was “for the Partnership” – thus waiving privilege as to any and all such materials. See the appended order and four items of discovery filed today for some background on the transactions between September 2012 and April of 2013.

We would like to arrange for your deposition. Will you agree to a date or require physical service?

Please let me know your thoughts at your earliest convenience.

Carl Hartmann

Carl J. Hartmann III, Attorney

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Christiansted, VI 00820

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EXHIBIT 2