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.

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 second motion as to Hamed Claim No. H-3: Partnership funds in the amount of $504,591.03 that Yusuf paid to his counsel, Fuerst Ittleman David & Joseph, PL, from September 2012 to April 2013, requesting for prejudgment interest as to $504,591.03.[1] Yusuf filed an opposition and Hamed filed a reply thereafter.

BACKGROUND

Hamed previously filed his initial motion as to Hamed Claim No. H-3, whereby Hamed requested the Master to find that Hamed Claim No. H-3 is ripe for determination and to determine that $504,591.03 was improperly paid by the Partnership to Fuerst Ittleman David & Joseph, PL. The Master subsequently entered an order which stated that:

> The Master must note at the outset that Hamed essentially amended its Claim No. H-3 from seeking reimbursement of "Partnership funds in the amount of $504,591.03 unilaterally taken by Yusuf to pay his counsel for defending **this instant lawsuit**" to "Partnership funds in the amount of $504,591.03 unilaterally taken by Yusuf to pay his counsel for defending **this instant lawsuit and the criminal lawsuit**." *See* Hamed's Reply, p. 3 ("To the extent Hamed's claim may have been misconstrued as only seeking reimbursement of fees related to the civil case, that misconception is hereby clarified—the claim for $504,591.03 (plus interest) is for all fees paid by the Partnership for Yusuf's personal legal fees, whether incurred in regard to the criminal case or the civil case.") However, Hamed has previously agreed to proceed with more discovery as to the attorneys' fees paid by the Partnership for the criminal case.[7] As such, it is unfair for Hamed to combine the two matters—attorneys' fees paid by the Partnership in this instant lawsuit and attorneys' fee paid by the Partnership in the criminal lawsuit—in his reply, and now renege on his agreement to proceed with discovery on attorneys' fee paid by the Partnership for the criminal case.
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> Furthermore, while it is true that that Plaza Extra is a distinct entity from United and that the Court did not formally recognize the existence of a Partnership until its November 7, 2014 Order and, the Court has long found indicia of the existence of a partnership and that the partners operated Plaza Extra under the corporate name of

[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 for prejudgment interest as to Hamed Claim No. H-3 falls within the scope of the Master's report and recommendation given that prejudgment interest as to Hamed Claim No. H-3 is alleged debt owed by Yusuf to the Partnership (or in other words, potential Partnership Assets).

> United. *See* April 25, 2013 Memorandum Opinion and Order ("Yusuf admitted in the *Idheileh* action that Plaza Extra was a distinct entity from United, although the 'partners operated Plaza Extra under the corporate name of United Corp.'"). Based on the joint motion to vacate the criminal temporary restraining orders submitted in the criminal case, *The United States of America v. United Corporation, et al.*, case no. 1:05-cr-15, United was named as a defendant as "United Corporation d/b/a Plaza Extra" (hereinafter "Joint Motion"). (Yusuf's Sur-response, Exhibit C: The United States of America and Defendant United Corporation d/b/a Plaza Extra's Joint Motion to Vacate the Criminal Temporary Restraining Orders) Moreover, the Joint Motion was filed to vacate the restraining orders that had frozen the assets of the Partnership. Thus, it is disingenuous for Hamed to argue that Yusuf was trying to confuse the Master by arguing that United—and not the Partnership—was named as a defendant in the criminal case. As such, the Master finds Hamed's argument that all of these funds paid to DiRuzzo's firm—counsel for United in the criminal case—were for the personal legal fees of Fathi Yusuf, and not for the Partnership to be unpersuasive. At this juncture, the Master will deny Hamed's motion and 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.
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> [7] On December 13, 2017, Yusuf and United filed a bench memo for status conference, wherein they submitted that "items 2, 3, 5, 10, and 12 listed on page 1 of the Master's December 4, 2017 Order should be removed from that list because further discovery is required for each of the matters described in those items." (Yusuf's Bench Memo for Status Conference, dated December 13, 2017) In his response thereto, Hamed stated that it is fine to proceed with discovery on the aforementioned items. (Hamed's Response to Yusuf's Bench Memo, dated December 14, 2017)
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> According to the Master's December 4, 2017 Order, item 12 refers to "Attorney and accounts fees paid by the Partnership for the criminal case." This is a separate matter from item 10, which refers to "Wally Hamed's payment of accounting and attorneys' fees (approx. $300,000) in *United States of America v. United Corp., et al.*"

Accordingly, the Master denied Hamed's motion, allowed 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, and allowed Hamed to re-file his motion upon the completion of discovery in connection with Hamed Claim No. H-3. On May 30, 2018, Parties filed and the Master granted, Parties' stipulation as to Hamed Claim No. H-3 (hereinafter "Stipulation"), whereby Parties stipulated, *inter alia*, that "Yusuf and United agree that, in exchange for the withdrawal of what Yusuf and United regard as expensive discovery over disputed issues regarding what legal services in

the criminal case benefitted the [P]artnership, Yusuf and United will concede the amount claimed by Hamed in [Hamed Claim No.] H-3 ($504,591.03)." (Stip., ¶ 1)

DISCUSSION

In Hamed's instant motion, Hamed argued that "[i]nterest is due on funds that Yusuf obtained and used for the period from April 2013 to the date of this order" at the statutory rate of 9%. (Motion, p. 2) As such, Hamed requested the Master to enter an order granting prejudgment interest at the rate of 9% as to $504,591.03 "from April 2013 to the date of this order."[2] (Id.)

In his opposition, Yusuf pointed out that there are "millions of dollars of accounting claims asserted by each partner against the other, in addition to third party claims for resolution" and "[u]ntil all of those claims on each side have been approved or denied (or approved or denied in part), and there is an accounting true-up by the Master showing which partner owes money to the other, and in what amounts, granting interest to any partner for any individual claim is inappropriate." (Opp., p. 2) Yusuf argued that he "believes that after all accounting claims are resolved that Hamed will owe him amounts which far exceed the $504,591.03 that Yusuf has conceded to be owed under [Hamed Claim No.] H-3." (Id.) Yusuf further argued that "[t]o the extent that the Master finds in the true-up that Hamed received any amount equal to or greater than $504,591.03 in distributions of [P]artnership monies, the amount conceded by Yusuf will operate as an offset, and there will be no net recovery by Hamed that would entitled [sic] him to any award of interest." (Id.) Yusuf also argued that "[o]nce the Master tabulates the true-up or reconciliation of each partners' [Revised Uniform Partnership Act, Title 26 V.I.C. §71(a)] account in his Report and Recommendation, he will at

[2] Hamed stated that "[t]he parties expect that the Master will appropriately address the effect of this conceded claim in his Report and Recommendation for Distribution to be provided to the Court pursuant to section 9, step 6 of the Final Wind Up Plan." (Motion, p. 2)

that time determine which partner is entitled to a net recovery, and the issue of whether any award of prejudgment interest is appropriate for the party obtaining the net recovery, and if so, how it should be calculated, including from what date the interest should run." (Id.) In support of his argument, Yusuf pointed to the Court's July 21, 2017 Memorandum Opinion and Order Striking Jury Demand, *Hamed v. Yusuf*, 2017 V.I. 113* (Super. Ct. July 21, 2017), and the Court's July 21, 2017 Memorandum Opinion and Order regarding Limitations on Accounting, *Hamed v. Yusuf*, 2017 V.I. 114* (Super. Ct. July 21, 2017), whereby the Court found that "despite the assertion of various nominal counts for damages in the Complaint and Counterclaim in this case, both parties had in reality asserted a single equitable accounting claim" and that "this single accounting claim is made up of 'numerous alleged individual withdrawals from [P]artnership funds made by the partners of their family members over the lifetime of the [P]artnership 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."[3] (Id., at p. 3) Thus, Yusuf argued that "the equitable accounting claim is an unliquidated claim, in the sense that the final dollar amount to be awarded to one partner or the other on their respective accounting claims is unknown and not easily ascertained." (Id.) (*citing American Home Assurance Company v. Sunshine Supermarket, Inc.,* 753 F.2d 321, 329 (3d Cir. 1885) ("[u]nder Virgin Islands law, the district court is given discretion to award prejudgment interest on unliquidated sums as justice requires"). As such, Yusuf argued that "at the conclusion of the claims resolution process, when the Master is able to make a reconciliation or true-up showing which partner is entitled to a net recovery on his accounting claim, and in what amount, the parties can brief whether equitable considerations support an

[3] Yusuf also pointed out that the Court's July 21, 2017 Opinion and Order the Court found both parties had "unclean hands" as to their respective accounting claims and implied that future briefing is necessary as to the availability of prejudgment interest. (Opp., p. 3)

award of interest in the court's discretion." (Id.) Moreover, Yusuf argued that "even assuming *arguendo*, that a piecemeal award of interest on a single claim were somehow appropriate, the amount being sought by Hamed on [Hamed Claim No.] H-3 is grossly excessive" for the following reasons: (1) "the claim was not articulated properly and clearly until January of this year, any interest award should run from that date"; and (2) "[t]he settlement was hardly an admission of theft" since "Yusuf settled the claim because of what promised to be 'expensive discovery over disputed issues." (Id., at p. 4) As such, Yusuf requested the Master to deny Hamed's motion.

In his reply, Hamed argued that interest owed by Yusuf as to $504,591.03 should be granted and calculated now and not later because: (1) "it is undisputed as to when these funds were removed for personal use, so it would be a windfall to Yusuf to allow him the use of these Partnership funds for six years without having interest granted" (Reply, p. 2) (Emphasis omitted); (2) "[t]o the extent Yusuf alleges interest that may offset the amount of interest owed on this claim, he can do what is always done in claims processing—seek his claimed interest on each of those claims as they are decided." (Id., at p. 2-3); (3) "ordering interest on this claim is obviously warranted now, when the claim is being decided—especially when it is a clear, simple matter of obtaining and holding Partnership funds" rather than waiting to calculate interest for each claim after all the claims are decided (Id., at p. 3); (4) the Court's "unclean hands" finding "dealt with the Court's decision to bar both sides' pre-2007 claims" and Hamed Claim No. H-3 is a post-2007 claim (Id.) (Emphasis omitted). Hamed also argued that his proposed interest calculation—9% starting in 2012 and 2013, based on the date showed on the checks made to Yusuf's counsel, Fuerst Ittleman David & Joseph, PL —is correct because: (1) this claim was not amended in 2018 because Hamed "has always asserted this entire amount was improperly removed from the Partnership, raising the issue of these withdrawals in 2013

during the preliminary injunction proceedings" (Id.); and (2) Yusuf conceded that he owed $504,591.03 (Id., at p. 4). As such, Hamed requested the Master to enter an order granting prejudgment interest at the rate of 9% as to $504,591.03 from "the date of each check to Yusuf's law firm up to the date the amount is deducted from Yusuf's Partner Account in the final calculation/adjustment of accounts."

The Court must note at the outset that Yusuf is not opposed to applying prejudgment interest at the rate of 9% per annum to $504,591.03,[4] Yusuf only opposed to: (1) Hamed's request to calculate the prejudgment interest now instead of later after all the monetary claims are resolved in this matter; and (2) Hamed's proposed accrual period for the prejudgment interest.

1. The Timing of the Calculation of the Prejudgment Interest as to Hamed Claim No. H-3

The Master finds Yusuf's argument that the calculation of the prejudgment interest later after all the monetary claims are resolved in this matter unpersuasive. First, unlike what Yusuf argued—that granting prejudgment interest for each individual monetary claim is inappropriate—the Master finds that granting prejudgment interest at the resolution of each individual monetary claim is appropriate in this instance because different monetary claims have different accrual date for prejudgment interest. If Parties wait until after all the monetary claims are resolved in this matter to calculate prejudgment interest, it will be difficult, if not impossible, to determine the applicable accrual date of the prejudgment interest for the final amounts Hamed and Yusuf are found to owe to the Partnership since said final amounts would be an accumulation of all the monetary claims for each partner. Second, the Master finds that there should be no offset between the final amounts Hamed and Yusuf are found to owe to the

[4] Yusuf did argue briefly in passing that prejudgment interest should not be granted in this instance. *See* Section 3 under Discussion.

Partnership because the money is owed to the Partnership and not owed to each other.[5] Furthermore, the Final Wind Up Plan provides that the Claims Reserve Account will be funded by "any Litigation Recovery realized"[6] and did not include any offsets as Yusuf argued in his opposition. As such, the Master finds that it is appropriate to determine the prejudgment interest as to Hamed Claim No. H-3 at this time.

2. The Accrual Date of the Prejudgment Interest as to Hamed Claim No. H-3

The Master similarly finds Yusuf's argument that the prejudgment interest as to Hamed Claim No. H-3 should accrue from January 2018 unpersuasive. However, the Master also finds

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[5] Based on Yusuf's statements that he "believes that after all accounting claims are resolved that Hamed will owe him amounts which far exceed the $504,591.03 that Yusuf has conceded to be owed under [Hamed Claim No.] H-3" and that "[t]o the extent that the Master finds in the true-up that Hamed received any amount equal to or greater than $504,591.03 in distributions of [P]artnership monies, the amount conceded by Yusuf will operate as an offset, and there will be no net recovery by Hamed that would entitled [sic] him to any award of interest," Yusuf seems to argue that there should be an offset between the final amount Hamed owes to the Partnership and the final amount Yusuf owes to the Partnership.

[6] The Final Wind Up Plan provides in pertinent parts:

> 1.6 "Claims Reserve Account" means one or more interest-bearing bank account(s),
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> Money market or securities account(s) to be established and held intrust [sic] by the Master for the purpose of holding the Available Cash until distributed in accordance with the Plan and any interest, dividends or other income earned upon the investment of such Claims Reserves Account. The Claims Reserves Account will be further funded form [sic] time to time by the Liquidating Partner with:
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> (i) any Liquidation Proceeds realized, plus
> (ii) any Litigation Recovery realized, minus
> (iii) any amounts necessary to pay Wind Up Expenses.
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> …
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> 1.20 "Litigation" means the interest of the Partnership or the Liquidating Partner, as applicable, in any and all claims, rights and causes of action that have ben [sic] or may be commenced by the Partnership or the Liquidating Partner including, without limitation, any action:
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> (i) to avoid and recover any transfers of property determined to be avoidable pursuant to V.I. Code Ann. tit. 28, §§ 171-212 or other applicable law;
> (ii) for the turnover of property to the Partnership of Liquidating Partner, as applicable;
> (iii) for the recovery of property or payment of money that belongs to or can be asserted by the Partnership or the Liquidating Partner, as applicable; and
> (iv) for compensation for damages incurred by the Partnership.
>
> 1.21 "Litigation Recovery" means any cash or other property received by the Partnership or the Liquidating Partner, as applicable, from all or any portion of the Litigation including, but not limited to, awards of damages, attorneys' fees and expenses, interest and punitive damages, whether recovered by way of settlement, execution of judgment or otherwise.

Hamed's proposed accrual periods to be unpersuasive.[7] The Virgin Islands prejudgment interest statute provides in pertinent part:

> (a) The rate of interest shall be nine (9%) per centum per annum on — (1) all monies which have become due; (2) money received to the use of another and retained beyond a reasonable time without the owner's consent, either express or implied; (3) money due upon the settlement of matured accounts from the day the balance is ascertained; and (4) money due or to become due where there is a contract and no rate is specified. Title 11 V.I.C. §951(a).

Here, Hamed never specified which subsection of Title 11 V.I.C §951(a) is applicable in this instance. The Master opines that the prejudgment interest should accrue when "all monies which have become due"—which is the date Hamed demanded $504,591.03 and Yusuf refused to return the money. *See e.g., Bank of N.S. v. Four Winds Plaza Corp.*, 56 V.I. 45, 57-58 (Super. Ct. Feb. 15, 2012) (While the court noted that prejudgment interest should accrue from the date Four Winds refused to turn over the sale proceeds, the court ended up using the date that the Bank demanded the sale proceeds since the record did not reflect the date of Four Winds' refusal.) However, when Hamed demanded $504,591.03, there was a reasonable dispute as to what amount out of $504,591.03 constituted a legitimate expense of the Partnership. As Yusuf pointed out, his concession to the Stipulation was driven by the considerations that it would be an expensive discovery process, and "hardly an admission of theft." Thus, it would be unjust to calculate the prejudgment interest from the date that Hamed demanded $504,591.03. Accordingly, for the calculation of the prejudgment interest as to Hamed Claim No. H-3, the Master will use the date Parties filed the Stipulation—May 30, 2018, through the date of this order.

[7] Hamed proposed two different accrual periods for the prejudgment interest in his motion and reply: (1) "from April 2013 to the date of this order" (motion); and (2) "the date of each check to Yusuf's law firm up to the date the amount is deducted from Yusuf's Partner Account in the final calculation/adjustment of accounts" (reply).

3. The Appropriateness of the Prejudgment Interest as to Hamed Claim No. H-3

The Master similarly finds Yusuf's argument that prejudgment interest should not be granted in this instance because the Stipulation is "hardly an admission of theft" since Yusuf's concession was driven by the considerations that it would be an expensive discovery process. Yusuf failed to cite to any binding authority or any legal basis to support his argument. As a result, this is a deficient argument and must be denied. *See Simpson v. Golden*, 56 V.I. 272, 280 (V.I. 2012) ("The rules that require a litigant to brief and support his arguments … before the Superior Court, are not mere formalistic requirements. They exist to give the Superior Court the opportunity to consider, review, and address an argument"); *Bertrand v. Mystic Granite & Marble, Inc.,* 63 V.I. 722, 782 (V.I. 2015) ("[S]imply stating a principle of law without any argument or explanation of how it applies to the case at hand is not sufficient to fairly present the issue to the Superior Court") (citing *Yusuf v. Hamed*, 59 V.I. 841, 851 n.5 (V.I. 2013)). Accordingly, the Master will grant prejudgment interest as to Hamed Claim No. H-3. *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 Hamed's instant motion. Accordingly, it is hereby:

ORDERED that Hamed's second motion as to Hamed Claim No. H-3: Partnership funds in the amount of $504,591.03 that Yusuf paid to his counsel, Fuerst Ittleman David & Joseph, PL, from September 2012 to April 2013, requesting for prejudgment interest as to $504,591.03, is **GRANTED**. **And** it is further:

ORDERED that prejudgment interest as to $504,591.03 shall accrue from May 30, 2018, through the date of this order, at the rate of 9% per annum.

DONE and so ORDERED this 11th day of July, 2018.

EDGAR D. ROSS
Special Master