

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 motion for summary judgment regarding Hamed Claim No. H-1: “Fathi Yusuf’s failure to pay funds re sale of the Y&S [Corporation, Inc.] stock resulting in the sale of the Dorothea condos and land.”¹ Yusuf filed an opposition² and Hamed filed a reply thereafter.³

BACKGROUND

On September 26, 1994, the Y&S Corporation, Inc. held its organizational meeting and the minutes thereto identified the following individuals as officers: Fathi Yusuf (President), Rifat Salem (Vice President), and Hakima Salem (Secretary/Treasurer), and the following individuals as shareholders: Hakima Salem (1000 shares), Najeh Yusuf (500 shares), and Hisham Hamed (500 shares). (Motion, Exhibit 1-September 26, 1994 Minutes of Y&S Corporation, Inc.) On September 28, 1994, a special warranty deed was filed with the Recorder’s Office for the Districts of St. Thomas and St. John, U.S. Virgin Islands, whereby Grantor Spread Eagle Paradise Holdings, Inc. conveyed various parcels of Estate Dorothea to Grantee Y&S Corporation, Inc. for \$900,000.00. (Motion, Exhibit 2-Special warranty deed for various parcels of Estate Dorothea) On September 28, 1994, a special warranty deed was filed with the Recorder’s Office for the Districts of St. Thomas and St. John, U.S. Virgin Islands, whereby Grantor Spread Eagle Paradise Holdings, Inc. conveyed

¹ Although Hamed’s Accounting Claims (as defined below) and Hamed’s Amended Accounting Claims (as defined below) both referred to Hamed Claim No. H-1 as Hamed’s 50% interest in the sale proceeds of Estate Dorothea—in the total amount of \$802,966, Hamed’s instant motion referred to Hamed Claim No. H-1 as “Fathi Yusuf’s failure to pay funds re sale of the Y&S [Corporation, Inc.] stock resulting in the sale of the Dorothea condos and land.”

² Although Yusuf’s Accounting Claims (as defined below) and Yusuf’s Amended Accounting Claims (as defined below) both did not mention the sale of Estate Dorothea and instead, both referenced Y&S Corporation, Inc. and R&F Condominiums, Inc. stock sale proceeds distribution in connection with \$802,966, Yusuf’s opposition similarly referred to Hamed Claim No. H-1 as “Fathi Yusuf’s failure to pay funds re sale of the Y&S [Corporation, Inc.] stock resulting in the sale of the Dorothea condos and land.”

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 Hamed Claim No. H-1 is an alleged debt owed by the Partnership to Hamed.

units and common area interests appurtenant thereto located at Estate Dorothea to Grantee R&F Condominiums, Inc. for \$100,000.00. (Motion, Exhibit 3-Special warranty deed for units and common area interests at Estate Dorothea)

On June 15, 2000, Hisham Hamed, Nejah Yusuf, and Hakima Salem executed an agreement of sale of stock (hereinafter "Agreement of Sale of Stock"), whereby Sellers Hisham Hamed and Nejah Yusuf sold all of their 1000 shares of Y&S Corporation, Inc. to Buyer Hakima Salem. (Motion, Exhibit 6-Agreement of Sale of Stock) According to the Agreement of Sale of Stock, seller and buyer agreed as follows:

1. Seller agrees to sell and transfer 1000 shares of common stock of Y & S Corporation, Inc. representing all of seller's stock ownership interest in that corporation, into escrow and after final payment, to register such transfer of shares upon the books of the corporation.
2. In consideration of the transfer of its 1000 shares of Y&S Corporation, Inc., Buyer agrees to pay to seller's nominee, Mr. Fathi Yusef of 9-C Princess Hill, St. Croix the sum of Nine Hundred Thousand (\$900,000.00) Dollars.
3. Price: The amount due and payable hereunder shall be paid over a period of four (4) years in four equal yearly installments, of Two Hundred and Twenty Five Thousand (\$225,000.00) Dollars. The first installment shall become due on January 15, 2001, and the remaining installments shall become due on January 15, 2002, January 15, 2003, and January 15, 2004.
...
6. Escrow: The stock sold under this agreement shall be endorsed by the sellers to the Buyer and such stock shall be held in Escrow by Robert L. King, Esq. until all payments due hereunder have been paid to the Seller's Nominee. Robert L. King, as escrow agent shall deliver the stock certificates sold hereunder to the Buyer within 30 days of receipt of written notice from seller that the entire purchase price has been paid in full. The corporation shall immediately thereafter cause the transfer of shares to be registered upon the books of the corporation. If Buyer shall default in making the payments as required by this agreement within the grace periods provided, and such default is not cured within 60 days after such default, then escrow agent may return said stock certificates to the seller or seller's nominee without recourse from either Buyer or Seller. (Motion, Exhibit 6-Agreement of Sale of Stock)

Subsequently, a notice of payment of purchase price and authorization of release of stock certificates pursuant to the Agreement of Sale of Stock, signed by Hisham Hamed on February 18, 2012, and by Najah Yusuf on February 19, 2012, was sent to Robert L. King, Esq. (hereinafter "Notice of Payment"), whereby they advised Robert L. King, Esq. that "the

purchase price has been paid in full on a timely basis and that you are authorized and directed to release the shares of stock that have been endorsed by the sellers to the buyer.” (Motion, Exhibit 7-Notice of Payment)

On September 17, 2012, Hamed filed this instant action against Yusuf and United in connection with the three Plaza Extra stores—case no. SX-12-CV-370. (Motion, Exhibit 15-Hamed’s complaint in SX-12-CV-370) On April 25, 2013, in response to Hamed’s emergency motion and memorandum to renew application for TRO, the Court entered a memorandum opinion whereby the Court made the following findings of fact:

11. Yusuf and Hamed were the only partners in Plaza Extra by the time in 1986 when the supermarket opened for business and Hamed has remained a partner since that time. *Pl. Ex. 28.*
12. As a partner in the Plaza Extra Supermarket business, Hamed was entitled to fifty (50%) percent of the profit and liable for fifty (50%) of the “payable as well as loss of his contribution to the initial start-up funds. *Tr. 44:12 -21; 200:16-23; 206:23-25, Jan. 25, 2013; Pl. Ex. 1, p 18:16 -23; p.23:18-25.*
13. Yusuf and Hamed have both acknowledged their business relationship as a partnership of an indefinite term. *Pl. Ex. 1, p:18:18 -23* (“I’m obligated to be your partner as long as you want me to be your partner until we lose \$800,000.”); *Tr. 210 :44-8, Jan. 25, 2013* (Q:“How long is your partnership with Mr. Yusuf supposed to last? When does it end?” A:“Forever. We start With Mr. Yusuf with the supermarket we cake money. He make money and I make money, we stay together forever.”)
- ...
33. Waleed Hamed testified that Fathi Yusuf utilized Plaza Extra account funds to purchase and subsequently sell property in Estate Dorothea, St, Thomas, to which it was agreed that Hamed was entitled to 50% of net proceeds. Although Yusuf’s handwritten accounting of sale proceeds confirms that Hamed is due \$802,966, representing 50% of net proceeds (*Pl. Ex. 18*), that payment has never been made to Hamed and the disposition of those sale proceeds is not known to Hamed. *Tr.88: 8- 90:17, Jan. 25, 2013.* (Court’s April 25, 2013 order)

On July 7, 2014, Hamed filed a separate complaint against Yusuf in connection with his 50% interest in the sale proceeds from the sale of Estate Dorothea—case no. SX-14-CV-278, which was subsequently consolidated with case no. SX-12-CV-370. (Motion, Exhibit 9-Hamed’s complaint in SX-14-CV-278, Exhibit 10-Parties’ stipulation re consolidation; Court’s October 13, 2016 order granting Parties’ stipulation re consolidation)

In 2016, both Hamed and Yusuf filed their respective accounting claims. In Hamed’s accounting claims (hereinafter “Hamed’s Accounting Claims”), Hamed included this claim for his 50% interest in the sale proceeds of Estate Dorothea—in the total amount of \$802,966—as one of his accounting claims. (Hamed’s Accounting Claims, Exhibit B-1) In Yusuf’s accounting claims (hereinafter “Yusuf’s Accounting Claims”), Yusuf did not mention the sale of Estate Dorothea; instead, Yusuf provided the following regarding Y&S Corporation, Inc. and R&F Condominiums, Inc. stock sale proceeds distribution:

The Claim provides: ...

b) an accounting of funds received by Yusuf for the sale of Y&S Corporation (“Y&S”) and R&F Condominium, Inc. (“R&F”) stock resulting in a balance of \$802,966.00 due to Hamed;

...

V. Y&S and R&F Stock Sale Proceeds Distribution

The Partnership invested in various entities used to purchase either stock or real estate. One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and NejeH Yusuf. The two sons sold their stock for \$900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. Yusuf has received all of the proceeds from the sale of the stock. Although claims to these funds were the subject of a separate suit (Hamed v. Yusuf, Superior Court of St. Croix, SX-2014-CV-278), the parties stipulated to have these claims¹³ consolidated into this case and incorporated into the Partnership accounting and distribution. As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966¹⁴ should be allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F.

¹³ Although no claims have ever been pled in this case or SX-2014-CV-278 concerning the \$600,000 in proceeds from Yusuf’s sale of his 1,000 shares of stock in R&F pursuant to an agreement dated January 15, 2001 with Hakima Salem, Yusuf is prepared to include these proceeds in his accounting.

¹⁴ Interest was not included on this claim because, among other things, United did not include all the interest it could claim on the rent actually awarded by the Rent Order. *See* n.11, above. There are additional reasons for not paying interest on the claim as reflected in Yusuf s First Amended Answer And Counterclaim filed in SX-2014-CV-278. *See also* n. 15, below, regarding \$150,000 offset. (Yusuf’s Accounting Claims, pp. 3, 11)

Additionally, Yusuf's Accounting Claims also included the following regarding the \$150,000 offset against \$802,966:

VI. Foreign Accounts and Jordanian Properties

...

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

...

- b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation; see Exhibit L, Wire Transfer Information Supporting Claim.¹⁵

¹⁵ This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should either be offset against the \$802,966 allocated to Hamed in § V, above, or it should be charged against Hamed's interest in the Partnership. Given Hamed's apparent negative balance in his Partnership account, Yusuf submits the \$150,000 should be offset against the \$802,966. (Yusuf's Accounting Claims, pp. 11-12)

In 2017, in a memorandum opinion and order dated July 21, 2017, the Court 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” (hereinafter “Limitation Order”). *Hamed v. Yusuf*, 2017 V.I. LEXIS 114, *44-45 (V.I. Super. Ct., July 21, 2017). Per the Court's Limitation Order, parties filed their respective amended counting claims. In Hamed's amended accounting claims (hereinafter “Hamed's Amended Accounting Claims”), Hamed again included this claim for his 50% interest in the sale proceeds of Estate Dorothea—in the total amount of \$802,966—as one of his accounting claims. (Hamed's Amended Accounting Claims, pp. 3-4) In Yusuf's amended accounting claims (hereinafter, “Yusuf's Amended Accounting Claims”), Yusuf,

again, did not mention the sale of Estate Dorothea; furthermore, Yusuf contended that Y&S Corporation, Inc. and R&F Condominiums, Inc. stock sale proceeds are barred by the Limitation Order and provided the following:

The Amended Claims provide:...

b) removal of the accounting of funds received by Yusuf for the sale of Y&S Corporation (“Y&S”) and R&F Condominium, Inc. (“R&F”) stock resulting in a balance of \$802,966.00 originally due to Hamed because these transactions are now barred by the [Limitation] Order and should be removed from the Partnership allocations;

...

V. Y&S and R&F Stock Sale Proceeds Distribution

The Partnership invested in various entities used to purchase either stock or real estate. One such entity was Y&S. The Partners invested Partnership funds through two of their sons, Hisham Hamed and NejeH Yusuf. The two sons sold their stock for \$900,000, pursuant to an agreement dated January 15, 2000 with Hakima Salem. Rather than receiving the proceeds, the two sons directed that the funds be paid to Yusuf, who was to be the nominee of the sales proceeds and, thus, custodian of the funds. The funds were not paid in a lump sum, but rather periodically and often late. Yusuf has received all of the proceeds from the sale of the stock. Although claims to these funds were the subject of a separate suit (*Hamed v. Yusuf*, Superior Court of St. Croix, SX-2014-CV-278), these claims¹⁵ have been consolidated into this case and incorporated into the Partnership accounting and distribution. **As a result of various adjustments reflected on Exhibit 1 to the complaint in SX-2014-CV-278, \$802,966 would have been allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y &S and R&F. However, since the [Limitation] Order limits the claims Partners can make to transactions occurring on or before September 17, 2006, any claims Hamed has regarding the sale of the stock of Y&S and R&F are barred by the [Limitation] Order.**

Disputed/Undisputed, Ripe for Determination or Discovery Needed: It is Yusuf’s position that this item is barred by the [Limitation] Order and no longer subject to determination by the Master.

¹⁵ Although no claims have ever been pled in this case or SX-2014-CV-278 concerning the \$600,000 in proceeds from Yusuf’s sale of his 1,000 shares of stock in R&F pursuant to an agreement dated January 15, 2001 with Hakima Salem, Yusuf included these proceeds in the Original Claims. (Yusuf’s Amended Accounting Claims, pp. 4, 15) (Emphasis added)

Additionally, Yusuf’s Amended Accounting Claims also included the following regarding the \$150,000 offset against \$802,966:

VI. Foreign Accounts and Jordanian Properties

...

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

...

b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation; see Exhibit L to the Original Claim, Wire Transfer Information Supporting Claim.¹⁷

¹⁷ This payment was made on behalf of the purchaser of the Y&S and R&F stock and represented a portion of the proceeds of the sale of that stock. Accordingly, the amount should be charged against Hamed's interest in the Partnership. (Yusuf's Amended Accounting Claims, pp. 15-16)

On December 20, 2018, Hamed filed an expedited motion to compel responses to discovery served in connection with Hamed Claim No. H-1: Hamed's 50% interest in the sale proceeds of Estate Dorothea—in the total amount of \$802,966. On January 7, 2019, the Master entered an order thereto and found the following facts undisputed: (1) Hamed and Yusuf each have 50% interest in the sale proceeds of Estate Dorothea; (2) Yusuf received the entire sale proceeds of Estate Dorothea; and (3) Hamed was never paid for his 50% interest in the sale proceeds. (Jan. 7, 2019 order, p. 5-6) On February 25, 2019, Hamed filed this instant motion for summary judgment in connection with Hamed Claim No. H-1.

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 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 permits the court to “grant summary judgment for a nonmovant” after “giving notice and a reasonable time to respond.” V.I. R. CIV. P. 56(f)(1). 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 claimed that the “only issue that remains to be resolved is whether Hamed’s 50% of the proceeds from the sale of the Y&S stock, and by extension, the ‘Dorothea’ condos, are barred by the [Limitation] Order.” (Motion, p. 7) Hamed further claimed that, “[w]hile the SOL or the doctrine of laches may obviate contractual claims outside of the limitations period (as set either by statute or court order), these limitations periods are tolled by [the following three] exceptions.” (Id.) (Emphasis omitted) First, Hamed argued that Yusuf’s acknowledgments of the debt post-2006—at Yusuf’s depositions in 2014⁴ and 2019⁵ and in Yusuf’s Accounting Claims⁶—tolled the debt. (Id.) In support of his argument, Hamed pointed to the Court’s Limitation Order where the Court explained that

⁴ “On April 2, 2014, Fathi Yusuf testified in his deposition that he received \$1.5 million in proceeds for the sale of the Y&S/Dorothea property, that one-half of it is owed to Hamed and that he would pay it.” (Motion, p. 8) (Emphasis omitted)

⁵ “In his subsequent deposition, on January 21, 2019, Yusuf again acknowledged the debt (after the Court’s order setting out the 2006 bar date) and stated that he owed \$802,966 to Hamed for the sale of the Y&S stock and a loan Hamed paid on behalf of Yusuf. (Id.)

⁶ “On September 30, 2016, Yusuf stated that ‘\$802,966 should be allocated to Hamed to equalize the Partnership distribution between the Partners resulting from the sale of the stock of Y&S and R&F.’” (Id.)

the acknowledgment of the debt doctrine is recognized as follows: “A debt which is time-barred may be ‘revived’ by an acknowledgement by the debtor.” (Id.) Second, Hamed argued that “Yusuf’s ‘SOL’ argument is also defeated by the doctrine of partial performance.” (Id., at p. 8) In support of his argument, Hamed pointed to two post-2006 transactions—in 2011⁷ and in 2012⁸—and concluded that these transactions “constituted new acts and new incidents of failure to pay the Hameds under the contract.” (Id., at p. 10) Finally, Hamed argued that “Yusuf’s arguments are also barred under the ‘continuing violations’ doctrine, as Fathi Yusuf received a partial contractual payment in 2011.” (Id., at p. 11) In support of his argument, Hamed alleged that “[a]s the seller’s nominee for collection under the contract, Fathi Yusuf (as an escrow agent) had a legal duty to either 1) distribute funds each time a partial payment was made by the purchaser (which occurred at least once in 2011) or 2) distribute all of the funds when requesting the release of the stock from the seller (which occurred in 2012).” (Id.) Hamed concluded that “Fathi Yusuf 1) wrongfully collected funds in 2011 and did not distribute them in breach of the contract and 2) after collecting them, in 2012 he failed to turn over Hamed’s half of the funds when he sought and supplied the Hamed release of the escrow for the stock certificate” and that “[b]oth are wrongful contractual acts committed within the post-2006 period.” (Id., at p. 13) As such, Hamed requested the Master to grant his motion for summary judgment regarding Hamed Claim No. H-1, enter a judgment in the amount of \$802,966 plus prejudgment interest, and credit such an amount “to his Partnership account when all claims are reconciled.” (Id.)

⁷ “Yusuf further testified [in his January 21, 2019 deposition] that he directed Salem to transfer the money directly and Yusuf deducted the \$150,000 from the \$1.5 million Salem owed for the Y&S stock” and “[a]n email on November 16, 2011 produced by Yusuf in discovery showed a bank transfer \$150,000 to the Bank of Palestine for this ‘concrete factory.’” (Id., at p. 10) (Emphasis omitted)

⁸ “Fathi Yusuf also testified in his January 21, 2019 deposition that he asked Hisham (“Shawn”) Hamed to sign a release, allowing the remaining Y&S shares to be released to the buyer, Salem” and “[o]n February 19, 2012, Shawn Hamed and Nejeah Yusuf signed a [Notice of Payment] for Y&S.” (Id., at pp. 10-11)

In his opposition, Yusuf argued that “the transaction giving rise to Hamed Claim No. H-1 occurred prior to September 17, 2006—the cut-off date imposed by the [Limitation Order]” and is therefore, barred. (Opp., pp. 2, 5) In support of his argument, Yusuf pointed to the following facts and made the following claims. First, Yusuf pointed to the Agreement of Sale of Stock, “which defines the transaction was dated June 15, 2000 and required the buyer to make four \$225,000 installment payments, which were due on January 15, 2001, January 15, 2002, January 15, 2003 and January 15, 2004—all of which were to occur before the September 17, 2006 cut-off date.” (Id., at p. 3) (Emphasis omitted) Second, Yusuf pointed out that “[t]here are no records as to the payments or when they were received” and that “[t]he only payment for which there is any documentation is a payment in 2011 in which a \$150,000 payment was made directly to a concrete [sic] batch plant in Jordan at Mr. Yusuf’s direction to satisfy a joint obligation of the partners, which Hamed failed to pay his portion of the obligation some ten (10) years earlier” and that “this single payment (to satisfy an outstanding obligation of Hamed) does not demonstrate when the other \$1,350,000 value had been received.” (Id., at p. 5) Third, Yusuf claimed that, “to the extent that Hamed tries to allege that Yusuf’s actions constitute a claim for damages, a continuing breach or partial performance of a contract, such arguments are misplaced as this is simply an equitable accounting claim, like all the other equitable accounting claims between the partners.” (Id.) Yusuf further claimed that the Court’s Limitation Order specifically addressed Hamed Claim No. H-1 and found that “[Hamed’s] Complaint in SX-14-CV-278, as a result of the consolidation of these matters, represent no additional claims or prayers for relief, and remains operative only in so far as it contains factual allegations supplementing those already contained in [Hamed’s] Complaint in SX-12-CV-370” and thus “Hamed Claim No. H-1, by virtue of its consolidation into this case is simply an accounting claim.” (Id., at pp. 5, 10) Therefore, Yusuf concluded that “Hamed (sic) arguments and analysis along the lines of a

continuing violation or partial performance so as to circumvent the application of the Limitation Order are misplaced.” (Id., at p. 12) Fourth, Yusuf pointed to the Master’s September 24, 2018 order and claimed that “the Master struck \$1.6 million of Yusuf’s claims for Hamed’s earlier partnership withdrawals because the \$1.6 million ‘was tabulated in 2001,’ although not reconciled and a matching distribution not made until August 15, 2012.” Yusuf noted that “[t]he Master determined the claim was based on a transaction that occurred pre-September 17, 2006 and thus, was barred by the Limitation Order.” (Id., at p. 7) Thus, Yusuf concluded that Hamed Claim No. H-1 similarly “should be deemed as barred” because “the transaction was initiated and scheduled to be completed before the cut-off date and there is evidence that the majority of the payments were made prior to 2006, with only one payment (used to satisfy an outstanding obligation to Hamed) was made in 2011, after the cut-off date” and thus (Id., at p. 8) (Emphasis omitted) Fifth, Yusuf pointed out that “there are no records as to the payments or when they were received” and that “the partners’ acquiescence to informal recordkeeping has been an issue in the case, served as a significant concern for the Court and was a primary factor in the Court’s rationale for issuing the Limitation Order” whereby the Court found that “Hamed is no less to blame for this state of affairs and no less at fault for failing to seek any formal accounting of his interest until this late hour” and held that “the fact that the partners waited approximately seven years—since the founding of the partnership in 1986—to conduct the first and only complete reconciliation of the accounts between them demonstrates that Hamed was equally content with this practice of informal and sporadic accounting.” (Id., at pp. 8-9) Sixth, as to acknowledgment of the debt doctrine, Yusuf pointed out that in the September 24, 2018 order, “the Master has already determined that ‘[e]ven if some claims were, in fact, undisputed’ the Limitation Order indicates that ‘only claims ‘based upon transactions that occurred on or after September 17, 2006 will be considered, regardless of whether it is

disputed or undisputed’ and found such arguments ‘unpersuasive.’” (Id., at p. 15) Seventh, Yusuf claimed that “[t]here is no basis for Hamed to claim that it is undisputed that funds were received in 2012 and, at best, it is a disputed fact.” (Id.) Yusuf also claimed that, “the receipt of payments after the cut-off date does not transform the transaction or immunize it from the reach of the Limitation Order.” (Id.) Lastly, Yusuf also argued that, in the event that Hamed Claim No. H-1 is not barred, “[i]n calculating what was due, then it would be \$750,000 for Yusuf (½ of the \$1,500,000) and \$600,000 for Hamed (total due \$750,000 (his ½ of the \$1,500,000) minus \$150,000 paid to the batch plant from Hamed’s portion.” (Id., at pp. 15-16) As such, Yusuf requested the Court to deny Hamed’s motion “as the claim is barred by the Limitation Order” or in the alternative, if not barred, then the amount credited to Hamed should be \$600,000. (Id., at pp. 16-17)

In his reply, Hamed again claimed that Hamed Claim No. H-1 is not barred by the Limitation Order and reiterated the arguments he made in his motion as to acknowledgment of the debt doctrine, partial performance, and continuing violations. (Reply, p. 9-10) Furthermore, Hamed also made the following arguments in response to Yusuf’s opposition. First, Hamed claimed that “[t]o qualify for laches, Yusuf, having the burden to demonstrate an affirmative defense, must show facts that place the buyer’s performance of the contract by making payments which had to be distributed to Hamed, prior to 2006” but “[t]here is simply no evidence, as to which Yusuf has the full and affirmative burden, that any actual performance by the buyer occurred prior to September 17, 2006.” (Id., at pp. 3-4) (Emphasis omitted) Hamed further claimed that, “[t]o the contrary, what Yusuf calls a ‘fragmentary’ \$150,000 documented receipt of contract funds in 2011 is the only actual proof of when any payments were made, by Yusuf’s own admission.” (Id., at p. 3) (Emphasis omitted) Second, Hamed claimed that Yusuf’s \$1.6 million dollars claim (part of Yusuf Claim No. Y-10) “is not analogous and was denied because there was no intervening event by Hamed to revive

it.” (Id., at p. 5) Hamed pointed out that as to Yusuf’s \$1.6 million dollar claim, “Yusuf cannot revive his own stale claim by arguing partial performance when he is the one withdrawing money from the Partnership account” and that in contrast to Hamed Claim No. H-1, “the written contract was formed in 2000 but it was Yusuf who did not distribute Hamed’s share of the sale funds as required by the contract after admittedly receiving funds pursuant to the contract in 2011” and “Yusuf committed another act under the contract in 2012, well after the September 17, 2006, cut-off date when he requested that Shawn Hamed release the Y&S stock pursuant to the contract, which Shawn Hamed did when he signed the requested release in February 2012.” (Id.) (Emphasis omitted) Third, Hamed pointed out that although “Yusuf tries to make a distinction between an ‘accounting claim’ and a claim for damages, with interest...the Revised Uniform Partnership Act (RUPA), as adopted in the U.S. Virgin Islands, “explicitly allows interest on RUPA claims just as it would be allowed in any other VI claim at law.” (Id., at p. 6) Hamed claimed that “RUPA allows interest on accounting claims, so it does not matter what term Yusuf uses to describe a claim.” (Id., at p. 9) Fourth, Hamed pointed out that although “Yusuf tries to argue...that the Partners ‘acquiesce[ed] to informal recordkeeping’...and therefore Hamed has no recourse to make a claim just because Yusuf can’t prove he received the proceeds prior to the September 2016 [sic] cutoff date...[t]his transaction was not an instance of ‘informal recordkeeping.’” (Id., at p. 10) Hamed further pointed out that “[o]n this occasion there was a written, signed contract with a separate entity, the Y&S corporation,” “[t]he contract specified the duties of the agent, Fathi Yusuf,” “Fathi Yusuf had a duty to pay Hamed’s share of the proceeds under the contract,” “He failed to pay Hamed his share and he further failed to maintain accurate records of payments, which was part of his fiduciary duty as an agent” so Yusuf “cannot now claim that his lack of recordkeeping should get him off the hook for paying Hamed his share.” (Id., at pp. 10-11) Finally, as to Yusuf’s argument that in the event that Hamed Claim No,

H-1 is not barred, the amount credited to Hamed should be reduced by \$150,000, Hamed argued that “[t]his reduction is not appropriate because, by Yusuf’s own words, this batch plant payment was allegedly due in the pre-2006 time period of the Limitations Order” and that “equally important, this \$150,000 is a claim that Yusuf has brought separately—Y-12-Foreign Accounts and Jordanian Properties.” (Id., at p. 11) As such, Hamed requested to the Court to grant his motion for summary judgment regarding Hamed Claim No. H-1, enter a judgment in the amount of \$802,966 plus prejudgment interest, and credit such an amount “to his Partnership account when all claims are reconciled.” (Id., at p. 12)

A. The Sale of Estate Dorothea

The Master must note at the outset that, based on circumstantial evidence, (1) when Parties referred to the sale of Estate Dorothea, Parties were referring to the sale of the following two purchases collectively: various parcels of Estate Dorothea purchased by Y&S Corporation, Inc. and units and common area interests appurtenant thereto located at Estate Dorothea purchased by R&F Condominiums, Inc.; and (2) the sale of Estate Dorothea is directly related to and/or the result of the sale of Hisham Hamed and Nejah Yusuf’s Y&S Corporation, Inc. stock to Hakima Salem and thus, Parties referred to the proceeds from both sales as one collective amount.⁹ Irrespective of how Parties structured the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale, Parties agreed that, as a result of these transactions, Hamed is owed \$802,966 as his 50% interest.¹⁰ As such, the Master finds that Hamed is

⁹ See *Supra*, footnotes 1 and 2. In their respective briefs, Parties referred to the Y&S Corporation, Inc’s stock sale and the Estate Dorothea sale interchangeably and referred to the proceeds from both sales as one collective amount—for example, Hamed claimed in his motion that “[o]n April 2, 2014, Fathi Yusuf testified in his deposition that he received \$1.5 million in proceeds for the sale of the Y&S stock/Dorothea property, that one-half of it is owed to Hamed...” (Motion, p. 8) and Yusuf stated throughout his opposition that “[t]he Agreement of Sale of Stock, which defines the transaction...” and that “the transaction was initiated and scheduled to be completed before the cut-off date...with one payment... made in 2011” where the 2011 payment is part of the proceeds from the sale of Estate Dorothea. (Opp., pp. 7-8)

¹⁰ In both Hamed’s Accounting Claims and Hamed’s Amended Accounting Claims, Hamed described Hamed Claim No. H-1 as a claim for his 50% interest in the sale proceeds of Estate Dorothea—in the total amount of \$802,966. Although Yusuf argued in his opposition that Hamed’s 50% interest in the sale proceeds of Estate Dorothea is \$750,000 (one half of the \$1,500,000), in both Yusuf’s Accounting Claims and Yusuf’s Amended

owed \$802,966 for his 50% interest in the proceeds of the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale.

B. The Limitation Order

The question remains whether Hamed Claim No. H-1—Hamed’s 50% interest in the proceeds of the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale—in the total amount of \$802,966—is barred by the Limitation Order. Here, it is undisputed that, in 2011, Yusuf instructed Hakima Salem (purchaser of Hisham Hamed and Nejah Yusuf’s Y&S Corporation, Inc. stock) to transfer \$150,000 of Salem’s payment for the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale directly to a concrete batch plant instead of making the \$150,000 payment to Yusuf.¹¹ As such, this payment in 2011—regardless of whether it

Accounting Claims, Yusuf referenced \$802,966 in connection with the sale of Y&S Corporation, Inc. This—the amount of \$802,966 is owed to Hamed—is further supported by Yusuf’s testimony at his January 21, 2019 deposition regarding his handwritten calculation.

Q. [Mr. Hartmann]...The first one is labeled Claim H-1 Exhibit 7, which is a notice of payment of pre-purchase price and authorization to release stock certificates.

And I’m also handing to you a second document, which is labeled Claim H-1 Exhibit 8, which is a handwritten document. And I’d ask you if you could look at both of those documents.

A. [Mr. Yusuf] Yeah, I recognize both of them.

Q: Okay.

A: This one, I don’t remember seeing. But this one is my handwriting.

...

Q. So you think you may have given it to either Shawn or –

A. One of the two, because one – both of them, they was in St. Thomas.

Q. Okay. Either Shawn or Willie, is that what you’re saying?

A. Yes.

Q. Yes. Okay.

And why did you give it to them? What were you –

A. Because they have the right to it. They own 50 percent of the million and half.

Q. Okay. And – and what is the eight -0- two nine six six?

A. This is – I honestly don’t remember what. This is my – I was doing something, but I remember the one -0- five nine thirty-two. This here was a loan to somebody. And I asked Mohammad Hamed to pay it. And this is what, 70,000 dinar, Jordanian dinar. I convert it into U.S. dollar. They came up one -0- five nine thirty-two. And then I brought the total. The total would be one – one million six -0- five nine thirty-two. Half of that is 802,966.

But, for the record, the one -0- five nine thirty-two, I already give Mohammad Hamed share when I collected that loan. I gave it to them in the city of Zarga, in his house, in front of his wife. So we’re back to one thousand – one and a half million. (Motion, Exhibit 8-Yusuf’s handwritten calculations; Motion, Exhibit 13-Yusuf’s January 21, 2019 deposition transcript, pp. 19-21)

Although Yusuf testified “the one -0- five nine thirty-two, [he] already give Mohammad Hamed share when [he] collected that loan” and thus, the amount due to Hamed should no longer be \$802,966, this assertion was unsupported and not accounted for in Yusuf’s Accounting Claims and Yusuf’s Amended Accounting Claims, which both referenced the amount of \$802,966.

¹¹ Hamed’s statement of facts and Yusuf’s response thereto:

was made directly to Yusuf or the concrete batch plant—is a payment Salem made towards the purchase price of the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale. This is also substantiated by Yusuf throughout his opposition and his counter statement of facts. For example:

Motion

There are no records as to the payments or when they were received. *See* Exhibit A-Yusuf’s Supplemental Discovery Responses dated December 18, 2018. **The only payment for which there is any documentation is a payment in 2011** in which a \$150,000 was paid directly to a concrete [sic] batch plant in Jordan at Mr. Yusuf’s direction to satisfy a joint obligation of the partners, Hamed’s portion of which Hamed failed to pay some ten (10) years earlier. *See* Exhibit D, Yusuf Depo. Dated January 21, 2019; 22:3-1; 43:5-49:12. However, this single payment does not

10. On November 16, 2011, an email to Wael H. Abu Hazeema from Iyad F. Al-Madhoun showed that the Bank of America, N.A. transferred \$150,000 to the Bank of Palestine PLS as part of these funds for a “concrete factory.” (Motion, Group Exhibit 14-Email with wire transfer information for \$150,000)

Yusuf 10. Yusuf does not dispute that funds were paid as reflected in the document Group Exhibit 14.

11. Regarding the November 16, 2011 payment, Fathi Yusuf testified in his January 21, 2019 deposition that the purchaser of the Y&S stock, Mr. Salem, transferred \$150,000 as partial payment of the Y&S stock purchase price. Yusuf further testified that he directed Mr. Salem to transfer the money directly and Yusuf deducted the \$150,000 from the \$1.5 million Mr. Salem owed for the Y&S stock. (Motion, Exhibit 13-Yusuf’s January 21, 2019 deposition transcript) (Emphasis omitted)

Yusuf 11. Undisputed.

At his January 21, 2019 deposition, Yusuf testified:

A. [Mr. Yusuf] So we’re back to square one. A million and a half. I will never deny that, the million and a half being collected.

Q. [Mr. Hartmann] And when did you collect the million and a half?

A. I collect by the way, one million three fifty. The other one hundred and fifty, I told the Salem family to transfer it into a concrete batch plant, because 10 years earlier, Mohammad Hamed received that money to deliver it to the batch plant and he never did deliver it, so –

Q. Okay. Just so – just so – just so I’m clear, you received money from Mr. Salem?

A. Yes.

Q. And when you received that money from him –

A. Yes.

Q. – you sent that for the batch plant?

A. I did not receive the one hundred and fifty.

Q. You had him send it?

A. I direct them –

Q. Okay.

A. – to take it off of the bill and send it.

Q. So that – just so I’m clear.

A. Year.

Q. That one fifty was part of the 1.5 million?

A. Exactly.

Q. Oh, okay. And you received that in what year?

A. I don’t remember, honestly.

Q. But – but the way you received it, you had Mr. Salem send it, the one fifty?

A. The one fifty, Mr. Salem sent it through a bank transfer. (Motion, Exhibit 13-Yusuf’s January 21, 2019 deposition transcript, pp. 21-23)

demonstrate when the other \$1,350,000 value had been received. (Opp., p. 5) (Emphasis added)

...

Here, the transaction was initiated and scheduled to be completed *before* the cut-off date and there is evidence that the majority of the payments were made prior to 2006, **with only one payment (used to satisfy an outstanding obligation of Hamed) was made in 2011**, *after* the cut-off date. (Id., at p. 8) (Emphasis added)

...

The only payment for which there is any documentation is a payment in 2011 in which \$150,000 was made directly to a concrete (sic) batch plant in Jordan at Ysuuf's direction so as to satisfy a joint obligation of the partners, because Hamed failed to pay his portion of the obligation some ten (10) years earlier." See Exhibit D, Yusuf Depo. Dated January 21, 2019; 22:3-1; 43:5-49:12. However, this single payment does not demonstrate when the other \$1,350,000 value had been received. (Id., at p. 9) (Emphasis added)

Counter statement of facts

8. In his most recent deposition, Yusuf was asked questions about the Dorthea [sic] transaction and when he had Hisham Hamed and Najeh Yusuf sign a release. Yusuf explained "I want them to give the release, because the people ask for the release. They already paid the money long time, and they requested the release, and I told Shawn to sign the release." See Exhibit D, Yusuf Depo. Dated January 21, 2019, 25:1-4. Yusuf further testified that he does not recall when he received \$1.3 million of the \$1.5 million. *Id.* at 28:1-2.

9. There are no records as to the payments or when they were received. See Exhibit A-Yusuf's Supplemental Discovery Responses dated December 18, 2018.

10. **The only payment for which there is any documentation is a payment in 2011** in which a \$150,000 was paid directly to a concrete [sic] batch plant in Jordan at Ysuuf's direction to satisfy a joint obligation of the partners, Hamed's portion of which Hamed failed to pay some ten (10) years earlier. See Exhibit D, Yusuf Depo. Dated January 21, 2019; 22:3-1; 43:5-49:12. However, this single payment does not demonstrate when the other \$1,350,000 value had been received. (Emphasis added)

It is also undisputed that, in 2012, Hisham Hamed and Nejah Yusuf signed the Notice of Payment and authorized the release of Y&S Corporation, Inc. stock pursuant to the Agreement of Sale of Stock.¹² The 2011 payment of \$150,000 made by Salem towards the

¹² Hamed's statement of facts and Yusuf's response thereto:

15. Fathi Yusuf testified in his January 21, 2019 deposition, that he asked Shawn Hamed to sign the February 2012 release of the Y&S stock in escrow, allowing the remaining shares of Y&S to be released to the buyer, Hakima Salem. (Motion, Exhibit 7-Notice of Payment; Motion, Exhibit 13-Yusuf's January 21, 2019 deposition transcript)
Yusuf 15. Undisputed.

At his January 21, 2019 deposition, Yusuf testified:

Q. [Mr. Hartmann] Exhibit 7, that one. Year, okay.

A. [Mr. Yusuf] These document is –

Q. Do – do you remember that you had to get – I know you may not remember.

A. Don't give me this things. This is lawyer work.

purchase price of the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale—regardless of whether it was made directly to Yusuf or the concrete batch plant—makes the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale a transaction that occurred post-2006. The 2012 execution of the Notice of Payment and authorization of the release of Y&S Corporation, Inc. stock pursuant to the Agreement of Sale of Stock by Hisham Hamed and Nejah Yusuf makes the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale a transaction that occurred post-2006. The Y&S Corporation, Inc. stock sale/the Estate Dorothea sale is one ongoing transaction and not complete until Hakima Salem paid the full purchase price—Yusuf admitted that he already collected \$1,350,000 of the \$1,500,000 purchase price, thus, the \$150,000 was the final payment¹³—and until Hisham Hamed and Nejah Yusuf signed the Notice of Payment and authorized the release of Y&S Corporation, Inc. stock pursuant to the Agreement of Sale of Stock.¹⁴

In more direct terms: (i) in 2000, Hisham Hamed, Nejah Yusuf, and Hakima Salem entered into an agreement for Hisham Hamed and Nejah Yusuf to sell their Y&S

...

Q. Okay. So what I'm asking you is, when you got – when you were talking to, you think, Willie and Shawn, you needed Willie or Shawn to do something, right?

A. I want them to give the release, because the people ask for the release. They already paid the money long time, and they requested the release, and I told Shawn to sign the release. (Motion, Exhibit 13-Yusuf's January 21, 2019 deposition transcript, pp. 21-23)

¹³ At his January 21, 2019 deposition, Yusuf testified:

A. [Mr. Yusuf] So we're back to square one. A million and a half. I will never deny that, the million and a half being collected.

Q. [Mr. Hartmann] And when did you collect the million and a half?

A. I collect by the way, one million three fifty. The other one hundred and fifty, I told the Salem family to transfer it into a concrete batch plant, because 10 years earlier, Mohammad Hamed received that money to deliver it to the batch plant and he never did deliver it, so – (Motion, Exhibit 13-Yusuf's January 21, 2019 deposition transcript, p. 22)

In his opposition and his counter statement of facts, Yusuf also stated:

Dorothea [sic] Condo transaction. Mr. Yusuf confirms the following:

1. I was to receive the proceeds under the sales contract for the sale of the Dorthea [sic] Condo.
2. The full amount of \$1.5 million for the sale was received.
3. I am currently in possession of \$1,350,000 of the total amount of those proceeds in the form of another asset. The remaining \$150,000, I directed the purchaser to pay directly to the Batch Plant to make up for what Hamed had received 10 years earlier but had failed to deliver to the Batch Plant.... (Opp., p. 3; Yusuf's CSOF, p. 8)

¹⁴ See Motion, Exhibit 7-Notice of Payment.

Corporation, Inc. stock to Hakima Salem; (ii) irrespective of how Parties structured the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale, the proceeds from both sales are one collective amount; (iii) over the years, Hakima Salem made payments toward the purchase price of the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale, with one documented payment made in 2011; (iv) per Yusuf's instruction, Hakima Salem's 2011 payment was paid directly to a concrete batch plant instead of to Yusuf; (v) the 2011 payment from Hakima Salem was the final payment of the full purchase price; and (vi) in 2012, Hisham Hamed and Nejah Yusuf signed the Notice of Payment and authorized the release of Y&S Corporation, Inc. stock pursuant to the Agreement of Sale of Stock. Based on the foregoing, the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale began in 2000 and completed in 2012 and thus, the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale is considered as a transaction that occurred after 2006. As such, the Master finds that Hamed's Claim No. H-1—Hamed's 50% interest in the proceeds of the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale—in the total amount of \$802,966—is not barred by the Limitation Order.

Based upon the Master's finding that Hamed Claim No. H-1 is not barred by the Limitation Order, the Master need not address Parties' arguments related to reviving the claim and the doctrine of laches—to wit, acknowledgment of the debt doctrine, partial performance, and continuing violations. Moreover, based upon the Master's finding that Hamed is owed \$802,966 for his 50% interest in the proceeds of the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale, the Master need not address Parties' arguments related to their informal recordkeeping in connection with Hamed Claim No. H-1.

In regard to Yusuf's argument that Hamed Claim No. H-1 is similar to Yusuf's claim for \$1.6 million, the Master finds it unpersuasive.¹⁵ Yusuf claimed in his opposition that “the

¹⁵ Yusuf's claim for \$1,600,000 is part of Yusuf's claim for \$1,778,103.00. See *Yusuf's opposition to Hamed's motion to preclude Yusuf's claims prior to September 17, 2006*, p. 2; see also, the Master's September 24, 2018 order, p. 3 (In his opposition, Yusuf claimed that \$1,778,103.00 has three components: (1) “the amount taken

Master struck \$1.6 million of Yusuf’s claims for Hamed’s earlier partnership withdrawals because the \$1.6 million ‘was tabulated in 2001,’ although not reconciled and a matching distribution was not made until August 15, 2012.” This implied that Yusuf previously raised the 2012 reconciliation and distribution issue in his opposition to Hamed’s motion to preclude Yusuf’s claims prior to September 17, 2006¹⁶ and that the Master considered it and made a ruling thereto. However, a review of Yusuf’s opposition to Hamed’s motion to preclude Yusuf’s claims prior to September 17, 2006 revealed that Yusuf never raised the 2012 reconciliation and distribution issue; instead, Yusuf argued that his claim for \$1.6 million was not barred by the Limitation Order because the debt was “acknowledged to be owed by Hamed” after 2006.¹⁷ As such, the 2012 reconciliation and distribution issue was never considered by the Master when the Master found that Yusuf’s claim for \$1.6 million

by Waleed Hamed from a partnership account at a St. Martin Bank when he closed it in 2011 or 2012 (i.e., \$88,711.00”); (2) “the amount taken by Waleed Hamed from a partnership account at a Jordanian Bank when he closed it in 2011 or 2012 (i.e., \$89,392.00”); and (3) “a debt of \$1.6 million owed to Yusuf by Hamed that was tabulated in October 2001 but acknowledged by Waleed Hamed to be owed in 2012.”)

¹⁶ The September 24, 2018 order as to Hamed’s motion to preclude Yusuf’s claims prior to September 17, 2006 provided that:

The Master must note at the outset 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. Hamed’s motion moved to have the Master: (1) strike Yusuf’s claim for \$1,778,103.00; and (2) instruct Yusuf to not re-assert any such pre-September 17, 2006 claims. The Master will certainly instruct Parties to comply with the Court’s Limitation Order. However, at this juncture, the Master cannot make a general, sweeping determination as to which claims are pre-September 17, 2006 claims. If Parties wishes to argue that a specific claim is a pre-September 17, 2006 claim and therefore should be stricken, Parties should file a separate motion specific to that claim. This order will only address whether the claim raised in Hamed’s motion—Yusuf’s claim for \$1,778,103.00—is a pre-September 17, 2006 claim. (September 24, 2018 order, p. 4)

¹⁷ In his opposition to Hamed’s motion to preclude Yusuf’s claims prior to September 17, 2006, Yusuf made the following argument as to his claim for \$1.6 million:

As for the \$1,600,000 portion that was acknowledged to be owed by Hamed as late as 2012, the legal analysis in Judge Brady’s order limiting the parties’ accounting claims, together with a prior ruling by him recognizing oral acknowledgment of a debt as basis for equitable tolling, bring that debt within the scope of the limitation on the accounting claim too. (pp. 2-3)

...

Hamed’s oral acknowledgment of the \$1,600,000 debt to Yusuf in 2012 likewise means that his counterclaim to recover that debt would not have been time-barred under the analogous 6-year statute of limitations for breach of contract claims. And that in turn creates a presumption that laches does not bar recovery for this debt as part of Yusuf’s equitable accounting claim. The affidavit attached hereto as Exhibit A creates, at the very least, genuine issues of material fact precluding any summary holding that the doctrine of laches bars this claim under Judge Brady’s [Limitation] Order. (p. 5)

was barred by the Limitation Order and granted Hamed's motion to preclude Yusuf's claims prior to September 17, 2006—Yusuf's claim for \$1.6 million.¹⁸ To be clear, the Master is not saying that, had the 2012 reconciliation and distribution been raised previously in Yusuf's arguments, it would have made a difference in the ruling, and the Master is not

¹⁸ The September 24, 2018 order provided:

B. \$1,600,000.00

Here, Yusuf admitted that the debt of \$1,600,000.00 owed by Hamed to Yusuf was tabulated in 2001. The Court clearly ordered in its Limitation Order that only claims “based upon transactions that occurred on or after September 17, 2006” will be considered, regardless of whether it is disputed or undisputed since “it appears doubtful, based upon the record and the representations of the parties in this matter, that any claim submitted by either party would truly be undisputed” and “even if some claims were, in fact, undisputed, because of the great dearth of accurate records there exists such an element of chance in any attempt to reconstruct the partnership accounts that an accounting reaching back to the date of the last partnership true-up in 1993 would ultimately be no more complete, accurate, or fair, than an accounting reaching back only to 2006”. *Hamed*, 2017 V.I. LEXIS 114 at *44. Thus, this portion—\$1,600,000.00—of Yusuf's claim for \$1,778,103.00 is a pre-September 17, 2006 since it was tabulated in 2001.

Yusuf argued that because Waleed Hamed acknowledged this debt in 2012, it should not be stricken pursuant to the Court's April 27, 2015 order re payment of rent (hereinafter “Rent Order”) because “Judge Brady has already found in a prior ruling that an oral acknowledgement of a debt tolls the 6-year statute of limitation for contract claims, so that the debt is deemed to have accrued on the date it was acknowledged – rather than the date the debt originally arose.” (Opp., at p. 4) The Master finds Yusuf's argument unpersuasive. First, when the Court ruled on the issue of payment of rent, the Court cited specifically to Hamed's own admission at Hamed's deposition that the Partnership owes United rent. (Rent Order, p. 4) Here, Yusuf merely submitted a copy of Bakir Hussein's Affidavit, dated August 10, 2014, whereby Bakir Hussein declared that he heard Waleed Hamed admitting to this debt;² Yusuf did not provide any evidence of Waleed Hamed personally admitting to this debt. Additionally, this alleged admission is disputed by Waleed Hamed. Second, this is exactly the type of claims the Court ordered to bar by its Limitation Order—claims based upon transactions that occurred before September 17, 2006. Finally, in its Limitation Order, the Court “conclude[d] that consideration of the principles underlying the doctrine of laches strongly supports the imposition of an equitable limitation on the submission of § 71(a) claims in the accounting and distribution phase of the Wind Up Plan” and explained that “the Court exercise[d] the significant discretion it possesses in fashioning equitable remedies to restrict the scope of the accounting in this matter to consider only those § 71(a) claims that are based upon transactions occurring no more than six years prior to the September 17, 2012 filing of Hamed's Complaint.” *Hamed*, 2017 V.I. LEXIS 114 at *41, 44. Thus, because the Court's ruling was based on the doctrine of laches, regardless of whether the applicable statute of limitations has or has not expired, Yusuf's claim for \$1,600,000.00 is barred by laches. See *In re the Suspension of Joseph*, 60 V.I. 540, 558-59 (V.I., 2014) (citations omitted) (“[l]aches ... may be found even if the applicable statute of limitations has not yet run”). As such, the Master will grant Hamed's motion as to \$1,600,000.00 of Yusuf's claim for \$1,778,103.00.

² Bakir Hussein's Affidavit provided, in relevant part:

9. In several open meetings, Mr. Yusuf said that the Hameds took \$1.6 million more than the Yusufs. Waleed Hamed admitted that he took the excess \$1.6 million dollars, which is the difference between the \$2.9 Million taken by the Hameds and the \$1.3 Million taken by the Yusufs. In addition to the \$1.6 million dollars which I heard Waleed Hamed admit to, both Waleed Hamed and Fathi Yusuf both agreed to additional withdrawals by the Yusufs provided that the Yusufs produced receipts to show proof of the additional withdrawals.

10. I personally heard Waleed Hamed admission to owing \$1.6 million dollars to the Yusufs as a result of excess withdrawals by the Hameds, and that the receipts for that amount were not available because they were destroyed prior to the raid by the U.S. Government.

making such a determination at this time. The Master is simply pointing out that said issue was never raised by Yusuf previously and thus it was not considered by the Master. It is extremely misleading for Yusuf to imply otherwise in his opposition and the Master strongly cautions Parties from making misleading implications in future filings.

Furthermore, in regard to Yusuf's argument that in the event that Hamed Claim No. H-1 is not barred, the amount credited to Hamed should be reduced by \$150,000, the Master also finds it unpersuasive. Yusuf already included his claim for \$150,000 paid to the concrete batch plant as one of his claims—Yusuf Claim No. Y-12: foreign accounts and Jordanian properties.¹⁹ As such, the Master will address Yusuf's claim for the \$150,000 paid to the concrete batch plant as a separate claim²⁰ and not reduce the amount credited to Hamed by \$150,000.

¹⁹ Yusuf's Accounting Claims:

VI. Foreign Accounts and Jordanian Properties

...

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

...

b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation. *See* Exhibit L, Wire Transfer Information Supporting Claim. (Yusuf's Accounting Claims, pp. 11-12)

Yusuf's Amended Accounting Claims:

VI. Foreign Accounts and Jordanian Properties

...

Yusuf has repeatedly raised these claims with Hamed and his agent, Waleed Hamed, but has received either unsatisfactory or no responses to questions as to how the funds were spent. The misappropriations or failures to account by Hamed and his agents of which Yusuf is presently aware include:

...

b. Because Hamed converted \$150,000 previously delivered as a charitable donation for a batch plant in West Bank, his interest in the Partnership should be charged for the transfer of \$150,000.00 to the Bank of Palestine to make good on the original donation. *See* Exhibit L to the Original Claims, Wire Transfer Information Supporting Claim. (Yusuf's Amended Accounting Claims, pp. 15-16)

²⁰ Hamed has already proceeded with discovery in connection with Yusuf Claim No. Y-12: foreign accounts and Jordanian properties. In fact, on December 20, 2018, Hamed filed an expedited motion to compel responses

C. Prejudgment Interest

In his motion, Hamed requested prejudgment interest as to \$802,966. In his opposition, Yusuf did not address the issue of prejudgment interest. It is arguable, at most, that Yusuf indirectly opposed Hamed's prejudgment interest when Yusuf argued that Hamed should only be awarded \$600,000 according to Yusuf's calculation—half of \$1,500,000, minus \$150,000 offset—in the event that Hamed Claim No. H-1 is not barred by the Limitation Order. However, Yusuf failed to cite to any binding authority or any legal basis to support his argument. As a result, this is a deficient argument against prejudgment interest and will not be considered by the Master. *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. 772, 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)). Nevertheless, 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 as to \$802,966. *See Williams v. Edwards*, 2017 V.I. LEXIS 105, *6 (Super. Ct. July 12, 2017); *Isaac v. Crichlow*, 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

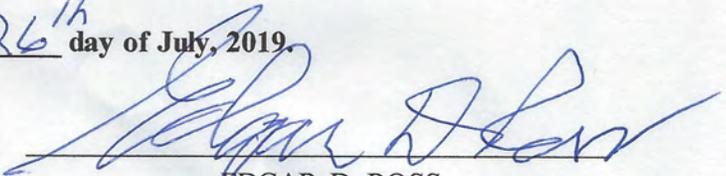
to discovery served in connection with Yusuf Claim No. Y-12: foreign accounts and Jordanian properties, which was subsequently granted by the Master. (Jan. 8, 2019 order, p. 6)

Based on the foregoing, 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-1—Hamed’s 50% interest in the proceeds of the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale—in the total amount of \$802,966, 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.”). As such, the Master will grant Hamed’s instant motion for summary judgment but deny Hamed’s request for prejudgment interest as to \$802,966. Accordingly, it is hereby:

ORDERED that Hamed’s motion for summary judgment regarding Hamed Claim No. H-1—Hamed’s 50% interest in the proceeds of the Y&S Corporation, Inc. stock sale/the Estate Dorothea sale—in the total amount of \$802,966—is **GRANTED**. And it is further:

ORDERED that Hamed’s request for prejudgment interest as to \$802,966 is **DENIED**.

DONE and so **ORDERED** this 26th day of July, 2019.


EDGAR D. ROSS
Special Master