

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

<p>WALEED HAMED,</p> <p style="text-align:center">Plaintiff,</p> <p style="text-align:center">vs.</p> <p>BANK OF NOVA SCOTIA, d/b/a SCOTIABANK,</p> <p style="text-align:center">Defendant.</p>	<p>CIVIL NO. SX-16-CV-429</p> <p style="text-align:center"><b>ACTION FOR DAMAGES</b></p> <p style="text-align:center"><u>JURY TRIAL DEMANDED</u></p>
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**DEFENDANT BANK OF NOVA SCOTIA'S MOTION TO STAY DISCOVERY AND  
MEMORANDUM OF LAW IN SUPPORT**

COMES NOW the Defendant, BANK OF NOVA SCOTIA (BNS) by and through its undersigned attorneys, Nichols, Newman, Logan, Grey & Lockwood, P.C., Charles E. Lockwood, Esq. and files this Motion to Stay Discovery and Memorandum of Law in Support. In further support of its Motion, BNS states as follows:

**I. BACKGROUND PROCEDURAL HISTORY**

This case is one of many currently clogging the Superior Court system arising out the the disputes between the Yusuf and Hamed families with respect to their Plaza Supermarkets business. Here, the Plaintiff Waleed Hamed ("Hamed") wrote himself a check for \$460,000 on a BNS account in the name of Plessen Enterprises, Inc. ("Plessen") which is owned jointly by various members of the Yusuf and Hamed families. The Yusufs considered Hamed's action to be theft and filed a police report with the Virgin Islands Police Department ("VIPD"). The VIPD and the V.I. Attorney General investigated the case, and BNS cooperated in that investigation in

good faith, including without limitation by responding to a duly issued subpoena from the Attorney General. Hamed was ultimately arrested and prosecuted, but after several months, the Attorney General dismissed the prosecution without prejudice.

Now Hamed seeks to drag BNS into his dispute with the Yusufs. Count Four of Hamed's first amended complaint in this case seeks to hold BNS liable for negligence arising out of its cooperation with law enforcement authorities.

On March 6, 2017 BNS filed a Motion to Dismiss and Motion to Strike Plaintiff's First Amended Complaint (the "Rule 12(b)(6) motion"). Among other relief, BNS sought dismissal of Hamed's negligence claim under FED. R. CIV. P. 12(b)(6). Hamed opposed the motion on March 22, 2017, and BNS filed a reply to the opposition on April 17, 2017.

BNS points out in its Rule 12(b)(6) motion that Hamed's claim faces significant challenges. These include waiver, arising out of the BNS documents signed by Hamed in connection with the account, and absolute privilege, which BNS enjoys in its communications with law enforcement authorities. In addition, the motion argues that allegations in Hamed's amended complaint do not give rise to a plausible claim for relief, under the well-established analysis of *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009), as adopted by the Virgin Islands Supreme Court in *Brady v. Cintron*, 55 V.I. 802, 823, 2011 V.I. Supreme LEXIS 37, 2011 WL 4543906 (V.I. 2011).

## II. SUMMARY OF ARGUMENT

Discovery should be stayed until the Court decides BNS's Rule 12(b)(6) motion. BNS should not be required to engage in discovery on a case that is so readily subject to dismissal.

Such a stay is not only within the Court's broad discretion to grant, but it would also serve to uphold the policies underlying V.I. R. Civ. P. 8 and 12.

### III. LAW AND ARGUMENT

#### A. The Court has Discretion to Grant the Stay.

V.I. R. Civ. P. 26(c)(1)(A) permits the Court, within its sound discretion, to order a stay of discovery pending resolution of a motion to dismiss. *See In re Orthopedic Bone Screw Prod. Liab. Litig.*, 264 F.3d 344, 365 (3d Cir. 2001) (district court acted within its discretion when staying discovery while it considered motion to dismiss) (applying federal rule). As the Third Circuit has made clear, "motions to dismiss filed under [Rule 12(b)(6)] should typically 'be resolved before discovery begins.'" *Levey v. Brownstone Inv. Group, LLC*, 590 F. App'x 132, 137 (3d Cir. 2014) (citing *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997)); *see also Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (The idea that discovery should be permitted before deciding a motion to dismiss "is unsupported and defies common sense" because the "purpose of FED. R. CIV. P. 12(b)(6) is to enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery."). Similarly, "motions to dismiss based on forum non conveniens usually should be decided at an early stage in the litigation, so that the parties will not waste resources on discovery and trial preparation in a forum that will later decline to exercise its jurisdiction over the case." *Lony v. E.I. Du Pont de Nemours & Co.*, 935 F.2d 604, 614 (3d Cir. 1991) (emphasis added).

#### B. Staying Discovery Furthers the Policy of the V.I. Rules of Civil Procedure.

The purpose of Rule 12(b)(6), to "streamline[] litigation by dispensing with needless

discovery and fact finding,” would be defeated if discovery were to be permitted with respect to a facially insufficient complaint. *Levey*, 590 F. App’x at 137 (internal citations omitted). Thus, as the Third Circuit has stated, it “may be appropriate to stay discovery while evaluating a motion to dismiss where, if the motion is granted, discovery would be futile.” *Mann v. Brenner*, 375 F. App’x 232, 239 (3d Cir. 2010). In accordance with these principles, a stay pending the outcome of a motion to dismiss is proper “where the likelihood that such motion may result in a narrowing or an outright elimination of discovery outweighs the likely harm to be produced by the delay.” *Ball v. Oden*, No. 09-CV-0847, 2010 WL 598653, at \*7 (M.D. Pa. Feb. 17, 2010) (quotation omitted), *aff’d*, 396 F. App’x 886 (3d Cir. 2010). Where, as here, “a pending motion to dismiss may dispose of the entire action and where discovery is not needed to rule on such motion, the balance generally favors granting a motion to stay.” *Weisman v. Mediq, Inc.*, No. 95-CV-1831, 1995 WL 273678, at \*2 (E.D. Pa. May 3, 1995) (staying discovery pending the outcome of a motion to dismiss where “the stay will potentially save time and money for all concerned” because “the parties will have full knowledge as to which claims are viable and, correspondingly, as to what discovery need occur”); *see also Mutschler v. Tritt*, No. 14-CV-1611, 2015 WL 4394018, at \*5 (M.D. Pa. July 16, 2015) (staying discovery where “a favorable ruling on all or some of the above arguments [in the motion to dismiss] could eliminate or significantly reduce the need for discovery in this action”).

As set forth in the Rule 12(b)(6) Motion and BNS’s reply to Hamed’s opposition to that motion, Hamed’s claims are subject to dismissal in their entirety for three independent reasons. First, under the documents that he signed in connection with the account, Hamed has explicitly waived any negligence claims against BNS. Second, to the extent the Court concludes that any of

the Hamed's allegations are not precluded by waiver, BNS has shown that it is entitled to absolute immunity from claims arising out of its cooperation with law enforcement. And finally, Hamed has failed to state a claim for negligence, because Hamed cannot prove that BNS had or breached a duty to him.

Hamed's legally and factually unsupported claims cannot "unlock the doors of discovery," and therefore they should be dismissed under Rule 12. See, *Ashcroft v. Iqbal*, 556 U.S. 662, 678-679 129 S.Ct. 1937, 1950 (2009). Should the Court grant the Rule 12(b)(6) motion on any of the three grounds, discovery would be eliminated or, at the very least, substantially narrowed. Thus, embarking on a lengthy, costly, and contentious discovery process at this time will only serve to waste the Court's and the parties' resources.

**C. Staying Discovery Will Not Prejudice Hamed.**

Finally, delaying discovery will not prejudice Hamed. Discovery is not needed to decide the Rule 12(b)(6) motion, which is fully briefed. Furthermore, there will be ample time to engage in discovery, if necessary, following resolution of the Rule 12(b)(6) Motion. See *Ball*, 2010 WL 598653, at \*7 (staying discovery pending resolution of a motion to dismiss would not prejudice plaintiffs where the case was "at an early stage" and there was "time following resolution of the motion to dismiss to engage in discovery"). There is no trial date set, and the Court has not entered a scheduling order. Other than Haemed's possible interest in forcing BNA to incur discovery costs as soon as possible, there is simply no need for the parties to continue discovery with the case in its current procedural posture.

**IV. CONCLUSION**

For the reasons set forth above, BNS moves that this Court stay all discovery in this

action pending resolution of BNS's Rule 12(b)(6) motion, and that the Court grant BNS such other relief as it deems appropriate.

DATED: July 5, 2017

Respectfully submitted,

NICHOLS NEWMAN LOGAN GREY &  
LOCKWOOD, P.C.

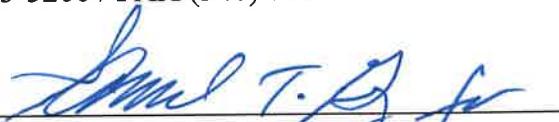
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By:

  
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CHARLES E. LOCKWOOD, ESQ.

**CERTIFICATE OF SERVICE**

This document complies with the page or word limitation set forth in Rule 6-1(e). I hereby certify that on July 5, 2017, I caused a true and correct copy of the foregoing *DEFENDANT BNS'S MOTION TO STAY DISCOVERY AND MEMORANDUM OF LAW IN SUPPORT* to be served on the following

Joel Holt, Esq.  
2132 Company Street, Suite 2  
Christiansted, VI 00820  
Counsel for Plaintiff

  
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**ORDER**

THIS MATTER comes before the Court on Defendant, Bank of Nova Scotia's Motion to Stay Discovery. The Court having reviewed the pleadings and being advised of the premises, it is hereby

**ORDERED** that Defendant Bank of Nova Scotia's Motion to Stay Discovery is **GRANTED**. Discovery in this action shall be stayed pending the Court's ruling on Bank of Nova Scotia's March 6, 2017 Motion to Dismiss and Motion to Strike Plaintiff's First Amended Complaint.

**SO ORDERED** on this \_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

AT T E S T:  
ESTRELLA GEORGE  
Acting Clerk of the Court

By: \_\_\_\_\_  
Deputy Clerk