

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

WALEED HAMED and KAC357, INC.,)	
)	CIVIL NO. SX-16-CV-429
<i>Plaintiffs,</i>)	
v.)	
)	ACTION FOR DAMAGES
BANK OF NOVA SCOTIA,)	
d/b/a SCOTIABANK, FATHI YUSUF,)	
MAHER YUSUF, YUSUF YUSUF,)	
and UNITED CORPORATION,)	
)	
<i>Defendants.</i>)	JURY TRIAL DEMANDED
_____)	

PLAINTIFFS' OPPOSITION TO THE BNS MOTION TO STAY DISCOVERY

The Plaintiffs filed a First Amended Complaint (hereinafter referred to as "FAC") on January 30, 2017. On March 9, 2017, the defendants, Fathi Yusuf/United Corporation ("Yusuf") and Bank of Nova Scotia ("BNS") filed two separate Motions to Dismiss the Amended Complaint. Those motions have been briefed. BNS now seeks a stay of discovery based on the pendency of the motions to dismiss.

Rule 12(b)(6) does not provide for a stay or the postponement of any of the obligations imposed under the new Rule 26, **which is designed to get a case moving**. In addressing an identical stay request after the filing of a Rule 12(b)(6) motion, the court in *Turner v. Nationstar Morig.*, 2015 WL 12763510, at *2 (N.D. Tex. Mar. 6, 2015) held:

The BDFTE Defendants' motion to abate is based only on their position that their pending motion to dismiss "has the potential to dispose of some or all of the claims asserted against them." But, as this Court has noted before, "no federal rule, statute, or binding case law applies to automatically stay discovery pending a ruling on ... a 12(b)(6) motion to dismiss." The BDFTE Defendants essentially "are seeking to invoke a rule that a pending motion to dismiss stays discovery- but no such rule applies

in these circumstances," and, "[i]n fact, such a stay is the exception rather than the rule." "[H]ad the Federal Rules contemplated that a motion to dismiss under Fed.R.Civ.P. 12(b) (6) would stay discovery, the Rules would contain a provision to that effect. (Citations omitted). (Emphasis added)

In short, motions to stay discovery should rarely be granted simply because a Rule 12(b)(6) motion has been filed.

Moreover, the BNS argument that a stay should be granted because its proposed Rule 12(b)(6) motion is meritorious is no different than what any proponent of such a motion would assert.¹ If this is granted, we are back to the "bad old days" where parties could automatically stop the movement of a case just by filing a motion.

Likewise, a re-hashing of the same issues to be raised in a Rule 12(b)(6) motion in a separate motion to stay is simply a further burden on this Court's otherwise overly-crowded docket, as the merits of the motion will be before the Court in the pending Rule 12(b)(6) pleadings once they are permitted to be filed.

Any delay in moving a case forward is prejudicial. In fact, this Court has adopted a plan to make sure cases move expeditiously. **Moreover, the defendant has not attached any affidavits in support of its position.**

¹ The Virgin Islands Rules of Civil Procedure, adopted on April 1, 2017, state in V.I.R. Civ. P. Rule 26 (d)(4) as follows:

(4) Effect on the Discovery Process of Motions Filed. The filing of any motion-including potentially dispositive motions such as a motion to dismiss or a motion for summary judgment- **shall not stay discovery in the action unless the judge so orders. (Emphasis Added).**

Likewise, to further limit the scope of Rule 12(b)(6) motions, V.I.R. Civ. P. 8 reverted to only requiring notice pleadings, abolishing the more stringent *Iqbel/Twombly* standards.

In summary, to seek a stay, one must have a specific reason other than the assertion that his or her motion is somehow more meritorious than other Rule 12(b)(6) motions.

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CERTIFICATE OF SERVICE

I certify that this filing meets the applicable requirements regarding length and number of words. I also hereby certify that on this 7th day of July, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

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