

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
<hr/>		

PLAINTIFFS' OPPOSITION TO  
THE YUSUF/UNITED MOTION TO STAY DISCOVERY

The Plaintiffs filed a First Amended Complaint ("FAC") on January 30, 2017. On March 9, 2017, the Yusuf defendants and BNS each filed separate Motions to Dismiss the Amended Complaint. Those motions have been briefed.

The parties were unable to even agree on a scheduling order, with one party (BNS) refusing to even participate in a Rule 26 conference. As a result, the Plaintiffs filed a motion asking this Court to enter a scheduling order, while the Yusuf defendants filed their own proposed scheduling order. To date, those requests remain pending as well.

On July 5, 2017, BNS filed its motion to stay of discovery based on the pendency of the motions to dismiss -- the opposition to which was filed by plaintiffs on July 14, 2017.

The Yusufs have now filed their own motion to stay, **without any supporting declaration**, basically repeating the BNS argument that the pendency of the motions to

dismiss and merits of their positions mandate a stay. Thus, the opposition to the BNS motion to stay applies with equal force here, which arguments are incorporated herein by reference. As noted therein, V.I. R. CIV. P. 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.

Thus, the rules are designed to keep a case moving. Consistent with the philosophy, V.I. R. CIV. P. 8 reverted to only requiring notice pleadings, abolishing the more stringent *Iqbel/Twombly* standards. Since opposition to the BNS motion to stay was filed, the V.I. Supreme Court has issued an opinion in *Mills-Williams v. Mapp*, \_ V.I.\_ at \*9 (slip opinion) (V.I. St. No. 2016-0054) (July 14, 2017) which makes the "merits of the underlying argument" argument almost overwhelmingly tenuous as a reason to stay discovery, clarifying the pleading standards now required in this jurisdiction:

Significantly, Virgin Islands Rule of Civil Procedure 8 expressly states that the Virgin Islands "is a notice pleading jurisdiction," V.I. R. CIV. P, 8(a), and the Reporter's Note eliminates any doubt that this language is calculated to "apply[] an approach that declines to enter dismissals of cases based on failure to allege specific facts which, if established, plausibly entitle the pleader to relief." V.I. R. CIV. P. 8 Reporter's Note (emphasis added); see also *Brathwaite v. H.D.V.I. Holding Co.*, Super.Ct. Civ. No. 76412016 (STT), \_ V.I. \_, 2017 WL 2295123, at "2 (V .I. Super. Ct. May 24,2017) (acknowledging that Virgin Islands Civil Procedure Rule 8(a)(2) eliminates the plausibility standard and instead will permit a complaint so long as it "adequately alleges facts that put an accused party on notice of claims brought against it").

Thus, not only does a motion to dismiss not stop discovery under the new rules, but the likelihood of success on that motion has been eviscerated, as it is now clear that the V.I. Supreme Court wants matters heard on their merits, not decided by technical objections to pleadings.

In any event, the argument that “a stay should be granted because its proposed Rule 12(b)(6) motion is meritorious” is contrary to V.I. R. CIV. P. 12(b)(6), which does not provide for a stay. See, e.g., *Turner v. Nationstar Morig.*, 2015 WL 12763510, at \*2 (N.D. Tex. Mar. 6, 2015) (A stay is the exception rather than the rule, as had Rule 12 contemplated that discovery be stayed while the motion is addressed, the rules would contain a provision to that effect). Indeed, our local rules make it clear that a stay is not to be routinely assumed. See V.I. R. CIV. P. 26(d)(4).<sup>1</sup>

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 decided by the Court In addressing the motion.

---

<sup>1</sup> The Virgin Islands Rules of Civil Procedure, adopted on April 1<sup>st</sup>, 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.

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, any delay in moving a case forward is prejudicial. Thus, the Yusufs' motion to stay, like the one filed by the BNS, should be denied.

**Dated:** July 19, 2017

  
\_\_\_\_\_  
**Joel H. Holt, Esq. (Bar # 6)**  
*Counsel for Plaintiffs*  
Law Offices of Joel H. Holt  
2132 Company Street,  
Christiansted, VI 00820  
Email: holtvi@aol.com  
Tele: (340) 773-8709  
Fax: (340) 773-8677


**Carl J. Hartmann III, Esq. (#48)**  
*Co-Counsel for Plaintiffs*  
5000 Estate Coakley Bay, L-6  
Christiansted, VI 00820  
Email: carl@carlhartmann.com

### **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 19<sup>th</sup> day of July, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

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

**Charles E. Lockwood**  
NICHOLS NEWMAN LOGAN GREY &  
LOCKWOOD, P.C.  
No. 1131 King Street, Suite 204  
Christiansted, U.S. Virgin Islands 00820-4971  
(340) 773-3200

  
\_\_\_\_\_