

single cause of action Hamed has against BNS – is based on Hamed's explicit waiver of any negligence claim against BNS and on the doctrine of absolute privilege for communications with law enforcement.¹ BNS submits that its assertion here of waiver and privilege defenses presents the type of circumstances under which a court would be within its discretion to forestall the discovery process against BNS.

Hamed's second argument in his Opposition is that "[a]ny delay in moving a case forward is prejudicial." Aside from his failure to say that any delay in moving **this** case forward is prejudicial, Hamed cites to no specific prejudice that he will suffer by the short delay inherent in waiting for the Court to rule on BNS's Rule 12(b)(6) motion. Moreover, as the Court is aware, this case is only one of at least three cases involving the same parties (although the only such case involving BNS) and the same or similar factual disputes. Hamed can obtain, and to some extent has already obtained, discovery relevant to this case in the other cases. Hamed cannot show that he will be prejudiced by the stay BNS seeks.

OPPOSITION TO MOTION FOR ENTRY OF SCHEDULING ORDER

As Hamed notes in his Motion for Entry of Scheduling Order, V.I. R. Civ. P. 26(d)(4) provides that the filing of a motion to dismiss "shall not stay discovery." BNS acknowledges this obvious fact of the Rule. However, the Rule also contains the proviso "unless the judge so orders." It is under this proviso that BNS seeks protection from being forced headlong into full-

¹ Hamed appears to suggest in his Opposition that since the new V.I. R. Civ. P. 8 "reverted to require only notice pleading," BNS's Rule 12(b)(6) motion should not be seen as meritorious. BNS points out, however, that the waiver and absolute privilege grounds of BNS's Rule 12(b)(6) motion are purely legal, and do not depend on the application of *Iqbal/Twombly* standards for the sufficiency of factual allegations.

blown discovery as Hamed insists.

Counsel for the parties have had discussions about discovery and scheduling, and counsel for BNS has even suggested some limitations on discovery, in view of Hamed's narrow claim against BNS and the amount of discovery Hamed has already had in the closely-related, several, ongoing lawsuits involving the same parties and evidence. Hamed, however, insists on full discovery. BNS by its motion to stay discovery is asking that the Court, in the words of Rule 26(d)(4), "so order" that discovery – including the entry of a scheduling order – wait until the Court has ruled on the pending motions to dismiss.

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Respectfully submitted,

NICHOLS NEWMAN LOGAN GREY &
LOCKWOOD, P.C.

Attorneys for Defendant BNS

No. 1131 King Street, Suite 204

Christiansted, U.S. Virgin Islands 00820-4971

(340) 773-3200 / FAX (340) 773-3409

By: *Charles E Lockwood*
CHARLES E. LOCKWOOD, ESQ. *ze*

Waleed Hamed v. Bank of Nova Scotia

SX-16-CV 429

BNS'S REPLY TO HAMED'S MOTION TO STAY DISCOVERY AND AND OPPOSITION TO HAMED'S MOTION TO ENTER A SCHEDULING ORDER PURSUANT TO RULE 26

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CERTIFICATE OF SERVICE

I hereby certify that this document complies with the page or word limitation set forth in Rule 6-1(e). I further certify that on July 31, 2017, I caused a true and correct copy of the foregoing *DEFENDANT BNS'S REPLY TO HAMED'S MOTION TO STAY DISCOVERY AND AND OPPOSITION TO HAMED'S MOTION TO ENTER A SCHEDULING ORDER PURSUANT TO RULE 26*, to be served on the following by electronic mail and First Class U.S. Mail addressed to:

Joel Holt, Esq.
2132 Company Street, Suite 2
Christiansted, VI 00820
Counsel for Plaintiff
E-mail: holtvi@aol.com

Charlotte K. Perrel, Esq.
DUDLEY, TOPPER AND FEUERZEIG, LLP
1000 Frederidsberg Gade – P.O. Box 756
St. Thomas, VI 00804
Counsel for the Yusuf Defendants and
Defendant United Corporation
E-mail: cperrell@dtflaw.com


