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

WALEED HAMED,

CIVIL NO. SX-16-CV-429

Plaintiff,

ACTION FOR DAMAGES

VS.

BANK OF NOVA SCOTIA, d/b/a SCOTIABANK,

JURY TRIAL DEMANDED

Defendant.

<u>DEFENDANT BANK OF NOVA SCOTIA'S REPLY TO HAMED'S MOTION TO STAY</u> <u>DISCOVERY AND AND OPPOSITION TO HAMED'S MOTION TO ENTER A</u> SCHEDULING ORDER PURSUANT TO RULE 26

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 in reply to Plaintiff Waleed Hamed's ("Hamed") Opposition to BNS's July 6, 2017 motion to stay discovery and in opposition to Hamed's July 12, 2017 Motion to Enter a Scheduling Order Pursuant to Rule 26. In reply to the Opposition and in Opposition to the Motion to Enter a Scheduling Order, BNS states as follows:

REPLY TO OPPOSITION TO MOTION TO STAY

Hamed's Opposition makes 2 arguments. Hamed asserts first that "[V.I. R. Civ. P.] 12(b)(6) does not provide for a stay or the postponement of any of the obligations under the new Rule 26." Opposition, p. 1. But BNS is not arguing that Rule 12(b)(6) provides any such thing.

BNS in its motion to stay discovery is requesting that the Court exercise its broad discretion to stay discovery because BNS's Rule 12(b)(6) motion – which seeks to dismiss the

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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. BNS submits that its assertion here of waiver and privilege defenses presents

the type of cirucmstances 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 requie 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.

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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.

DATED: July 3 | 2017

Respectfully submitted,

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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:

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