

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

WALEED HAMED and KAC357, INC.,)
)
 Plaintiffs,)
)
 v.)
)
 BANK OF NOVA SCOTIA, d/b/a/)
 SCOTIABANK, FATHI YUSUF, MAHER)
 YUSUF, YUSUF YUSUF, and UNITED)
 CORPORATION,)
)
 Defendants.)

CASE NO. SX-16-CV-429

ACTION FOR DAMAGES

JURY TRIAL DEMANDED

ORDER

THIS MATTER comes before the Court on several pending motions: Defendant Bank of Nova Scotia (BNS)'s Motion to Dismiss, filed March 6, 2017;¹ BNS's Motion to Stay Discovery (BNS Discovery Motion), filed July 5, 2017;² Defendants Fathi Yusuf, Maher Yusuf, Yusuf Yusuf, and United Corporation (Yusuf Defendants)'s Motion to Dismiss, filed March 9, 2017;³ and Yusuf Defendants' Motion to Stay Discovery (Yusufs' Discovery Motion), filed July 14, 2017.⁴ The primary argument raised by BNS in its Motion to Dismiss is that Plaintiffs have contractually waived their claims, supported by attached exhibits. *See* BNS Motion to Dismiss, Ex. A-D. In support of their Motion to Dismiss, Yusuf Defendants attached an affidavit from Virgin Islands Police Sgt. Mark A. Corniero. *See* Yusuf Defendants' Motion to Dismiss, Ex. 1. However, Rule 12(d) requires that when matters outside the pleadings are to be considered on a motion to dismiss, "the motion must be treated as one for summary judgment under Rule 56." V.I. R. Civ. P. 12(d); *see Brady v. Cintron*, 55 V.I. 802, 825 n.29 (2011). Before a court rules on such a motion, "all parties must be given a reasonable opportunity to present all the material that is pertinent to the

¹ BNS's Motion to Dismiss incorporates a motion to strike Plaintiffs' demand for a jury trial and for consequential and punitive damages. Plaintiffs filed an Opposition March 23, 2017, followed by BNS's Reply, filed April 19, 2017.

² Plaintiffs filed an Opposition July 7, 2017, followed by BNS's Reply, filed July 31, 2017.

³ Plaintiffs filed an Opposition March 23, 2017, followed by Yusuf Defendants' Reply, filed April 12, 2017. Related to the discovery motions, on July 12, 2017, Plaintiffs filed Motion to Enter a Scheduling Order Pursuant to Rule 26, opposed within BNS's Reply relative to its Motion to Dismiss, and countered by Yusuf Defendants' July 14, 2017 Notice Regarding Submission of Proposed Scheduling Orders. As set forth herein, Plaintiffs' Motion to Enter Scheduling Order will be denied.

⁴ Plaintiffs filed an Opposition July 20, 2017, followed by Yusuf Defendants' Reply, filed August 8, 2017.

motion.” *Id.* (emphasis added); see *United Corp. v. Hamed*, 64 V.I. 297, 311 (2016) (holding that plaintiff must be given notice and an opportunity to respond to defendant’s converted motion for summary judgment). Thus, BNS’s Motion to Dismiss and Yusuf Defendants’ Motion to Dismiss will each be converted to a Motion for Summary Judgment under Rule 12(d).

To survive summary judgment, the nonmovant “must present actual evidence showing a genuine issue for trial.” *Machado v. Yacht Haven U.S.V.I., LLC*, 61 V.I. 373, 379 (2014) (quoting *Williams v. United Corp.*, 50 V.I. 191, 194 (2008)). However, as to each converted Motion for Summary Judgment, in order to give Plaintiffs “a reasonable opportunity to present all the material that is pertinent to the motion” Plaintiffs must be permitted to engage in some discovery. As such, BNS Discovery Motion and Yusufs’ Discovery Motion will necessarily be denied to allow Plaintiffs adequate opportunity to obtain evidence needed to properly respond to each converted Motion for Summary Judgment, pursuant to the timeframes set forth below.

Accordingly, it is hereby

ORDERED that BNS’s Motion to Dismiss is converted to a Motion for Summary Judgment. It is further

ORDERED that Yusuf Defendants’ Motion to Dismiss is converted to a Motion for Summary Judgment. It is further

ORDERED that BNS Discovery Motion is DENIED. It is further

ORDERED that Yusufs’ Discovery Motion is DENIED. It is further

ORDERED that Plaintiffs’ Motion to Enter Scheduling Order is DENIED. It is further


ORDERED that within 30 days of entry of this Order, Plaintiffs may submit written discovery requests to BNS, which may include discovery requests previously tendered to BNS; and BNS shall have 30 days from the date of service within which to provide to Plaintiffs responses to such discovery. It is further

ORDERED that within 30 days of entry of this Order, Plaintiffs may submit written discovery requests to Yusuf Defendants, which may include discovery requests previously tendered to Yusuf Defendants; and Yusuf Defendants shall have 30 days from the date of service within which to provide to Plaintiffs responses to such discovery. It is further

ORDERED that within 21 days of service of discovery responses by BNS and by Yusuf Defendants to any supplemental discovery tendered, Plaintiffs may supplement their previously filed Oppositions to the BNS Motions to Dismiss and the Yusuf Defendants’ Motion to Dismiss,

both now converted to Motions for Summary Judgment; and thereafter within 14 days of service, BNS and Yusuf Defendants may file replies to any supplemental filings of Plaintiffs.

October 31, 2017.



DOUGLAS A. BRADY
Judge of the Superior Court

ATTEST:

Estrella H. George
Clerk of the Court

By: _____
Court Clerk Supervisor

11/2/17