

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' REPLY TO THE BNS OPPOSITION
TO THE ENTRY OF A SCHEDULING ORDER

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 BNS filed two separate Motions to Dismiss the Amended Complaint. Those motions have been briefed. On July 14, 2017, BNS then moved for a stay of discovery based on the pendency of the motions to dismiss. That motion is also fully briefed. Thereupon, in direct violation of the V.I. Rules of Civil Procedure¹, BNS has also refused to participate in a scheduling conference with other counsel based solely on the pendency of the merit arguments in its motion to dismiss.

¹ The Virgin Islands Rules of Civil Procedure, adopted on April 1st, 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.**

Therefore, on July 7, 2017, plaintiff filed a Motion for Entry of a Scheduling Order arguing that the remedy to this impasse is for the Court to simply enter the proposed scheduling order submitted by the Plaintiff. On July 31, 2017, BNS filed a Reply to another motion, at which time it included its opposition to the Plaintiff's motion for entry of the scheduling order. In the "opposition" BNS argues:

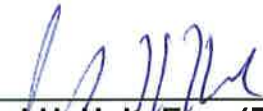
As Hamed notes in his Motion for Entry of Scheduling Order, V.I. R. Crv. P. 26(d)(4) provides that the filing of a motion to dismiss "shall not stay discovery." **BNS acknowledges this obvious fact of the Rule. However, the Rule also contains the proviso "unless the judge so orders."**

In essence, BNS is arguing that it can violate a Rule based on the POSSIBILITY that this Court might grant a stay at some future date. However, it is clear that unless and until such an order is issued, the mandates to meet and confer under Rule 26 (f) must be followed, which is to be done as soon as practicable after an answer is filed. No one disputes the fact that this time period has long passed. In fact, **BNS has not attached any affidavits in support of its position to delay this matter until its Rule 12(b)(6) motion is addressed**, which is now subject to new, relaxed standard announced by the V.I. Supreme Court in *Mills-Williams v. Mapp*, __ V.I.___ at p. 9 (slip opinion) (V.I. St. No. 2016-0054) (July 14, 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"). Further V.I.R. Civ. P. 1-1(c) makes these new rules applicable to all pending cases.

Again, the new Rules are explicitly based on the view that delays in moving a case forward are disfavored by the Court and prejudicial to the process. Thus, the

Plaintiff's motion to enter a scheduling order should be granted and an order entered accordingly.

Dated: August 7, 2017

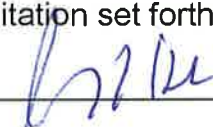


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CERTIFICATE OF WORD/PAGE COUNT

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CERTIFICATE OF SERVICE

I hereby certify that on this 7th day of August, 2017, I served a copy of the foregoing by email, as agreed by the parties, on:

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