

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

Waleed Hamed and KAC357, Inc.)	
)	CIVIL NO. SX-16-CV-429
Plaintiff,)	ACTION FOR DAMAGES
vs.)	
)	
Bank of Nova Scotia, d/b/a)	<u>JURY TRIAL DEMANDED</u>
Scotiabank, Fathi Yusuf, Maher Yusuf,)	
Yusuf Yusuf and United Corporation)	
)	
Defendants.)	
)	

**DEFENDANTS, FATHI YUSUF, MAHER YUSUF, YUSUF YUSUF
AND UNITED CORP.'S REPLY IN SUPPORT OF THEIR MOTION TO STAY
DISCOVERY PENDING THE DISPOSITION OF THEIR MOTION TO DISMISS
PLAINTIFFS' FIRST AMENDED COMPLAINT**

Defendants, Fathi Yusuf, Maher Yusuf and Yusuf Yusuf (collectively “Yusuf Defendants”) and United Corporation, through undersigned counsel, hereby reply in support of their Motion to Stay Discovery Pending the Disposition of Their Motion to Dismiss Plaintiffs’ First Amended Complaint (“Motion to Stay”) and, in support, state as follows.

I. INTRODUCTION

This case is just one of several cases recently filed by the Hamed family as part of their litigation “blitzkrieg” against the Yusuf family. Plaintiffs, doubtlessly, would like to engage in expensive and harassing discovery now, as their complaint is wholly frivolous and properly dismissed in its entirety. Despite extensive discovery in many of the other matters, Plaintiffs do not articulate a specific reason they need discovery right now, or the potential prejudice they will suffer if discovery is delayed. Plaintiffs merely claim that because a discovery stay is not automatic under the new Virgin Islands Rules of Civil Procedure—notably, it was not automatic under the old rules either, which is why Defendants filed the motion at issue—that Defendants

are not entitled to a stay. Plaintiffs fail to give the Court any other reason that it should not exercise its "broad discretion" to stay discovery until the Motions to Dismiss Plaintiffs' First Amended Complaint have been decided.¹

II. THE COURT SHOULD EXERCISE ITS BROAD DISCRETION AND STAY THE MATTER PENDING RESOLUTION OF DEFENDANTS' MOTIONS TO DISMISS

Plaintiffs assert that Virgin Islands Rule of Civil Procedure 12(b)(6) "does not provide for such a stay." *See* Plaintiffs' Opposition to Yusuf/United Motion to Stay Discovery at p. 3 ("Opposition"). Notably, Defendants never claimed the terms of Rule 12(b)(6) provide for a stay. Instead, Defendants set forth the unique circumstances of this case and cited multiple cases which establish that a stay is properly granted under the present circumstances. In contrast, Plaintiffs cite one case for the unremarkable proposition that federal Rule 12(b)(6) does not provide for a stay and failed to cite any legal support for the position that a stay is not appropriate pending the adjudication of Defendants' Motion to Dismiss Plaintiffs' First Amended Complaint. Likewise, Plaintiffs do not explain how they would suffer even a modicum of prejudice if this matter was briefly stayed. Instead, Plaintiffs merely allege, notably without any legal support, that "any delay in moving a case forward is prejudicial." *Opposition*, p. 4. When the unique facts and circumstances surrounding this matter are applied to the clear case law on this issue, it is plain that a stay is properly granted.

What Plaintiffs ignore, and in doing so inappropriately urge this Court to do the same, is the undisputable fact that the Court's adjudication of the Motion to Dismiss may completely resolve all the issues presented in this case or substantially reduce the number of issues upon which discovery will be required. What Plaintiffs also ignore is this Court "is given broad

¹ Defendant, Bank of Nova Scotia, has also filed a Motion to Dismiss.

discretion to stay discovery pending decision on a dispositive motion.” *See e.g. Jackson v. Northern Telecom, Inc.*, 1990 WL 39311 at *1 (E.D.Pa. 1990). This discretion exists because pleading requirements serve two purposes: “to ensure that a defendant is placed on notice of his or her alleged misconduct sufficient to prepare an appropriate defense,” and “to avoid ginning up the costly machinery associated with our civil discovery regime on the basis of ‘a largely groundless claim.’ ” *See Pace v. Swerdlow*, 519 F.3d 1067, 1076 (10th Cir. 2008) (Gorsuch, J., concurring). As the U.S. Supreme Court has explained in *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), a deficient complaint cannot “unlock the doors of discovery” and when a “respondent’s complaint is deficient under Rule 8, he is not entitled to discovery, cabined or otherwise.” *Id.* at 678–79 and 686, respectively. Plainly, whether a plaintiff’s complaint is deficient under Rule 8 is tested by a motion to dismiss pursuant to Rule 12(b)(6), like the ones filed by Defendants in this matter.

Specifically, a stay of discovery pending resolution of a motion to dismiss avoids unnecessary expense and costs. As the Eleventh Circuit Court of Appeals explained in *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1368 (11th Cir. 1997), “[i]f the district court dismisses a nonmeritorious claim before discovery has begun, unnecessary costs to the litigants and to the court system can be avoided. Conversely, delaying ruling on a motion to dismiss such a claim until after the parties complete discovery encourages abusive discovery and, if the court ultimately dismisses the claim, imposes unnecessary costs.” *Id.* Therefore, “[f]acial challenges to the legal sufficiency of a claim or defense . . . should, however, be resolved before discovery begins.” *Id.* at 1367.

Where a pending dispositive motion “may dispose of the entire action and where discovery is not needed to rule on such motion, the balance generally favors granting a motion to

stay.” *Weisman v. Mediq, Inc.*, 1995 WL 273678 at *2 (E.D.Pa. 1995); *Neitzke v. Williams*, 490 U.S. 319, 326-27 (1989) (the purpose of Rule 12(b)(6) is to “streamline[] litigation by dispensing with needless discovery and factfinding”); *Rutman Wine Co. v. E. & J. Gallo Winery*, 829 F.2d 729, 738 (9th Cir. 1987) (the idea that discovery should be permitted before deciding a motion to dismiss “is unsupported and defies common sense [because t]he purpose of F.R. Civ. P. 12(b)(6) is to enable defendants to challenge the legal sufficiency of complaints without subjecting themselves to discovery”).

Courts are also justified in staying or limiting discovery when—as in this case—doing so would facilitate increased efficiency in resolving the case. Indeed, the U.S. Supreme Court in *Herbert v. Lando*, 441 U.S. 153, 177 (1979), referred to the fact that “the discovery provisions, like all of the Federal Rules of Civil Procedure, are subject to the injunction of Rule 1 that they ‘be construed to secure the just, speedy, and inexpensive determination of every action.’ . . . With this authority at hand, judges should not hesitate to exercise appropriate control over the discovery process.” *Id.* at 177.

III. CONCLUSION

Discovery is properly stayed given a fully briefed motion to dismiss all counts of Plaintiffs' First Amended Complaint is currently pending before the Court. To move forward with discovery with respect to any, or all, of the counts when they may be dismissed is an utter waste of the parties' time and resources—as well as the Court's, should it have to decide discovery disputes. Moreover, Plaintiffs will not suffer any prejudice if discovery is stayed until the Motion to Dismiss is adjudicated.

Apparently, Plaintiffs are willing to risk undertaking discovery—and incurring the expense of the same—which may prove to be entirely useless to them. By taking this position,

Plaintiffs demonstrate their true motives for attempting to take discovery while two comprehensive motions to dismiss are pending: harassing Defendants and forcing them to spend unnecessary attorneys' fees. Plainly, if potentially unnecessary additional expense to the parties—and burdens on the resources of the Court—can be avoided, it makes perfect sense for this Court to do so. Accordingly, the Court should properly exercise its “broad discretion” to stay discovery when a dispositive motion is pending and do so in this case.

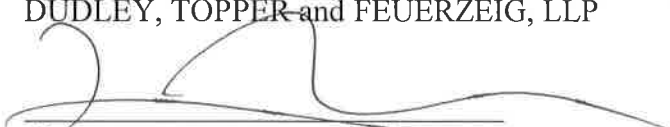
WHEREFORE, on the basis of the foregoing, Defendants, Fathi Yusuf, Maher Yusuf, Yusuf Yusuf and United Corporation respectfully request that the Court: 1) stay discovery in this matter until their Motion to Dismiss the First Amended Complaint has been ruled upon by the Court; 2) award Defendants such other relief as the Court deems just and proper.

Respectfully Submitted,

DUDLEY, TOPPER and FEUERZEIG, LLP

Dated: August 8, 2017

By:



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CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of August, 2017, I served the foregoing, *DEFENDANTS, FATHI YUSUF, MAHER YUSUF, YUSUF YUSUF AND UNITED CORP.'S REPLY IN SUPPORT OF THEIR MOTION TO STAY DISCOVERY PENDING THE DISPOSITION OF THEIR MOTION TO DISMISS PLAINTIFFS' FIRST AMENDED COMPLAINT*, which complies with the page or word limitations set forth in Rule 6.1(e), via electronic mail addressed to:

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