

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS  
DIVISION OF ST. THOMAS AND ST. JOHN**

J. P. MOLYNEUX STUDIO, LTD. and	)	
JUAN PABLO MOLYNEUX,	)	
	)	
Plaintiffs,	)	Civil No. 2010/34
v.	)	
	)	
JEFFREY EPSTEIN and L.S.J., LLC,	)	
	)	
Defendants.	)	

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**DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION TO STAY RULING ON  
DEFENDANTS' MOTION TO DISMISS**

The Defendants have filed a pleading captioned "Notice of Motion" and an unsworn affidavit not based upon personal knowledge in an attempt to control this Court's management of this litigation. The motion and unsworn affidavit inaccurately state the status of settlement negotiations between the above-captioned parties. Based upon the attached Affidavit of Jeffrey Epstein ("Epstein") filed in support of this opposition and for the reasons set for the below, the Defendants' motion asking this Court to "withhold its ruling on Defendants' motion to dismiss..." should be denied and Defendants' should be awarded their attorney's fees and costs incurred in defending this motion.

**I. Defendants' Motion Is Defective and Should Be Denied.**

LRCi 7.1(b) requires "[w]hen allegations of fact not appearing of record are relied in support of a motion...all affidavits and other pertinent documents shall be filed before the hearing of the motion." Defendants most recent motion (Doc # 31) refers to facts not appearing of record. While the motion was filed with a document called an affidavit, the document is not a sworn statement or attorney's affirmation or declaration. An affidavit is "[a] voluntary

declaration of facts written down and sworn to by the declarant before an officer authorized to administer oaths.” *Black's Law Dictionary (9th ed. 2009)*.

The statement submitted by Plaintiffs' counsel Rosh D. Alger does not comply with V.I. Code Ann. tit. 5, §699 which also requires affirmations to be sworn statements of truth nor does it comply with Title 28 U.S.C. A. §1746 which provides for the submission of unsworn declarations under penalty of perjury in lieu of an affidavit.

Accordingly, the statement submitted by Plaintiffs' counsel Rosh D. Alger cannot be considered an affidavit in support of Plaintiffs' motion which relies upon allegations of fact not appearing of record.

Plaintiffs' motion is also defective and unpersuasive because it is not supported by a brief containing a concise statement of reasons and citations of authorities. Plaintiffs' motion is devoid of any legal authority in support of their position. *LRCi 7.1(c)*.

Based upon the foregoing, the Plaintiffs' motion is defective, fails to comply with the Local Rules of Civil Procedure and should be denied.

## **II. Plaintiffs' Motion Should be Denied Because It Inaccurately Describes The Status of Settlement Discussions Between the Parties.**

As evidenced by the attached affidavit of Defendant Jeffrey Epstein, the Plaintiffs' motion does not accurately describe the status of settlement discussions between the parties. As confirmed by the attached affidavit of Epstein, Plaintiff Juan Pablo Molyneux (“Molyneux”) was supposed to have sent Epstein a proposal in writing regarding settlement on or about November 8, 2010. When the proposal was not received as promised, Molyneux's attorney in New York was contacted on November 12, 2010. As of November 12, 2010, the Defendants had not

received a settlement proposal from the Plaintiffs. There was no “oral resolution of the case in controversy” as claimed by Plaintiffs in their motion. Nor did Defendants agree to a stay a ruling on their pending motion to dismiss which is fully briefed. These actions by the Plaintiffs and their history of backing out of two earlier settlements agreement compels Defendants to conclude that the Defendants’ actions, including the filing of this instant action are simply tactics to avoid honoring their obligations under the Agreement for Design Services with Defendants. The fact that the Plaintiffs’ filed this lawsuit before a second extension of the deadline expired is evidence of their manipulation of the Courts.

The affidavit of Epstein confirms that the representations made to this Court are not accurate. In fact, they demonstrate a pattern of delay which is particularly egregious given that Plaintiffs are the ones who filed this lawsuit and now are attempting to control this Court’s management of the litigation. If Plaintiffs’ pending motion is granted based upon their inaccurate statement of the status settlement negotiations, then it will only embolden the Plaintiffs to make further misstatements. The Plaintiffs should not be rewarded for this kind of misconduct.

Based upon the foregoing, the Plaintiffs’ motion to withhold ruling on Defendants’ Motion to Dismiss should be denied, and the Defendants’ should be awarded their attorney’s fees and costs incurred in having to defend against this frivolous motion.

Dated: November 22, 2010

Respectfully submitted,  
HODGE & FRANCOIS  
Attorneys for Jeffrey Epstein and  
L.S.J., LLC

s/ Denise Francois  
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*Defendants' Opposition to Plaintiffs' Motion to Withhold Ruling on  
Defendants' Motion to Dismiss  
J.P. Molyneux Studio, Ltd. vs. Epstein et al.  
Civil No. 2010/34*



**CERTIFICATE OF SERVICE**

**IT IS HEREBY CERTIFIED THAT**, pursuant to LRCi 5.4.9, a true and exact copy of the foregoing was served on this 22<sup>nd</sup> day of November, 2010 through Notice of Electronic Filing for parties and counsel who are Filing Users and through the alternate method indicated below for any party or counsel who is not a Filing User.

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s/ Denise Francois  
Denise Francois, Esquire