

RECEIVED, 11/5/2018 4:55 PM, Mary Cay Blanks, Third District Court of Appeal

IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
THIRD DISTRICT  
DCA CASE NO.: 3D18-1997  
L.T. CASE NO.: 2014-021348 CA 01

JEFFREY EPSTEIN,  
Appellant/Defendant,

vs.

JEAN-LUC BRUNEL, individually,  
and MC2 MODEL & TALENT MIAMI, LLC,  
Appellees/Plaintiffs.

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**ANSWER BRIEF OF APPELLEES/PLAINTIFFS**

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*On Appeal from a Non-Final Order of the Circuit Court of the Eleventh Judicial  
Circuit in and for Miami-Dade County, Florida*

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## STATEMENT OF THE CASE AND OF THE FACTS

The Amended Complaint in this case was filed on January 26, 2015. (Defendant's App. A). After an unsuccessful attempt to serve Defendant Epstein (Epstein) at his New York residential address, (in which his housekeeper answered the door) Epstein successfully moved to quash the service of process against him (Defendant's App. C, p.24). Brunel then requested leave to serve Epstein, which the trial court granted on October 5, 2016 (Defendant's App. E, p.48). The trial court gave Brunel 120 days to properly serve Epstein. *Id.* Brunel properly served Epstein at his Virgin Islands business address on November 17, 2016 (Defendant's App. F, p.52). This service was well within the 120 day limit set by the trial court in its order granting Brunel leave to serve Epstein (Defendant's App. E, p.48). Additionally, Brunel did not serve Epstein at his home address in the Virgin Islands, as Epstein lives on his own private island (Little St. James), which is inaccessible to the public (Defendant's App. F, p.62-65).

After Epstein's counsel at that time wrote to the undersigned on December 2, 2016, stating that service on Epstein in the Virgin Islands was improper, (Defendant's App. H, p.106), Brunel then filed a Motion for Ruling on Service of Process on March 16, 2017 (Defendant's App. G). Epstein then filed a motion to quash the service or dismiss until March 30, 2017 (Defendant's App. H,I,J).

Finally, on October 16, 2017, Plaintiffs filed a follow-up Motion for Ruling on Service of Process on Epstein (Defendant's App. K). Epstein then filed a Motion in Opposition. (Defendant's App. L). The trial court heard both motions on September 14, 2018, and correctly ruled in favor of Brunel (Defendant's App. M).

## SUMMARY OF THE ARGUMENT

Plaintiffs' service upon Defendant Jeffrey Epstein comes with the presumption of validity from the trial court. In addition:

- First, the record as reflected in Defendant's Appendix, does not necessarily rule out the fact that at least two prior attempts were made to serve Defendant at his place of business.
- Second, the record does not definitively reflect that the person served with process at Defendant's place of business was not the person in charge of the business.
- Third, the plain language of F.S. 48.031(1)(a) does not explicitly require an averment on the return of service that the person served was orally informed of the papers' contents.
- Fourth, Epstein's place of business is a valid place to serve him individually, as the legislature could not have intended an individual to be essentially beyond the reach of legal service of process, as in the instant case.

If this Court believes that the above points could be construed in Plaintiff Brunel's favor, then an affirmance of the trial court judgment, or at the very least, a reversal and remand for an evidentiary hearing, is warranted.

## **ARGUMENT**

### **Standard of Review**

“A trial court’s ruling on a motion to quash service of process is subject to a de novo standard of review.” [Boca Stel2 LLC vs. JP Morgan ChaseBank National Association](#), 159 So.3d 140, 141 (Fla. 5<sup>th</sup> DCA 2014).

### **INTRODUCTION**

The trial court’s ruling in favor of Brunel comes with a presumption of correctness. “It is well-settled that “the burden is on the appellant to make reversible error appear.” [Snowden v. Wells Fargo Bank](#), 172 So.3d 506, 507 (Fla. 1<sup>st</sup> DCA 2015). “Even under a *de novo* standard of review, the trial court’s final judgment “has the presumption of correctness and the burden is on the appellant to demonstrate error.” *Id.* Defendant’s appendix is not accompanied by a transcript of the hearing, so appellate review is limited to this appendix. *Id.* at 508.

#### **I. The process server’s affidavit does not definitively rule out the possibility that two prior attempts were made at service at Epstein’s place of business**

Florida Statute [48.031\(2\)\(b\)](#) states in relevant part that service upon the person in charge of the business at the time is permissible of service if two attempts to serve the owner have been made at the place of business. In the instant case, the affidavit of the process server reflects that an attempt was made to serve Epstein’s place of business in the Virgin Islands (Defendant’s App. F, p.52). It

does not state that two previous attempts were made to serve Epstein himself; however, the statute does not explicitly require the server to affirmatively state that previous attempts were made. F.S. [48.031\(2\)\(b\)](#). Accordingly, the affidavit is not fatally flawed in this manner, despite Epstein's claims to the contrary. However, should this Court require evidence of two prior attempts at service upon Epstein himself, then a remand for an evidentiary hearing would be appropriate. [Linville v. Home Sav. Of America, FSB](#), 629 So.2d 295,296 (Fla. 4<sup>th</sup> DCA 1993). The process server could testify under oath as to any prior attempts he made to serve Epstein himself. The testimony would definitively clear up any issues as to the number of attempts to serve Epstein himself at his place of business.

**II. The process servers' affidavit does not definitively reflect that the person served with process at Defendant's place of business was not the person in charge of the business.**

The affidavit of the process server clearly states that the person served, Jeanne Brenna, was the office manager at Epstein's place of business at the time service was made (Defendant's App. F, p.52). Defendant's argument that this was merely a title conferred by the process server is unavailing, as nothing in F.S. [48.031\(2\)\(b\)](#) explicitly states that the process server must affirmatively provide identification of the person served. Jeanne Brenna could have introduced herself to the process server as the office manager, and the server could've noted her title as such. Should this Court require more evidence as to the role of Jeanne Brenna, an

evidentiary hearing where the process server testifies is an option. [Linville v.Home Sav. Of America, FSB](#), at 296.

**III. F.S. 48.031(1)(a) does not explicitly require an averment on the return of service that the person served was orally informed of the papers' contents.**

Defendant's argument that the person served in the instant case was not informed of the contents of the papers left at the office has no merit. F.S. [48.031\(1\)\(a\)](#) does not require the affidavit to explicitly reflect the fact that the person being served was informed of the papers' contents. This is an issue that the trial court was in the best position to determine.

**IV. Epstein's place of business is a valid place to serve him individually, as the legislature could not have intended an individual to be essentially beyond the reach of legal service of process, as in the instant case.**

Epstein was served at the Office of the Southern Trust Company, Inc. (Defendant's Appendix F, p.52). There was no access to his island place of abode, "The process server could not gain access to the property by any reasonable means to serve the papers personally." [Hull v. Lending House, Inc.](#), 19 So.3d 404 (Fla. 3<sup>rd</sup> DCA 2009). There was no direct access to the property. *Id.* "...[l]itigants have the right to choose their abodes; they do not have the right to control who may sue or serve them by denying them physical access." [Delancy v. Tobias](#), 26 So.3d 77, 80 (Fla. 3<sup>rd</sup> DCA 2010). "...there is no rule of law which requires that the officers of the court be able to breach the self-imposed isolation in order to inform the defendant that a suit is filed against him."). *Id.* Plaintiff properly resorted to

substituted service on Defendant Epstein. *Id.* Additionally, Defendant Epstein travels by private jet. Federal aviation rules prevent public access to a passenger on a private jet, whether arriving or departing (Defendant's Appendix G, p.96).

In the instant case, Epstein is de facto avoiding proper service of process by his self-imposed lifestyle. There is simply no way to properly serve him, as he is not the owner of a sole proprietorship. This could not possibly have been the result the Legislature intended, as they did not contemplate lifestyles like Epstein's.

### **CONCLUSION**

Plaintiffs request the following relief from this Court:

- First, an affirmance of the trial court order stating that service of process on Defendant Epstein was proper; or
- Second, a remand to the trial court for an evidentiary hearing to resolve any issues as stated above that this Court believes are in need of clarification; and
- Third, any other relief this Court deems fit to award to Plaintiff.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing was served by electronic mail to the Appellant's counsel:

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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that this brief complies with Florida Rule of Appellate Procedure 9.210(a) (2), requiring fourteen-point Times New Roman Font.

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