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SHER TREMONTE LLP

VIA ECF

October 30, 2017

The Honorable John G. Koeltl
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

A CONFERENCE WILL BE HELD ON TUESDAY, NOVEMBER 14, 2017, AT 3:00PM.
SO ORDERED.
JGK
USDJ
11/1/17

Re: ***Jane Doe 43 v. Epstein et al.***, No. 17 Civ. 616 (JGK)

Dear Judge Koeltl:

We represent non-party Haddon, Morgan and Foreman, P.C. ("Haddon Morgan"), which represented Defendant Ghislane Maxwell ("Maxwell") in *Giuffre v Maxwell*, Case No. 15-cv-7433 (RWS) (S.D.N.Y.) (the "Giuffre Action").

We write to respectfully request an opportunity to oppose Plaintiff's motion for alternative service on Maxwell through Haddon Morgan, or to seek reconsideration of the Court's order granting that motion, to which Haddon Morgan was not provided notice or any opportunity to respond.

Procedural Background

As the Court knows, counsel for Plaintiff in this action were also counsel for another plaintiff in the Giuffre Action, filed in 2015. Haddon Morgan represented Maxwell as a defendant in that case. Maxwell and the plaintiff in that case reached a settlement, and the claims against her were dismissed with prejudice on May 25, 2017, *see* So Ordered Joint Stipulation for Dismissal, *Giuffre v Maxwell*, Case No. 15 Civ. 7433 (RWS) (S.D.N.Y. May 25, 2017), ECF No. 919.

This action before Your Honor has been pending since January 26, 2017. *See* Complaint, Dkt. No. 1. On May 11, 2017, Plaintiff filed a motion seeking an additional 90 days to serve Maxwell (Dkt. No. 34), which the Court granted on May 12, 2017 (Dkt. No. 36). On August 10, 2017, Plaintiff's last day to serve Maxwell, Plaintiff filed a motion for alternative service pursuant to Federal Rule of Civil Procedure 4(e)(1) and New York Civil Practice Law and Rules ("CPLR") § 308(5) (Dkt. No. 55) (the "Alternative Service Motion"). The Court issued an order granting the Alternative Service Motion on September 29, 2017 (the "Order"). Thereafter, Plaintiff hand-delivered a copy of the Summons and Amended Complaint in this matter to Haddon Morgan's offices in Denver, Colorado on October 9, 2017.

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Haddon Morgan had not been served with the Alternative Service Motion when originally filed, and had no notice of it until after the Court entered the Order. Because the Order places Haddon Morgan in the unusual position of being compelled to accept service beyond the scope of its engagement or the client's authorization, and because certain relevant information was omitted from the Alternative Service Motion, Haddon Morgan engaged my firm to submit this application for relief from the Order.

Plaintiff's Factual Assertions Were Incomplete and Misleading

Plaintiff made numerous factual assertions that Haddon Morgan would have challenged had it been served with a copy of the Alternative Service Motion when filed.

First, Plaintiff's counsel neglected to inform the Court that Maxwell – described throughout the press as a "British Socialite" – owns a residence in London. Indeed, Maxwell's London home was the subject of motion practice in the Giuffre Action, in which the same counsel who represent Plaintiff here sought disclosure as to what they called "Maxwell's . . . home."[1] Maxwell's residence in London has also been discussed in publicly available documents in yet another lawsuit.[2] We respectfully submit that the existence of a known residence on which service had not been attempted would have been fatal to the Alternative Service Motion.

Second, Plaintiff's counsel asserted "[i]t is clear" that Maxwell was purposefully and intentionally evading service," Alt. Serv. Mot. ¶ 2, even though Plaintiff admits not attempting any service that could have been evaded. Plaintiff's counsel only describes one "attempt" at service at a Manhattan address nine days before their extended deadline expired. Plaintiff and her counsel abandoned the attempt when they realized the business address, supposedly affiliated with Maxwell, turned out to be a UPS store. *See* Alt. Serv. Mot. ¶¶ 6, 7. Nothing in Plaintiff's submission, however, evidences that Maxwell was actually evading service, as there was no attempt at service to evade.

Third, Plaintiff's counsel not only imagined that Maxwell was evading service, they baselessly attempted to link Haddon Morgan to such efforts. Plaintiff's counsel submitted that Maxwell "has instructed her counsel not to accept service, and has also instructed her counsel not to disclose her whereabouts in response to inquiries related to effectuating service in this case." Alt. Serv. Mot. ¶ 4. Plaintiff's counsel had no conceivable basis to make such assertions about communications between Haddon Morgan and Maxwell; certainly, Haddon Morgan never informed Plaintiff's counsel of

[1] *See* Plaintiff Virginia Giuffre's Motion to Compel the Production of Documents Subject to Improper Objections at 22, *Giuffre v Maxwell*, No. 15 Civ. 7433 (RWS) (S.D.N.Y. Feb. 26, 2016), ECF No. 404.

[2] *See also* Jane Doe #3 and Jane Doe #4's Motion Pursuant to Rule 21 for Joinder in Action at 5, *Jane Doe #1 and Jane Doe #2 v. United States*, No. 9:08-cv-80736 (KAM) (S.D. Fla. Dec. 30, 2014), ECF No. 279 (referencing "Ghislane Maxwell's apartment" in London) *See also, e.g.*, Guy Adams & Tom Leonard, *Why ARE the Rich and Powerful So in Thrall to Ghislaine Maxwell?*, The Daily Mail.com (Jan. 9, 2015, 8.44 PM), http://www.dailymail.co.uk/news/article-2904115/Ghislaine-Maxwell-s-link-sex-scandal-court-papers-involving-Prince-Andrew-Jeffery-Epstein-don-t-stop-having-amazing-social-connections.html.

any such instructions. Moreover, although still counsel of record for Maxwell in the Giuffre Action, and attending to post-termination matters (i.e., confidentiality issues), Haddon Morgan has no occasion to know Maxwell's current whereabouts.

The Alternative Service Motion was Not Well Founded as a Matter of Law

Plaintiff's Alternative Service Motion was based on Fed. R. Civ. P. 4(e) and CPLR § 308(5), neither of which supported alternative service in light of the facts noted above. Rule 4(e)(1) provides for service on an individual by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." Fed. R. Civ. P. 4(e)(1). In turn, CPLR § 308(5), the New York state law provision governing service of summons, provides for alternative service, but only upon a showing that "service is *impracticable*" under conventional means of service,[3] and even then, only "[i]n such manner as the court, upon motion without notice, directs." N.Y. C.P.L.R. § 308(5) (emphasis added); *see also Bozza v. Love*, No. 15-cv-3271 (LGS), 2015 WL 4039849, at *1 (S.D.N.Y. July 1, 2015).

"Though the impracticability standard is not capable of easy definition, ... a plaintiff seeking to effect alternative service must make some showing that the other prescribed methods of service could not be made." *Bozza*, 2015 WL 4039849, at *1 (internal citations omitted); *see also Markoff v. S. Nassau Cmty Hosp.*, 61 N.Y.2d 283, 287 n.2 (1984) (finding a "conclusory affidavit stating that service was impracticable . . . was insufficient to justify the order of expedient service under CPLR 308 (subd 5)"). *Preza v. Sever's Gourmet*, 212 A.D.2d 765, 765 (2d Dep't 1995) (finding alternative service was improperly granted). In particular, courts have found the impracticability standard unsatisfied where the defendant could have been properly served in a foreign country. *See, e.g., Yamamoto v. Yamamoto*, 43 A.D.3d 372, 373 (1st Dep't 2007) (where defendant was located in Japan, in "the absence of any evidence that service in that manner is 'impracticable,' the court properly denied plaintiff's request, pursuant to CPLR 308(5), for an order directing that service on defendant be effectuated by personal delivery of process upon his attorneys.").[4]

Here, Plaintiff has failed to make the requisite showing of "impracticability" in order to justify a court-ordered alternate method of service. Plaintiff's counsel cites "internet inquiries" without elaboration. Plaintiff's counsel further cites a single "attempt" at service – initiated only nine days before the expiration of Plaintiff's deadline

[3]Specifically, substitute service is available only where it is impracticable to serve an individual under CPLR § 308(1), (2), or (4) – the provisions for personal service, leave-and-mail, and nail-and-mail *See* N.Y. C.P.L.R. § 308(5)

[4]Pursuant to Fed.R.Civ.P. 4(f), an individual may be served in a foreign country "by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents" (the "Hague Convention"). Fed. R. Civ. P 4(f) The United Kingdom and the United States are both signatories to the Hague Convention

to serve Maxwell, and then abandoned. Plaintiff failed to inform the Court of Maxwell's residence in London, and has never purported to have attempted service there. In short, Plaintiff should not have asked the Court to enlist Maxwell's counsel as an agent of service, in lieu of bona fide diligent efforts to serve her.

Conclusion

For the reasons set forth above, we respectfully request that the Court withdraw its Order, or permit Haddon Morgan an opportunity to oppose Plaintiff's Alternative Service Motion or to file a motion to reconsider. We further respectfully request that any deadlines to formally answer or respond to the Complaint be held in abeyance pending the Court's resolution of Haddon Morgan's objections to service.

Respectfully submitted,

/s/ Kimo S. Peluso

Kimo S. Peluso

cc: All counsel of record (via ECF)

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