

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
MIAMI-DADE COUNTY, FLORIDA

GENERAL JURISDICTION DIV.

JEAN-LUC BRUNEL, individually;
and MC2 MODEL & TALENT
MIAMI, LLC,

Plaintiffs,

v.

CASE NO. 2014-21348-CA-01
DIVISION 34

JEFFREY EPSTEIN; TYLER
McDONALD; and TYLER
McDONALD d/b/a YI.ORG,

Defendants.

**DEFENDANT JEFFREY EPSTEIN'S AMENDED EMERGENCY
MOTION TO STAY PENDING APPELLATE REVIEW**

Defendant, Jeffrey Epstein ("Epstein"), pursuant to Florida Rules of Appellate Procedure 9.130(f) and 9.310(f), and this Court's inherent authority, amends his request on an emergency basis for this Court to stay this action pending appellate review of this Court's September 14, 2018 Order Denying Epstein's Motion to Dismiss for Lack of Personal Service, and states:

Introduction

On September 14, 2018, this Court denied Epstein's Motion to Dismiss for lack of personal service. The Court found that substitute service was effective—finding jurisdiction over Epstein's person. Importantly, Plaintiffs' own papers and affidavit confirm that they failed to comply with the strict requirements of section 48.031, Florida Statutes. Pursuant to Florida Rule of Appellate Procedure 9.130(a)(3)(C)(i), Epstein timely appealed that ruling to the Third District Court of Appeal and amends his stay request to be heard on an emergency basis. An order staying Plaintiffs' circuit court case against Epstein pending appellate review is appropriate and necessary.

After moving for a stay, Epstein's counsel contacted Plaintiffs' counsel in an effort to either reach an agreement on the stay request or agree upon dates for a hearing. At that time, Plaintiffs' counsel rejected a UMC hearing and specifically requested a special set hearing time. Epstein's counsel took immediate steps to special set the matter for hearing, and scheduled it on the first available agreeable date – January 30, 2019, at 3:00 p.m.

On October 23, 2018, after already agreeing to the special set hearing date, Plaintiffs' counsel emailed Epstein's counsel and advised he intended to set the "full-day" deposition of his own client, Plaintiff Jean Luc Brunel ("Brunel"), and declared Plaintiffs' intent to have "a representative of the Media/other persons" present at his client's deposition. Moreover, Plaintiffs' counsel insisted on setting his client's deposition within the next seventeen days and for Epstein's counsel to respond within 24 hours with dates of unavailability and any objections to the media circus Plaintiffs are apparently attempting to create. As Epstein made no prior request to set Brunel's deposition, Plaintiffs' counsel's email was completely unsolicited (not to mention entirely premature) and he provided no explanation for any immediacy in unilaterally setting the deposition of his own client or the need for the media to be present. The deposition dates Plaintiffs' counsel requested fall during the week of November 1, 2018, thus necessitating this Court's protection of a stay on an "emergency" basis because the first available UMC hearing time open on the Court's calendar is not until November 28, 2018.

Epstein's stay request is based on Plaintiffs' failures to effect service of process on Epstein and Plaintiffs' violation of the Court's October 5, 2016 Order directing Plaintiffs to do so within 120 days. This case has been pending against Epstein for almost four years without Plaintiffs having properly served him with process. Plaintiffs' two failed service attempts in four years presented compelling reasons for the Court to dismiss the instant case, or mandated a finding that

service was deficient and never accomplished. However, in its denial of Epstein's Motion, the Court effectively ruled that Plaintiffs properly effectuated substitute service on Epstein at a U.S. Virgin Islands business address in November 2016, a ruling that finds no support in section 48.031, Florida Statutes, where neither Epstein's business nor a sole proprietorship of Epstein is a defendant or even involved in this action. Accordingly, Epstein has a strong likelihood of prevailing on appeal in the Third District Court of Appeal, and he will be prejudiced by having to defend this matter while simultaneously prosecuting an appeal on jurisdictional grounds. For these reasons, this Court's inherent authority to control its docket and Florida Rules of Appellate Procedure 9.130(f) and 9.310(f) support the entry of a stay of Plaintiffs' case against Epstein until the Third District Court of Appeal fully resolves Epstein's appeal regarding jurisdiction.

Procedural Background

1. Plaintiffs, Jean-Luc Brunel and MC2 Model & Talent Miami, LLC, first included Epstein in a pleading in this case—their Amended Complaint—in January 2015. Ten months later, on October 5, 2016, after ruling as deficient Plaintiffs' one and only service attempt on Epstein since filing of the Amended Complaint, the Court ordered Plaintiffs to effect service of process on Epstein within 120 days (i.e., by no later than February 2, 2017), and ruled that the case would be dismissed without further action of the Court if Plaintiffs failed to do so. Plaintiffs did not move to enlarge that deadline. Near the end of that deadline they attempted service by leaving process with a third party at an office address in the U.S. Virgin Islands. This attempt, only the second in the two years since filing the Amended Complaint, was undeniably improper under Florida law and did not constitute service.

2. On March 30, 2017, Epstein moved to dismiss this action based on the deficient service of process and Plaintiffs' failure to comply with the October 5, 2016 Order of this Court,

and filed his separate supporting Memorandum of Law. On July 24, 2018, Epstein filed his Supplemental Motion to Dismiss and Motion to Enforce the October 5, 2016 Order.

3. On September 14, 2018, this Court entered its Order denying Epstein’s Motion to Dismiss. (Although his Motion was clearly denied in that the Court directed Epstein to respond or answer, the Court’s Order states that Epstein’s Motion was granted. Plaintiffs have submitted a proposed clarified order, but the Court has not yet executed it). The Order directs Epstein to respond or answer the Amended Complaint within 20 days. **(Ex. A, Order on Appeal)**.

4. On October 3, 2018, Epstein filed his Notice of Appeal of the Court’s Order denying his Motion to Dismiss to the Third District Court of Appeal. **(Ex. B, Notice of Appeal)**. The Third District Court of Appeal issued its Acknowledgement of New Case on October 4, 2018. **(Ex. C, Third DCA Acknowledgement of New Case)**.

5. In accordance with the Florida Rules of Appellate Procedure, and to preserve the Court’s judicial resources, Epstein requests a stay of this circuit court case against him—including, without limitation, the directive in the Order appealed that Epstein respond or answer the Amended Complaint, as well as the conduct of any and all depositions and other discovery in this case—pending completion of the Third District’s review of whether the Court has, in fact, properly found jurisdiction over Epstein’s person.

Argument and Memorandum of Law

Stay Request First Presented to Circuit Court Establishing Two Elements

This Court should stay Plaintiffs’ case against Epstein pending the conclusion of appellate review. *See* Fla. R. App. P. 9.130(f); 9.310(f). The Florida Rules of Appellate Procedure envision that a motion for a stay on appeal be presented in the first instance to the trial court. *See* Fla. R. App. P. 9.310(a), (f) (2012). In order to prevail on such a motion, a party must establish: (1) a

likelihood of success on the merits, and (2) a likelihood of harm absent the entry of a stay. *Sunbeam Television Corp. v. Clear Channel Metroplex, Inc.*, 117 So. 3d 772 (Fla. 3d DCA 2012). Here, a stay is appropriate not only due to Epstein's substantial likelihood of success on the merits of his substitute service issue on appeal, but also because of the likelihood of significant harm if no stay of this litigation is granted. This most immediate harm now presented if a stay is not granted is the conduct of Brunel's deposition (and the attendant media circus Plaintiffs hope to create as a result) which Plaintiffs intend to immediately set and conduct before the Third District Court of Appeal has an opportunity to complete its appellate review. A stay will also impart numerous benefits towards conserving the parties' and the Court's own judicial resources.

Because it concerns legally insufficient service of process, this Court's Order denying Epstein's Motion to Dismiss is an appealable non-final order under Florida Rule of Appellate Procedure 9.130(a)(3)(C), and Epstein has timely appealed it. *See, e.g., Vaughn v. Wells Fargo Bank, N.A.*, 153 So. 3d 969, 970 n.1 (Fla. 5th DCA 2015) ("An order on a motion to quash service of process is one that determines personal jurisdiction and is thus appealable."); *Re-Employment Servs., Ltd. v. Nat'l Loan Acquisitions Co.*, 969 So. 2d 467, 470 (Fla. 5th DCA 2007) ("[T]his Court has jurisdiction to review the non-final order denying the motion to quash under Florida Rule of Appellate Procedure 9.130(a)(3)(C)(i), which permits review of non-final orders that determine the jurisdiction of a person.").

Rule 9.130(f), which governs the extent of the trial court's continuing jurisdiction in the case of a non-final appeal under Rule 9.130, provides:

(f) Stay of Proceedings. *In the absence of a stay*, during the pendency of a review of a non-final order, the lower tribunal may proceed with all matters, including trial or final hearing, except that the lower tribunal may not render a final order disposing of the cause pending such review absent leave of the court.

Fla. R. App. P. 9.130(f) (emphasis added). *See also* Fla. R. App. P. 9.130, Comm. Note, 1977 Amend. (“Subdivision (f) makes clear that *unless a stay is granted* under rule 9.310, the lower tribunal is divested of jurisdiction to enter a final order disposing of the case. This follows the historical rule that trial courts are divested of jurisdiction only to the extent that their actions are under review by an appellate court.”) (emphasis added). Rule 9.310(a), in turn, provides that “a party seeking to stay a final or non-final order pending review shall file a motion in the lower tribunal, which shall have continuing jurisdiction, in its discretion, to grant, modify, or deny such relief.” Fla. R. App. P. 9.310(a). Thus, the rules obligate Epstein to request a stay from this Court, notwithstanding his appeal of the threshold jurisdictional issue.

The trial court has discretion to set the conditions under which proceedings may be stayed pending appellate review. *Mariner Health Care of Nashville, Inc. v. Baker*, 739 So. 2d 608, 609 (Fla. 1st DCA 1999); *see also Sunbeam Television Corp. v. Clear Channel Metroplex, Inc.*, 117 So. 3d 772, 772 (Fla. 3d DCA 2012) (“The idea is that the court most familiar with the controversy is in the best posture to determine the appropriateness and conditions of a stay.”). A stay is appropriate when a party has demonstrated a likelihood of success on the merits, and a likelihood of harm absent the entry of a stay. *See Perez v. Perez*, 769 So. 2d 389, 391 n.4 (Fla. 3d DCA 1999). These factors militate heavily in favor of the Court exercising its discretion to grant a stay of Plaintiffs’ case against Epstein, pending the Third District’s completion of its review.

1. Epstein is Likely to Succeed on the Merits

There is indeed a substantial likelihood of success on the merits of Epstein’s appeal. In support, Epstein incorporates his March 30, 2017 Motion to Dismiss, his March 30, 2017 Memorandum in Opposition to Plaintiffs’ Motion for Ruling on Service of Process, and his July 24, 2018 Supplemental Motion to Dismiss. Without belaboring his arguments previously

presented, it is clear that Plaintiffs' service attempts on Epstein in the U.S. Virgin Islands failed to adhere to the substitute service requirements set forth in section 48.031(2), Florida Statutes, which require *strict compliance*. See *Dubois v. Butler*, 901 So. 2d 1029 (Fla. 4th DCA 2005) ("Because the statute allowing substituted service is an exception to the general rule requiring a defendant to be personally served, due process values require *strict compliance* with the statutory requirements."). Strict compliance means that the Court has *no discretion* to permit circumvention of the statutory service requirements. And the issue here was straightforward: Florida law simply did not permit Plaintiffs to effect substitute service on Epstein by presenting the summons to a third party at 6100 Red Hook Quarter in the U.S. Virgin Islands. See § 48.031(2)(b), Fla. Stat. (2016); *Hauser v. Schiff*, 341 So. 2d 531 (Fla. 3d DCA 1977). Critically, neither Epstein's business nor a sole proprietorship is a party to this case or even identified in the Amended Complaint. Rather, Plaintiffs were required to effectuate service at Epstein's usual place of abode. § 48.031(1)(a), Fla. Stat. Plaintiffs' own evidence confirmed that they did not comply with the statutory service requirements.

Even if substitute service was possible under section 48.031(2)(b), though it was not because Epstein was not "doing business as a sole proprietorship," Plaintiffs failed to comply with the other key component of the substitute service statute which requires two attempts. The statute provides:

(b) Substitute service may be made on an individual doing business as a sole proprietorship at his or her place of business, during regular business hours, by serving the person in charge of the business at the time of service *if two attempts to serve the owner have been made at the place of business.*

Id. (emphasis added). Plaintiffs' process server made only *one* attempt before leaving the Summons and Amended Complaint with a third party at the Red Hook Quarter address. Contrary

to the statute, the process server failed to return to the Red Hook Quarter address to make a second attempt, as the law required, upon learning that Epstein was not there.

Based on the foregoing, the Third District is likely to grant relief to Epstein on appeal, supporting this request for a stay.

2. Epstein will Likely be Harmed Absent a Stay

Additionally, Epstein will suffer significant harm if this Court does not stay Plaintiffs' case against him. This is clearly evidenced in Plaintiffs' counsel's declared intent to immediately set the "full-day" deposition of his own client with representatives of the "media/other persons" present at that deposition (**Ex. D, Email dated October 23, 2018**). This is an obvious gambit to force Epstein into settling a case in which personal jurisdiction over Epstein has barely been attempted and never been obtained in the four years it has been pending by threatening Epstein with a day-long media event, if Epstein does not capitulate. Worse, Plaintiffs demand that the deposition be completed in the next seventeen days, before the Third District Court of Appeal has the opportunity to review the merits of Epstein's appeal, as to which, as explained above, there is a substantial likelihood that Epstein will prevail. In the absence of a stay, Epstein will be forced to immediately expend substantial resources to address Plaintiffs' improper demands with respect to Brunel's deposition, as well as to prepare other dispositive motions or Epstein's answer and affirmative defenses, and begin the arduous process of engaging in discovery—all while his appeal on the key, threshold issue of jurisdiction is proceeding.

Plaintiffs' counsel's recent email dated October 23, 2018, tips the balance of the "harm" prong of this Court's required analysis decidedly in Epstein's favor because Plaintiffs' counsel has already declared his intent to (1) depose his own client, Plaintiff Brunel, the week of November 1, 2018, while the appeal is pending and (2) create a circus-like atmosphere at a deposition which

typically does not allow media representatives. While a presumption of openness in judicial proceedings may generally exist, the law has established numerous exceptions to protect competing interests. *Barron v. Fla. Freedom Newspapers, Inc.*, 531 So. 2d 113, 117 (Fla. 1988). A pre-trial deposition is undeniably one of the most well-established of those exceptions, and neither the press nor the public has a right of access to pretrial discovery depositions or to the unfiled transcripts of such depositions in civil or criminal cases. *Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378 (Fla. 1987); *Miami Herald Pub. Co. v. Gridley*, 510 So. 2d 884, 885 (Fla. 1987)(rationale employed in *Burk* led to same conclusion concerning the right of access in civil proceeding).

Relying on United States Supreme Court precedent, one Florida appellate court discussed the rationale for denying access to information obtained through pretrial discovery. *See Forrest v. Citi Residential Lending, Inc.*, 73 So. 3d 269, 277 (Fla. 2d DCA 2011) (citing *Seattle Times Co. v. Rhinehart*, 467 U.S. 20 (1984)). Pretrial discovery is generally conducted in private and ‘much of the information obtained . . . may be unrelated or merely tangentially related to the underlying case so that restraints placed upon discovered, but not yet admitted, information do not restrict a traditionally public source of information.’ *Id.* (citing *Seattle Times Co.*, 467 U.S. at 33).

Although Epstein is not at this time asking this Court to reach the correct conclusion that the media is not allowed at depositions to be taken in this case (though he may well be forced to do so, should the stay be denied), Epstein uses Plaintiffs’ counsel’s email request as record evidence of the harm he will suffer, including the potential media attention, should a stay not be granted. If the Third District concludes that Epstein was never properly served, he should not have to endure or pay the costs for depositions, with or without media, in a suit that lacks merit and critically was never properly served on Epstein. There is simply no reason to force Epstein’s

expenditures of substantial costs while simultaneously appealing this matter or to permit the needless waste of precious judicial resources on multiple fronts where, if Epstein is successful on appeal, Plaintiffs' ability to proceed with further litigation against him in this Court will be rendered moot. Staying this matter pending appellate review will save this court from unnecessary motion practice related to the additional forthcoming pleadings, discovery disputes, or otherwise dedicating its limited resources to this matter, which need never occur if Epstein is successful on appeal.

3. Plaintiffs will Suffer No Prejudice from a Stay

Finally, granting a temporary stay pending the appeal already underway¹ will not cause Plaintiffs to suffer any cognizable prejudice. Nearly four years have passed since Plaintiffs filed their Amended Complaint, and they still have made no attempt to properly comply with Florida's strict service of process statute. Plaintiffs' failure to pursue this matter for four years should not be rewarded, particularly during the short period of time the Third District Court of Appeal will need to resolve this appeal. Plaintiffs will incur nothing beyond what they have incurred as a result of their own idle disregard for the strict service requirements under Florida law. To the extent the additional delay causes any concern at all to Plaintiffs or the Court, such concern is far outweighed by the benefits of certainty that will result from an appellate ruling on the threshold jurisdictional issue.

CONCLUSION

This Court should grant a stay of Plaintiffs' case against Epstein pursuant to Florida Rules of Appellate Procedure 9.130(f) and 9.310(f). These rules, combined with this Court's inherent

¹ Epstein already filed his Initial Brief without asking for an extension of time. Plaintiffs/Appellees' Answer Brief is due on November 7, 2018.

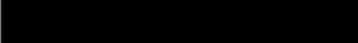
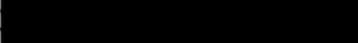
authority, support this Court's exercise of its discretion to grant the requested stay. Epstein is likely to succeed on the merits and will be undeniably prejudiced if no stay is in place. Conversely, no harm will befall Plaintiffs. Whether Plaintiffs properly effectuated service of process on Epstein (and thus the Court's jurisdiction over him) is squarely a threshold question for this proceeding. Until the Third District is able to fully vet the issue—which may very well obviate Plaintiffs' ability to proceed against Epstein—the parties' and the Court's resources should be preserved.

WHEREFORE, Defendant, Jeffrey Epstein, respectfully requests that this Court enter an Order granting this Motion to Stay Pending Appellate Review, and stay Plaintiffs' case against him and his obligations under Court orders and the Rules of Civil Procedure in all respects, until the Third District issues its Mandate resolving Epstein's non-final appeal of this Court's September 14, 2018 Order on Epstein's Motion to Dismiss.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on October 24, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

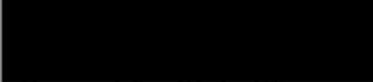
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