

HODGE & FRANCOIS
1340 Taarneberg
St. Thomas, VI 00802

facsimile transmittal

To: Darren K. Indyke

Fax: (646) 350-0378 #789

From: Denise Francois DF

Date: 7/5/2012

Re: Epstein vs. Fancelli

Pages: 6

Urgent

For review Please

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Opposition of Defendant Fancelli Paneling, Inc. to Plaintiffs' Emergency Motion to Compel the Attendance of (Monsieur) Jean-Pierre Fancelli follows this cover sheet.

Denise Francois
Hodge & Francois
1340 Taarneberg
St. Thomas, VI 00802
Telephone: (340) 774-6845
Telefax: (340) 776-8900
Email: denise@hodgefrancois.com

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS & ST. JOHN

JEFFREY EPSTEIN, et al.,

Plaintiffs,

v.

FANCELLI PANELING, INC., and
J.P. MOLYNEUX STUDIO, LTD.,

Defendants.

NO. ST-10-CV-443

(CARROLL, J.)

**OPPOSITION OF DEFENDANT FANCELLI PANELING, INC., TO PLAINTIFFS'
EMERGENCY MOTION TO COMPEL THE ATTENDANCE OF (MONSIEUR)
JEAN-PIERRE FANCELLI AT MEDIATION**

COMES NOW Defendant, FANCELLI PANELING, INC., by and through its undersigned counsel, to state its *Opposition* to Plaintiffs' unseasonable *Motion*¹ pursuant to *Super Ct. R 40*. In support of its *Opposition*, Defendant states the following facts and circumstances:

Plaintiff filed for this relief Friday, June 29th. The undersigned had been off-island June 27 through July 2, 2012, with Attorney Baker second seating this matter. Attorney Baker, with other attorneys from this office, attended a day-long CLE session Monday, July 2nd. Local and federal holidays consumed July 3-4. Mediation is scheduled for July 13th and there is no fair way, insufficient notice and no economically feasible way for the relief Plaintiff seeks at this late juncture. See *Fed. R. Civ. P. 1; Super. Ct. R. 7*.

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1. Plaintiff Jeffrey Epstein is a resident of the U.S. Virgin Islands. *Second Amended Complaint*, ¶ 1. Plaintiff choose this forum, resides here and, as a natural person, is fully obliged to personally attend mediation as scheduled.
2. Fancelli Paneling, Inc., is a corporation organized under the laws of the state of New York. *Second Amended Complaint*, ¶ 2. See also Exhibit 4, *Plaintiffs' Opposition to Motion to Dismiss*. A corporation, as a statutory person, must designate the natural person(s) through which it functions. See also, *Fed. R. Civ. P. 30(b)(6)*.
3. Monsieur Jean-Peirre Fancelli resides in St. Ouen, France. The language he is most comfortable using is French. Monsieur Fancelli previously requested the courtesy of appearing telephonically at mediation, but Plaintiffs' declined.
4. As a corporation, Fancelli Paneling, Inc., is permitted to designate its representative for purposes of, *inter alia*, mediation and the only qualification is that the person designated has full authority to settle without further qualification. *Super. Ct. R. 40(e)(2)*. For purposes of this procedure, the corporation has designated a representative that is familiar with all aspects of this dispute and the English language and he will appear with settlement authority. The corporate representative will be assisted at mediation by Michele Baker, Esquire, who is fluent in French. Plaintiffs' discourtesy notwithstanding, Mon. Fancelli may choose to be available by telephone during mediation to speak with her as necessary.
5. The designated representative, although an attorney, is not practicing in this jurisdiction, nor has he been admitted *pro hac vice* in this, or any Virgin Islands action. He appears solely as

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a corporate representative, not in any legal capacity. A corporation, however, may only appear in actions of this nature through its attorney of record, the undersigned.

6. The Court's attention is drawn to ¶ 3 of Plaintiffs' *Motion*, attempting to use counsel's efforts at settlement as evidence, in contravention of *Fed. R. Evid. 408*, and to which Defendant objects. With a reservation of all rights, however, and while it appears that the parties have been able to work out a suitable *Confidentiality Agreement* to permit Plaintiffs' to surrender (settlement) *Agreements* necessary for consideration and compliance with the Mediator's requirements in advance of mediation, Plaintiffs have not made suitable arrangements for the undersigned's request for an informed mediation to be conducted with visual inspection of the on-site work at issue for all counts pending before this Honorable Court. The Court is aware that this suit is based upon a questionable claim of the alleged beneficiary of a distinct and different contract and the impermissible tort arising therefrom. The "work" at issue is in place at Plaintiffs' St. Thomas property and must be reviewed by the Mediator and all parties to gauge whether Plaintiffs have been adequately compensated for the contractual work received, together with the additional work and funds they subsequently received.

Additional "emergency" relief will be sought, failing universal recognition of the basic logic that we must all compare the one hand to the other.²

²

Under *Fed. R. Civ. P. 26(a)(1)(A)(i)*, Defendant need only disclose persons Defendant may use to support its claims or defenses. Defendant had no obligation to disclose this representative.

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CONCLUSION

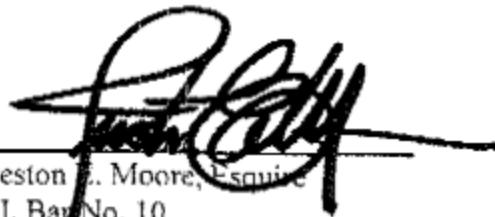
It is respectfully submitted that it would question and undermine the integrity of mediation if one party could hand-pick and designate the corporate representative of its opposition on that occasion.

WHEREFORE, Defendant respectfully requests this Honorable Court to:

- A. **DENY** Plaintiffs' *Motion to Compel Fancelli's Personal Attendance at Mediation*;
- B. To award Defendant fees and costs in conjunction with its *Opposition*; and
- C. To award such other and further relief as the Court deems just and proper.

Dated this 5th day of July, 2012.

Respectfully submitted,



Treston J. Moore, Esquire
V.I. Bar No. 10

MOORE DODSON & RUSSELL, P.C.
Attorneys for Defendant Fancelli Paneling, Inc.
P.O. Box 310, E.G.S. (14A Norre Gade)
St. Thomas, VI 00804-0310
PHONE: (340) 777-5490
FAX: (340) 777-5498
EMAIL: tresmoore@aol.com

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CERTIFICATE OF SERVICE

I hereby certify that on this 5th day of July, 2012, a copy of the foregoing was served by facsimile transmission and first class mail, postage prepaid, upon Denise Francois, Esquire, Hodge & Francois, #1340 Taarneberg, St. Thomas, V.I. 00802, and upon A. Jeffrey Weiss, Esquire, 6934 Vessup Lane, St. Thomas, V.I. 00802-1001.

