

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

20 FEB - 89  
SUPERIOR COURT  
OF THE VIRGIN ISLANDS  
AH 10: 19

<b>IN THE MATTER OF THE ESTATE OF</b> <b>JEFFREY E. EPSTEIN,</b>  <p style="text-align: center;"><b>Deceased.</b></p> <hr style="width: 100%;"/>	) ) ) ) )	<b>PROBATE NO. ST-19-PB-89</b>  <b>ACTION FOR TESTATE ADMINISTRATION</b>
---	-----------------------	--

**OPPOSITION TO  
GOVERNMENT’S MOTION TO INTERVENE (CORRECTED BRIEF)<sup>1</sup>**

COME NOW the Co-Executors of the Estate of Jeffrey E. Epstein (the “Estate”), **DARREN K. INDYKE AND RICHARD D. KAHN**, by and through **KELLERHALS FERGUSON KROBLIN PLLC**, and hereby oppose the Motion to Intervene filed by the Government of the Virgin Islands (the “GVI”). Because the GVI’s Motion to Intervene is flawed both substantively and procedurally, the Court should deny that application.

**I. The Proposed Intervention Serves No Proper Purpose**

The GVI asserts that its intervention in this probate proceeding is, in part, required “to ensure that the administration of the Estate conforms to the laws of the Virgin Islands.” (Motion to Intervene at 1.) That is nonsense: under Virgin Islands law, it is the Court's charge — not the GVI's — to oversee the proper administration of estates and ensure their compliance with Virgin Islands law.

The Superior Court has original jurisdiction “to supervise and administer estates and fiduciary relations.” 4 V.I.C. § 76(a).

“[T]he Superior Court ‘has jurisdiction and the power to administer justice in all matters relating to the affairs of decedents, ... to try and determine all questions, legal or equitable, arising between any or all of the parties to any

---

<sup>1</sup> This Corrected Brief in Opposition is filed in place of the Opposition to the Government’s Motion to Intervene, filed in this Court on behalf of the Co-Executors on Friday, January 31, 2020.

proceeding, ... as to any and all matters necessary to be determined in order to make a full, equitable, and complete disposition of the matter by such order or decree as justice requires.' 15 V.I.C. § 161. The court is unrestricted in its power to dispose of such cases 'as justice requires' and is explicitly authorized to grant letters of administration, direct and control an executor or administrator's conduct, distribute assets, and order the sale of the deceased person's property. *Id.*"

*Ottley v. Estate of Bell*, 61 V.I. 480, 489-90 (V.I. 2014). The GVI offers no explanation for why it believes the Court is not up to that task.

Nor does the GVI explain why it waited *more than five (5) months* to seek to intervene in this proceeding, which the Co-Executors commenced on August 15, 2019. That the GVI decided two (2) weeks ago to commence civil claims and file criminal activity liens against the Estate is a self-created emergency: the GVI has long known that Mr. Epstein (and now the Estate) owns substantial real property in the Virgin Islands.

The GVI also purports to find a "potential conflict of interest" in the Co-Executors' administration of the Estate, in particular in proposing to hire independent, nationally recognized claims administration experts to design and implement the proposed Epstein Victims' Compensation Program (the "Program"). (Motion to Intervene at 1.)<sup>2</sup> That purported conflict does not exist. "The mere existence of a possible adverse interest, without more, is not sufficient grounds for complaint in the Virgin Islands." *In re Estate of Vose*, 317 F.2d 281, 282, n.4 (3d Cir. 1963) (internal citations omitted). Here, the Co-Executors do not have an interest adverse to the Estate which would prevent them from faithfully administering their fiduciary duties. Nor is there any allegation of neglect or dereliction of their fiduciary duties. Indeed, there is absolutely no evidence that the Co-Executors' manner and conduct in executing their office has run afoul of the

---

2. The GVI's baseless attack on the Program is dealt with separately in the Estate's Reply to the GVI's Opposition to Estate's Motion for Establishment of a Voluntary Claims Resolution Program, filed Friday, January 31, 2020.

standard of care required of an executor. There is, and can be, no allegation that the Co- Executors have been unfaithful to their trust.

It cannot be a “conflict of interest” for the Co-Executors to have known Mr. Epstein during his lifetime — if that were the case, no one could ever appoint a friend or trusted colleague as executor of his or her estate. Nor can Messrs. Indyke’s and Kahn’s past and present involvement in “various Epstein business entities” constitute a disqualifying conflict of interest. (Motion to Intervene at 6.) That some of those entities “are alleged to share liability in [Mr.] Epstein’s civil and criminal violations in the Virgin Islands and elsewhere” (*id.* at 6-7) is nothing more than an unsupported, unproven allegation — none of those business entities have ever been criminally charged, and none have ever been found liable for Mr. Epstein’s alleged conduct.

## **II. The Virgin Islands Code and the Probate Rules Govern, Not Rule 24**

The GVI bottoms its purported right to intervene on Rule 24 of the Virgin Islands Rules of Civil Procedure (“Rule 24”). (Motion to Intervene at 1, 3, 4, 7.) That is a false bottom: it is the Virgin Islands Code and the Virgin Islands Rules for Probate and Fiduciary Proceedings (the “Probate Rules”) that set forth the specific steps a purported claimant must take to bring a claim against an estate and participate in a probate proceeding. *Rule 24 has no application to this proceeding.*

The exclusive procedure for pursuing a claim against an estate is set forth in Chapter 23 of Title 15 of the Virgin Islands Code and the Probate Rules, entitled “Claims and Charge Against the Estate.” *See* 15 V.I.C §§ 391-430. The Probate Rules also include provisions governing a claimant’s participation in a probate proceeding. To the extent the GVI has a claim against the Estate, it must follow these mandatory claims procedures to make that claim and participate in these proceedings.

The Virgin Islands Code and the Probate Rules also provide the only procedure for a creditor to present its claim against the Estate. Thus, a creditor must follow the process outlined in 15 V.I.C. § 606(b) in order to properly file a complaint against an estate. *See Ottley, supra*, 61 V.I. at 493. The language of Section 606(b) is absolute: it forbids a creditor from commencing an action against an estate until it has first presented its claim to the executors, and they have considered and disallowed that claim. *See Oat v. Sewer Enters.*, 46 V.I. 286, 290 (D.V.I. 2004). While all claimants, including the GVI, may file claims with the Estate, they are subject to the jurisdiction of the Court in this probate proceeding. *See* 15 V.I.C. §§ 391 and 392.<sup>3</sup>

### **III. The GVI Failed to Follow the Applicable Claims Procedure**

Under Virgin Islands law, one who seeks to assert a claim against an estate must first present its claim to the appointed executor or administrator of that estate. *See* 15 V.I.C. § 391 (requiring “[e]very executor or administrator” to publish in a local newspaper and to post a notice “requir[ing] all persons having claims against the estate to present them, with the proper vouchers, within six months from the date of the notice, to the executor or administrator, at a place within this territory therein specified.”). The claimant must conform to the requirements set forth in Title 15, including verification of its claim by affidavit of the claimant or someone with personal knowledge of the relevant facts. *See* 15 V.I.C. § 393 (“Every claim presented to the executor or administrator shall be verified by the affidavit of the claimant, or someone on his behalf who has personal knowledge of the facts, to the effect that the amount claimed is justly due; that no

---

3. The GVI does not address how Rule 24 could apply to this probate matter, which is of course governed by the Probate Rules. *See* V.I. R. PROB. 1 (providing that “[t]hese Virgin Islands Rules for Probate and Fiduciary Proceedings shall apply in probate, guardianship, trust and other fiduciary proceedings.”). While Rule 1 of the Probate Rules permits the Court to adapt the Virgin Islands Rules of Civil Procedure “as appropriate” when “no procedural provision is included [in the Probate Rules],” here there are express procedural provisions in the Probate Rules that govern claims and the participation of claimants in probate proceedings.

payments have been made thereon, except as stated; and that there is no just counterclaim to the same, to the knowledge of the affiant.”).

If and when such a claim is presented to an executor, the executor is then required to examine the claim, consider it, and then either accept or reject it. 15 V.I.C. § 394 (“When a claim is presented to the executor or administrator, as prescribed in section 393 of this title, if he is satisfied that the claim thus presented is just, he shall indorse upon it the words ‘Examined and approved’, with the date thereof, and sign the same officially, and shall pay such claim in due course of administration. If he is not so satisfied he shall indorse thereon the words ‘Examined and rejected’, with the date thereof, and sign the same officially.”).

Here, the GVI failed to follow the claims procedure required by Virgin Islands law to bring a claim against the Estate. Rather than present its claim to the Co-Executors and call on them to review and consider it, GVI instead filed a civil action seeking damages and other relief. That is improper. If the GVI wishes to formally appear in these proceedings, it must (like any other creditor) follow the claims procedure set forth in 15 V.I.C. §§ 391-394: the GVI must present a verified claim, supported by documentation, to the Co-Executors. Pursuant to the statutory scheme, the Co-Executors are then required to assess the GVI’s claim and either reject or accept it. Only then would the GVI have standing to participate in this probate proceeding like all other claimants. However, the Virgin Islands Legislature has mandated that an action may be commenced against an executor only after the expiration of twelve (12) months from the date letters testamentary are granted by this Court. *Ottley, supra*, 61 V.I. at 491 (quoting 15 V.I.C. § 606(a)). These “mandatory” rules apply to all claimants, including the GVI. A claimant is not permitted to bypass the probate process enacted by the Legislature, which was designed precisely for this purpose -- to relieve the executors from defending the estate’s rights in both a civil action

and through probate proceedings simultaneously. *See Ottley, supra*, 61 V.I. at 494. This process also ensures that a claimant will not serve the executor with a summons, in an attempt to gain priority over estate assets to the detriment of other creditors who properly follow the probate process.

**IV. Even if Rule 24 Were Applicable – It is Not – the Contingent Nature of the GVI's Claim Requires the Court to Deny Intervention**

On January 15, 2020, the GVI filed a civil forfeiture action against the Estate in derogation of the applicable statutory requirements set forth in the Virgin Islands Code and Probate Rules. Even assuming the GVI's complaint had not been filed in contravention of these mandatory claims rules, the GVI would merely have a contingent claim — *i.e.*, one that is entirely dependent on its success in that separate action. “[C]ourts in this circuit that have been confronted with the issue have consistently held that intervention pursuant to Rule 24(a)(2) is inappropriate where the proposed intervenor's interest is contingent upon prevailing on a tort claim in a separate action.” *Gen. Star Indem. Co. v. Virgin Is. Port Auth*, 224 F.R.D. 372, 375-376 (D.V.I. 2004) (“Proposed Intervenor cannot deny that any interest they have or may have in this matter is purely contingent upon a favorable judgment in their underlying suit . . . . The Court finds that such a contingent interest is insufficient to sustain intervention of right”). Here, even assuming for the sake of argument that Rule 24 is applicable, the Government's contingent interest in a possible favorable judgment in another suit is not an interest significant enough to authorize its intervention.


**V. Conclusion**

How and when a creditor may present a claim and participate in a probate proceeding is governed by Title 15 of the Virgin Islands Code and the Probate Rules. If the GVI has a claim against the Estate as alleged in its Motion to Intervene, it must follow the claims procedure set forth in 15 V.I.C. §§ 391-394 and the Probate Rules. The rule under which the GVI seeks to

intervene in this proceeding, Rule 24 of the Virgin Islands Rules of Civil Procedure, does not apply to this probate proceeding. Because the GVI has not satisfied the requisites for its participation in this probate proceeding, the Court should deny the GVI's Motion to Intervene.

Respectfully,

Dated: February 3, 2020

  
**CHRISTOPHER ALLEN KROBLIN, ESQ.**  
**ANDREW W. HEYMAN, ESQ.**  
**WILLIAM L. BLUM, ESQ.**  
**SHARI N. D'ANDRADE, ESQ.**  
**MARJORIE WHALEN, ESQ.**  
V.I. Bar Nos. 966, 266, 136, 1221 & R2019  
KELLERHALS FERGUSON KROBLIN PLLC  
Royal Palms Professional Building  
9053 Estate Thomas, Suite 101  
St. Thomas, V.I. 00802  
Telephone: (340) 779-2564  
Facsimile: (888) 316-9269  
Email: ckroblin@kellfer.com  
aheyman@solblum.com  
wblum@solblum.com  
sdandrade@kellfer.com  
mwhalen@kellfer.com

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on this 3<sup>rd</sup> day of February 2020, I caused a true and exact copy of the foregoing **Opposition to Government's Motion to Intervene (Corrected Brief)** to be served upon:

**Via Electronic Mail by Agreement of the Parties:**

John H. Benham, Esq.  
Law Office of John H. Benham, P.C.  
P.O. Box 11720  
St. Thomas, VI 00801  
*john@benhamlawvi.com*

Douglas B. Chanco, Esq.  
ChancoSchiffer P.C.  
3355 Lenox Road, Suite 750  
Atlanta, GA 30326  
*doug@csfirm.com*

A. Jeffrey Weiss, Esq.  
A.J. Weiss & Associates  
6934 Vessup Lane  
St. Thomas, VI 00802  
*jeffweiss@weisslaw-vi.net*

Richard P. Bourne-Vanneck, Esq.  
Law Offices of Richard Bourne-Vanneck  
9800 Buccaneer Mall Suite #9  
St. Thomas, VI 00802  
*richard@rpvblawoffices.com*

Sean Foster, Esq.  
Marjorie Rawls Roberts, P.C.  
P.O. Box 6347  
St. Thomas, VI 00804  
*sean@marjorierobertspc.com*



Via First-Class Mail, Postage Prepaid:

Denise N. George, Esq.  
Attorney General  
Ariel M. Smith, Esq.  
Chief, Civil Division  
Virgin Islands Department of Justice  
34-38 Kronprinsdens Gade  
GERS Complex, 2<sup>nd</sup> Floor  
St. Thomas, Virgin Islands 00804

J. Russell B. Pate, Esq.  
THE PATE LAW FIRM  
P.O. Box 370, Christiansted  
St. Croix, USVI 00821

Kevin F. D'Amour, Esq.  
Gaylin Vogel Esq.  
Kevin F. D' Amour, P.C.  
5143 Palm Passage, Suite 18b & 19b  
St. Thomas, V.I. 00802

John K. Dema, Esq.  
Law Offices of John K. Dema  
1236 Strand Street, Suite 103  
Christiansted, St. Croix  
U.S. Virgin Islands 00820-5008

A handwritten signature in blue ink, appearing to read "John K. Dema", is written over a horizontal line.