

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

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SUPERIOR COURT
OF THE VIRGIN ISLANDS

IN THE MATTER OF THE ESTATE OF)
JEFFREY E. EPSTEIN,) ST-19-PB-0000080
)
Deceased.)
_____)

OPPOSITION TO MOTION TO INTERVENE

COME NOW, the Co-Executors of the Estate of Jeffrey E. Epstein (the “Estate”), **DARREN K. INDYKE AND RICHARD D. KAHN**, and hereby oppose the Motion to Intervene filed by the Government of the Virgin Islands (the “Government”) and in support thereof state as follows:

I. The Virgin Islands Code and the Probate Rules, Not V.I. R. CIV. P. 24, Govern

The Virgin Islands Code sets forth the specific steps a purported claimant must take to bring a claim against an estate and participate in a probate proceeding. Here, the Government alleges it has a claim against the Estate. *See* Motion to Intervene at 1, 6, 7. Thus, the Government is a potential claimant or creditor of the Estate.

However, rather than adhere to the procedure set forth in the Virgin Islands Code and the Virgin Islands Rules for Probate and Fiduciary Proceedings (“Probate Rules”), the Government seeks to intervene in the probate of the Estate pursuant to Virgin Islands Rule of Civil Procedure 24 (“Rule 24”). **But Rule 24 has no application to this proceeding.**

Probate proceedings in the Superior Court are governed by Title 15 of the Virgin Islands Code and the Probate Rules. The procedure for pursuing a claim against an Estate is set forth in Chapter 23 of Title 15, 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 Government has a claim, the Government must follow the “mandatory” claims procedure to make a claim and participate in these proceedings.

The Virgin Islands Code and the Probate Rules provide the only procedure for presenting a claim against the Estate. A claimant or 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 v. Estate of Bell*, 61 V.I. 480, 493 (V.I. 2014). The language of Section 606(b) is “mandatory”. It forbids a claimant or creditor from commencing an action against an estate until she has first presented her claim to the executors and they have disallowed the claim. *See Oat v. Sewer Enters.*, 46 V.I. 286, 290 (D.V.I. 2004). Thus, all creditors, including the Government, must first present their claims to the Co-Executors, subject to the original jurisdiction of this Court in this probate proceeding. *See* 15 V.I.C. §§ 391 and 392.

The Government did not follow the required statutory procedure before filing its Complaint against the Estate, Case No. ST-20-CV-14. No complaint may be filed against the Estate until the claim has been properly presented to the Co-Executors. Thus, for purposes of this proceeding, the Government does not yet have a valid claim against the Estate. Accordingly, its Motion to Intervene pursuant to V.I. R. CIV. P. 24 must be denied.

II. The Applicable Claims Procedure

Persons who seeks to assert a claim against an estate must present their claims to the appointed executor or administrator of the 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 claim must conform to the requirements set forth in Title 15, including

verification of the claim by affidavit of the claimant or someone with personal knowledge. *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 payments have been made thereon, except as stated; and that there is no just counterclaim to the same, to the knowledge of the affiant.”).

When such a claim is presented to an executor, the executor examines the claim and either accepts or rejects the claim. 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.”).

Moreover, “[a]n action against an executor or administrator shall not be commenced until the claim of the plaintiff has been duly presented to such executor or administrator and by him disallowed.” 15 V.I.C. § 606(b). As noted above, the Government has failed to follow the mandatory claims processing procedure that is required for it to bring a claim against the Estate.

III. Rule 24 is Inapplicable

The Government is an ostensible claimant or creditor of the Estate. However, rather than adhering to the applicable claims-processing statute, as required, first presenting its purported claim to the Co-Executors, the Government seeks to intervene pursuant to Rule 24.

If the Government wishes to formally appear in this proceeding, it must, like any other creditor, follow the claims procedure set forth in 15 V.I.C. §§ 391-394. That is, the Government 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 Government's claim and either reject or accept it. From that stage, the Government may participate in the probate of the Estate under the procedural provisions governing accepted or rejected claims, as applicable.

Notably, the Government's Motion to Intervene does not address how Rule 24 is applicable to this probate matter, which is governed by the Virgin Islands Rules for Probate and Fiduciary Proceedings. *See* V.I. R. PROB. 1 (providing that "These Virgin Islands Rules for Probate and Fiduciary Proceedings shall apply in probate, guardianship, trust and other fiduciary proceedings."). Additionally, the Government's request to intervene as a party in these probate proceedings makes little sense because there are no parties in probate proceedings, as reflected by the caption of this and every probate proceeding in the Virgin Islands.

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, however, there are procedural provisions in the Probate Rules and the Virgin Islands Code governing claims and the participation of claimants in estate proceedings.

Rule 11 of the Probate Rules mirrors the statutory requirements of 15 V.I.C. § 391 with respect to the publication and posting of a notice to creditors instructing "all persons having claims against the estate to present, or deliver to the executor or administrator, their claim(s), verified by affidavit, to a place within the territory specified in the notice, within six months from the date of the notice . . ." Probate Rule 16 authorizes an heir, creditor, "or other person with an interest in the estate" to seek a citation in the event an inventory or account is not filed. Pursuant to Probate Rule 17, "[a] copy of the notice [of hearing on the final account] shall be mailed to . . . each creditor with unsatisfied claims." Further clarifying the extent to which a creditor may participate in a probate proceeding, Rule 17 further provides that "[a]ny interested person, to include creditors,

objecting to the final account or the proposed distribution therein, shall file a statement of their objections in writing and serve same upon the administrator or executor, prior to the final hearing.”

Plainly, the Probate Rules include procedural provisions for the participation of a creditor in a probate proceeding. Accordingly, Rule 24 has no application to this probate proceeding.

IV. Even if Rule 24 were Applicable – It is Not – Intervention Should Still Be Denied

As currently postured, the Government has filed a separate civil forfeiture action against the Estate. As noted above, its Complaint was filed in derogation of the applicable statutory requirements set forth in the Virgin Islands Code and Probate Rules. Assuming the Complaint had not been filed in contravention to the mandatory claims processing rules, the Government would merely have a claim that is contingent upon its success in a 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 Intervenors 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, assuming for the sake of argument that Rule 24 is applicable, the Government’s purely contingent interest of a possible favorable judgment in another suit is not considered a significant interest authorizing intervention. Accordingly, for this alternative reason, the Government’s Motion to Intervene should be denied.

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 Government has a claim against the Estate as alleged in its Motion to Intervene, the Government must follow the claims procedure set forth in 15 V.I.C. §§ 391-394 and the Probate Rules. Rule 24, under which the Government seeks to participate in this probate proceeding, is inapplicable because the rules that do apply, the Probate Rules, include provisions for the participation of a creditor. Accordingly, the Government's Motion to Intervene must be denied.

Respectfully,

Dated: January 31, 2020



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CERTIFICATE OF SERVICE

I **HEREBY CERTIFY** that on this 31st day of January 2020, I caused a true and exact copy of the foregoing **Opposition to Motion to Intervene** to be served upon:

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