

**FILED**

October 31, 2023 04:36 PM

ST-2020-CV-00155

TAMARA CHARLES  
CLERK OF THE COURT

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

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**GHISLAINE MAXWELL,**

**Plaintiff,**

**v.**

**ESTATE OF JEFFREY E. EPSTEIN,  
DARREN K. INDYKE, in his capacity as  
EXECUTOR OF THE ESTATE OF  
JEFFREY E. EPSTEIN, RICHARD D.  
KAHN, in his capacity as EXECUTOR OF  
THE ESTATE OF JEFFREY E. EPSTEIN,  
and NES, LLC, a New York Limited  
Liability Company,**

**Defendants.**

**CIVIL NO: ST-20-CV-155**

**COMPLEX**

**CO-EXECUTORS' REPLY IN SUPPORT OF SUPPLEMENTAL MOTION TO  
DISMISS, OR ALTERNATIVELY, COMPEL PLAINTIFF TO APPEAR *PRO SE***

DARREN K. INDYKE and RICHARD D. KAHN, by and through their undersigned counsel, in their capacity as Co-Executors of the Estate of Jeffrey E. Epstein (the "Estate"), and on behalf of the Estate and NES, LLC ("NES"), an entity administered in probate by the Co-Executors as part of the Estate (collectively, "Defendants"), respectfully submit this reply in support of their supplemental motion to dismiss for failure to prosecute, or alternatively, to compel Plaintiff Ghislaine Maxwell ("Maxwell") to appear *pro se*.

**ARGUMENT**

Maxwell initiated the instant action over three and a half years ago, seeking contractual and common law indemnification of attorneys' fees and other costs incurred in connection with her criminal prosecution in the Southern District of New York. Subsequently, Defendants moved

to dismiss pursuant to Virgin Islands Rule of Procedure 12(b)(6). That motion has been fully briefed and pending before this Court since August 2022.

The Court has held off ruling on Defendants’ motion because, in September 2022, Maxwell’s counsel withdrew, and the Court stayed the proceedings to allow Maxwell time to seek new representation. By March 2023, Maxwell still had not secured new counsel, and the Court granted her an additional sixty days to do so.

Having received no indication from Maxwell that she had retained new counsel or intended to proceed *pro se*, on September 19, 2023, Defendants moved to dismiss under Rule 41(b) for failure to prosecute, or alternatively, to compel Maxwell to appear *pro se*. But on October 3, the Court received a filing from Maxwell—apparently dated May 16, 2023—in response to the Court’s March 2023 Order.<sup>1</sup> In her filing, Maxwell seeks an additional one hundred-eighty days to secure new counsel and requests yet another stay during the pendency of the appeal of her criminal conviction.

Maxwell’s perpetual delay in prosecuting her claims must end. Maxwell’s filing sets forth no new grounds to support her request for more time to secure counsel. Instead, she merely details the difficulties of obtaining counsel while incarcerated. But Maxwell’s incarceration is the result of her crimes, and it does not excuse her from diligently prosecuting her claims in accordance with the Virgin Islands Rules of Civil Procedure. *Simon v. Herbert*, 69 V.I. 963, 697 (V.I. 2018) (“Although we have traditionally given *pro se* litigants greater leeway where they have not followed the technical rules of pleading and procedure, self-representation is not a license excusing compliance with relevant rules of procedural and substantive law.” (cleaned up)). Indeed, Maxwell’s response to the Court’s March 2023 Order demonstrates that: (1) she was aware of the

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<sup>1</sup> While the Court received Maxwell’s filing on October 3, Maxwell did not serve Defendants with a copy. Defendants did not receive a copy until October 17, when the Court alerted Defendants of the filing.

Court's direction to identify new counsel or appear *pro se*, and (2) she had ample time to find new counsel and still has not done so. Given that the additional one hundred eighty days requested will expire shortly with no further word from Maxwell or appearances from counsel, Maxwell should not be permitted to delay this matter further.

Moreover, as she indicates in her filing, if Maxwell is unable to obtain new counsel—which appears to be the case thus far, as no appearance of counsel has been entered—she will be proceeding in this matter *pro se*. Maxwell has indicated her willingness to proceed *pro se*, and that status does not justify any further delay of the Court's consideration of Defendants' Rule 12(b)(6) Motion to Dismiss. Indeed, Defendants' Motion has already been fully briefed by all parties *when Maxwell was still represented by counsel*. Whether Maxwell is able to obtain counsel or not should have no effect on the Court's consideration of the Motion. Accordingly, Defendants respectfully submit that the Court should lift the stay and address Defendants' pending Motion to Dismiss.

Finally, this matter should not be further stayed during the pendency of Maxwell's criminal appeal. While Maxwell's criminal conviction is one reason why her indemnification claims are barred, Defendants also set forth several other arguments in their Rule 12(b)(6) Motion that independently support dismissal of her claims, including that (1) NES's operating agreement bars Maxwell's claims and (2) the lawsuits for which Maxwell seeks indemnification are not related to her performance of legitimate, employment-related duties on behalf of Epstein or his affiliated entities. Thus, the outcome of Maxwell's criminal appeal does not preclude the Court from ruling on Defendants' Motion. As detailed in Defendants' supplemental Motion, the Estate is prevented from completing probate and bringing the Estate to a close while this matter remains pending and

thus, any further delay is prejudicial. Consequently, Maxwell's request for a further stay should be denied.

### CONCLUSION

For the foregoing reasons, the Court should grant Defendants' supplemental Motion to Dismiss for Failure to Prosecute, or alternatively, should lift the stay, compel Maxwell's *pro se* appearance, and rule on the Defendants' pending Motion to Dismiss for Failure to State a Claim.

Respectfully,

Dated: October 31, 2023

/s/ Christopher Allen Kroblin

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Dated October 31, 2023

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Dated October 31, 2023

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Dated October 31, 2023

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that on October 31, 2023, I will cause a true and exact copy of the foregoing **Co-Executors' Reply in Support of Supplemental Motion to Dismiss, or Alternatively, Compel Plaintiff to Appear Pro Se**, which complies with the page or word limitation set forth in Rule 6-1(e), to be served via Certified Mail return receipt requested upon:

Ms. Ghislaine Maxwell  
Register Number 02879-509  
FCI Tallahassee  
P O Box 5000  
Tallahassee FL 32314

/s/ Christopher Allen Kroblin