

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JANE DOE 43

Plaintiff,

No. 17 Civ. 00616 (JGK)

v.

JEFFREY EPSTEIN, GHISLAINE MAXWELL,
SARAH KELLEN, LESLEY GROFF and
NATALYA MALYSHEV

Defendants.

**PLAINTIFF'S RENEWED MOTION TO APPROVE ALTERNATE SERVICE
PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 4(e)(1)**

Plaintiff, Sarah Ransome¹, by and through her undersigned counsel and pursuant to Federal Rule of Civil Procedure 4(e)(1) and the New York Civil Practice Law and Rules Section 308(5) files this Renewed Motion to Approve Alternative Service and for grounds thereof states:

As this Court is aware, Defendant Maxwell is also a defendant in another action in the Southern District of New York, *Giuffre v. Maxwell*, Case No. 15-cv-07433 RWS. In that action, Maxwell is represented by counsel who appeared before that Court on her behalf as recently as November 8, 2017. Despite that fact, Maxwell will apparently not authorize her counsel to accept service of the complaint in this case. Indeed, Maxwell's counsel has gone so far as to hire their own separate legal counsel to argue to this Court that they should not have to accept service in this case. Yet in this very case, Maxwell has already actively participated, including having counsel make a request for additional time to serve her answer and attempting to impose

¹ Plaintiff has decided to reveal her identity in connection with this matter and has filed a Notice to Change Case Caption.

restrictions on the case of discovery materials. *See* DE 69 and November 23, 2017 Letter to Judge Koeltl, Exhibit D.

While this Court originally granted Plaintiff Ms. Ransome's Motion for Alternate Service (DE 57), Maxwell's counsel sought reconsideration of that Order on October 30, 2017. This Court held a hearing on November 28, 2017 and issued an Order on November 30, 2017 instructing Ms. Ransome to again attempt service on Defendant Maxwell on or before January 5, 2018: "By that date, the plaintiff will file either proof of service or a renewed application to the alternate service." DE 90. As directed, Ms. Ransome has made the following attempts to effectuate service on Maxwell:

- Ms. Ransome provided Maxwell's counsel of record in the *Giuffre v. Maxwell* case a copy of the summons and complaint;
- Ms. Ransome emailed a copy of the summons and complaint to the following email address which is publicly associated with Maxwell, gmax@ellmax.com. *See* McCawley Decl. at Exhibit 1, December 4, 2017 E-mail;
- Ms. Ransome retained, at significant expense, a private investigation firm to attempt to effectuate service at locations associated with Maxwell in New York and New Jersey, including the following addresses:
 1. 116 E. 65th Street, New York, NY 10065;
 2. 457 Madison Avenue, 4th Floor, New York, NY 10022; and
 3. 55 Monterey Avenue, Teaneck, NJ 07666.

As detailed in the affidavit of Investigator Douglas Mercer (*See* McCawley Decl. at Exhibit 2), at one location, it was clear that individuals were present in the home but were refusing to answer the door and accept service;

- Ms. Ransome conducted a public record search of the London Townhome that was identified in Epstein's Phone Directory as being associated with Defendant Maxwell: 44 Kinnerton Street, London. The UK government record request demonstrates that title to the property was changed on March 17, 2016 to Eaton Square Properties Limited and is no longer owned by Defendant Maxwell rendering attempts at service in London futile. *See* McCawley Decl. at Exhibit 3, Summary of Title NGL948023; and

- Defendant Ghislaine Maxwell is also identified as the founder of the TerraMar Project on its website. The organization has a New York address for its headquarters at 326 E. 65th Street #326, New York, New York 10065. The email address identified with the organization is hello@theterramarproject.org. On January 4, 2018, we served a copy of the summons and complaint to the following potential email addresses:

1. gmaxwell@theterramarproject.org;
2. maxwellg@theterramarproject.org;
3. ghislaine@theterramarproject.org;
4. gmax@theterramarproject.org;
5. maxwell@theterramarproject.org; and
6. ghislaine.maxwell@theterramarproject.org.

See McCawley Decl. at Exhibit 4. The only email address which received a delivery failure message was maxwell@theterramarproject.org.

Accordingly, having made renewed – and unsuccessful efforts – to serve Maxwell through conventional means, Ms. Ransome now renews her request for alternative service as such means as the Court may find appropriate. Ms. Ransome respectfully suggests that, as the Court allowed in its previous order, that service of the complaints on current legal counsel representing her in a related matter before this Court and other publicly identified email accounts be permitted as a means of alternative service.

MEMORANDUM OF LAW

Service of a Complaint should not be a game of cat and mouse particularly where the defendant is represented by counsel in a matter pending in the same district. *See* Carillo v. Hagerty, No. 3:05CV1417 (MRK), 2006 WL 2165679, at *1 (D. Conn. July 31, 2006) (court

finding defendant should not benefit from service gamesmanship reasoning that: "service of process is not intended to be a game of hide and seek or cat and mouse.").

Based on the exhaustion of the other methods of service delineated above, Ms. Ransome moves, pursuant to Federal Rule of Civil Procedure 4(e)(1), for an order permitting service by an alternative method. Federal Rule of Civil Procedure 4(e)(1) provides that service upon a party may be effected by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." Accordingly, Defendant Maxwell may be served pursuant to CPLR § 308, which provides several methods by which service upon a natural person may be effectuated, including personal service; service by "delivering the summons ... to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served" and then mailing the summons to the individual's "last know residence;" or service by "affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served" and then "mailing the summons to such person at his or her last known residence" or to his or her place of business - so called "nail and mail" service. CPLR §§ 308(1), (2) & (4).

If service under CPLR §§ 308(1), (2) & (4) is impracticable, CPLR § 308(5) permits service "in such manner as the court, upon motion without notice, directs." The determination of whether service is impracticable "depends upon the facts and circumstances of a particular case." *Securities & Exch. Comm'n v. HGI, Inc.*, No. 99 Civ. 3866 (DLC), 1999 WL 1021087, at *1 (S.D.N.Y. Nov. 8, 1999). Although the plaintiff must show impracticability of service, there is no requirement of "proof of due diligence or of actual prior attempts to serve a party under the other provisions of the statute." *Id.* "When usual methods of service prove impracticable, service

that is reasonably calculated, under all the circumstances, to apprise the interested party of the pendency of the action will suffice.” *D.R.I., Inc. v. Dennis*, No. 03 Civ. 10026 (PKL), 2004 WL 1237511, at *1 (S.D.N.Y. June 3, 2004).

New York Courts consistently affirm their right to direct or approve alternative methods of service where regular service has been deemed “impracticable.” For example, in *Dobkin v. Chapman*, 21 N.Y.2d 490, 498, 289 N.Y.S.2d 161, 168 (1968), the New York Court of Appeals held that where a plaintiff could not follow the prescribed methods of service as set forth in § 308, Courts are “given the discretion to fashion other means adapted to the particular facts of the case before it” pursuant to § 308(5) (referred to in *Dobkin* as § 308(4), the predecessor to § 308(5)). Moreover, the Court of Appeals held that a Court’s discretion to fashion such methods of service “must be broad” if the statute is to be “meaningful.” *Id.* at 499, 289 N.Y.S.2d at 168.

There is no doubt that Defendant Maxwell has had actual notice and knowledge of the claims asserted in this Complaint. Ms. Ransome has tried multiple alternative avenues to serve Maxwell, including (1) sending the documents to her current counsel in another matter, (2) investigating and attempting service at multiple locations known to be associated with Defendant Maxwell, and (3) emailing the documents to Defendant Maxwell’s publicly available email address. As a result, this Court should deem the service methods attempted to be sufficient and grant the Motion for Alternate Service. *See Rampersad v. Deutsche Bank Secs., Inc.*, No. 02 Civ. 7311 (LTS), 2003 WL21073951, at *1 (S.D.N.Y. May 9, 2003) (authorizing alternative service under § 308(5) when Plaintiff was unable to determine Defendant’s residence or place of business after “extensive Internet searches” and inquires with Defendant’s former clients); *Javier H. v. Garcia-Botello*, 217 F.R.D. 308, 309 (W.D.N.Y. 2003) (service by publication authorized when individual Defendant was a fugitive from the criminal justice system; was likely aware of

the pending civil action through his relatives, who were co-Defendants; and when the Court determined that Defendant would likely read a newspaper that was circulated in the region of his last known residence); *see also HGI, Inc.*, 1999 WL 1021087, at *1 (service by publication in USA Today authorized when Defendant's whereabouts were unknown, efforts to locate his home or business address by searching computer databases failed, and there existed no record that he designated an agent for service); *D.R.I., Inc.*, 2004 WL 1237511, at *2 (after Plaintiff unsuccessfully attempted to serve Defendant through a process server and searched databases for his address, Court authorized service by sending process by certified mail to Defendant's last known address; by publishing the action in a local newspaper; and by emailing it to Plaintiff's last known email address).

WHEREFORE, Plaintiff prays for this Court to enter an Order granting Plaintiff's Motion to Approve Alternative Service Pursuant to Federal Rule of Civil Procedure 4(e)(1) and New York Civil Practice Law and Rules Section 308(5) upon Defendant Ghislaine Maxwell and finding that the service efforts made by Plaintiff's counsel herein are sufficient.

Dated: January 5, 2018

Respectfully submitted,

BOIES SCHILLER FLEXNER LLP

/s/ Sigrid McCawley

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² This daytime business address is provided for identification and correspondence purposes only and is not intended to imply institutional endorsement by the University of Utah for this private representation.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of January, 2018, I electronically filed the foregoing document with the Clerk of Court by using the CM/ECF system. I also certify that the foregoing document is being served to all parties of record via transmission of the Electronic Court Filing System generated by CM/ECF.

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