

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

JANE DOE,

CASE NO. 08-CV-80893-CIV-MARRA/JOHNSON

Plaintiff

vs.

JEFFREY EPSTEIN, et al.

Defendant.

/

Related Cases:

08080119, 08-80232, 08-80380, 08-80381,
08-80994, 08-80811, 08-80893, 09-80469,
09-80591, 09-80656, 09-80802, 09-81092

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**NON-PARTY, JEAN LUC BRUHNEL'S RESPONSE TO PLAINTIFF
JANE DOE'S MOTION FOR AN ORDER TO SHOW CAUSE AND FOR
AN ORDER TO COMPEL AND INCORPORATED MEMORANDUM OF LAW**

Non-party Jean Luc Bruhnel hereby files his Response to Plaintiff, Jane Doe's Motion for an Order to Show Cause and for an Order to Compel and Incorporated Memorandum of Law which was filed on March 10, 2010. (DE#483). Plaintiff's counsel seeks to compel Mr. Bruhnel, a french citizen who is not a party to the instant action, to sit for a deposition that was canceled and for which he has never been re-noticed. This motion is premature at best, and frivolous.

While visiting New York, Mr. Bruhnel was served with a Subpoena and Notice of Videotape Deposition in this matter.¹ As a courtesy, undersigned counsel for Mr. Bruhnel

¹ Please see Exhibit A, annexed hereto and incorporated by reference.

agreed to produce Mr. Bruhnel for deposition in Florida on November 3, 2010 for the convenience of the parties because Mr. Bruhnel had plans to travel to Florida at that time. The videotape deposition was accordingly canceled. Two new deposition notices were then e-mailed to counsel for Bruhnel, both of which emanated from related cases in *Florida Circuit Court*, with no additional notice emanating from the instant matter before this Court.² That scheduled deposition was then canceled by agreement of the parties, who mutually agreed that plaintiff's counsel's secretary would call counsel for Mr. Bruhnel to reset the deposition.

Neither plaintiff's counsel nor his secretary called to reschedule the deposition until January, 2010. In the intervening time, *all depositions* in the myriad related matters had been canceled, upon information and belief, due to the scandal involving plaintiff's counsel's previous law partner. Further, Mr. Bruhnel had left the United States with no firm plan to return, which was conveyed to plaintiff's counsel during a telephone conversation in January.

Mr. Bruhnel's counsel attempted to secure firm dates on which Mr. Bruhnel would be traveling to the United States, but was unable to do so. Undersigned counsel accordingly informed plaintiff's counsel that she could not secure any firm dates. When plaintiff's counsel insisted that Mr. Bruhnel provide deposition dates, plaintiff's counsel was informed that Mr. Bruhnel could not be compelled to return to the United States. Undersigned counsel told plaintiff's counsel that there were appropriate mechanisms through which he could secure Mr.

² Please see Exhibit B, annexed hereto and incorporated by reference.

Bruhnel's testimony abroad pursuant to Florida, Federal and International law. Indeed, undersigned counsel directed plaintiff's counsel to the Florida Rules of Civil Procedure and the Hague Convention, each of which provide specific mechanisms for the securing of testimony abroad.

Plaintiff's counsel has *never* served Mr. Bruhnel or undersigned counsel with a re-notice for deposition since the cancellation of the prior scheduled depositions, and has never attempted to avail himself of proper legal procedures to secure Mr. Bruhnel's testimony abroad. Further, contrary to plaintiff's counsel's Certification to this court, plaintiff's counsel *never* conferred with undersigned counsel for Mr. Bruhnel regarding the instant Order to Show Cause and for an Order to Compel.

MEMORANDUM OF LAW

As stated above, the previously scheduled depositions were canceled by agreement of the parties herein and Mr. Bruhnel has *never* been re-noticed for deposition. The motion currently before the court is therefore premature and frivolous. Regardless, it is respectfully noted that the Court lacks authority to compel Mr. Bruhnel to return to the United States for deposition. Indeed, the Federal Rules of Civil Procedure specifically decline to confer upon the Court the power to compel foreign nationals to appear before it. *See Fed. Rules Civ. Proc. Rule 45, 28 USC § 1783.*

The Florida Rules of Civil Procedure and the Hague Convention, however, have each

adopted procedural rules to facilitate the deposition of a non-party foreign national. Indeed, The Uniform Foreign Depositions Act, as adopted by Florida in section 92.251 (“UFDL”) provides a road map for litigants seeking to secure evidence from foreign non-party witnesses, stating:

(2) Whenever any mandate, writ or commission is issued out of any court of record in any other state, territory, district, or foreign jurisdiction, or whenever upon notice or agreement it is required to take the testimony of a witness or witnesses in this state, *witnesses may be compelled to appear and testify in the same manner and by the same process and proceeding as may be employed for the purposes of taking testimony in proceedings pending in this state.*

§ 92.251 Florida statutes.

Thus, whenever a Florida litigant desires to depose a witness residing in another state, that litigant must first secure the appointment of a commissioner from the court where the litigation originates. *See Freedom Newspapers, Inc.*, 507 So.2d 1180 (Fla 2^d DCA 1987), at 1183. The foreign litigant may then apply to the court having personal jurisdiction over the witness for the process necessary to secure the attendance of the witness. *Id.* (citing Travelers Indem. Co. v. Hill, 388 So.2d 648 (Fla. 5th DCA 1980)). *See Greenlight Financial Services, Inc. v. Union America Mortg., Inc.*, 971 So.2d 983 (Fla. 3^d DCA 2008). This may be done through mechanisms provided via The Hague Convention, to which France is a signatory. Given that several cases are currently pending in Florida Circuit Court that are related to the instant matter, plaintiff may avail herself of this mechanism to secure Mr. Bruhnel’s testimony, but has chosen not to. Accordingly, there has been no malfeasance herein by Mr. Bruhnel or his counsel, only nonfeasance by plaintiff’s counsel.

Plaintiff's counsel has misrepresented to this court that he spoke to Mr. Bruhnel's counsel about this motion prior to filing it with the Court. Undersigned counsel for Mr. Bruhnel was *never* notified in any manner that any such motion was being prepared or filed.

Plaintiff's counsel has further misrepresented to this Court that undersigned counsel for Mr. Bruhnel stated that Mr. Bruhnel, "has been out of this country since prior to the New Year with no plans to return." In fact, undersigned counsel has consistently told Plaintiff's counsel that she was *unaware* of Mr. Bruhnel's travel schedule and that she did not know when Mr. Bruhnel planned to return to this country.

WHEREFORE, JEAN LUC BRUHNEL, a non-party to the instant matter, and undersigned counsel for Mr. Bruhnel, respectfully request that the Court DENY plaintiff's Motion for an Order to Show Cause and an Order to Compel in its entirety. Mr. Bruhnel and undersigned counsel further respectfully request that the Court impose sanctions and attorney's fees incurred in the defense of Plaintiff's frivolous motion, and for whatever further relief this Court deems appropriate.

Dated: March 12, 2010

Respectfully submitted,

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By: s/ Tama Beth Kudman
TAMA BETH KUDMAN
Fla. Bar No.: 0637432

CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2010, I electronically filed the foregoing document with the clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day on all parties identified via transmission of Notices of Electronic Filing generated by CM/ECF.