

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

20 FEB 11 PM 1:34
SUPERIOR COURT

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

**GOVERNMENT OF THE UNITED STATES VIRGIN ISLANDS' OPPOSITION
TO REQUEST TO EXTINGUISH CRIMINAL ACTIVITY LIENS**

The Government of the United States Virgin Islands ("Government") hereby responds to the "Supplemental Brief Regarding Co-Executors['] Obligations to Satisfy Expenses of Administration Notwithstanding Liens Issued to 'The Estate,'" filed before the Probate Division of the Superior Court, and opposes the request therein for this Court to enter a judgment extinguishing the Criminal Activity Liens entered against the Estate of Jeffrey E. Epstein ("Epstein Estate").

INTRODUCTION

The Court should deny the Co-Executors' request for a judgment extinguishing the Government's Criminal Activity Liens because the Court has no authority to grant this relief and the arguments the Co-Executors make are legally incorrect and misleading.

The Probate Court lacks authority to extinguish the Criminal Activity Liens while the Government's Criminally Influenced and Corrupt Organizations Act ("CICO") action, No. ST-20-CV-14, is pending against the Epstein Estate. Under CICO, when the Attorney General files a Criminal Activity Lien Notice upon commencement of an action, the lien attaches as of the filing and "shall continue thereafter until expiration, termination, or release as provided herein." 14 V.I.C. § 610(f). The Act further provides that during the Lien Notice's six-year term, 14 V.I.C. § 610(q), only "[t]he Attorney General or United States Attorney filing the Criminal

Activity Lien Notice may release . . . the Criminal Activity Lien Notice upon such terms as he may determine.” 14 V.I.C. § 610(r). The sole exception where a court may release or extinguish a Criminal Activity Lien arises “[i]f no criminal or civil proceeding or action under this chapter is then pending against the person named in a Criminal Activity Lien Notice.” 14 V.I.C. § 610(t). That exception clearly does not apply here because the Government’s CICO action *is* pending against the Epstein Estate. Thus, the Court has no authority or discretion to enter a judgment, as the Co-Executors request, extinguishing the Government’s Criminal Activity Liens.¹

Even if the Court had this authority (*which it does not*), the Co-Executors fail to raise any legal basis for this relief. The Co-Executors argue that Criminal Activity Lien Notices apply to *trustees*, and that since they are not trustees, the Liens do not apply to them. Under CICO, however, a Criminal Activity Lien Notice may apply *not only* to a trustee, but to *any* “person or other entity named in the notice” 14 V.I.C. § 610(c). The Epstein Estate is such an entity properly sued as a defendant. *See, e.g., Otley v. Estate of Bell*, 61 V.I. 480, 500 (2014) (“Otley correctly named Bell’s estate as the defendant”). The Co-Executors also argue that the Government’s CICO action is defective for not complying with 15 V.I.C. § 606’s timing and notice procedures. Section 606, however, applies only to a creditor’s “claim” against an executor or administrator. 15 U.S.C. § 606(b); *see also Out v. Sewer Enterprises, Ltd.*, 46 V.I. 286, 290 (D.V.I. 2004) (section 606(b) “forbids the plaintiff from commencing an action against

¹ For the same reasons the Court may not extinguish the Government’s Criminal Activity Liens, it also may not grant the relief sought in the Co-Executors’ just-filed “Emergency Motion for Order Releasing Funds for Administration of Estate,” which raises the same invalid arguments (*see* Emergency Motion at 6-17) as are rebutted herein for relief that the Court has no authority to award. As noted below, this Emergency Motion was filed despite the Attorney General’s offer to release reasonable funds for the Estate to meet expenses, and without any response to her effort, making clear that the Estate’s true purpose is not to obtain operating funds, but to extinguish the liens and the constraint on its spending.

Sewer's estate until she has first presented a claim to Sewer . . ."). The Government's CICO action and Criminal Activity Liens seeking forfeiture and divestiture of the Epstein Estate's property within the Virgin Islands used to facilitate Mr. Epstein's criminal sex-trafficking enterprise *is not such a claim*. See *Ottley*, 61 V.I. at 498 ("We agree that an action for partition is not a 'claim' that is required to be presented to an estate's executor or administrator under section 606."). Finally, the Co-Executors' argument that the Epstein Estate's expenses relating to other persons' claims take priority under 15 V.I.C. § 421 fails because the Government's Criminal Activity Liens take priority over all claims except those where a beneficial interest was acquired before the filing of the Lien Notice. See 14 V.I.C. § 610(f). The Co-Executors do not in their briefing identify any claimant who has obtained a judgment as of January 16, 2020, when the Government filed its Lien Notice. Thus, no identified claimant has priority over the Government's Criminal Activity Lien.

Therefore, the Co-Executors' request for a judgment extinguishing the Government's Criminal Activity Liens is procedurally defective because the Court lacks the authority to grant this relief, is substantively baseless, and should be denied.

ARGUMENT

A. The Court Lacks Authority to Extinguish the Government's Criminal Activity Liens While Its CICO Action against the Epstein Estate is Pending.

In their Supplemental Brief, the Co-Executors ask the Court to allow them to disregard the Government's Criminal Activity Liens against the Epstein Estate. Suppl. Brief at 1, to "enter a judgment extinguishing [the Liens]," *id.* at 3, and to "reject the Liens," *id.* at 7; *see also* Emergency Motion at 14-17 ("The Court should vacate the liens."). The Court should reject these requests out of hand because it lacks authority to grant this relief.

Under CICO, where the Government has filed an action against a party and concurrently filed a Criminal Activity Lien Notice, only the Attorney General may release the liens thereunder while the action is pending. The relevant CICO sections provide first that “[u]pon the institution of any criminal or civil proceeding or action under this chapter, the Attorney General . . . may file . . . a Criminal Activity Lien Notice” and that the “clerk of the trial court shall upon the presentation of a Criminal Activity Lien Notice, immediately record it in the official records.” 14 V.I.C. § 610. The Government has done this here. See Exhibit A hereto (Criminal Activity Lien Notice, dated January 16, 2020).

The Government’s “filing of a Criminal Activity Lien Notice creates *from the time of its filing*, a lien in favor of the Government of the Territory of the Virgin Islands” on the named person or entity’s “personal or real property situated in the Territory of the Virgin Islands” and on “any beneficial interest in it located in the Territory of the Virgin Islands” 14 V.I.C. § 610(e)(1)-(2) (emphasis added); *see also* 14 V.I.C. § 610(f) (“The lien shall commence and attach as of the time of filing of the Criminal Activity Lien Notice . . .”). The Government’s Criminal Activity Liens thus already are attached to all of the Epstein Estate’s property and interests located within the Territory of the Virgin Islands.

Once the Government’s Criminal Activity Liens were filed and attached, they “shall continue thereafter until expiration, termination or release as provided herein.” 14 V.I.C. §610(f). With respect to expiration, the Act provides that “[t]he term of a Criminal Activity Lien Notice shall be for a period of 6 years from the date of filing” and subject to renewal for one additional 6-year period upon Notice filed by the Attorney General. 14 V.I.C. § 610(q). The Government’s Liens on the Epstein Estate thus shall continue in effect until either January 16, 2026, or January 16, 2032, absent a termination or release.

Where, as here, the Government's underlying CICO action still is pending, *only the Attorney General may release any property or interest from the Criminal Activity Liens*. This is the express command of the statute, which provides in relevant part that:

The Attorney General . . . filing the Criminal Activity Lien Notice may release, in whole or in part, any Criminal Activity Lien Notice or may release any personal or real property or beneficial interest in it from the Criminal Activity Lien Notice *upon such terms and conditions as he may determine*.

14 V.I.C. § 610(r) (emphasis added). The Act thus is unambiguous that where, as here, a Criminal Activity Lien Notice has commenced and attached upon the Attorney General's filing of an action and Notice, the Attorney General has sole authority to release the Liens upon such terms and conditions as she may determine to be appropriate.² This exclusive authority with the Attorney General leaves no room for this Court or any other to disregard, "extinguish," or "reject" the Government's Criminal Activity Liens, as the Co-Executors request.

The one instance in which CICO permits a Court to release or extinguish a Criminal Activity Lien Notice does not apply here. The Act provides that where "no criminal or civil proceeding or action under this chapter is then pending against the person named in a Criminal Activity Lien Notice, any person named in a Criminal Activity Lien Notice may institute an action . . . seeking a release or extinguishment of the notice," which a court may grant upon the appropriate factual findings. 14 V.I.C. § 610(t)(1)-(3). This provision does not apply here for the simple reason that the Government's CICO action against the Epstein Estate *is* pending

² In an attempt to exercise this authority reasonably, the Attorney General following this Court's hearing invited a meeting with the Estate's counsel and indicated her willingness to release sufficient funds to enable the routine and necessary operations of the Estate and requested a budget or accounting from the Estate that would allow her to review and release an appropriate amount of money. The Estate did not, at that time, indicate a willingness to cooperate, and has instead demanded that the Attorney General's Office release the lien in its entirety, *see* Letter of Christopher A. Kroblin, Esq. to Hon. Denise N. George, Esq., dated Feb. 5, 2020 (**Exhibit B** hereto), and filed an Emergency Motion with this Court seeking a release of funds in direct contravention of the Government's Criminal Activity Liens.

before the Superior Court, which has sole authority to hear any challenge to that action, such as the Co-Executors' purported constitutional challenge to the Government's Criminal Activity Liens. *See* Emergency Motion at 8-10. This Court, however, has no authority to disregard, extinguish, or reject the Government's Criminal Activity Liens against the Epstein Estate.

The Estate may, however, attempt to invoke this statutory exception by moving the Superior Court, *not this Court*, to dismiss the CICO action. 14 V.I.C. § 610(u) ("In the event a civil proceeding is pending against a person named in a Criminal Activity Lien Notice, the Superior Court or United States District Court, upon motion by the person, may grant the relief set forth in this section.") A dismissal on the merits by the Superior Court in the CICO action may establish grounds for that Court to release or extinguish the Criminal Activity Lien at such time. *See* 14 V.I.C. § 610(s)-(t). The Estate has not done so, however.

In sum, the Co-Executors' request that the Court disregard, extinguish, or reject the Government's Criminal Activity Liens has no merit or basis in law and therefore must be denied. In light of the Legislature's purpose in enacting CICO to "curtail criminal activity and lessen its economic . . . power in the Territory of the Virgin Islands by . . . providing *to law enforcement* . . . new civil sanctions and remedies." 14 V.I.C. § 601 (emphasis added), the Probate Court has no authority to grant this relief while the Government's CICO action against the Epstein Estate is pending in the Superior Court.

B. The Co-Executors' Legal Arguments for Extinguishing the Government's Criminal Activity Liens are Incorrect.

Even if the Probate Court had authority to extinguish the Criminal Activity Liens during the pendency of the Government's CICO action against the Epstein Estate (*which it does not*), the Court also should not grant this relief because the Co-Executors' legal arguments proffered in support of it are incorrect.

First, the Co-Executors argue that “Criminal Activity Lien Notices apply to *trustees* pursuant to 14 V.I.C. § 610[.]” but that a “‘*trustee*’, under CICO, does not include an executor appointed by, or under the control of, or accountable to a court.” Suppl. Brief at 2 (emphases in original); *see also* Emergency Motion at 10. This is true as far as it goes. But that is not far enough. Although CICO does apply to trustees, *see, e.g.*, 14 V.I.C. § 610(k)-(m), it does not apply *only* to trustees. Rather, CICO’s Criminal Activity Lien Notice provisions apply to any “*person or other entity* named in the notice” 14 V.I.C. § 610(e) (emphasis added). Thus, whether or not the Co-Executors are considered trustees under CICO, they do not have to be because the Act applies far more broadly to any other person or entity, of which the Epstein Estate is one.³

Second, arguing next that the lien is not valid against the Estate because the underlying CICO action is not, the Co-Executors assert that “[i]t is axiomatic that an estate is not a legal entity and cannot be sued” and “[t]he same holds true with respect to the [Government] naming the 1953 Trust – which also cannot be sued – as a defendant in its forfeiture action.” Suppl. Brief at 2-3; *see also* Emergency Motion at 13-14 (“An estate is not a legal entity; it cannot be sued.”). This argument makes no reference to Virgin Islands law and is clearly incorrect and baseless. Indeed, just two sentences earlier in their brief, the Co-Executors cited to the case of *Ottley v. Estate of Bell, supra*. *See* Suppl. Brief at 2. The *Ottley* case is, as its caption suggests, a lawsuit naming an estate as defendant. *See* 61 V.I. at 486 (“Ottley named Bell’s estate, Eboni, and Gerard (collectively, ‘Appellees’) as defendants in the action.”). Moreover, in its decision in

³ Moreover, § 610’s “trustee” provisions would not support the relief the Co-Executors seek in any event, as these provisions merely exempt the personal or real property *of the trustees themselves* from a Criminal Activity Lien where the trustees are not named. *See* 14 V.I.C. § 610(m). These provisions do not exempt the personal or real property of an estate that *is* properly named.

Ottley, the Virgin Islands Supreme Court squarely held that “*Ottley* correctly named Bell’s estate as the defendant, and although not necessary, additionally listed the two heirs entitled to inherit her interest in the [disputed] property.” *Id.* at 500; *cf. Francis v. Ruan Living Trust*, No. ST-15-cv-177, 2016 V.I. LEXIS 160, at *13 (V.I. Super. Ct., Div. of St. Thomas and St. John Oct. 5, 2016) (“Plaintiff has pled sufficient facts to support her claim of negligence . . . against *Defendant Ruan Trust*.”) (emphasis added). Thus, the Co-Executors’ argument that the Government’s CICO action is improper because the Epstein Estate cannot be sued is incorrect and should be rejected.⁴

Third, the Co-Executors argue that the Government’s “entire CICO action is defective as well because the [Government] has failed to follow the statutory procedures in 15 V.I.C. § 606(b) that must be met before such an action can be commenced.” Suppl. Brief at 2; *see also* Emergency Motion at 11-13 (repeating § 606 argument). This, too, is wrong. Section 606’s timing and notice requirements apply only to a “claim” against an executor or administrator. 15 U.S.C. § 606(b). In *Ottley, supra*, the Virgin Islands Supreme Court addressed an action for partition of real property brought by a half-owner against the estate of the other half-owner and her heirs, who argued that the action was invalid for failure to comply with § 606(b). *See* 61 V.I. at 485. The Supreme Court reversed dismissal of the action, holding that “an action for partition is not a ‘claim’ that is required to be presented to an estate’s executor or administrator under section 606.” *Id.* at 498. The Court explained that § 606’s coverage of “‘claims’” contemplates the debts that the deceased incurred during their lifetime and which a creditor is attempting to

⁴ In any event, to avoid any doubt and to narrow the issues in the case, the Government filed an amended complaint on February 10, 2020. Besides adding allegations and a count related to an additional entity—Southern Trust Company, Inc.—that is tied to Epstein and the Co-Executors, the amended complaint also names the Co-Executors and Trustees, as well as the Estate and The 1953 Trust.

recover from the estate,” whereas “[a]n action for partition is not an attempt to recover debt or property from an estate.” *Id.* at 498-99.

The same is true here with respect to the Government’s CICO action against the Epstein Estate for forfeiture and divestiture of the Estate’s interests in real and personal property within the U.S. Virgin Islands used to facilitate Mr. Epstein’s sex-trafficking enterprise, civil penalties, damages, and other equitable remedies. *See* Complaint, Prayer for Relief ¶¶ (c)-(i). Since the Government is not seeking payment of an alleged debt owed by the Epstein Estate, 15 V.I.C. § 606 does not apply. The Court therefore should likewise reject this collateral attack on the CICO action and Criminal Activity Liens.

Fourth, the Co-Executors argue that the “Virgin Islands Code creates an unambiguous preference in favor of payment of the Estate’s administration” and that the Government’s Criminal Activity Liens thus are “subordinate to the Estate’s administrative expenses” including primarily those for defending “twenty-two (22) pending lawsuits filed in multiple jurisdictions.” Suppl. Brief at 3-4 (citing 15 V.I.C. § 421(c)). This argument, too, must fail. The twenty-two other pending lawsuits would constitute “other claims against the estate” under § 421(a)(7). The Co-Executors do not contend, however, that any of these lawsuits have been litigated to judgment against Mr. Epstein or the Epstein Estate. Absent an enforceable judgment as of the time the Government filed its Criminal Activity Lien Notice, those claims are subordinate to the Government’s Liens. *See* 14 V.I.C. § 610(f) (The Government’s Criminal Activity Lien “shall be superior to and prior to the interest of any other person in the personal or real property or beneficial interest in it if the interest is acquired subsequent to the filing of the notice.”). Here, the Government’s Criminal Activity Lien Notice was filed prior to, and thus is superior to, any

acquired interest in the claims in the identified cases. The Co-Executors' argument therefore should be rejected as an attempted end-run around the CICO lien-enforcement provisions.

And finally, the Court also should reject the Co-Executors' argument that "the equities strongly disfavor the imposition of the liens." Suppl. Brief at 6. The Government's Criminal Activity Liens are not a proposed preliminary injunction subject to judicial review based upon a balancing of asserted equities. *See, e.g., SBRMCOA, LLC v. Morehouse Real Estate Invs., LLC*, 62 V.I. 168, 186 (V.I. Super. Ct., Div. of St. Thomas and St. John 2015) ("A preliminary injunction is an extraordinary remedy, offering equitable relief. However, flexibility is a hallmark of equity jurisdiction. The best approach would appear to require the Virgin Islands courts to balance these two conflicting concepts in fashioning equitable relief.") (internal quotation marks and citation omitted). Here, the Government's Criminal Activity Liens under CICO do not invite or permit the Court to balance perceived inequities based upon the Epstein Estate Co-Executors' purported assertion of the interests of Mr. Epstein's many victims. To the extent the Co-Executors resist or decry the "sweeping remedies" the Government invokes under CICO, they are trying to avoid or rewrite the history in which Mr. Epstein chose to carry out his sex-trafficking enterprise in the Virgin Islands on his vast property holdings here. Whatever Mr. Epstein's reasons were for making this choice, the Epstein Estate and its Co-Executors cannot avoid the consequences of this choice based on a purported assertion of his victims' interest in an attempt to override controlling Virgin Islands law.

The Government is very sympathetic to the interests of victims—those who may participate voluntarily in an informal claims process, those who may choose to pursue existing lawsuits to judgment, or those who may come forward in the future—and is willing to work with

the Estate and victims (as with the Estate's expenses) to release funds to resolve their claims.

But that decision is at the Government's discretion, upon acceptable terms and accounting.

Regardless of the Co-Executors' arguments, the law is clear that the Government's Criminal Activity Liens are enforceable against the Epstein Estate and superior as to any other interests.

CONCLUSION

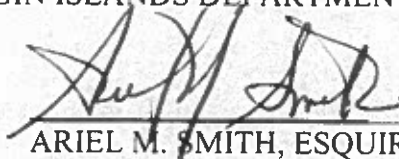
For all of the reasons set forth, the Court lacks authority to grant the Co-Executors' request to disregard, extinguish, or reject the Government's Criminal Activity Liens, and therefore should deny these requests.

Respectfully submitted,

DENISE N. GEORGE, ESQUIRE
ATTORNEY GENERAL
VIRGIN ISLANDS DEPARTMENT OF JUSTICE

Dated: February 10, 2020

By:



ARIEL M. SMITH, ESQUIRE
Assistant Attorney General
Virgin Islands Department of Justice
Office of the Attorney General
34-38 Kronprindsens Gade
St. Thomas, U.S. Virgin Islands 00802
Email: ariel.smith@doj.vi.gov
(340) 774-5666 ext. 10155

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that the foregoing Motion complies with the word and page requirements of V.I.R. Civ. P. 6-1(e) and, a true and correct copy of the Motion was served via regular mail, postage prepaid, with a courtesy copy sent by email to counsel of record on February 11, 2020 to:

CHRISTOPHER ALLEN KROBLIN, ESQ.
ANDREW W. HEYMANN, ESQ.,
WILLIAM BLUM, ESQ.

SHARI D'ANDRADI, ESQ.
MARJORIE WHALEN, ESQ.
KELLERHALS FERGUSON KROBLIN PLLC
Royal Palms Professional Building
9053 Estate Thomas, Suite 101
St. Thomas, V.I. 00802-3602

Email: ekroblin@kellfer.com
aheymann@solblum.com
wblum@solblum.com
sdandrade@kellfer.com
mwhalen@kellfer.com

Sherlene Auke

20 FEB 11 PM 1:34
SUPERIOR COURT