

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock St. Denver, CO 80202 (303) 606-2300	DATE FILED: August 22, 2022 4:37 PM FILING ID: 360DD39B94B0A CASE NUMBER: 2022CV32430
Plaintiff: HADDON, MORGAN AND FOREMAN, P.C., v. Defendants: GHISLAINE MAXWELL, KEVIN MAXWELL, and SCOTT BORGERSON	▲ COURT USE ONLY ▲ _____ Case No. Division
Christopher P. Montville, No. 40837 HADDON, MORGAN AND FOREMAN, P.C. 950 17th Street, Suite 1000 Denver, CO 80202 Tel: 303.831.7364 Fax: 303.832.2628 cmontville@hmflaw.com <i>Attorney for Plaintiff Haddon, Morgan and Foreman, P.C.</i>	
COMPLAINT	

Plaintiff Haddon, Morgan and Foreman, P.C. (“HMF”) respectfully submits the following Complaint against Defendants Ghislaine Maxwell, Kevin Maxwell, and Scott Borgerson.

Parties

1. HMF is a small law firm based in Denver, Colorado. Since its founding in 1976, HMF has focused on defending clients in criminal matters and related civil litigation. At all times relevant to the Complaint, HMF had fewer than ten full-time lawyers.

2. Defendant Ghislaine Maxwell is a citizen of the United States, France, and the United Kingdom. She is currently in the custody of the Federal Bureau of Prisons at the

Metropolitan Detention Center, Brooklyn, New York. Prior to her indictment and arrest, she resided in Massachusetts.

3. Defendant Kevin Maxwell is Ms. Maxwell's brother. He is a citizen of the United Kingdom.

4. Defendant Scott Borgerson resides in Massachusetts. On information and belief, he and Ms. Maxwell married in or about August 2015.

Jurisdiction and Venue

5. The Court has jurisdiction under C.R.S. § 13-1-124(1)(a) because the claims relate to business transacted in the State of Colorado and because they arise from a contract that identifies this Court as the forum for resolving disputes between the parties.

6. Venue in this district is proper pursuant to C.R.C.P. 98(c)(1) because none of the Defendants are residents of Colorado.

7. Venue in this district is proper pursuant to C.R.C.P. 98(c)(4) because the allegations relate to a contract for services performed in Denver, Colorado.

8. Venue in this district is proper pursuant to C.R.C.P. 98(c)(5) because the allegations relate to torts committed in Denver, Colorado.

General Allegations

I. Ms. Maxwell Retains HMF to Represent Her in a Criminal Matter

9. In late 2015, Ms. Maxwell retained HMF to defend her in a civil case, *Virginia L. Giuffre v. Ghislaine Maxwell*, 15-cv-07433-RWS, United States District Court, Southern District of New York. The matter was resolved through settlement in May 2017.

10. Ms. Maxwell subsequently hired HMF to defend her in several other civil matters.

11. On June 29, 2020, a federal grand jury indicted Ms. Maxwell on charges stemming from an alleged conspiracy to facilitate the sexual abuse of underage girls by Jeffrey Epstein.

12. The indictment resulted in *United States v. Ghislaine Maxwell*, 20-CR-0330-AJN, United States District Court, Southern District of New York (the “Criminal Matter”).

13. Ms. Maxwell retained HMF to defend her in the Criminal Matter.

14. Ms. Maxwell was incarcerated from the date of her arrest through the present day.

15. She therefore told HMF that her brother, Kevin Maxwell, would coordinate the financial aspects of her defense, including paying HMF’s attorneys’ fees and also costs advanced by the firm.

16. Ms. Maxwell directed HMF to communicate with Mr. Maxwell regarding all such issues.

II. Mr. Maxwell Personally Agrees Pay HMF’s Fees and Costs

17. Based on developments during the first few weeks of the engagement, HMF developed concerns regarding the representation, including HMF’s role in the case and Ms. Maxwell’s willingness and ability to meet her financial obligations.

18. On or about August 11, 2020, an HMF shareholder spoke to Mr. Maxwell and a British lawyer for the Maxwell family retained to coordinate Ms. Maxwell’s defense. The shareholder explained that, given the firm’s numerous concerns, it could no longer represent Ms. Maxwell.

19. During the discussion, Mr. Maxwell strongly opposed HMF’s withdrawal and assured HMF he would facilitate revised terms for the engagement.

20. In a follow-up email to HMF, Mr. Maxwell emphasized that “HMF are and need[s] to] remain an integral part of the criminal defen[s]e team.”

21. HMF agreed, conditioned on a \$250,000 retainer.

22. Mr. Maxwell responded by asking the firm to “please consider \$100k evergreen¹ as alternative.”

23. On August 13, 2020, HMF reached an agreement with Mr. Maxwell under which he would personally guarantee payment and agree to maintain a \$100,000 balance in HMF’s client trust account at all times. In return, HMF agreed to continue representing Ms. Maxwell.

24. Following their discussion, an HMF shareholder wrote Mr. Maxwell to confirm their agreement:

This is to confirm our agreement that we will continue to represent Ghislaine in her SDNY criminal action upon your agreement that you will pay the outstanding balance in that matter plus a \$100,000 evergreen retainer. We will provide you with a monthly bill on or about the 10th of the month for the previous calendar month and you will pay that balance on the 30th of the same month. You have engaged a consulting firm to review and inquire as to any of the bill entries within that window between billing and payment. You agree to keep \$100,000 in our trust account on an evergreen basis.

25. Mr. Maxwell then wired HMF the \$100,000 retainer and HMF continued to represent Ms. Maxwell.

26. On August 19, 2020, HMF emailed Mr. Maxwell a revised fee agreement (the “Fee Agreement”) reflecting the updated terms of Ms. Maxwell’s engagement with the firm.

¹ Under an “evergreen” retainer, the client agrees to pay all invoices when due and, in addition, maintain an agreed-upon sum in the firm’s client trust account at all times.

27. The Fee Agreement required, among other things, an additional retainer if HMF continued to represent Ms. Maxwell through trial in the Criminal Matter.

28. It also provided for 12% default interest and fee-shifting in the event that HMF was forced to file litigation to recover unpaid fees.

III. Mr. Maxwell Induces HMF's Continued Representation of Ms. Maxwell Based on False Promises and Representations

29. Mr. Maxwell then retained a "costs lawyer" based in the United Kingdom, tasked with auditing HMF's invoices for reasonableness. HMF supplied all its invoices to the costs lawyer and provided all other information requested.

30. The cost lawyer, who reviewed the invoices on a monthly basis, never raised any concerns with HMF's fees or the quality of its work.

31. By November 2020, Ms. Maxwell's retainer had been exhausted.

32. By January 4, 2021, Ms. Maxwell owed HMF \$141,160.64.

33. Throughout January 2021, HMF emailed Mr. Maxwell asking for updates regarding the funds owed to HMF. Mr. Maxwell ignored the emails.

34. On January 27, 2021, an HMF shareholder again asked for an update, expressing the importance of "resolv[ing] the issue as soon as possible because it is neither fair nor practical for the firm to carry these amounts due."

35. Mr. Maxwell responded the same day, claiming that "this will be sorted out tomorrow."

36. At the time he made the statement, Mr. Maxwell had no intention of paying HMF in full "tomorrow"—or ever.

37. As 2021 progressed, Ms. Maxwell fell consistently behind on her obligations to HMF. When HMF raised concerns, Mr. Maxwell routinely assured the firm that he would satisfy the outstanding invoices.

38. To keep HMF from withdrawing, Mr. Maxwell made a handful of sporadic payments. Despite his promises, however, he never brought Ms. Maxwell's account current, let alone refreshed the evergreen retainer.

IV. Mr. Maxwell Induces HMF to Represent Ms. Maxwell At Trial

39. The court in the Criminal Matter set trial for December 2, 2021.

40. In August 2021, after receiving repeated false assurances from Mr. Maxwell that the firm would soon be paid, HMF told him that it planned to raise the situation with Ms. Maxwell and warn her that it would have to withdraw.

41. Mr. Maxwell responded to "humbly request" that HMF not do so, claiming that his sister lacked "the ability to impact funding"

42. He went on to state that Mr. Borgerson, Ms. Maxwell's husband, "control[led] the funds," but assured HMF that "you will be in funds before the weekend."

43. Instead of satisfying HMF's balance and refreshing the retainer as agreed, Mr. Maxwell made only a single partial payment in mid-September 2021.

44. HMF recognized that Ms. Maxwell's trial would be a complex and extended ordeal that would require HMF to advance substantial costs, divert the firm's resources from other matters, and require turning away other potential clients.

45. In light of Mr. Maxwell's past failure to honor his commitments, HMF required a trial retainer of \$1,000,000 to cover anticipated fees and costs.

46. Mr. Maxwell spent the weeks and days leading up to trial assuring HMF that he was on the verge of obtaining financing on Ms. Maxwell's properties that would result in more than enough cash to settle the amount owed to HMF and satisfy the retainer.

47. On or about November 5, 2021, after weeks of unfulfilled promises, an HMF shareholder advised Mr. Maxwell that the firm was "continu[ing] to commit substantial resources and out-of-pocket money to the defense of this case" Without immediate payment, the shareholder explained, the firm could not continue working on the case.

48. Mr. Maxwell asked to speak to the HMF shareholder and, on the call, reiterated his personal commitment to pay HMF's fees and advanced costs, as well as the trial retainer.

49. Mr. Maxwell followed up by reiterating "the *commitment we as a family have made to honour the fees due* and requested by you both in good faith and as a binding commitment" (emphasis added).

50. Mr. Maxwell concluded by stating that, given the "commitment to pay, I would sincerely hope that you and your shareholders do not reduce staffing in this critical period."

51. HMF, relying on Mr. Maxwell's commitment, continued to devote all necessary resources to Ms. Maxwell's defense.

52. On November 29, 2021, an HMF shareholder participated in another discussion with Mr. Maxwell in which he again guaranteed that he would bring HMF current and provide the trial retainer.

53. In reality, Mr. Maxwell had no present intention of doing so.

54. On December 12, 2021, the shareholder followed up with Mr. Maxwell, asking for an update on the status of the loan and trial retainer.

55. Mr. Maxwell responded by falsely stating “[f]inal stages of drawdown this week . . . s[hou]ld be done in the next three or four days.”

56. The following week, Mr. Maxwell falsely told HMF that funds were now available to pay Ms. Maxwell’s bill and trial retainer.

V. Mr. Borgerson Attempts To Shelter Ms. Maxwell’s Assets From Creditors

A. Mr. Borgerson’s Real Estate Holdings

57. Mr. Maxwell and the family lawyer repeatedly told HMF that Mr. Borgerson controlled Ms. Maxwell’s money and was responsible for delaying payments to the firm.

58. In December 2019, while HMF already represented Ms. Maxwell on civil matters, Mr. Borgerson formed an entity under the laws of New Hampshire called Granite Realty LLC (“Granite”). Mr. Borgerson was its sole member.

59. At the time, Ms. Maxwell and Mr. Borgerson knew that a criminal investigation against Ms. Maxwell was underway and that she was likely to incur significant liabilities to legal counsel, including HMF.

60. Granite, Mr. Borgerson, and other entities associated with Mr. Borgerson, including Tidewood LLC, acquired several high-end properties including two condominiums in Boston, an estate in Manchester, Massachusetts, and an estate in Bradford, New Hampshire.

61. On information and belief, each of these properties were acquired with Ms. Maxwell’s assets, either directly or through a trust, in an effort to shield them from creditors.

B. Mr. Borgerson Engages in Suspiciously Timed Transfers

62. Mr. Borgerson repeatedly represented to HMF, through Mr. Maxwell, that the complete equity of each of these properties were available to fund Ms. Maxwell’s defense.

63. On July 27, 2020, less than a month after the indictment against Ms. Maxwell, the Maxwell family lawyer who was managing Ms. Maxwell's defense became Granite's sole manager.

64. Under Granite's operating agreement, the Maxwell family lawyer had "the right and power to manage, operate, and control [Granite] and to do all things which it deems necessary or desirable for [Granite]."

65. On July 30, 2020, a month after the indictment, Mr. Borgerson transferred one of the Boston condominiums from a trust to himself personally for \$100 in consideration.

66. On December 21, 2021, an HMF shareholder wrote Mr. Maxwell to express concern about media reports that Mr. Borgerson was divorcing Ms. Maxwell.

67. Mr. Maxwell assured HMF that "[y]ou will not be tangled with Scott."

68. Mr. Maxwell, however, had information indicating that Mr. Borgerson's planned divorce would further impede HMF's ability to recoup fees and advanced costs, which he withheld from HMF.

69. Mr. Maxwell and the family lawyer also routinely told HMF that missed payment deadlines and Ms. Maxwell's growing delinquency was the result of obstruction by Mr. Borgerson.

70. Public records reflect that, in May 2022, Mr. Borgerson sold the same property he transferred a month after Ms. Maxwell's arrest for \$2,150,000.

71. Also following Ms. Maxwell's conviction, Mr. Borgerson listed the Bradford, Massachusetts, estate for \$7,295,000, claiming that Ms. Maxwell had no ownership interest in the property.

VI. Mr. Maxwell Continues To Mislead HMF After Ms. Maxwell's Conviction

A. Mr. Maxwell's Continued False Assurances

72. A jury convicted Ms. Maxwell on December 29, 2021.

73. By January 3, 2022, Ms. Maxwell owed the firm \$956,671 in fees and advanced costs.

74. Mr. Maxwell nonetheless asked HMF to take lead on post-trial briefing. On January 6, 2022, an HMF shareholder wrote Mr. Maxwell, warning him that the firm couldn't afford to continue working unless the past-due amounts were paid by January 10, 2022.

75. Mr. Maxwell ignored these requests, causing HMF to advise Mr. Maxwell that it would be withdrawing.

76. Mr. Maxwell finally responded on January 12, 2022, now blaming his broken promises on Mr. Borgerson and "administrative and bureaucratic" issues.

77. Yet Mr. Maxwell continued to falsely claim that there were "ample cash and assets to cover the total sums that are either due for payment now and are budgeted to become due in the coming month."

78. He then falsely asserted that substantial additional assets would soon become available within "next 30-60 days maximum," with "additional cash and assets being disbursed within a 120-180 days time frame."

79. On January 13, 2022, Mr. Maxwell paid HMF \$143,500, a small fraction of the amount owed.

80. He did so for the purpose of inducing the firm into continuing to work on post-conviction issues, even though he had no present intention of paying past-due fees or those incurred in the future.

81. On January 14, 2022, Mr. Maxwell falsely assured the firm that he would bring it current no later than February 28, 2022.

82. In reality, Mr. Maxwell would never again make a payment to HMF toward Ms. Maxwell's balance—which still exceeded \$850,000 .

B. Mr. Maxwell Reaffirms His Agreement to Personally Guarantee Ms. Maxwell's Obligations

83. In mid-January 2022, HMF yet again told Mr. Maxwell that it needed to withdraw due to lack of payment.

84. On January 20, 2022, Mr. Maxwell wrote HMF to underscore his agreement to pay all outstanding fees by the end of February.

85. Mr. Maxwell then proposed “providing [HMF] with by way of comfort . . . is a personal recognisance of debt due to your firm which would allow you to issue ~~bankruptcy~~ proceedings against me without delay in the event that the end February date and payment is not respected for any reason.”

86. He then emphasized that while “[t]his does not give you cash on account or trust account or in escrow but it does provide you with a serious ability to cause me commercial and reputational harm (which I absolutely cannot afford to allow to occur in my home jurisdiction at any time).”

87. Mr. Maxwell concluded by insisting that “I would not offer this if I had any doubt about the commitment and ability to make good on the fees commitment.”

88. HMF agreed, confirming that it “expect[s] to receive no less than \$319,861.45 no later than January 31, 2022.”

89. On January 31, 2022, Mr. Maxwell falsely stated that “[t]ransfer of \$319,861.45 is being processed today. Remitting bank is NatWest Bank, UK. Swift confirmation to follow.”

90. Neither a “swift confirmation” nor any funds followed.

91. On March 3, 2022, Mr. Maxwell again falsely told HMF that a payment had been wired. When asked to provide a SWIFT code, he evaded the question by claiming he was “overseas” and thus somehow unable to contact the bank. No payment ever arrived.

92. Mr. Maxwell continued to make similar claims throughout March and April that funds had been wired. All of these representations were knowingly false. HMF never received any payment.

93. On or about April 1, 2022, an HMF shareholder spoke to Ms. Maxwell. Ms. Maxwell claimed that her prover had not provided her with any information regarding the payment issues. She asked the firm not to withdraw and requested another week to sort out payment issues.

94. On or about April 28, 2022, Mr. Maxwell falsely represented that payment for fees “will be . . . prior to May 15.”

95. Mr. Maxwell then falsely promised payment would be made “on or before June 4[, 2022].”

96. No payment was ever received.

Causes of Action

**First Claim for Relief
(Account Stated – Against Ghislaine Maxwell)**

97. HMF incorporates all preceding paragraphs as if fully restated here.

98. From the beginning of its engagement on the Criminal Matter, HMF sent detailed invoices to Ms. Maxwell's agent, Mr. Maxwell, at her direction.

99. These statements contained extensive detail regarding the services rendered by HMF and costs that it had advanced on Ms. Maxwell's behalf.

100. As of June 27, 2022, Ms. Maxwell had an unpaid balance of \$878,302.66, not including interest.

101. More than \$850,000 of that amount has been due since January 31, 2022.

102. Neither Ms. Maxwell nor her agent, Mr. Maxwell, has contested the amount stated on Ms. Maxwell's account.

103. In addition, Mr. Maxwell's promises to pay the amount due, made as Ms. Maxwell's agent, constitutes a meeting of the minds regarding the amount stated on Ms. Maxwell's account.

104. HMF is therefore entitled to recover the amount of the account stated, contractual interest, and costs of collection.

**Second Claim for Relief
(Breach of Contract – Against Ghislaine Maxwell)**

105. HMF incorporates all preceding paragraphs as if fully restated here.

106. The Fee Agreement is a binding contract between Ms. Maxwell and HMF.

107. HMF performed or substantially complied with its obligations under the Fee Agreement.

108. Ms. Maxwell breached the Fee Agreement by failing to pay for services and advanced costs within 30 days of invoicing.

109. Ms. Maxwell is therefore liable to HMF for the unpaid balance, plus applicable interest and costs of collection.

**Third Claim for Relief
(Breach of Contract – Against Kevin Maxwell)**

110. HMF incorporates all preceding paragraphs as if fully restated here.

111. In August 2020, Mr. Maxwell agreed with HMF that, in return for reducing Ms. Maxwell's retainer from \$250,000 to an evergreen retainer of \$100,000, he would guarantee payment of HMF's fees and advanced costs.

112. Mr. Maxwell and HMF manifested their assent to this agreement when Mr. Maxwell paid, and HMF accepted, the \$100,000 retainer.

113. By representing Ms. Maxwell through trial and post-trial proceedings, HMF performed or substantially complied with its obligations under its agreement with Mr. Maxwell.

114. Mr. Maxwell breached the agreement by failing to pay for services and advanced costs on behalf of Ms. Maxwell.

115. Mr. Maxwell is therefore liable to HMF for the unpaid balance plus applicable interest and costs of collection.

**Fourth Claim for Relief
(Fraud – Against Kevin Maxwell)**

116. HMF incorporates all preceding paragraphs as if fully restated here.

117. Mr. Maxwell made false representations of material fact and present intention as alleged above.

118. Based on information that includes Mr. Maxwell's dozens of statements regarding the timing of payment, supposed loans, financing agreements, and liquidity that were later proven to be untrue, the representations were false at the time Mr. Maxwell made them.

119. These false representations include those identified in paragraphs 55, 56, 77, 78, 81, 89, 91, 92, 94, and 95 above.

120. Mr. Maxwell knew that these statements were false at the time they were made.

121. HMF relied on Mr. Maxwell's representations to its detriment by continuing to devote substantial resources to Ms. Maxwell's defense and advance costs on her behalf.

122. Mr. Maxwell knew that HMF would rely on his representations.

123. HMF has been damaged as a result of Mr. Maxwell's fraud in an amount to be proved at trial.

**Fifth Claim for Relief
(Promissory Estoppel – Against Kevin Maxwell)**

124. HMF incorporates all preceding paragraphs as if fully restated here.

125. Mr. Maxwell promised to HMF on numerous occasions that he would ensure that fees and advanced costs were paid pursuant to the terms of the Fee Agreement.

126. Mr. Maxwell reasonably believed, and in fact knew, that his promise would induce HMF to devote substantial resources and to advance costs with respect to Ms. Maxwell's defense in the Criminal Matter.

127. HMF did in fact rely on Mr. Maxwell's promise to its detriment.

128. Mr. Maxwell's promise must be enforced to prevent injustice.

**Sixth Claim for Relief
(Tortious Interference with Contractual Relations –
Against Scott Borgerson)**

129. HMF incorporates all preceding paragraphs as if fully restated here.

130. Mr. Borgerson was aware of the Fee Agreement between Ms. Maxwell and HMF.

131. Mr. Borgerson wrongfully encumbered Ms. Maxwell's assets, joint marital assets, and/or assets committed to fund her defense, impairing her ability to perform her obligations under the Fee Agreement.

132. Mr. Borgerson lacked an absolute right to encumber the assets.

133. Mr. Borgerson had the motive of preventing Ms. Maxwell from using those assets to satisfy her contractual obligations to HMF and others.

134. As a result of Mr. Borgerson's tortious interference, Ms. Maxwell has been damaged in an amount to be proved at trial.

**Seventh Claim for Relief
(Violation of the Colorado Uniform Fraudulent Transfers Act,
C.R.S. §§ 38-8-105(1)(a) and 38-8-105(1)(b) —
Against Ghislaine Maxwell and Scott Borgerson)**

135. HMF incorporates all preceding paragraphs as if fully restated here.

136. Based on information including the family lawyer's and Mr. Maxwell's statements that Mr. Borgerson had encumbered marital assets, Mr. Borgerson's sale of the Boston condominium, and Mr. Borgerson's effort to market the Massachusetts estate that had been Ms. Maxwell's residence, Ms. Maxwell transferred or is transferring assets to Mr. Borgerson with the intent to hinder, delay, and defraud HMF's efforts to recover amounts due from Ms. Maxwell under the Fee Agreement.

137. The transfers were made without receiving reasonably equivalent value in exchange.

138. On information and belief, Ms. Maxwell was insolvent or became insolvent as a result of the transfer.

139. On information and belief, Ms. Maxwell's remaining assets were unreasonably small compared to her contractual obligations to HMF.

140. Mr. Borgerson and Ms. Maxwell shared the motive of protecting those assets from creditors including HMF.

141. HMF is therefore entitled to a judgment for one and one-half the value of the assets transferred or one-and-one half the amount necessary to satisfy its claim against Ms. Maxwell, whichever is less.

Prayer for Relief

WHEREFORE, Haddon, Morgan & Foreman, P.C. respectfully requests that the Court award it damages, statutory penalties, contractual interest, attorneys' fees and costs incurred in this action, and all other relief available in law or equity.

Dated: August 22, 2022

Respectfully submitted,

s/ Christopher P. Montville

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CERTIFICATE OF SERVICE

I hereby certify that on this 22nd day of August, 2022, a true and correct copy of the foregoing was served via Colorado Courts E-filing system to all parties of record.

s/Nikki M. Chappelle
