IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND
FOR PALM BEACH COUNTY, FLORIDA
CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS, individually, and
L.M., individually,

Defendant,

_____/

DEFENDANT/COUNTER-PLAINTIFF'S SUPPLEMENT TO AMENDED PROPOSED JURY INSTRUCTIONS AND VERDICT FORM

Defendant/Counter-Plaintiff, Bradley J. Edwards, by and through undersigned counsel, hereby files his Supplement to Amended Proposed Jury Instructions and Verdict Form, and as grounds therefor states as follows:

Counter-Plaintiff hereby adds the following proposed jury instructions to his Amended Proposed Jury Instructions and Verdict Form:

Litigation Privilege[1]

The law does not allow a separate lawsuit to be based on conduct that occurs in and is related to another legal proceeding. That protection, called the "litigation privilege" does not prevent the application of other remedies such as contempt of court proceedings, the filing of professional grievances, or prosecution for perjury, but lawsuits for damages are not allowed.

In his lawsuit against Bradley Edwards, Jeffrey Epstein alleged that Bradley Edwards engaged in discovery in the cases on behalf of L.M., E.W., and Jane Doe,

[1] Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole, 950 So. 2d 380, 383 (Fla. 2007) ("In Myers v. Hodges, 53 Fla. 197, 44 So. 357 (1907), this Court recognized the principle of the litigation privilege in Florida, essentially providing legal immunity for actions that occur in judicial proceedings. In that case, involving a libel suit based on statements contained in a complaint, this Court established a qualified litigation privilege, requiring that the alleged defamatory statements be relevant to the judicial proceeding. . . .Under our holding, once this threshold showing was met, the statements were entitled to immunity.").

including the noticing of certain depositions, that was improper and caused Jeffrey Epstein to spend money on attorney's fees to defend against that discovery. Jeffrey Epstein claims that these monies constitute damages that are recoverable in his independent lawsuit against Bradley Edwards.

However, if the investigation Bradley Edwards engaged in was reasonably calculated to lead to the discovery of admissible evidence regarding any part of the claims being pursued by L.M., E.W. and Jane Doe, including but not limited to their potential claims for punitive damages against Jeffrey Epstein, then the discovery conducted by Bradley Edwards was relevant to those proceedings and is protected by absolute immunity.

Thus, if you find that the discovery being taken by Bradley Edwards was relevant to the potential claims being pursued by his three clients, then you must also find that Jeffrey Epstein could not properly pursue an independent lawsuit against Bradley Edwards to recover any claimed damages for attorney's fees, as those claims were absolutely barred by Florida's litigation privilege.

Jeffrey Epstein's Failure to Testify at Trial[2]

The failure of Jeffrey Epstein to appear or testify as to material facts within his knowledge creates an inference that he refrained from appearing or testifying because the truth, if revealed, would not be favorable to him.

[2] See Geiger v. Mather of Lakeland, Inc., 217 So. 2d 897, 898 (Fla. 4th DCA 1968) ("It is a general rule that the failure of a party to appear or testify as to material facts within his knowledge creates an inference that he refrained from appearing or testifying because the truth, if made to appear, would not aid his contention . . . This appears to be the clear weight of authority throughout the country.").

The Sword-Shield Doctrine[3]

Under Florida law, Jeffrey Epstein is not permitted to file a civil proceeding against Bradley Edwards and then invoke a privilege to avoid discovery on the claims made by Jeffrey Epstein against Bradley Edwards in that civil proceeding.

An issue you are deciding in this case is whether Jeffrey Epstein initiated and continued claims against Bradley Edwards in the absence of probable cause. If you find that Jeffrey Epstein was asked to provide information about whatever probable cause he may have had, and rather than provide that information he instead refused to answer relevant questions, then you are permitted, but are not required, to infer that Jeffrey Epstein's answers would have been adverse to his position and would have demonstrated a lack of probable cause.

[3] See DePalma v. DePalma, 538 So. 2d 1290, 1290 (Fla. 4th DCA 1989) ("It is well settled in this district that a person may not seek affirmative relief in a civil action and then invoke the fifth amendment to avoid giving discovery, using the fifth amendment as both a 'sword and a shield.'").

Epstein's Failure to Raise Advice of Counsel as a Defense[4]

Jeffrey Epstein had the option in this case of claiming that, after he provided his attorney with a full and complete disclosure of all the facts known to Jeffrey Epstein, his attorney advised him to institute the civil proceeding against Bradley Edwards. This defense, called "advice of counsel," would have been a complete defense to Bradley Edwards' malicious prosecution action.

Jeffrey Epstein, however, chose not to raise this defense and failed to call any of his attorneys as a witness in support of his defense to Bradley Edwards' malicious prosecution claim. The failure of Jeffrey Epstein to present testimony of his own attorneys who are within his control and who may have knowledge of facts at issue justifies an adverse inference against Jeffrey Epstein.

You therefore may, but are not required to, infer that Jeffrey Epstein failed to call his attorneys because his attorneys' testimony would have been unfavorable to Jeffrey Epstein's claim that Jeffrey Epstein had probable cause to initiate the civil proceeding against Bradley Edwards.

[4] See Paulk v. Buczynski, 106 So. 2d 100, 102 (Fla. 2d DCA 1958) ("As mentioned above, defendant alleged that the perjury prosecution against plaintiff was instituted upon advice of counsel. Such is a complete defense to an action for malicious prosecution; however, such advice of counsel must be based upon a full and complete disclosure of all the facts."). See Tri-State Systems, Inc. v. Department of Transportation, 500 So. 2d 212, 215 (Fla. 1st DCA 1986) ("[T]he failure of a party to present the testimony of a person within his control who has knowledge of the fact at issue justifies an inference adverse to that party."); see also Haliburton v. State, 561 So. 2d 248, 250 (Fla. 1990); McLaughlin v. Union-Leader Corp., 99 N.H. 492, 498 (N.H. 1955) (affirming trial court's ruling permitting counsel to comment on the opposing party's failure to call its attorney in defense of the claims).

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 27th day of February, 2018.

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