

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiff.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S
NOTICE OF PROPOSED JURY INSTRUCTIONS AND VERDICT FORM**

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), pursuant to Florida Rule of Civil Procedure 1.470, files this Notice of Proposed Jury Instructions and Verdict Form. Epstein adopts Defendant/Counter-Plaintiff Bradley J. Edwards' ("Edwards") November 9, 2017, proposed Standard (Civil) Jury Instructions Nos. 201.3, 202.2, 202.3, 202.4, 301.1, 301.2, 301.3, 301.4, 301.5, 406.1, 406.3, 406.6, 406.7, 406.9, 601.1, 601.2, 601.5 and 700, which Epstein has not restated here. Epstein objects to Edwards' November 9, 2017, proposed Jury Instructions Nos. 201.1, 201.2, 406.2, 406.4, 406.5, 406.8, 406.12, 503.2 and Adverse Inference, and Edwards' November 14, 2017, and December 1, 2017, Supplemental Instructions. Epstein has provided alternative and additional instructions for the Court's consideration.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on December 15, 2017, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 1

101.1 Oath of Jurors Before Voir Dire

Do you solemnly swear or affirm that you will answer truthfully all questions asked of you as prospective jurors [so help you God]?

Source:

Florida Standard Jury Instruction (Civil) 101.1

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 2

Qualifications Instruction Before Voir Dire

Many of you have electronic devices such as cell phones, smartphones, tablets, and laptops. Even though you have not yet been selected as a juror, there are some strict rules that you must follow about electronic devices.

When you are called to a courtroom, the judge will give you specific instructions on the use of electronic devices. These rules are so important that the judge may tell you that you must turn off your cell phone or other electronic devices completely or that you cannot have your cell phone or electronic devices in the courtroom. If someone needs to contact you in case of an emergency, the judge will provide you with a phone number where you can receive messages.

If the trial judge allows you to keep your cell phones, computers, or other electronic devices, you cannot use them to take photographs, video recordings, or audio recordings of the proceedings in the courtroom or your fellow jurors. You must not use them to search the Internet or to find out anything related to any cases in the courthouse.

Why is this restriction imposed? This restriction is imposed because jurors must decide the case without distraction and only on the evidence presented in the courtroom. I know that, for some of you, these restrictions affect your normal daily activities and may require a change in the way you are used to communicating and perhaps even in the way you are used to learning.

If you investigate, research, or make inquiries on your own, the trial judge has no way to make sure that the information you obtain is proper for the case. The parties likewise have no opportunity to dispute or challenge the accuracy of what you find. Any independent investigation by a juror unfairly and improperly prevents the parties from having that opportunity our judicial system promises.

Between now and when you have been discharged from jury duty by the judge, you must not discuss any information about your jury service with anyone, including friends, co-workers, and family members. You may tell those who need to know where you are that you have been called for jury duty. If you are picked for a jury, you may tell people that you have been picked for a jury and how long the case may take. However, you must not give anyone any information about the case itself or the people involved in the case. You must also warn people not to try to say anything to you or write to you about your jury service or the case. This includes face-to-face, phone or computer communications.

I want to stress that you must not use electronic devices or computers to talk about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept any messages, including e-mail and text messages, about your jury service. You must not disclose your thoughts about your jury service or ask for advice on how to decide any case.

The judge will tell you when you are released from this instruction. Remember, these rules are designed to guarantee a fair trial. It is important that you understand the rules as well as the

impact on our system of justice if you fail to follow them. If it is determined that any one of you has violated this rule, and conducted any type of independent research or investigation, it may result in a mistrial. A mistrial would require the case to be tried again at great expense to the parties and the judicial system. The judge may also impose a penalty upon any juror who violates this instruction. All of us are depending on you to follow these rules, so that there will be a fair and lawful resolution of every case.

Source:

Florida Standard Jury Instruction (Civil) (not numbered)

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 3

201.1 Description of the Case Before Voir Dire

Welcome. [I] [The clerk] will now administer your oath.

Now that you have been sworn, I'd like to give you an idea about what we are here to do.

This is a civil trial. A civil trial is different from a criminal case, where a defendant is charged by the state prosecutor with committing a crime. The subject of a civil trial is a disagreement between people or companies, where the claims of one or more of these parties have been brought to court to be resolved. It is called "a trial of a lawsuit."

This case *has two components*. *First, Plaintiff Jeffrey Epstein has a claim against Defendant Scott Rothstein for utilizing three cases that Rothstein's firm had against Epstein to fabricate other claims and continue the operation of a Ponzi scheme. Second, about whether Plaintiff Jeffrey Epstein had probable cause to initiate and continue a civil proceeding against Defendant Bradley Edwards alleging that Edwards knew or should have known about Rothstein's Ponzi scheme.*

Bradley Edwards is an attorney. In August and September 2008, while he was a sole practitioner, Edwards filed three claims against Epstein for alleged sexual misconduct.

In late March 2009, Edwards joined the law firm of Rothstein Rosenfeldt and Adler ("RRA"). At the time he joined RRA, Edwards held the title of "partner" and he turned over to Scott Rothstein the three clients who had brought claims against Epstein. RRA continued to pursue these clients' claims until the firm imploded in November 2009.

It was publicly disclosed in early November 2009 that Rothstein, the senior partner of RRA, had conducted a fraudulent Ponzi scheme which, in part, had used the fact that sexual abuse claims against Epstein were being prosecuted by RRA to induce investors to buy interests in fictitious, non-existent settlements of sexual abuse claims against Epstein. Rothstein's scheme raised hundreds of millions of dollars and was one of the largest frauds in U.S. history.

In early December 2009, Epstein, through his attorneys, filed a lawsuit against Edwards, Rothstein and one of Edwards' clients. Epstein alleged that while Edwards was a partner at RRA in 2009, the cases Edwards brought against Epstein when Edwards was a sole practitioner in 2008, were being used in 2009 to pursue issues and evidence unrelated to and unnecessary to the claims pled in those cases, and instead were done to benefit and lure investors into Rothstein's Ponzi scheme.

Edwards countersued Epstein for malicious prosecution. Edwards contends that Epstein filed the lawsuit for the sole purpose of attempting to intimidate him into abandoning or cheaply compromising his clients' claims. Epstein eventually settled the cases with Edwards' three clients.

A default was entered against Rothstein because he failed to respond to Epstein's Complaint. Epstein voluntarily withdrew his claims against Edwards' client in August 2010.

Epstein dismissed his claims against Edwards in August 2012 without prejudice to his right to reassert them at a later time. The only claim pending is Edwards' claim against Epstein for malicious prosecution.

The principal witnesses who may testify in this case are *Jeffrey Epstein (via video deposition), Bradley Edwards, Scott Rothstein (via video deposition), and Mr. Edwards' clients (L.M., E.W. and Jane Doe).*

Source:

Florida Standard Jury Instruction (Civil) 201.1

Given	_____
Given as Modified	_____
Denied	_____
Withdrawn	_____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 4

201.2 Introduction of Participants and Their Roles

Who are the people here and what do they do?

Judge/Court: I am the Judge. You may hear people occasionally refer to me as "The Court." That is the formal name for my role. My job is to maintain order and decide how to apply the rules of the law to the trial. I will also explain various rules to you that you will need to know in order to do your job as the jury. It is my job to remain neutral on the issues of this lawsuit.

Parties: A party who files a lawsuit is called the Plaintiff. A party that is sued is called the Defendant.

Attorneys: The attorneys have the job of representing their clients. That means they speak for their client here at the trial. They have taken oaths as attorneys to do their best and to follow the rules for their profession.

Plaintiff/*Counter-Defendant's* Counsel: The attorney on this side of the courtroom, Scott Link, represents Jeffrey Epstein, who is the person who filed the initial proceeding here at the courthouse. His job is to present his client's side of things to you. He and his client will be referred to most of the time as "the Plaintiff" or "the Counter-Defendant." Mr. Link, will you please introduce who is sitting at the table with you?

Defendant/*Counter-Plaintiff's* Counsel: The attorney on this side of the courtroom, Jack Scarola, represents Bradley Edwards, one of the defendants who has been sued and who brought a counterclaim against Mr. Epstein. His job is to present his client's side of things to you. He and his client will usually be referred to here as "the Defendant" or "the Counter-Plaintiff." Mr. Scarola, will you please introduce who is sitting at the table with you?

Court Clerk: This person sitting in front of me, (name), is the court clerk. [He] [She] is here to assist me with some of the mechanics of the trial process, including the numbering and collection of the exhibits that are introduced in the course of the trial.

Court Reporter: The person sitting at the stenographic machine, (name), is the court reporter. [His] [Her] job is to keep an accurate legal record of everything we say and do during this trial.

Bailiff: The person over there, (name), is the bailiff. [His] [Her] job is to maintain order and security in the courtroom. The bailiff is also my representative to the jury. Anything you need or any problems that come up for you during the course of the trial should be brought to [him] [her]. However, the bailiff cannot answer any of your questions about the case. Only I can do that.

Jury: Last, but not least, is the jury, which we will begin to select in a few moments from among all of you. The jury's job will be to decide what the facts are and what the facts mean. Jurors should be as neutral as possible at this point and have no fixed opinion about the lawsuit.

In order to have a fair and lawful trial, there are rules that all jurors must follow. A basic rule is that jurors must decide the case only on the evidence presented in the courtroom. You must not communicate with anyone, including friends and family members, about this case, the people and places involved, or your jury service. You must not disclose your thoughts about this case or ask for advice on how to decide this case.

I want to stress that this rule means you must not use electronic devices or computers to communicate about this case, including tweeting, texting, blogging, e-mailing, posting information on a website or chat room, or any other means at all. Do not send or accept any messages to or from anyone about this case or your jury service.

You must not do any research or look up words, names, [maps], or anything else that may have anything to do with this case. This includes reading newspapers, watching television or using a computer, cell phone, the Internet, any electronic device, or any other means at all, to get information related to this case or the people and places involved in this case. This applies whether you are in the courthouse, at home, or anywhere else.

Many of you may have cell phones, tablets, laptops or other electronic devices with you here in the courtroom.**

***The trial judge should select one of the following two alternative instructions explaining the rules governing jurors' use of electronic devices, as explained in Note on Use 1.*

Alternative A: [All cell phones, computers, tablets or other types of electronic devices must be turned off while you are in the courtroom. Turned off means that the phone or other electronic device is actually off and not in a silent or vibrating mode. You may use these devices during recesses, but even then you may not use your cell phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or of your fellow jurors. After each recess, please double check to make sure your cell phone or electronic device is turned off. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. You cannot have in the jury room any cell phones, computers, or other electronic devices. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. A contact phone number will be provided to you.]

Alternative B: [You cannot have any cell phones, tablets, laptops, or other electronic devices in the courtroom. You may use these devices during recesses, but even then you may not use your cell phone or electronic device to find out any information about the case or communicate with anyone about the case or the people involved in the case. Do not take photographs, video recordings or audio recordings of the proceedings or your fellow jurors. At the end of the case, while you are deliberating, you must not communicate with anyone outside the jury room. If someone needs to contact you in an emergency, the court can receive messages and deliver them to you without delay. A contact phone number will be provided to you.]

What are the reasons for these rules? These rules are imposed because jurors must decide the case without distraction and only on the evidence presented in the courtroom. If you investigate, research, or make inquiries on your own outside of the courtroom, the trial judge has no way to make sure that the information you obtain is proper for the case. The parties likewise have no opportunity to dispute or challenge the accuracy of what you find. That is contrary to our judicial system, which assures every party the right to ask questions about and challenge the evidence being considered against it and to present argument with respect to that evidence. Any independent investigation by a juror unfairly and improperly prevents the parties from having that opportunity our judicial system promises.

Any juror who violates these restrictions jeopardizes the fairness of these proceedings, and a mistrial could result that would require the entire trial process to start over. A mistrial is a tremendous expense and inconvenience to the parties, the court, and the taxpayers. If you violate these rules, you may be held in contempt of court, and face sanctions, such as serving time in jail, paying a fine or both.

All of your communications with courtroom personnel, or me, will be part of the record of these proceedings. That means those communications shall either be made in open court with the court reporter present or, if they are in writing, the writing will be filed with the court clerk. I have instructed the courtroom personnel that any communications you have with them outside of my presence must be reported to me, and I will tell the parties and their attorneys about any communication from you that I believe may be of interest to the parties and their attorneys.

However, you may communicate directly with courtroom personnel about matters concerning your comfort and safety, such as juror parking, location of break areas, how and when to assemble for duty, how you should dress, what personal items can be brought into the courthouse or jury room, and similar inquiries.

If you become aware of any violation of these instructions or any other instruction I give in this case, you must tell me by giving a note to the bailiff.

Source:

Florida Standard Jury Instruction (Civil) 201.2

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 5
201.3 Explanation of the Voir Dire Process

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 201.3.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 6

101.2 Oath of Juror After Voir Dire

Do you solemnly swear or affirm that you will well and truly try this case between the Plaintiff/Counter-Defendant Jeffrey Epstein, and the Defendant/Counter-Plaintiff, Bradley Edwards, and a true verdict render according to the law and evidence [so help you God]?

Source:

Florida Standard Jury Instruction (Civil) 101.2

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 7
202.2 Explanation of the Trial Procedure

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 202.2.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 8
202.3 Note-Taking by Jurors

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 202.3.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 9
202.4 Juror Questions

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 202.4.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 10

**301.1 Deposition Testimony, Interrogatories, Stipulated Testimony,
Stipulations, and Admissions**

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 301.1. By agreeing to the instruction, Epstein does not waive the argument that some of the items should not be permitted to be used in this case. Epstein agrees to the instruction so that, in the event that either the parties agree, or the Court rules, that these types of items will be used, the relevant instruction should proceed the item.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 11

**301.2 Instruction When First Item of Documentary, Photographic,
or Physical Evidence is Admitted**

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 301.2.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 12

301.3 Instruction When Evidence is First Published to Jurors

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 301.3.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 13

301.4 Instruction Regarding Visual or Demonstrative Aids

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 301.4. Epstein does not waive any objections to any particular demonstrative or visual aids by adopting the proposed instruction, but includes the instruction in case the Court decides, or the parties agree, to permit any such items

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 14

301.5 Evidence Admitted for a Limited Purpose

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 301.5.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 15

301.10 Instruction Before Recess

We are about to take [our first] [a] recess. Remember that all of the rules I have given you apply even when you are outside the courtroom, such as at recess.

Remember the basic rule: Do not talk to anyone, including your fellow jurors, friends, family or co-workers about anything having to do with this trial, except to speak to court staff. This means no e-mailing, text messaging, tweeting, blogging, or any other form of communication. You cannot do any research about the case or look up any information about the case. Remember to observe during our recess the other rules I gave you. If you become aware of any violation of any of these rules at all, notify court personnel of the violation.

After each recess, please double check to make sure [that your cell phone or other electronic device is turned off completely] [that you do not bring your cell phone or other electronic device into the courtroom or jury room].

Source:

Florida Standard Jury Instruction (Civil) 301.10

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 16

406.1 Introduction

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 406.1.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 17

406.2 Summary of Claims

The claims and defenses in this case are as follows:

Plaintiff Jeffrey Epstein claims that Defendant Scott Rothstein conspired with other lawyers and employees at the firm of Rothstein, Rosenfeld and Adler, for personal greed and enrichment, and engaged in a pattern of racketeering that involved, among other things, marketing of non-existent settlements involving claims (both real and fabricated), against Epstein, and engaging in improper litigation tactics in order to promote and sustain that Ponzi scheme. Epstein brought claims for violations of Florida's Civil Remedies for Criminal Practices Act, violations of Florida's Racketeer Influenced and Corrupt Organization (RICO), abuse of process, fraud and conspiracy to commit fraud. Rothstein did not defend those claims and, consequently, a default was entered against him. A default is not an actual determination of the merits of the claim. Instead, it is a legal ruling that because the defendant did not contest the claim, the defendant will be deemed to have committed the offense. Consequently, the sole issue for your determination on Epstein's claim against Rothstein is the amount of damages that should be awarded to Epstein against Rothstein for the harm that Rothstein caused to Epstein.

Epstein must prove the amount of damages he suffered by Rothstein's actions by the greater weight of the evidence.

Plaintiff Jeffrey Epstein, through his attorneys, also filed claims (called the "civil proceeding") against Defendant Bradley J. Edwards. Epstein voluntarily dismissed his claims against Edwards before the claims were decided by the Court. Epstein's dismissal of the claims against Edwards was without prejudice to Epstein's right to later reassert them. Therefore, those claims are not before you for your determination.

Edwards filed a Counterclaim for malicious prosecution against Epstein which alleged that Epstein maliciously and without probable cause, filed and continued the civil proceeding against him, and that this caused Edwards damage. Epstein denies that claim and also asserts that he is entitled to a verdict in his favor.

Edwards must prove by the greater weight of the evidence that Epstein caused to be filed or continued the civil proceeding against Edwards maliciously and without probable cause and that Epstein's lawsuit caused Edwards to suffer damage.

I will now define some of the terms you will use in deciding this case.

Source:

Florida Standard Jury Instruction (Civil) 406.2

Fla. R. Civ. P. 1.500; *DG Sports Agency LLC v. First Round Mgmt., LLC*, 174 So. 3d 541, 544 (Fla. 4th DCA 2015) (effect of default); *Donohue v. Brightman*, 939 So. 2d 1162, 1164-65 (Fla. 4th DCA 2006) (effect of default); Clerk's Default on January 21, 2010 (D.E. 27)

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 18

406.3 Greater Weight of the Evidence

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 406.3.

NOT A CERTIFIED COPY

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 19

Claim Against Rothstein: Damages

You must consider whether or not to award damages in favor of Jeffrey Epstein against Scott Rothstein for the claims that Jeffrey Epstein has raised against Scott Rothstein.

You should award Jeffrey Epstein an amount of money that the greater weight of the evidence shows will fairly and adequately compensate him for his loss, injury or damage, including any damage.

If you find that Jeffrey Epstein has not proven any loss or damage, you may still award Jeffrey Epstein nominal damages such as one dollar.

Source:

Abuse of Process: *Valdes v. GAB Robins N. Am. Inc.*, 924 So. 2d 862 (Fla. 3d DCA 2006); *S & I Investments v. Payless Flea Market, Inc.*, 36 So. 3d 909, 917 (Fla. 4th DCA 2010). Nominal damages are sufficient to recover on an action for abuse of process. *See Stoler v. Levinson*, 394 So. 2d 462 (Fla. 3d DCA 1981); (*North Star Capital Acquisitions, LLC v. Krig*, 611 F. Supp. 2d 1324 (M.D. Fla. 2009), Florida Standard Jury Instruction (Contracts and Business) 504.11

Fraud: *Prieto v. Smook, Inc.*, 97 So. 3d 916, 917 (Fla. 4th DCA 2012). *See also Sena v. Pereira*, 179 So. 3d 433, 436 (Fla. 4th DCA 2015).

Conspiracy: *Eagletech Communications, Inc. v. Bryn Mawr Inv. Group, Inc.*, 79 So. 3d 855, 863 (Fla. 4th DCA 2012) (quoting *Raimi v. Furlong*, 702 So. 2d 1273, 1284 (Fla. 3d DCA 1997)).

Florida Civil Remedies for Criminal Acts: Fla. Stat. 772.103, Fla. Stat. § 772.104, Fla. Stat. 772.102

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 20

Issues on Claim

I will now instruct you on what Edwards must prove to prevail on his claim for malicious prosecution against Epstein.

The issues you must decide on Edwards' claim against Epstein are whether Epstein maliciously and without probable cause instituted or continued a civil proceeding against Edwards which later terminated in favor of Edwards and, if so, whether that action was a legal cause of damage to Edwards.

Edwards must prove each of these elements in order to prevail on his claim for malicious prosecution against Epstein.

I will now instruct you further on the individual elements of this claim.

Source:

Second Paragraph: Florida Standard Jury Instruction 406.8. This paragraph reflects the Standard Instruction, but the order of the instructions has been changed to instruct the jury on the elements first, then explain the elements to the jury. It is Epstein's position this will allow the jury to better understand why they are being instructed on probable cause, malice, etc.; *Alamo Rent-A-Car Inc. v. Mancusi*, 632 So. 2d 1352 (Fla. 1994); *Rivernider v. Meyer*, 174 So. 3d 602 (Fla. 4th DCA 2015); *Hickman v. Barclay's Int'l Realty, Inc.*, 16 So. 3d 154, 155 (Fla. 4th DCA 2009).

Third Paragraph: *Tatum Bros Real Estate & Investment Co. v. Watson*, 109 So. 623 (Fla. 1926); *Union Oil of Cal. Amsco Division v. Watson*, 468 So. 2d 349, 353 (Fla. 3rd DCA 1985); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1355 (Fla. 1994).

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 21

Probable Cause

Probable cause means that at the time of instituting and then continuing a civil proceeding against another, the facts and circumstances known to Jeffrey Epstein were sufficiently strong to support a reasonable belief that the proceeding against Bradley Edwards was supported by existing facts.

It is Bradley Edwards' burden to prove that Jeffrey Epstein lacked probable cause at every stage of the civil proceeding against Bradley Edwards, from the filing of his suit to the termination of it. You may find that Bradley Edwards failed to show a lack of probable cause even if some of the allegations in the civil proceeding brought by Jeffrey Epstein were ultimately shown to be untrue, or if some of the claims would not have been successful.

The information that Jeffrey Epstein relied on does not have to be information gained first-hand by Jeffrey Epstein, but can be trustworthy information that was provided to Jeffrey Epstein. You may find probable cause existed even if there was no certainty of the outcome of the proceeding.

You cannot base your finding as to probable cause on whether or not you believe that Bradley Edwards has proven that Jeffrey Epstein acted with malice. Likewise, you cannot base your findings as to whether there was a lack of probable cause on evidence that Jeffrey Epstein terminated his civil proceeding against Bradley Edwards.

Source:

First Paragraph: Florida Standard Jury Instruction (Civil) 406.4.

Second Paragraph: *Endacott v. Int'l Hosp., Inc.*, 910 So. 2d 915, 924 (Fla. 3d DCA 2005) (must show lack of probable cause for entire case or claim fails); *May v. Fundament*, 444 So. 2d 1171, 1172-73 (Fla. 4th DCA 1984) (same); *Moity v. Bodin*, 489 So. 2d 474 (La. Ct. App. 1986) (where did not show lack of probable cause for at least several of allegations, then no malicious prosecution).

Third Paragraph: *Gill v. Kostroff*, 82 F. Supp. 2d 1354, 1364 (M.D. Fla. 2000) (does not have to be first-hand information); *Endacott v. International Hospitality, Inc.*, 910 So. 2d 915, 922 (Fla. 3d DCA 2005) ("the defendants need not be certain of the outcome of the underlying proceeding to have probable cause for bringing the counterclaim").

Fourth Paragraph: *Tatum Bros Real Estate & Investment v. Watson*, 109 So. 623 (Fla. 1926) (cannot infer probable cause based on finding of malice); *Central Florida Machinery Co., Inc. v. Williams*, 424 So. 2d 201 (Fla. 2d DCA 1983) ("a bare showing of malice will not, in turn, permit

an inference of a lack of probable cause"); *Applestein v. Preston*, 335 So. 2d 604 (Fla. 3d DCA 1976) ("when want of probable cause was not established, the existence thereof could not be inferred from malice, if malice was proved. Although malice may be inferred from want of probable cause, want of probable cause cannot be inferred from malice"); *Endacott v. Int'l Hosp., Inc.*, 910 So. 2d 915, 924 (Fla. 3d DCA 2005) ("However, termination of an underlying civil proceeding in favor of the present plaintiff is not sufficient evidence that the defendants lacked probable cause").

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 22

Malice

One acts maliciously in instituting or continuing a civil proceeding against another if he or she does so for the primary purpose of injuring the other, or recklessly and without regard for whether the proceeding is justified, or for any primary purpose except to bring an offender to justice or to establish what he or she considers to be a meritorious claim. In determining whether Jeffrey Epstein acted maliciously, you may consider all the circumstances at the time of the conduct complained of, including any lack of probable cause to institute or continue the proceeding.

You are not required, however, to find malice because of a lack of probable cause to institute or continue the proceedings and you should not draw an inference of malice from a lack of probable cause if other evidence of the circumstances at the time of the conduct lead to a different conclusion.

Source:

First Paragraph: Florida Standard Jury Instruction 406.5

Second Paragraph: *Colonial Stores, Inc. v. Scarbrough*, 355 So. 2d 1181, 1185 (Fla. 1977) ("It is recognized that malice may be inferred from the absence of probable cause. *Adams v. Whitfield*, 290 So. 2d 49 (Fla. 1974); *Duval Jewelry Co. v. Smith*, 102 Fla. 717, 136 So. 878 (Fla. 1931). However, malice is not legally synonymous with the absence of probable cause. *White v. Miami Home Milk Producers Association*, 143 Fla. 518, 197 So. 125 (1940). The inference of malice from the absence of probable cause is not one of law but merely a presumption of fact which may be rebutted. This is an inference which the jury is not required to draw, and which it should not draw if other facts disclosed by the evidence lead to a different conclusion. See *Tatum Brothers Real Estate & Investment Co. v. Watson*, 92 Fla. 278, 109 So. 623 (1926).

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 23
406.6 Instituting or Continuing a Proceeding

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 406.6.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 24

406.7 Legal Cause

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 406.7.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 25

Bona Fide Termination

Bradley Edwards must prove that the termination of Jeffrey Epstein's civil proceeding against him was a bona fide termination in favor of Bradley Edwards.

A termination of a civil proceeding is a bona fide termination of the civil proceeding only if it ended in a manner that demonstrated that the proceeding lacked merit.

You must consider the reasons for the voluntary dismissal by Jeffrey Epstein of his claims against Bradley Edwards, as well as all of the circumstances surrounding the voluntary dismissal of those claims in making this determination.

Source:

Giving an instruction: Florida Standard Jury Instructions (Civil) 406.8, Notes on Use ("If a fact question exists concerning whether the prior proceeding terminated in favor of the claimant, an additional instruction on that issue will be necessary." *See Shidlovsky v. National Car Rental Systems, Inc.*, 344 So. 2d 903 (Fla. 3d DCA 1977); *Freedman v. Crabro Motors, Inc.*, 199 So. 2d 745 (Fla. 3d DCA 1967).

First Paragraph: *Debrincat v. Fischer*, 217 So. 2d 68, 70 (Fla. 2017) (element of malicious prosecution claim); *CA Hansen Corp. v. Wicker Smith et al.*, 565 So. 2d 812, 813 (Fla. 3d DCA 1990) (plaintiff must show either a favorable decision on the merits or a bona fide termination); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1356 (Fla. 1994).

Second Paragraph: *Sharaka v. E&A, Inc.*, 135 So. 3d 428, 432 (Fla. 2d DCA 2014) (*citing Cohen v. Corwin*, 980 So. 2d 1153, 1155 (Fla. 4th DCA 2008)).

Third Paragraph: *Cohen v. Corwin*, 980 So. 2d 1153, 1156 (Fla. 4th DCA 2008) ("whether a voluntary dismissal qualifies as a 'bona fide termination' of the proceedings in the defendant's favor depends upon the reasons and circumstances underlying the dismissal"); *Doss v. Bank of America, N.A.*, 857 So. 2d 991, 995 (Fla. 5th DCA 2003) ("whether a withdrawal or abandonment of a lawsuit constitutes a bona fide termination in favor of a person against whom the suit was brought depends on the total circumstances surrounding the withdrawal or abandonment").

Given _____

Given as Modified _____

Denied _____

Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 26

406.9 Burden of Proof on Claim

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 406.9.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 27

406.12 Malicious Prosecution Damages

If you find for Jeffrey Epstein, you will not consider the matter of damages. But, if you find for Bradley Edwards, you should award Bradley Edwards an amount of money that the greater weight of the evidence shows will fairly and adequately compensate Bradley Edwards for such damage as the greater weight of the evidence shows was caused by the institution or continuation of the proceeding complained of.

Source:

Florida Standard Jury Instructions (Civil) 406.12

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 28

601.1 Weighing the Evidence

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 601.1.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 29

601.2 Believability of Witnesses

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 601.2. Epstein does not waive any argument that Edwards' should not be permitted to present any expert testimony by inclusion of this jury instruction, but includes it in the event the Court overrules Epstein's objections

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 30

601.4 Multiple Claims, Numerous Parties, Consolidated Cases

In your deliberations, you will consider and decide several distinct claims, including claims by Jeffrey Epstein against Scott Rothstein and one claim by Bradley Edwards against Jeffrey Epstein. Although these claims have been tried together, each is separate from the others, and each party is entitled to have you separately consider each claim as it affects that party. Therefore, in your deliberations, you should consider the evidence as it relates to each claim separately, as you would had each claim been tried before you separately.

Source:

Florida Standard Jury Instruction (Civil) 601.4

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 31

601.5 Concluding Instruction (Before Final Argument)

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 601.5.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 32
700 Closing Instructions

Epstein hereby adopts and incorporates Edwards' Standard Jury Instruction 700.

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PLAINTIFF/COUNTER-DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 33
[BIFURCATED ISSUE]
503.2 PUNITIVE DAMAGES¹

There is an additional claim in this case that you must decide. If you find for Bradley Edwards and against Jeffrey Epstein, you must decide whether, in addition to compensatory damages, punitive damages are warranted as punishment to Jeffrey Epstein and as a deterrent to others.

Bradley Edwards claims that punitive damages should be awarded against Jeffrey Epstein for his conduct in maliciously prosecuting a civil proceeding against Bradley Edwards. Punitive damages are warranted against Jeffrey Epstein if you find by clear and convincing evidence that Jeffrey Epstein was guilty of intentional misconduct or gross negligence, which was a substantial cause of damage to Bradley Edwards. Under those circumstances you may, in your discretion, award punitive damages against Jeffrey Epstein. If clear and convincing evidence does not show such conduct by Jeffrey Epstein, punitive damages are not warranted against Jeffrey Epstein.

“Intentional misconduct” means that Jeffrey Epstein had actual knowledge of the wrongfulness of the conduct and that there was a high probability that injury or damage to Bradley Edwards and, despite that knowledge, he intentionally pursued that course of conduct, resulting in injury or damage. “Gross negligence” means that Jeffrey Epstein’s conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

“Clear and convincing evidence” differs from the “greater weight of the evidence” in that it is more compelling and persuasive. As I have already instructed you, “greater weight of the evidence” means the more persuasive and convincing force and effect of the entire evidence in the case.

If you decide that punitive damages are warranted against Jeffrey Epstein, then we will have a separate proceeding in which to decide the amount of punitive damages, if any, to be assessed as punishment against Jeffrey Epstein and as a deterrent to others. This amount would be in addition to the compensatory damages you have previously awarded. In making this determination, you should consider the following:

- (1) the nature, extent and degree of misconduct and the related circumstances, including the following:
 - (A) whether the wrongful conduct was motivated solely by unreasonable financial gain;
 - (B) whether the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by Jeffrey Epstein;

¹ Punitive damages have been bifurcated from the main trial, so that this instruction should not be given unless it becomes appropriate.

(C) whether, at the time of damage, Jeffrey Epstein had a specific intent to harm Bradley Edwards and the conduct of Jeffrey Epstein did in fact harm Bradley Edwards, and

(2) the financial resources of Jeffrey Epstein; and

However, you may not award an amount that would financially destroy Jeffrey Epstein.

You may in your discretion decline to assess punitive damages.

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Source:

Florida Standard Jury Instruction (Civil) 503.2

Given _____
Given as Modified _____
Denied _____
Withdrawn _____

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN AND
FOR PALM BEACH COUNTY, FLORIDA

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiff.

VERDICT FORM

We, the Jury, find:

A. Epstein's Claims Against Rothstein

On Jeffrey Epstein's claims against Scott Rothstein, what amount of damages did Jeffrey Epstein prove by the greater weight of the evidence that he suffered?

\$ _____

B. Edwards' Counterclaim Against Epstein

1. Did Bradley Edwards prove that an original civil proceeding was caused to be commenced or continued against him by Jeffrey Epstein?

YES _____

NO _____

If the Answer to Question 1 is "YES" then proceed to Question 2. If the Answer to Question 1 is "NO," then please date and sign the verdict form and proceed no further.

2. Did Bradley Edwards prove that Jeffrey Epstein was the legal cause of the original civil proceeding against Bradley Edwards?

YES _____ NO _____

If the Answer to Question 2 is “YES” then proceed to Question 3. If the Answer to Question 2 is “NO,” then please date and sign the verdict form and proceed no further.

3. Did the termination of Jeffrey Epstein’s original civil proceeding constitute a bona fide termination of that proceeding in favor of Bradley Edwards?

YES _____ NO _____

If the Answer to Question 3 is “YES” then proceed to Question 4. If the Answer to Question 3 is “NO,” then please date and sign the verdict form and proceed no further.

4. Did Bradley Edwards prove by the greater weight of the evidence that there was *no* probable cause for Jeffrey Epstein to initiate or continue his original civil proceeding against Bradley Edwards?

YES _____ NO _____

If the Answer to Question 4 is “YES” then proceed to Question 5. If the Answer to Question 4 is “NO,” then please date and sign the verdict form and proceed no further.

5. Did Edwards prove by the greater weight of the evidence that Epstein instituted or continued his original civil proceeding against Edwards maliciously?

YES _____ NO _____

If the Answer to Question 5 is “YES” then proceed to Question 6. If the Answer to Question 5 is “NO,” then please date and sign the verdict form and proceed no further.

6. Did Edwards prove by the greater weight of the evidence that Epstein's institution or continuation of his original civil proceeding against Edwards caused damage to Edwards?

YES _____

NO _____

If the Answer to Question 6 is "YES" proceed to Question 7. If the Answer to Question 6 is "NO," then please date and sign the verdict form and proceed no further.

7. What amount of damage, if any, did Edwards prove, by the greater weight of the evidence, that he suffered as a result of Epstein's institution or continuation of his original civil proceeding against Edwards?

\$ _____

8. Did Edwards prove that punitive damages are warranted as punishment to Epstein for instituting or continuing his original civil proceeding against Edwards and as a deterrent to others from filing a civil proceeding without probable cause?

YES _____

NO _____

YOU HAVE REACHED YOUR VERDICT. PLEASE SIGN AND DATE THIS VERDICT FORM

SO SAY WE ALL, this _____ day of _____, 2018.

FOREPERSON