

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

CASE NO. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

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

Defendants/Counter- Plaintiffs.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION FOR
FEES AND COSTS AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to §768.79 of the *Florida Statutes* and Rule 1.442 of the *Florida Rules of Civil Procedure*, hereby files this Motion requesting that the Court enter an Order of entitlement to costs and attorneys' fees against Defendant/Counter-Plaintiff Bradley Edwards ("Edwards"). In support of thereof, Epstein states as follows:

INTRODUCTION

On August 25, 2011, Epstein served an Offer of Judgment on Edwards in the amount of three hundred thousand dollars (\$300,000.00) pursuant to Rule 1.442 of the *Florida Rules of Civil Procedure* and §768.79 of the *Florida Statutes* (the "Offer"). A true and correct copy of same is attached hereto as "Exhibit A." Edwards failed to accept Epstein's Offer. On January 27, 2014, this Honorable Court granted summary judgment in favor of Epstein on both counts. This Court entered an Order reflecting same on May

19, 2014. A true and correct copy of the Order is attached hereto as "Exhibit B." A Final Judgment has been entered in favor of Epstein against Edwards, and is attached hereto as "Exhibit C." Pursuant to §768.79 of the *Florida Statutes* and Rule 1.442 of the *Florida Rules of Civil Procedure*, Epstein is entitled to recover his reasonable costs and attorneys' fees against Edwards that were incurred from the date of the Offer.

MEMORANDUM OF LAW

A. A Fee and Cost Award is Proper Pursuant to §768.79 of the Florida Statutes.

Section 768.79 of the *Florida Statutes* governs offers of judgment, and provides, in relevant part:

- (1) In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney's fees incurred by him... from the date of filing of the offer if the judgment is one of no liability...

§768.79 FLA. STAT. (2013). In addition to an award of reasonable costs, "[t]he statute creates a mandatory right to attorney's fees when the statutory 'prerequisites have been fulfilled: i.e., (1) when a party has served ...an offer of judgment, and (2) that party has recovered a judgment ...less than the ... offer.'" *Levine v. Harris*, 791 So. 2d 1175, 1177 (Fla. 4th DCA 2001)(citing *Schmidt v. Fortner*, 629 So. 2d 1036,1040 (Fla. 4th DCA 1993)). Likewise, pursuant to this statute, "once an offer of judgment has been made and rejected and a judgment of no liability has been entered, the defendant has a right to an award of attorney's fees unless the offer was found to have been made in bad faith." *Florida Gas Transmission Co. v. Lauderdale Sand & Fill, Inc.*, 813 So. 2d 1013, 1014 (Fla. 4th DCA 2002). Accordingly, if the moving party satisfies the above requisites, the court has very limited discretion to deny attorney's fees and costs.

If the above requisites are satisfied, the court may only deny attorney's fees "if the court determines the qualifying offer was not made in good faith.' Absent a finding that a party's offer of judgment was not made in good faith, the trial court cannot disallow an entitlement to an award of fees." *Downs v. Coastal Sys. Int'l, Inc.*, 972 So. 2d 258, 261 (Fla. 3d DCA 2008) (citing *Vines v. Mathis*, 867 So.2d 548 (Fla. 1st DCA 2004)). *See also McMahan v. Toto*, 311 F.3d 1077,1083 (11th Cir. 2002). An offer of judgment is typically deemed to be a "bad faith" offer when it is a nominal amount in light of the valuation of the case, although many nominal offers have been accepted by the courts as made in good faith. *See Fox v. McCaw Cellular Communications of Florida, Inc.*, 745 So. 2d 330 (Fla. 4th DCA 1998); *Neptune Beach v. Smith*, 740 So. 2d 25, 27 (Fla. 1st DCA 1999).

In the case at hand, Edwards filed a Counterclaim against Epstein for abuse of process and malicious prosecution; a Counterclaim against which Epstein vigorously litigated. Throughout his defense of the Counterclaim, Epstein repeatedly asserted several defenses, including that all allegations contained in Edwards's Counterclaim were barred by the litigation privilege. This Court concluded that both of Edwards's causes of action were barred by the litigation privilege, and entered Summary Judgment in favor of Epstein. Epstein timely, and in complete accordance with §768.79 of the *Florida Statutes*, tendered a good faith Offer of Judgment to Edwards in the sum of three hundred thousand dollars (\$300,000.00); an offer Edwards rejected. Undeniably, this offer was not for a nominal amount. Additionally, this offer cannot be deemed as one made in bad faith, especially in light of the fact that throughout his defense of this action, Epstein maintained that he had no liability to Edwards and that Edwards's actions were barred by,

among other things, the litigation privilege. Accordingly, an award of attorney's fees and costs in favor of Epstein is required under Section 768.79 of the *Florida Statutes*.

B. A Fees and Costs Award is Proper Pursuant to Rule 1.442 of the Florida Rules of Civil Procedure

Rule 1.442 of the *Florida Rules of Civil Procedure* applies to all proposals for settlement authorized by Florida law, and provides, in pertinent part:

- (1) A proposal shall be in writing and shall identify the applicable Florida law under which it is being made.
- (2) A proposal shall: (A) name the party or parties making the proposal and the party or parties to whom the proposal is being made; (B) identify the claim or claims the proposal is attempting to resolve; (C) state with particularity any relevant conditions; (D) state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal; (E) state with particularity the amount proposed to settle a claim for punitive damages, if any; (F) state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim; and (G) include a certificate of service in the form required by Rule 1.080(f).
- (3) A proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal. A joint proposal shall state the amount and terms attributable to each party.

(h) Costs and Fees.

- (1) If a party is entitled to costs and fees pursuant to applicable Florida law, the court may, in its discretion, determine that a proposal was not made in good faith. In such case, the court may disallow an award of costs and attorneys' fees.

FLA.R.CIV.P 1.442 (2013). Under this Rule, which is analogous to §768.79 of the *Florida Statutes*, “[a]bsent a finding that a party's offer of judgment was not made in good faith, the court cannot disallow an entitlement to an award of fees.” *Downs v. Coastal Systems International, Inc.*, 972 So. 2d 258, 261 (Fla. 3d DCA 2008). Here, Epstein served his proposal for settlement in good faith and fulfilled the requisites of Rule 1.442 of the *Florida Rules of Civil Procedure* to create valid and enforceable proposal as a matter of law. Consequently, Epstein is entitled to an award of his fees and costs as permitted thereby.

CONCLUSION

For the reasons stated above, and in reliance upon the law cited herein, Epstein respectfully requests that this Court enter an Order entitling him to an award of costs and fees, retain jurisdiction to determine the amount of costs and fees to which Epstein is entitled pursuant to the above-referenced authorities, and such other and further relief as this Court deems just and proper.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served, via electronic service, to all parties on the attached service list, this June 2, 2014.

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IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION
CASE NO. 502009CA040800XXXXMB-AG
Judge David F. Crow

JEFFREY EPSTEIN,

Plaintiff,

v.

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

Defendants.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S PROPOSAL
FOR SETTLEMENT TO DEFENDANT/COUNTER-PLAINTIFF
BRADLEY J. EDWARDS, INDIVIDUALLY**

Plaintiff/Counter-Defendant, JEFFREY EPSTEIN, by and through undersigned counsel, hereby serves this Proposal for Settlement upon Defendant/Counter-Plaintiff, BRADLEY J. EDWARDS, individually, pursuant to §768.79, Fla. Stat. and Fla. R. Civ. P. 1.442:

1. This Proposal is being made pursuant to §768.79, Fla. Stat. and Fla. R. Civ. P. 1.442.
2. This Proposal is being made on behalf of Plaintiff/Counter-Defendant, JEFFREY EPSTEIN.
3. This Proposal is being made to Defendant/Counter-Plaintiff, BRADLEY J. EDWARDS, individually.
4. This Proposal is directed to, and is intended to resolve, all claims pled or which could have been pled in the instant action (Case No. 502009CA040800XXXXMB-AG) by Plaintiff/Counter-Defendant, JEFFREY EPSTEIN, against Defendant/Counter-Plaintiff, BRADLEY J. EDWARDS, individually, and all claims pled or which could have been pled by Defendant/Counter-Plaintiff, BRADLEY J. EDWARDS, individually, against Plaintiff/Counter-

Defendant, JEFFREY EPSTEIN, in this action, including any and all claims for compensatory damages, interest, attorney's fees, and costs.

5. Plaintiff/Counter-Defendant, JEFFREY EPSTEIN has not pled a claim for punitive damages against Defendant/Counter-Plaintiff, BRADLEY EDWARDS, individually, nor has Defendant/Counter-Plaintiff, BRADLEY EDWARDS, individually, pled a claim for punitive damages against Plaintiff/Counter-Defendant, JEFFREY EPSTEIN, although this Proposal is intended to resolve all such claims if available.

6. Attorney's fees are not part of the legal claims brought by Plaintiff/Counter-Defendant, JEFFREY EPSTEIN, against Defendant/Counter-Plaintiff, BRADLEY EDWARDS, individually, and are not part of the legal claims brought by Defendant/Counter-Plaintiff, BRADLEY EDWARDS, individually, against Plaintiff/Counter-Defendant, JEFFREY EPSTEIN. However, this Proposal is intended to resolve all such claims if available.

7. The total amount of this Proposal is Three Hundred Thousand Dollars and 00/100 (\$300,000.00) to be paid on behalf of Plaintiff/Counter-Defendant, JEFFREY EPSTEIN, to Defendant/Counter-Plaintiff, BRADLEY EDWARDS, individually.

8. The conditions of this Proposal are: (1) that Defendant/Counter-Plaintiff, BRADLEY J. EDWARDS, individually, shall execute and deliver to undersigned counsel the General Release attached hereto as Exhibit "A;" and (2) that Defendant/Counter-Plaintiff BRADLEY J. EDWARDS, individually, shall, by and through his attorney, execute and deliver to undersigned counsel the Stipulation for Dismissal with Prejudice attached hereto as Exhibit "B."

9. This Proposal shall expire in thirty (30) days from its service unless withdrawn in writing prior to that date. Any acceptance of this Proposal must be in writing and must be an acceptance of the entire Proposal as outlined above.

I HEREBY CERTIFY that a true and correct copy of the foregoing was faxed and mailed this 25th day of August, 2011 to Jack Scarola, Esq., Searcy, Denney, Scarola, Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409.


Joseph L. Ackerman, Jr.
Fla. Bar No. 235954

FOWLER WHITE BURNETT, P.A.
Espirito Santo Plaza, Fourteenth Floor
1395 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 789-9200
Facsimile: (305) 789-9201

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GENERAL RELEASE

TO ALL TO WHOM THESE PRESENTS SHALL COME OR MAY CONCERN:

BRADLEY J. EDWARDS, individually, for and in consideration of the sum of Three Hundred Thousand Dollars and 00/100 (\$300,000.00) lawful money of the United States of America, paid to him on behalf of **JEFFREY EPSTEIN**, the receipt whereof is hereby acknowledged, has remised, released, and forever discharged, and by these presents does for himself, as well as his heirs, survivors, executors, administrators, agents, and assigns, remise, release, acquit and forever discharge **JEFFREY EPSTEIN**, as well as his heirs, survivors, executors, administrators, agents, assigns, attorneys, insurers, and reinsurers (hereinafter referred to as "Releasees"), of and from all manner of action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever, in law or in equity, which **BRADLEY J. EDWARDS**, individually, ever had, now has, or may have against **Releasees** or which his heirs, survivors, executors, administrators, agents, and assigns hereafter can, shall or may have against **Releasees**, including but not limited to all claims for compensatory damages, punitive damages, penalties, interest, costs or attorney's fees, past, present and future, and all other damages, without limitation, specifically arising out of that certain incident described more particularly in Defendant/Counter-Plaintiff's Counterclaim filed in the Action entitled *JEFFREY EPSTEIN v. SCOTT ROTHSTEIN, individually, and BRADLEY J. EDWARDS, individually*, Case No. 502009CA040800XXXXMB-AG, pending in the Circuit Court of the 15th Judicial Circuit in and for Palm Beach County, Florida ("the Action").

As further consideration, I agree not to disclose the details of this release in settlement of all claims, including the nature or the amount paid and the reasons for the payment, to any person other than my lawyer, accountant, income tax preparer, or by valid order of a Court of competent

EXHIBIT

A.

jurisdiction whether directly or indirectly. To the extent that I must disclose any of the above information to any of the above named persons, I shall instruct that person or persons to keep the information confidential.

I understand and agree that this settlement is the compromise of a doubtful and disputed claim, and that the payment made is not to be construed as an admission of liability on the part of the party or parties hereby released, and that **Releasees** deny liability therefor and intend merely to avoid litigation and buy peace.

I understand and agree that this General Release shall be construed, enforced and interpreted in accordance with the laws of the State of Florida and venue for any action to enforce or construe the General Release shall be Palm Beach County, Florida.

IN WITNESS WHEREOF, I, _____, have hereunto set

hand and seal on this _____ day of _____, 201____.

Signed, sealed and delivered
in the presence of:

WITNESS

BRADLEY J. EDWARDS

STATE OF FLORIDA }
COUNTY OF _____ }

BEFORE ME, the undersigned authority, personally appeared **BRADLEY J. EDWARDS**, who, upon being first duly sworn according to law, deposes and says that he executed the foregoing **General Release** and that the representations therein are true and correct to the best of his knowledge and belief.

SWORN TO AND SUBSCRIBED before me this _____ day of _____, 20____.

Individual Personally Known _____ OR Produced Identification _____

Type And Number of Identification Produced: _____

My Commission Expires:

(seal)

NOTARY PUBLIC
State of Florida at Large

NOT A CERTIFIED COPY

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION
CASE NO. 502009CA040800XXXXMB-AG
Judge David F. Crow

JEFFREY EPSTEIN,

Plaintiff,

v.

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

Defendants.

STIPULATION FOR DISMISSAL WITH PREJUDICE

COME NOW the parties herein, by and through the undersigned attorneys, and show unto the Court that the parties hereto, Plaintiff/Counter-Defendant, **JEFFREY EPSTEIN**, and Defendant/Counter-Plaintiff, **BRADLEY EDWARDS, individually**, have agreed to amicably settle all claims brought in the above-styled cause.

WHEREFORE, the parties petition this Court for an Order dismissing the claims brought by Plaintiff/Counter-Defendant, **JEFFREY EPSTEIN**, against Defendant/Counter-Plaintiff, **BRADLEY EDWARDS, individually**, and the claims brought by Defendant/Counter-Plaintiff, **BRADLEY EDWARDS, individually**, against Plaintiff/Counter-Defendant, **JEFFREY EPSTEIN**, with prejudice, each party to bear its own costs and attorney's fees. The parties further request that the Court retain jurisdiction over this case for a period of sixty (60) days to enforce the terms of the settlement.

**SEARCY, DENNEY, SCAROLA,
BARNHART & SHIPLEY, P.A.**
2139 Palm Beach Lakes Blvd,

FOWLER WHITE BURNETT, P.A.

Espirito Santo Plaza

EXHIBIT

B.

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Jeffrey Epstein
Fla. Bar No. 235954

NOT A CERTIFIED COPY

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

CIVIL DIVISION: "AG"
CASE NO.: 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

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

Defendants/Counter-Plaintiffs.

**ORDER GRANTING COUNTER-DEFENDANT, JEFFREY EPSTEIN'S
MOTION FOR SUMMARY JUDGMENT**

THIS CAUSE having came before the Court upon Counter-Defendant, Jeffrey Epstein's Motion for Summary Judgment. Having reviewed the law and case file, having heard argument of counsel and being otherwise fully advised in the premises, the Court hereby determines as follows:

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein") filed suit against Defendant/Counter-Plaintiff, Bradley Edwards ("Edwards"). Edwards then filed a counter-claim against Epstein. Epstein subsequently dismissed his Complaint without prejudice. The counter-claim proceeded, undergoing several amendments. As it now stands, the Fourth Amended Counterclaim has two causes of action: abuse of process and malicious prosecution. Epstein moved for summary judgment arguing that the litigation privilege applies to both the abuse of process and malicious prosecution claims. This Court agrees and grants summary judgment in favor of Epstein.

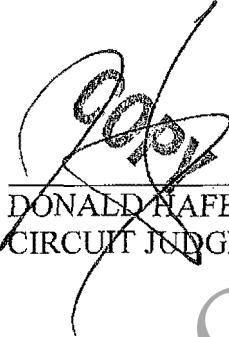
The Court thoroughly reviewed *Levin, Middlebrooks, Moves & Mitchell v. U.S. Fire Ins. Co.*, 639 So. 2d 606, 608 (Fla. 1994), *Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole*, 950 So. 2d 380 (Fla. 2007), and *Wolfe v. Foreman*, 38 Fla. L. Weekly D1540 (July 17, 2013). These cases provide the binding precedent in this area of law. All actions occurring during the course of a judicial proceeding are absolutely privileged, so long as the actions have some relation to the underlying proceeding. *Levin, Middlebrooks, Moves & Mitchell v. U.S. Fire Ins. Co.*, 639 SO. 2d 606, 608 (Fla. 1994). This position was reaffirmed in *Echevarria*. In *Wolfe*, the Third District Court of Appeal, quoting in large part from *Echevarria*, found specifically that the litigation privilege applies to malicious prosecution claims and acts occurring during the course of a judicial proceeding, if those acts bear some relation to the proceeding.

Edwards urged the Court to find that *Olson v. Johnson*, 961 So. 2d 356 (Fla. 2d DCA 2007), is in conflict with *Wolfe*, thereby allowing the Court to find that the privilege does not apply. However, *Olson* is inapplicable, because that case involved false statements made to a police officer prior to the judicial proceeding. The court found that the privilege did not apply, and that the malicious prosecution claim was not barred.

At the hearing on the motion, Edwards conceded that all of the allegations made in both the abuse of process and malicious prosecution claims are of acts occurring during the course of a judicial proceeding and bear some relation to the proceeding. Therefore, the Court finds that the absolute litigation privilege applies to both the abuse of process and malicious prosecution claims made herein. The Court also notes that the cases cited by Edwards involved malicious prosecution claims stemming from actions filed by the party themselves, not counsel. In the instant case, it was conceded that all filings were done by an attorney in good standing with the Florida Bar, rather than by the individual party. Accordingly, it is

ORDERED AND ADJUDGED that Counter-Defendant, Jeffrey Epstein's Motion for Summary Judgment is **GRANTED**.

DONE and ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this 19 day of May 2014.


DONALD NAFELE
CIRCUIT JUDGE

Copies furnished to attached service list

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

CIVIL DIVISION -AG

CASE NO. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

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

Defendants/Counter-Plaintiffs.

FINAL JUDGMENT

Pursuant to the Summary Judgment rendered in this action:

IT IS ADJUDGED that Counter-Plaintiff, BRADLEY J. EDWARDS, 425 N. Andrews Avenue, Suite 2, Ft. Lauderdale, FL 33301 (SS unknown) take nothing by this action and that Counter-Defendant, JEFFREY EPSTEIN, 6100 Red Hook Boulevard, Virgin Islands, shall go hence without day. The court reserves jurisdiction for the taxation of costs and if appropriate, the award of attorney's fees.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this _____
day of _____, 2014.

SIGNED & DATED

MAY 27 2014

JUDGE DONALD W. HAFEL

CIRCUIT COURT JUDGE

Copies furnished to those on the attached service list.

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