

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

JEFFREY EPSTEIN,

Plaintiff and Counter-Defendant,

v.

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

Defendant(s) and Counter-Plaintiff(s).

**ORDER DENYING COUNTER-DEFENDANT'S
MOTION FOR CLARIFICATION/RECONSIDERATION**

THIS CAUSE came before the Court on Plaintiff/Counter-Defendant Jeffrey Epstein's (the "Counter-Defendant") Motion for Clarification/Reconsideration of this Court's Order Dated May 17, 2013, filed on May 28, 2013. This Court, having heard argument on the motion and having carefully reviewed the Counter-Defendant's objections and all applicable legal authority, and being otherwise fully advised in the premises does hereby determine as follows:

BACKGROUND

On March 11, 2013, this Court entered an Order (the "First Discovery Order") requiring the Counter-Defendant to file a detailed privilege log in response to Defendant/Counter-Plaintiff Bradley Edwards' (the "Counter-Plaintiff") Request for Production and Net Worth Interrogatories. The Order stated that the Counter-Defendant was not required to list any documents on the privilege log that he asserted were protected by his constitutional privilege against self-incrimination. The Counter-Defendant responded to this Court's Order by filing a privilege log wherein he asserted a Fifth Amendment privilege against self-incrimination as to essentially every document request and interrogatory, as well as asserting that many documents were protected by attorney-client privilege, accountant-client privilege, trade secret privilege, work product privilege, and third party privacy

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rights.

The Counter-Defendant's Fifth Amendment privilege claims were based upon the assertion that the identification and certification of the existence of certain documents would be self-incriminating. Because of the Counter-Defendant's assertion that he could not identify the requested documents, the Counter-Defendant did not provide to this Court a basis upon which to substantiate his non-constitutional claims of privilege. On April 15, 2013, the Counter-Plaintiff filed his Response to the Counter-Defendant's Objections to the Counter-Plaintiff's Request for Production and Net Worth Interrogatories wherein he requested that this Court require a new privilege log for an *in camera* review to determine whether the Counter-Defendant's non-constitutional claims of privilege were valid.

This Court entered an order on May 17, 2013 (the "Second Discovery Order") requiring the Counter-Defendant to provide to the Court, *in camera*, a privilege log that provided a basis for the Counter-Defendant's asserted privileges. Presently before the Court is the Counter-Defendant's Motion for Clarification/Reconsideration filed in response to the Second Discovery Order on May 28, 2013.

LEGAL ANALYSIS AND RULING

In response to this Court's Second Discovery Order requiring the Counter-Defendant to provide, for an *in camera* review, a privilege log substantiating his claims of attorney-client privilege, accountant-client privilege, trade secret privilege, work product privilege, and third party privacy rights, the Counter-Defendant argues the following: (A) the Counter-Plaintiff has not requested this Court rule on Fifth Amendment privilege and this Court's Second Discovery Order is in conflict with the First Discovery Order, (B) the Court's Second Discovery Order was confusing with respect to interrogatories, and (C) this Court's Second Discovery Order requiring the production of a privilege log will cause the Counter-Defendant to waive his Fifth Amendment privilege against self-incrimination. Accordingly, each of the Counter-Defendant's arguments is considered in turn.

A. The Counter-Plaintiff has not Requested this Court Rule on Fifth Amendment Privilege and this Court's Second Discovery Order is in Conflict with the First Discovery Order.

The Counter-Defendant argues that the Counter-Plaintiff has not objected to the Counter-Defendant's assertion of Fifth Amendment privilege and, as a result, this Court should not require a privilege log substantiating the Counter-Defendant's assertion of Fifth Amendment privilege. The Counter-Defendant also argues that this Court's First Discovery Order, which did not require the Counter-Defendant to create a privilege log for any document he asserted was protected under the Fifth Amendment, conflicts with this Court's Second Discovery Order, which required the Counter-Defendant to file a privilege log with the Court for an *in camera* inspection that substantiated all assertions of privilege.

As discussed in the Second Discovery Order, the Counter-Plaintiff has objected to the Counter-Defendant's assertion of non-constitutional privileges in his Response to Epstein's Objections to Edwards' Request for Production and Net Worth Interrogatories, filed on April 15, 2013. Further, the Counter-Plaintiff has requested that this Court rule on all of the Counter-Defendant's asserted non-constitutional privileges through a motion filed on April 8, 2013. The Counter-Defendant has asserted that he cannot provide a privilege log to substantiate his non-constitutional assertion of privileges because the identification of documents necessary for substantiation would violate his Fifth Amendment privilege against self-incrimination. Therefore, the Counter-Plaintiff has requested, and this Court has ordered, that the Counter-Defendant provide a privilege log to the Court for an *in camera* inspection so that this Court can rule on the Counter-Defendant's assertion of non-constitutional privileges.

B. This Court's Second Discovery Order was Confusing with Respect to Interrogatories.

While this Court's Second Discovery Order contained a brief analysis of the law applicable to the Counter-Defendant's interrogatory objections, which was substantially related to the law relevant to the Counter-Defendant's other objections, the Second Discovery Order contained no

rulings as to interrogatories. This Court will rule on the non-constitutional assertions of privilege by the Counter-Defendant with respect to interrogatories after conducting an *in camera* review.

C. This Court's Second Discovery Order Requiring the Production of a Privilege Log will Cause the Counter-Defendant to Waive his Fifth Amendment Privilege Against Self-Incrimination.

Although the Counter-Defendant argues that this Court's Second Discovery Order will cause the Counter-Defendant to waive his Fifth Amendment privilege against self-incrimination, the Counter-Defendant fails to cite any authority that holds a court-ordered *in camera* review causes an individual to waive Fifth Amendment privilege. In his motion, the Counter-Defendant also fails to address any of the authority cited in the Second Discovery Order that asserts an *in camera* review **does not** cause an individual to waive Fifth Amendment rights, including:

"The court ordered *in camera* review will prevent any privileged materials from disclosure to the State. The review process will also preserve [the respondent's] Fifth Amendment rights of due process and protection against self-incrimination." *Bailey v. State*, 100 So. 3d 213, 219 (Fla. 3d DCA 2012).

"It is the duty of this court to ensure that [Fifth Amendment] protections are held inviolate. We therefore must quash the order and direct the trial court to conduct an *in camera* inspection to prevent any violation of the privilege." *Calzon v. Capital Bank*, 689 So. 2d 279, 281 (Fla. 3d DCA 1995).

"Where a claim of privilege is asserted, the trial court should hold an *in camera* inspection to review the discovery requested and determine whether assertion of the privilege is valid." *Austin v. Barnett Bank*, 472 So. 2d 830, 830 (Fla. 4th DCA 1985) (considering an order to compel in the context of the Florida Rules of Civil Procedure).

"The witness is not exonerated from answering merely because he declares that in so doing he would incriminate himself—his say-so does not of itself establish the hazard of incrimination. It is for the court to say whether his silence is justified." *Hoffman v. United States*, 341 U.S. 479, 486 (1951).

Instead of addressing the above-referenced case law in this Court's Second Discovery Order, the Counter-Defendant cites to a variety of trial court cases that found, as a matter of case-specific

fact, that Fifth Amendment objections to the production of documents were valid. This Court has not ruled on the Counter-Defendant's Fifth Amendment objections. The purpose of this Court's Second Discovery Order was to obtain the necessary information *in camera* so this Court *can* rule. Because the Counter-Plaintiff has expressly limited his own objections to the Counter-Defendant's assertion of non-constitutional claims of privilege, this Court will not rule on the Counter-Defendant's assertion of Fifth Amendment privilege even though many of the requested documents appear to belong to corporations which do not possess Fifth Amendment rights. Accordingly, it is hereby

ORDERED and ADJUDGED that the Counter-Defendant's Motion for Clarification/Reconsideration of this Court's Order Dated May 17, 2013 is **DENIED**. This Court will proceed with the *in camera* review, as previously delineated under the Second Discovery Order, and will rule upon all of the Counter-Defendant's asserted non-constitutional claims of privileges, both for interrogatories and document production, after the *in camera* review is complete.

DONE and ORDERED in Chambers in West Palm Beach, Palm Beach County, Florida this 17th day of June, 2013.



DAVID CROW
CIRCUIT JUDGE

Copies furnished to:
See attached service list.

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