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,

Defendants.
_____/

RESPONSE IN OPPOSITION TO EPSTEIN'S MOTION TO REMOVE CASE FROM TRIAL DOCKET IN ORDER TO COMPLY WITH THE MANDATE SET FORTH IN RULE 1.440

Counter-Plaintiff Edwards, by and through undersigned counsel, hereby files this Response in Opposition to Epstein's Motion to Remove Case from Trial Docket in Order to Comply with the Mandate Set Forth in Rule 1.440, and in support states as follows:

1. As Edwards has argued for months, Epstein has no intention of ever trying this malicious prosecution case. At the eve of every trial date, Epstein files a host of motions in an effort to avoid answering to a jury for his malicious lawsuit against Edwards.

2. In his latest attempt to continue that trial, Epstein misrepresents the remaining claims by using the term "Action" without defining what he is referring to. As can be seen from the record, however, there are two separate and independent Actions involving different parties and different claims, and it is undisputable that Edwards' action against Epstein for Malicious Prosecution, to which Rothstein is not a party, is at issue.

Action #1 – Epstein v. Rothstein (Second Amended Complaint)

3. First, Epstein has a claim for Conspiracy to Commit Abuse of Process against Scott Rothstein. That claim is pled in the Second Amended Complaint, which was filed on August 21, 2011.

4. Edwards, however, is not a party to that case as Epstein voluntarily dismissed Edwards from the Second Amended Complaint on August 16, 2012.[1] That point alone nullifies Epstein's entire argument that Edwards' Motion to Set Case for Trial was not ripe. Rule 1.440(b), on which Epstein relies, unequivocally states that only a **party** may notice an action for trial:

> *Thereafter, any **party** may file and serve a notice that the action is at issue and ready to be set for trial . . .*

5. As a non-party to the Second Amended Complaint, Edwards clearly had no ability to notice Epstein's case against Rothstein for trial, and he never attempted to do so. Epstein, however, has conceded that his action against Rothstein may not be set for trial given, *inter alia*, the Motion for Default Against Rothstein that was filed yesterday. Thus, if Epstein would like to try his action against Rothstein (assuming Epstein has finally figured out what case he is actually pursuing against that uncollectible defendant in federal prison), he apparently has a lot of work left to do, including demonstrating that the Second Amended Complaint and this latest Motion for Default were properly served on Rothstein and that Rothstein was given opportunity to respond.

6. Edwards, however, has no dog in that fight because he is not a party to the Second Amended Complaint.

[1] Among other reasons, Epstein's voluntary dismissal of Edwards resulted in a "bona fide termination" of Action #1 in Edwards' favor, a necessary element for Edwards' independent malicious prosecution claim in Action #2.

Action #2 – Edwards v. Epstein (Fourth Amended Counterclaim)

7. The second action pending is a claim for Malicious Prosecution filed by Edwards against Epstein. That claim is pled in the Fourth Amended Counterclaim, filed on January 9, 2013, after Edwards was dismissed from Action #1. Rothstein is not a party to this separate action.

8. There is no question that Edwards' Malicious Prosecution claim against Epstein has been properly set for trial. Epstein does not even attempt to argue otherwise in his spurious motion.

9. The case law cited by Epstein is also factually distinguishable for the simple reason that all of the claims or counterclaims in those cases involved the same parties that were involved in the underlying complaint.

10. For example, in Gawker Media, LLC v. Bollea, 170 So. 3d 125 (Fla. 2d DCA 2015), the case primarily relied upon by Epstein, the plaintiff, Bollea, sued multiple defendants, one of whom, Blogwire, contested Florida's long arm-jurisdiction over it. After an initial unsuccessful attempt to sever the claims against Blogwire and go forward with a trial on his claims against the remaining defendants, Bolllea dismissed his claims against Blogwire with prejudice. He then filed an amended complaint seeking punitive damages against the remaining defendants and requested that the trial court reset the case for trial. Although none of the remaining defendants had answered the amended complaint, the trial court set the case for trial. The defendants then sought a writ of mandamus in the appellate court, which granted the petition on the basis that the trial court's order setting the trial before the defendants answered the amended complaint violated Rule 1.440's requirement of a minimum of 50 days between service of the last pleading and commencement of trial.

11. Gawker is simply inapplicable here. The Fourth Amended Counterclaim is an independent action filed ***after*** Edwards was dismissed from Action #1 (a necessary element to the Malicious Prosecution claim). The pleadings in Action #2, the Malicious Prosecution claim, have been closed for years, and it is undisputed that the case is at issue. Edwards is simply no longer a party to Action #1, having been dismissed from that Action long ago. Contending that Edwards could notice Action #1 for trial is equivalent to saying that defendant Blogwire in the Gawker case could have noticed the case there for trial after having been dismissed from the case. Therefore, Action #2 is more akin to a crossclaim, which is exempt from Rule 1.440.

12. In any event, given that Edwards is actually a ***party*** to the Fourth Amended Counterclaim, he properly moved to notice that cause for trial. The Court granted that motion and entered its Order Specially Setting Trial on July 20, 2017. The parties to Action #2, Edwards and Epstein, have proceeded under that valid Order for months and are ready to try Edwards' Malicious Prosecution claim against Epstein. The fact that Epstein has failed to pursue his claim against Rothstein in Action #1 is, to be blunt, irrelevant.

Epstein's Counsel Continues to Knowingly Inject Privileged Materials into the Public Record

13. Edwards asks the Court to direct its attention to page 7 of Epstein's Motion to Remove Case from Trial Docket, in which Epstein's counsel again references privileged e-mail correspondence listed on Edwards' 2011 Privilege Log. Both Mr. Link and Ms. Rockenbach have been notified repeatedly that they are in possession of privileged materials listed on Edwards' 2011 Privilege Log. Both have ignored requests to turn over or destroy that information. And it appears that they will continue to use these privileged materials without regard for their ethical obligations not to do so.

14. Contemporaneous with this filing Edwards will be filing a Response in Opposition to Epstein's Motion for Court to Declare Relevance, et al, in which Epstein's counsel once again cites to privileged materials despite being on notice that these communications are on Edwards' 2011 privilege log and were never produced in this case. As the Court will see, Epstein's counsel has "jumped the shark" and are claiming to have evidence that Brad Edwards (as well as other RRA attorneys and certain other individuals) were in fact knowingly involved in Rothstein's Ponzi scheme. What the F.B.I and Justice Department missed in their years' long investigation into Rothstein's criminal enterprise, and their review of every aspect of RRA's internal documents and servers, Epstein and his counsel have possessed for years (without explanation as to how they obtained it), overlooked (without explanation as to how or why) for years, and have now found days before the scheduled start of trial.

15. Obviously, Epstein's ploy is a desperate attempt to avoid what is clearly the case: that he lacked probable cause to either institute or continue the underlying proceeding against Edwards. But Epstein will not admit his wrongdoing and is once again attempting to drag Brad Edwards' name and reputation through the mud, and this time wants to drag many others in as well.

16. Epstein and his counsel, however, benefit (so far) from Florida's absolute litigation privilege, which prevents Edwards and the other victims from pursuing an independent tort claim for actions that occur in this proceeding. So, although the litigation privilege dooms Epstein on probable cause, it provides cover for his ridiculous and embarrassing claim to have found proof that Edwards (and apparently a host of others) were actually involved in Rothstein's Ponzi scheme.

Conclusion

For the foregoing reasons, Epstein's attempt to once again continue the Malicious Prosecution Action should be denied.

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 6th day of March, 2018.

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