

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.

**ORDER DENYING PLAINTIFF/COUNTER-DEFENDANT'S MOTION TO AMEND
ANSWER AND AFFIRMATIVE DEFENSES TO THE FOURTH AMENDED
COUNTERCLAIM**

THIS CAUSE having come to be considered upon Plaintiff/Counter-Defendant's Motion to Amend Answer and Affirmative Defenses to the Fourth Amended Counterclaim, and the Court, having reviewed the file, considered the arguments of counsel, and being fully advised in the premises, it is hereby ORDERED and ADJUDGED that the motion is DENIED for the reasons stated on the record and summarized as follows:

1. The proposed Fifth Affirmative Defense is inapplicable to a claim for malicious prosecution. The *Noerr-Pennington* doctrine relied upon by Counter-Defendant Epstein is inapplicable to this case. Leave to amend to add the proposed Fifth Affirmative Defense is therefore denied on grounds of futility.
2. The proposed Sixth Affirmative Defense is inapplicable based upon the United States Supreme Court's decision in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). Leave

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to amend to add the proposed Sixth Affirmative Defense is therefore denied on grounds of futility.

3. The proposed Seventh Affirmative Defense is also inapplicable based upon the United States Supreme Court's decision in *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974). Furthermore, the proposed Seventh Affirmative Defense is not an affirmative defense, as it does not constitute a confession and avoidance as required by Florida law. Leave to amend to add the proposed Seventh Affirmative Defense is therefore denied on grounds of futility.
4. The proposed Eighth Affirmative Defense is not an affirmative defense, as it does not constitute a confession and avoidance as required by Florida law. To the extent it was a legally sufficient affirmative defense, it concerns defamation and not malicious prosecution. Leave to amend to add the proposed Eighth Affirmative Defense is therefore denied on grounds of futility.
5. The proposed Ninth Affirmative Defense is not an affirmative defense, as it does not constitute a confession and avoidance as required by Florida law. Leave to amend to add the proposed Ninth Affirmative Defense is therefore denied on grounds of futility. The Court further notes that where punitive damages are sought, due process of law is guaranteed through existing Florida law on that issue.

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6. _____

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DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida, this 19
day of Dec 2017.

THE HONORABLE DONALD W. HAFELE
CIRCUIT COURT JUDGE

Copies have been furnished to all counsel on the attached counsel list.

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