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 RESPONSE IN OPPOSITION TO DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS' MOTION IN LIMINE TO LIMIT THE INTRODUCTION OF EVIDENCE ALLEGED TO SUPPORT EPSTEIN'S CLAIMS AGAINST EDWARDS

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein") responds in opposition to the Motion filed by Defendant/Counter-Plaintiff Bradley Edwards ("Edwards") to Limit Introduction of Evidence alleged to support Epstein's claims against Edwards, and states:

INTRODUCTION

Edwards has argued repeatedly that evidence Epstein discovered after filing suit should not be allowed at trial because it does not support what Epstein knew at the time he filed his Complaint. This argument forgets that Edwards has disputed Epstein's probable cause for the continuation of the action through its dismissal in 2012. Furthermore, a party can obtain evidence through subsequent discovery that supports the party's probable cause. No party must have "all the evidence" at the time he files his lawsuit in order to defend against a claim of malicious prosecution. That simply is not the legal standard. Finally, Edwards—not Epstein—has the burden of proof in this case, and Edwards has had more than sufficient time in the eight years of this

pending litigation in which to discover evidence that would satisfy his heavy burden. If Edwards is concerned with the evidence being presented to a jury, he has the choice of dismissing his lawsuit but not hiding the truth.

ARGUMENT

Edwards contends that evidence unknown to Epstein at the time he filed suit against Edwards on December 7, 2009, could not possibly have supported probable cause for such prosecution. (Mot. at ¶ 2). Also, for the first time, Edwards arbitrarily picks March 17, 2010—the date of Epstein's deposition—as "the cut-off for any information Epstein's counsel can allege that their client relied upon in either instituting or continuing the lawsuit against Edwards, since the deposition is the only possible source of testimony from the absent party, and because Epstein effectively precluded discovery into the probable cause issue through his assertions of privilege." (Mot. at ¶ 4). These arguments are meritless.

To prevail in a malicious prosecution action, a plaintiff must establish the following elements:

> (1) **an original . . . civil judicial proceeding** against the present plaintiff **was commenced *or* continued**; (2) the present defendant was the legal cause of the original proceeding against the present plaintiff as the defendant in the original proceeding; (3) the termination of the original proceeding constituted a bona fide termination of that proceeding in favor of the present plaintiff; (4) **there was an absence of probable cause for the original proceeding**; (5) there was malice on the part of the present defendant; and (6) the plaintiff suffered damage as a result of the original proceeding.

Alamo Rent–A–Car, Inc. v. Mancusi, 632 So. 2d 1352, 1355 (Fla. 1994) (emphasis added). "[A] balancing of the various interests involved has appropriately resulted in imposing a **particularly heavy burden of proof** upon an individual claiming malicious prosecution." *Burns v. GCC Beverages, Inc.*, 502 So. 2d 1217, 1219 (Fla. 1986) (emphasis added).

Clearly, evidence discovered by Epstein during his continuation of the suit against Edwards - and even during his defense of the malicious prosecution action – is relevant to counter Edwards' allegations that Epstein did not have probable cause to *continue* his action against Edwards. Otherwise, what would be the role of a defense? Simply because Epstein has invoked the Fifth Amendment does not mean he cannot serve interrogatories, requests for production, and take depositions. There is nothing in the United States Constitution, as Edwards would apparently like this Court to insert, that states a citizen who invokes his Fifth Amendment right to remain silent cannot defend through discovery against a civil malicious prosecution action.

Therefore, evidence uncovered after Epstein's March 17, 2010 deposition, as Epstein did is easily relevant to support Epstein's basis and probable cause belief for his original civil proceeding and continuation of same. Edwards had an opportunity to re-depose Epstein on the probable cause issue at Epstein's January 25, 2012, deposition, but failed to do so. Indeed, in the *eight years* since this lawsuit has been pending, Edwards has ample opportunity to discover evidence with which to satisfy his heavy burden of proof.

Lastly, Edwards contends that because Epstein has failed to raise the advice of counsel defense, he should be barred from introducing any deposition testimony or interrogatory answers to which he invokes attorney-client privilege. The Fifth Amendment does not provide Edwards' proposed handcuffs on a defendant's right to defend a civil action. Edwards argues the reason for precluding this evidence "is simple: by invoking attorney-client privilege to questions regarding what Epstein relied upon to support probable cause to institute and continue the civil proceeding against Edwards, Epstein implies that his lawyers provided information to support a finding of probable cause." (Mot. at ¶ 7). Not true. Epstein is a party and the party, not the attorneys, propounds discovery. The party, whether he invokes the Fifth Amendment or not, is the one seeking and obtaining discovery relevant to his defense!

Contrary to Edwards' assertion, the privilege invoked by Epstein in the discovery responses at issue was not attorney-client, but the privilege(s) against self-incrimination and right to counsel guaranteed by the Fifth, Sixth and Fourteenth Amendments of the United States Constitution. (*See generally* Ex. A to Edwards' Motion). As such, Epstein's responses do not imply in any way that his lawyers provided information to support a finding of probable cause.

In short, Edwards' arguments fail and should be rejected. Accordingly, Epstein respectfully requests that the Court deny Edwards' requested relief.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on March 7, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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