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

Case: 50 2009 CA 040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendants,

_____/

MOTION FOR A STAY OF SUBPOENA PENDING RULING ON PREVIOUSLY-FILED MOTION FOR SUMMARY JUDGMENT, FOR A PROTECTIVE ORDER, AND FOR SCHEDULING ORDER ON CREATING A PRIVILEGE LOG

Defendant, Bradley J. Edwards, Esq., pursuant to Rule 1.280(c), Florida Rules of Civil Procedure, hereby moves for protection from an abusive subpoena issued by plaintiff Jeffrey Epstein through this Court and served on him and on bankruptcy trustee Herb Stettin.

Epstein has served a subpoena on Edwards and Stettin that will require Edwards to review more than 70,000 pages of materials to identify responsive documents and to assert appropriate privileges. Moreover, Epstein has contrived to have issues regarding this Court's subpoena litigated in the Bankruptcy Court for the Southern District of Florida through the happenstance that possession of the documents (records of a law firm) rests in the hands of Stettin. Epstein apparently contemplates that the bankruptcy court will make rulings on privilege issues that properly should be made by this Court.

Epstein's maneuvers threaten to burden both this Court and the bankruptcy court with making duplicative, potentially conflicting, and likely unnecessary rulings. Accordingly,

Edwards asks this Court to stay enforcement of *its* subpoenas for a brief period of time to permit this Court to first rule on the pending motion for summary judgment on all of Epstein's claims that have been filed by Edwards. If any of Epstein's claims somehow survive the pending summary judgment motion, then this Court could rule on the proper scope of the subpoena and any privilege or other issues which remain to be litigated. Edwards proposes a schedule to rapidly bring these issues to resolution and urges the Court to adopt it. Edwards also requests a protective order, narrowing the scope of the production requests made by Epstein and requiring billionaire Epstein to pay all reasonable costs associated with responding to his discovery requests.

BACKGROUND FACTS

As this court is well aware from a summary judgment motion filed by Edwards, Plaintiff Jeffrey Epstein (a convicted sex offender) has sued legal counsel Bradley J. Edwards, Esq., for conduct that occurred in the course of Edwards' representation of multiple young female victims of Epstein's sexual abuse. Edwards filed and pursued civil lawsuits against Epstein to recover damages for Epstein's extensive pattern of molestations. In retaliation and to try and intimidate Edwards and his young clients, Epstein brought this lawsuit in this court alleging that Edwards had somehow fabricated and/or exaggerated the claims. Edwards has now filed a comprehensive motion for summary judgment against Epstein, detailing how he is entitled to judgment on each and every one of Epstein's frivolous claims.

Epstein has yet to file any response to Edwards' comprehensive summary judgment motion. Nonetheless, he continues to harass Edwards through discovery requests connected with this case. In particular, on April 12, 2010, Epstein propounded an extremely broad Request for

Production (RFP) to Edwards. *See* Exhibit "A." Containing some 27 different requested items, the RFP seeks all sorts of electronically stored information, including a raft of internal emails between Edwards and other attorneys, paralegals, expert witnesses, investigators, and others who worked on the civil lawsuits against Epstein. On May 11, 2010, Edwards duly responded to the request for production. Through his legal counsel, Edwards noted that many of the requests sought attorney-client or work-product privileged information and others were overly broad and unduly burdensome. *See* Exhibit "B."

While Edwards was raising his objections to the subpoena lodged against him, Epstein duplicated his requests by serving a separate subpoena for the same information. On April 16, 2010, four days after making the requests to Edwards – without waiting for his responses to the requests, much less a court ruling on Edwards' objections – Epstein served a subpoena duces tecum for documents on bankruptcy court-appointed trustee, Herb Stettin.

A bit of background may be helpful here. Mr. Stettin never represented any of the underage females who had been sexually abused by Epstein. Instead, Mr. Stettin has possession of certain records related to this case – and many more entirely unrelated to this case – because he was court-appointed as bankruptcy trustee for the now-defunct law firm of Rothstein Rosenfeldt Adler (RRA). Edwards had a brief connection to RRA. For a short period of time during his representation of his young clients, Edwards was employed by RRA. It was then revealed that the law firm president, Scott Rothstein, had been running a criminal Ponzi scheme out of the law firm. Shortly after learning of the fraud, Edwards left RRA. Later, RRA declared bankruptcy and the bankruptcy court appointed Herb Stettin trustee of the estate of RRA, charging him with handling financial claims regarding the assets of the firm. RRA's electronic

database, including all electronically stored files and emails, were left in the possession of Stettin. Because Stettin was not involved in the sexual abuse litigation against Epstein, he does not have detailed knowledge of the persons or subjects discussed in the various e-mails and other records.

On June 28, 2010, a hearing was set before this court on Epstein's Motion to Compel the Trustee to produce the documents responsive to Epstein's subpoena. On that date, Stettin's counsel, Edwards' counsel, and counsel for Epstein all met in the hallway outside the courtroom and worked out an agreed resolution to the dispute. All counsel agreed that Stettin would turn over to Edwards's counsel all documents responsive to the subpoena and that Edwards' counsel would then prepare a privilege log and produce all documents that are not subject to objection or privilege. At that point, Epstein could pursue any further arguments that he wanted in this Court regarding materials not produced. As a result of the agreement, the Court never held the hearing on the Motion to Compel. Epstein's counsel agreed to draft a proposed consent order for all the parties.

Despite the agreement between the parties, Epstein's counsel never prepared that agreed order. Instead, Epstein decided to launch litigation in yet another forum – the United States Bankruptcy Court for the Southern District of Florida. On July 14, 2010, Epstein filed a Motion to Compel production of numerous documents from Trustee Stettin in the bankruptcy proceeding being overseen by the bankruptcy court (Judge Raymond Ray). *See* Jeffrey Epstein's Motion to Compel Production of Documents from Trustee Pursuant to Document Production Protocol Established by DE #672, *In re: Rothstein Rosenfeldt Adler*, Case No. 09-34791-BKC-RBR (DE 807) (attached as Exhibit "C"). In his motion, Epstein recounted that he had served a subpoena

on the trustee. *See id.* at 2. Epstein did not inform the bankruptcy court, however, that he was seeking the same information from Edwards and that Edwards had raised claims of privilege. Nor did Epstein mention that he had previously filed a motion to compel before this Court. Instead, Epstein claimed to the bankruptcy court that "[p]roduction of these documents from the Trustee is critical to issues in the state court lawsuit. Without access to the emails in question, Movant will suffer unfair prejudice and will be unable to obtain information critical to his lawsuit." *Id.* at 3. Epstein also stated that he was "willing to reimburse the Estate for its reasonable expenses incurred in reviewing the documents for privileged matters and preparing a Privilege Log." *Id.* at 4.

In response, on July 19, 2010, Edwards filed a Motion for Protective Order (DE 818) (Exhibit "D") and an amended Motion for Protective Order (DE 819) (Exhibit "E.") to restrict this production so that privileged or other non-discoverable material was not produced. A hearing was held on that Motion and on August 13, 2010, the bankruptcy court entered an Order that appointed as Special Master former Broward County Circuit Judge Robert Carney to take all materials responsive to the subpoena from Stettin and to prepare a privilege log (DE 888) (Exhibit "F").

Special Master Carney did take possession of the materials; however, after reviewing the materials he immediately realized that there were obvious problems if he (the Special Master) prepared a privilege log. Specifically, lacking familiarity with the sexual abuse litigation, the Special Master had no way to determine which materials were relevant and of those relevant materials, which were privileged. Moreover, the privileges were not the Special Master's to assert or waive. Rather, the attorney-client privilege and other privileges were held by clients of

Edwards and Edwards himself. As a result of these problems, on September 20, 2010, Special Master Carney filed a Motion to Clarify Order Appointing Special Master (DE 1013). (Exhibit "G."

On September 27, 2010, Edwards then filed another Motion for Protective Order (DE 1022) (attached as Exhibit "H"). In that motion, Edwards explained that "Epstein asks this [Bankruptcy] Court to usurp the properly exercised jurisdiction of the Circuit Court over a subpoena *duces tecum* issued by the state court in connection with an action pending before the state court." *Id.* at 1. Edwards further noted that he had previously objected to this information being turned over in state court and that this was Epstein's "attempt to backdoor his way into obtaining information to which he is not entitled." *Id.* at 4.

On October 10, 2010, the bankruptcy court entered an amended order modifying the production procedures and the role of the Special Master (DE 1068) (attached as Exhibit "I"). In this Amended Order Respecting Production of Documents Regarding Jeffrey Epstein, the bankruptcy court directed the Trustee to produce all of the materials in question to Edwards' law firm – Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman. Farmer, Jaffe was then directed to produce a privilege log of all materials. The privilege log was to be provided to the Special Master. The Special Master was, in turn, to "schedule a hearing . . . where all parties in interest will have the opportunity to provide written submissions respecting the privilege log and to make argument on all issues relevant to the applicability of privilege as to the documents listed on the Farmer Jaffe privilege log. That hearing shall be transcribed by a court reporter." *Id.* at 3. Then, "[f]ollowing completion of the aforementioned hearing, the Special Master shall prepare a report making all appropriate findings and recommendations to the Court, which shall be served on all

parties in interest and filed with the Court, along with the transcript of the Special Master's hearing. . . . If an objection to the report is filed by any party in interest, then this Court shall schedule and hold a hearing to resolve with finality the issues of privilege as consistent with the appropriate law and procedures set forth herein." *Id.*

Following the entry of this order, Trustee's counsel delivered several disks containing more than 70,000 pages of materials to Farmer Jaffe. Some of these materials are e-mails from the RRA computers and other materials are electronically stored case files containing pleadings, discovery, correspondence between counsel and other case related materials. While some of these materials are connected with the Epstein litigation, many of them are not. Most of the materials do not appear to be responsive to the Epstein subpoena originally served.

On November 2, 2010, Edwards filed a motion in bankruptcy court requesting relief from the Amended Order. *See* Motion for Relief from Amended Order [DE1068] and to Compel Jeffrey Epstein to Pay for the Production of all Documents in Response to His Request (DE 1120) (Attached as Exhibit "J"). It was then also discovered that the disks provided to Edwards were not identical to those provided to Special Master Carney and a meeting was set up between Special Master Carney and Edwards to compare the disks and get the correct disks in Edwards' hands to begin review of the materials. As a result, on November 10, 2010, Special Master Carney met with Edwards. The disk problem was sorted out, and Edwards was then provided the same materials that Special Master Carney had, from which Edwards was ordered pursuant to DE 1068 to begin preparing a privilege log.

During the meeting with Special Master Carney, it became apparent that the result of Edwards's creation of a privilege log and his anticipated objections to the production of

irrelevant and privileged materials was on a path for a hearing ultimately before the bankruptcy court ruling on the scope of this Court's subpoena and possible restrictions from it.

DISCUSSION

THIS COURT, RATHER THAN THE BANKRUPTCY COURT, IS THE PROPER FORUM FOR LITIGATING THE SCOPE OF SUBPOENAS SERVED IN THIS CASE.

As is apparent from the foregoing recitation of the facts, Epstein has taken his meritless retaliatory lawsuit against Edwards into a different court – the bankruptcy court – and then sought to have rulings on the application of privileges in this Court's case made by that court. This backdoor approach is not proper, as the issues surrounding *this Court's subpoenas* belong before this Court for several reasons.

First and foremost, Epstein is now deploying his retaliatory lawsuit to burden Edwards and other lawyers at his firm with requests to review tens of thousands of pages of documents for privilege claims and other discovery issues. Because the Trustee has produced what amounts to every single piece of paper that even remotely relates to an Epstein case rather than just those documents responsive to the subpoena, Edwards is now forced to review more than 70,000 documents to create a privilege log.

While it might be appropriate to force the attorneys to review some portion of those documents if a viable lawsuit were at hand, Epstein's lawsuit is entirely meritless. As explained at length in Edwards' pending motion for summary judgment, Epstein's case should be summarily rejected for three separate reasons: First, under the well-established "sword and shield" doctrine, Epstein cannot assert a Fifth Amendment privilege to deny access to relevant discovery about his lawsuit while simultaneous trying to force Edwards to pay damages. Second, because Epstein has repeatedly taken the Fifth when asked numerous relevant questions

about his lawsuit, no reasonable jury could find in his favor. And third and most fundamentally, Epstein's lawsuit completely lacks any factual basis whatsoever and does not even make an attempt at alleging a viable damage theory.

If the Court were to agree with Edwards and grant his summary judgment motion on any of these three separate grounds, then it seems likely that the entire discovery dispute surrounding Epstein's subpoenas to Edwards and the trustee would be considerably narrowed or perhaps even eliminated entirely.[1] It makes no sense that extensive satellite litigation is on-going in the bankruptcy court about subpoenas in Epstein's case when Epstein's case itself is meritless and malicious. Of course, the bankruptcy court has to assume that Epstein's case has merit – as it is bound to recognize a presumptively valid subpoena that Epstein has issued through this Court. Only this Court can rule on the lack of merit to Epstein's case and then narrow or eliminate this separate litigation about the subpoenas.

Second, even assuming *arguendo* that Epstein's case could survive the pending summary judgment motion, the bankruptcy court is simply not the proper forum for determining privilege claims in this case. Without in any way challenging the legal acumen of the bankruptcy court, the ultimate issues of privilege in this case must be decided by this Court. Whatever the bankruptcy court may conclude about certain privilege arguments in the context of discovery, this Court will have to ultimately rule on those privilege claims at trial. It makes no sense to have two different judges taking time to rule on the same issues. Rather, one court should make one binding ruling one time on the privilege issues. The only court that can issue a final ruling

[1] Even if the Court grants summary judgment for Edwards, this case will continue before this Court on Edwards' counterclaim against Epstein.

controlling at trial is this Court. Therefore, this Court should rule on the discovery issues as well.

Third, only this Court can fairly evaluate Edwards' claims regarding the scope of the subpoenas. Epstein has issued through this Court extremely broad subpoenas which are unduly burdensome on Edwards and his law firm. Yet the bankruptcy court does not have authority to grant relief from those subpoenas – only this Court can do that. Under rule 1.280(c) of the Florida Rules of Civil Procedure, the trial judge may limit or prohibit discovery "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense." As explained in *Rasmussen v. South Florida Blood Service, Inc.*, 500 So.2d 533, 535 (Fla. 1987), under this rule trial judges possess "broad discretion" to restrict discovery. But that discretion rests in the "trial court," *id.*, which obviously is familiar with the litigation pending before it. The bankruptcy court cannot exercise discretion to restrict this Court's subpoenas.

Finally, the bankruptcy court simply lacks jurisdiction to rule regarding privilege issues that have arisen in this Court's case. It is well settled that the bankruptcy court's jurisdiction is limited to "(1) cases under title 11 ...;(2) 'core' bankruptcy proceedings that either 'arise under' the Bankruptcy Code or 'arise in' a case under the Code, or (3) cases in which all interested parties 'consent' to the bankruptcy court having jurisdiction to enter a final order in a matter that is 'related to' a case under the Bankruptcy Code." *In re Ray*, --- F.3d ---, 2010 WL 4160135at * 4 (9th Cir. 2010) (internal quotations omitted). Ruling on privilege claims from a subpoena issued by this Court in a tort suit filed by Epstein (who is not a party to the bankruptcy proceeding) against Edwards (who is likewise not a party to the bankruptcy proceeding) does not

fall within any of these grants of jurisdiction to the bankruptcy court and therefore Epstein's proposed procedure is without jurisdictional foundation.

THIS COURT SHOULD ENTER A PROTECTIVE ORDER AND ESTABLISH A SCHEDULE FOR RESOLVING THE PENDING SUMMARY JUDGMENT MOTION AND THEN ANY SURVIVING PRIVILEGE ISSUES.

While Edwards could file a jurisdictional objection to the bankruptcy court ruling on this issue, he does not want to spawn further litigation that could delay a resolution of the privilege issues. Instead, Edwards proposes that this Court simply assert jurisdiction over *its* subpoena and the litigation that has arisen from it. The subpoena to Edwards and to the trustee that Epstein has propounded were issued on the authority of this Court. Accordingly, it is indisputable that this Court can simply withdraw or stay enforcement of *its* subpoena, thereby simply consolidating the litigation surrounding its subpoena into this Court. This Court could then make binding rulings on both the merits (or lack thereof) of Epstein's lawsuit and any surviving privilege issues concerning the subpoenas.

Edwards therefore respectfully proposes that the Court take the following actions:

1. Hold its scheduled hearing on Edwards' summary motion on January 5, 2011. The Court shall then rule on whether any of Epstein's claims survive Edwards' summary judgment motion. After making those rulings, the Court should then rule on whether Epstein's subpoenas should be quashed in light of its rulings. If the Court concludes that parts of the subpoenas remain viable, then the Court could rule on any remaining claims of privilege or other objections that have not been mooted by its summary judgment rulings.

2. Stay further enforcement of its subpoenas to the trustee and to Edwards pending further rulings by this Court on the merits of Epstein's underlying lawsuit and any privilege or other issues that Edwards might raise to the subpoenas.

3. Direct Edwards to prepare a privilege log regarding documents that are actually responsive to the subpoenas. Such privilege log shall be prepared within 30 days following this Court's ruling on Edwards' pending summary judgment motion assuming any claim by Epstein survives. At that time, Edwards shall also produce to Epstein any documents that are responsive to the subpoenas to Edwards and to the trustee and for which there is no privilege or other objection to production (i.e., vagueness in the subpoena or not reasonably calculated to lead to discovery of admissible evidence).

4. Epstein shall then file any objections to claim of privilege or other objections within 15 days following Edwards' response.

5. Edwards shall file any response to Epstein within 10 days following receipt of the objections.

In addition, it is clear that there is an imbalance of financial resources between billionaire Jeffrey Epstein and the parties on whom he is serving subpoenas. This Court possesses the authority to "direct[] the requesting party to pay the costs and expenses of providing discovery." PHILIP J. PADOVANO, FLORIDA CIVIL PRACTICE, § 10.3 at 354 (2007-08 edition) (*citing CBS, Inc. v. Jackson*, 578 So.2d 698 (Fla. 1991); *Mt. Sinai Med. Ctr., Inc. v. Perez-Torbay*, 555 So.2d 1300 (Fla. 3d DCA 1990)). Given the vast sums available to Epstein to pursue his meritless litigation, he should be directed to pay to Farmer, Jaffe and Stettin all costs associated with responding to

his discovery requests, including reasonable costs of attorney's time and any copying or other expenses.

Because proceedings are on-going in the bankruptcy court regarding these issues, Edwards is simultaneously giving notice to the bankruptcy court, the trustee, and the Special Master that this pleading is being filed and providing a copy of this pleading to each of them.

CONCLUSION

This Court should stay further enforcement of its subpoena to Edwards and to the trustee Stettin pending further ruling on the pending summary judgment motion regarding Epstein's lawsuit. This Court should also enter a protective order narrowing the scope of Epstein's requests and requiring Epstein to pay all reasonable expenses associated with responding to his requests. This Court should then grant Edwards' pending summary judgment motion against Epstein, and then rule on any surviving privilege or other issues concerning Epstein's subpoenas.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Fax and U.S. Mail to all Counsel on the attached list, this 30th day of November, 2010.

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