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

CIVIL DIVISION AG
CASE NO. 502009CA040800XXXXMB
Judge David F. Crow

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiffs.

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PLAINTIFF JEFFREY EPSTEIN'S REPLY TO EDWARDS' RESPONSE IN OPPOSITION TO JEFFREY EPSTEIN'S MOTION FOR PROTECTIVE ORDER RELATING TO HIS DEPOSITION AND MOTION TO TERMINATE DEPOSITION

Plaintiff, Jeffrey Epstein ("Epstein"), hereby offers the following reply to Edwards' Response in Opposition to Epstein's Motion for a Protective Order to prevent Defendant, Bradley J. Edwards ("Edwards"), from inquiring into certain areas at the second deposition of Plaintiff, and to terminate the deposition of the Plaintiff for the reasons set forth below:

ARGUMENT

I. NO UNFETTERED DISCOVERY

This Court has already ruled that discovery will not be permitted into sexual conduct. Edwards contends, however, that he is entitled to take "broad discovery" of Epstein, including inquiring about *any* aspect of Epstein's sex life at any time and place in part because Epstein charges him with making "'unfounded and highly charged sexual allegations" in the underlying litigation. (Resp. at 2, quoting Corrected Second Amended Complaint at 2.) Edwards has

misread the operative allegations of the Corrected Second Amended Complaint. The quoted language appears solely in the Introduction to the Complaint, and does not form the basis of any operative allegations against Edwards for abuse of process. *See* ¶¶¶30-32. Accordingly, Epstein's allegations against Edwards for abuse of process do not open the door to full-scale discovery regarding the basis for the allegations in the underlying litigation.

It is axiomatic that Edwards is not entitled to any discovery that is not reasonably related to the allegations in the Corrected Second Amended Complaint, and has not shown that the unlimited discovery that he seeks is reasonably related to the allegations of that pleading. The Corrected Second Amended Complaint itself does not raise the panoply of sexual issues that Edwards seeks to explore in detail at Epstein's deposition. Rather, the pleading raises the narrow issue of whether certain discovery was undertaken by Edwards in good faith with respect to Epstein's pilots and acquaintances, Epstein's health care and financial records, and whether Edwards acted in good faith in filing a motion to freeze Epstein's asserts. Epstein's specific claims against Edwards do not give Edwards carte blanche to inquire into any and all sexual conduct and related matters. Nor do the L.M., E.W. and Jane Doe cases that Edwards filed – which settled – open the door to such expansive and entirely irrelevant discovery, or give Edwards the right to ask Epstein about all of the factual allegations in those lawsuits, or seek the identity of other potential witnesses to support those allegations. Whether or not Epstein may be liable as alleged in L.M., E.W. and Jane Doe is simply not at issue in the pending abuse of process lawsuit against Edwards. He can lose, settle, or win the underlying litigation. The result or ultimate truth is irrelevant. *Blue v. Weinstein* 381 So.2d 308 (Fla. 3 DCA 1980) (abuse of

process does not require as one of its essential elements a termination of the action in favor of the person against which process was issued.).

Any evidence that Edwards seeks to obtain after the fact from Epstein regarding the L.M., E.W. and Jane Doe allegations cannot be used to bootstrap an argument that Edwards is not liable for abuse of process.

Although Edwards attempts to make much of the fact that he was not at RRA for very long, and that he had filed the L.M., E.W. and Jane Doe cases while he was still a sole practitioner, the fact remains that the alleged abuse of process was not in the initial filing of those lawsuits, but in the discovery and filing of the federal complaint after he joined RRA.

II. L.M.

Edwards incorrectly asserts that Epstein claims abuse of process in connection with Edwards' *filing* of the L.M. case in state court. The Corrected Second Amended Complaint alleges that after filing the state court action on behalf of L.M., Edwards filed the 234-page federal L.M. Complaint while the state L.M. action was still pending. (*See* ¶30a-b.) Thus, Epstein does not allege that the filing of the state L.M. action itself was an abuse of process, but rather that the filing of the subsequent federal action with highly-charged, salacious allegations which were absent in the state case, with a huge damage claim far exceeding that of the state case, with no attempt to prosecute the federal action, constitutes an abuse of process. Accordingly, it is not proper to ask Epstein about the truth of the allegations when he has not placed them in issue.

Evidence that the federal L.M. Complaint was shown to investors and was never served on Epstein supports allegations that the federal L.M. Complaint was not filed for a legitimate reason or in good faith. Nevertheless, Edwards contends that he is entitled to depose Epstein not only about whether the allegations in the L.M. lawsuits are true, but also about *any* sexual activities by Epstein. This contention is flatly wrong. Paragraphs 30-32 of the Corrected Second Amended Complaint allege that Edwards filed (and did not serve[1]) the *federal* L.M. action for an ulterior purpose after proceeding with the *state* L.M. action. Thus, the critical issue is not whether the allegations in L.M. are true, but whether Edwards had a good faith basis for filing the federal action and never serving it while at the same time continuing to prosecute the state L.M. action.[2] Questions by Edwards regarding a sexual addiction or the solicitation of minors in various cities will *not* lead to the discovery of admissible evidence about whether *Edwards* had a reasonable basis to file, but not serve, the 156-count federal L.M. action that was shown to potential investors. The allegations in the Corrected Second Amended Complaint do *not permit* Edwards to engage in open-ended interrogation of Epstein on any and all sexual matters because such discovery will not lead to the discovery of admissible evidence regarding the specific abuse of process claims in the Corrected Second Amended Complaint.

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[1] Epstein did not discover the federal complaint had been filed but not served until almost a year later, at which time his lawyers took action to have it dismissed.

[2] Contrary to Edwards' contention, Epstein does not allege abuse of process in connection with the filing of the state court L.M. action, but, rather, the subsequent filing of federal 156-count L.M. action

III. RICO

There is no merit to Edwards' contention that he is entitled to ask *anything* about Epstein's sexual activities to refute Epstein's allegations that Edwards' RICO claims were without merit. The fact of the matter is that the RICO claims were dismissed in the underlying action. In light of those dismissals, Edwards has no right to pursue evidence from Epstein *after the fact* to justify the filing of the RICO claims.

IV. DISCOVERY

Edwards argues that to refute the allegation that he had no legitimate purpose in asking Epstein's pilots about sexual activities on Epstein's aircraft, he should be permitted to now ask Epstein "whether he was sexually abusing young girls on Epstein's airplane." (Resp. at 11) His argument is flatly wrong, as demonstrated by the fact that Edwards did not ask the pilots anything about his clients, which is Epstein's point about the abuse of process. Moreover, for purposes of the pending litigation, the issue is not whether Epstein engaged in such conduct. Rather, the relevant inquiry is whether at the time of the pilots' depositions, Edwards had a legitimate right to ask inflammatory questions unrelated to the claims of Edwards' clients. Edwards' questioning of Epstein is not probative of that issue.

In addition, there was no reason to subpoena the high-profile individuals for deposition because there were no allegations by Edwards' clients that they were with any of these individuals. Equally untenable is Edwards' claim about Virginia Roberts because the newspaper accounts of her activities post-date Edwards' alleged abuse of process claims. Moreover,

Virginia Roberts' "news" account is not referenced in the complaint or any sworn testimony, and is rank irrelevant hearsay.

V. EDWARDS' MOTION TO FREEZE ASSETS

The Federal District Court ruled that Edwards' motion to freeze Epstein's assets was unfounded, *see* ¶32(10), so there is no need for any testimony from Epstein regarding this non-issue. Moreover, Epstein's state of mind and whether he began to transfer assets is not probative of whether Edwards had a good faith basis, *at the time* he filed the motion.

VI. PUNITIVE DAMAGES

It seems Edwards is attempting to justify this unlimited discovery regarding sexual conduct for a claim of punitive damages he wants to make in this case, but has not succeeded in obtaining leave of court to do so. There is no logic in the argument that Epstein's alleged conduct with women allows Edwards to make a claim for punitive damages in his own behalf. Epstein's abuse of process claim does not challenge the punitive damage claims made by the victims against Epstein. Any discovery now into that same area is harassing. Edwards had whatever ability the Court allowed at that time to establish his claim.

VII. EDWARDS' COUNTERCLAIM

Finally, in a patently desperate move, Edwards argues that Epstein and his counsel know that Epstein's claims against Edwards are without merit and were filed to seek revenge against Edwards. The Court has already dismissed Edwards' counterclaims for abuse of process and malicious prosecution once. The new Counterclaim, which is virtually identical to the one

dismissed,[3] does not permit Edwards to pursue the unfettered discovery that he seeks or to obtain sanctions against Epstein. At best, the Court should stay this discovery pending Edwards stating a claim that withstands a motion to dismiss, as this Court has done with Epstein. *See Feigin v. Hospital Staffing Services, Inc.*, 569 So.2d 941 (Fla. 4 DCA 1990); *Capco Properties, LLC v. Monterey Gardens of Pinecrest Condominium,* 982 So.2d 1211, 1215 (Fla. 3 DCA 2008).

VIII. NO SANCTIONS

Edwards seeks to hold Epstein in indirect civil contempt and have a 90-day jail sentence imposed, with the sentence suspended upon the condition that a compensatory fine is paid and the deposition is timely concluded. No sanctions, let alone the sanction of indirect civil contempt, may be levied against Epstein because Epstein has not violated a court order or engaged in any contumacious conduct demonstrated by Edwards. *Johnson v. Bednar*, 573 So. 2d 822 (Fla. 1991) (civil contempt is used to coerce an offending party into complying with a court order rather than to punish the offending party for a failure to comply with a court order). Epstein did not violate any order regarding his deposition. He appeared for his deposition, answered some questions, asserted the Fifth Amendment on others, and then properly sought relief as authorized by Fla. R. Civ. P. 1.310.[4] *See Tubero v. Ellis*, 472 So. 2d 548 (Fla. 4th DCA 1985) (holding that the trial court erred in finding appellant in contempt without ever ruling on the appellant's motion to terminate or limit the deposition). The charge of contempt by Edwards is spurious.

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[3] The hearing on Epstein's Motion to Dismiss is scheduled for 3/26/2012.

[4] The Court is respectfully advised that Plaintiff is not available for a deposition until April 2, 2012.

In sum, Plaintiff respectfully requests that the Court grant his Motion for a Protective Order and deny Edwards' Motion to Compel and Impose Sanctions.

Respectfully submitted,

Joseph L. Ackerman, Jr.
Florida Bar No. 235954
FOWLER WHITE BURNETT, P.A.
901 Phillips Point West
777 South Flagler Drive
West Palm Beach, Florida 33401
Telephone: (561) 802-9044
Facsimile: (561) 802-9976
and
Christopher E. Knight
Florida Bar. No. 607363
FOWLER WHITE BURNETT, P.A.
Espirito Santo Plaza, 14th Floor
1395 Brickell Avenue
Miami, Florida 33131
Telephone: (305) 789-9200
Facsimile: (305) 789-9201
Attorneys for Plaintiff Jeffrey Epstein

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail and U.S. Mail on this 9th day of February, 2012 to: Jack Scarola, Esq., Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409; Jack Alan Goldberger, Esq., Atterbury, Goldberger & Weiss, P.A., 250 Australian Ave. South, Suite 1400, West Palm Beach, FL 33401-5012; and Marc S. Nurik, Esq., Law Offices of Marc S. Nurik, One East Broward Blvd., Suite 700, Fort Lauderdale, FL 33301.

Joseph L. Ackerman, Jr.