UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 08-80119-CIV-MARRA

JANE DOE, et al.,

Plaintiffs,

vs.

JEFFREY EPSTEIN,

Defendant.

WEST PALM BEACH, FLORIDA

JUNE 12, 2009

TRANSCRIPT OF MOTION HEARING
BEFORE THE HONORABLE KENNETH A. MARRA,
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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THE COURT: That's not my concern. So, again, I just want to make sure that if the cases go forward and if Mr. Epstein defends the case as someone ordinarily would defend a case that's being prosecuted against him or her, that that in and of itself is not going to cause him to be subject to criminal prosecution.

MR. JOSEFSBERG: I agree, Your Honor.

THE COURT: Any other plaintiff's counsel want to chime in?

MR. WILLITS: Richard Willits on behalf of C.M.A.. I would join, to weigh in on what Mr. Josefsberg said.

MR. JOSEFSBERG: Your Honor, I could not hear.

THE COURT: We'll get him to a microphone. Mr. Willits is speaking.

MR. WILLITS: On behalf of my client, C.M.A., we join in what Mr. Josefsberg said, and we also want to point out something to the Court.

First, we want to make a representation to the Court, we have no intention of complaining to the U.S. Attorney's Office, never had that intention, don't have that intention in the future, but, of course, subject to what occurs in the future.

I want to point out to the Court that Mr. Epstein went into this situation with his eyes wide open, represented by counsel, knowing that civil suits had to be coming. If he

didn't know it, his lawyers knew it.

He appears to be having second thoughts now about he could have negotiated this way or he could have negotiated that way with the U.S. Attorney's Office. And they want to impose their second thoughts on the innocent plaintiffs. We don't think that's fair. We think it's in the nature of invited error, if there was any error whatsoever.

Thank you.

THE COURT: You agree he should be able to take the ordinary steps that a defendant in a civil action can take and not be concerned about having to be prosecuted?

MR. WILLITS: Of course. And we say the same thing Mr. Josefsberg said. It's all subject to your rulings and the direction of this Court as to what is proper and what is not proper. And we're prepared to abide by the rulings of this Court, and we have no intention of running to the State's Attorney.

THE COURT: The U.S. Attorney?

MR. WILLITS: I'm sorry. The U.S. Attorney.

THE COURT: Mr. Garcia.

MR. GARCIA: Thank you, Your Honor.

If I may briefly, I think perhaps defense counsel forgot about this, but on pages 17 and 19 of my memorandum of law in opposition to the motion to dismiss, I did make reference to the non-prosecution agreement, and I did say that

the contesting of the jurisdiction of this Court was a potential breach of the non-prosecution agreement.

So my client happens to have, and they have filed with the Court a copy of her state court complaint, given the fact that the non-prosecution agreement limits the non-contesting of jurisdiction to claims exclusively brought under the federal statute.

I'm going to go ahead and withdraw those contentions on pages 17 and 19 of my memo of law because it doesn't apply to my case. So to the extent that I raised this issue with defense counsel and the Court, I'm going to withdraw that aspect of it.

THE COURT: Can you file something in writing on that point with the Court?

MR. GARCIA: Yes.

THE COURT: What do you say about this issue that we're here on today?

MR. GARCIA: I think that the problem that I have with it is that this non-prosecution agreement is being used by defense counsel for the exact opposite purpose that it was intended. My perception of this thing, and I wasn't around, is that Mr. Epstein essentially bought his way out of a criminal prosecution, which is wonderful for the victims in a way, and wonderful for him, too.

Now he's trying to use the non-prosecution agreement

as a shield against the plaintiffs that he was supposed to make restitution for.

And, certainly, he can take my client's depo. He's done extensive discovery in the state court case -- very intrusive, I might add. And we don't care, because we can win this case with the prosecution agreement or without the prosecution agreement. We are ready to go forward.

THE COURT: You're not going to assert to the United States Government that what he's doing in defending the case is a violation for which he should be further prosecuted?

MR. GARCIA: Absolutely not.

THE COURT: Anyone else for the plaintiffs?

MR. HOROWITZ: Judge, Adam Horowitz, counsel for plaintiffs Jane Doe 2 through 7.

I just wanted to address a point that I think you've articulated it. I just want to make sure it's crystal clear, which is that we can't paint a broad brush for all of the cases.

The provision relating to Mr. Epstein being unable to contest liability pertains only to those plaintiffs who have chosen as their sole remedy the federal statute. My clients, Jane Doe 2 through 7, have elected to bring additional causes of action, and it's for that reason we were silent when you said does anyone here find Mr. Epstein to be in breach of the non-prosecution agreement. That provision, as we understand

it, it doesn't relate to our clients.

THE COURT: Okay. But, again, you're in agreement with everyone else so far that's spoken on behalf of a plaintiff that defending the case in the normal course of conducting discovery and filing motions would not be a breach?

MR. HOROWITZ: Subject to your rulings, of course, yes.

THE COURT: Thank you.

Anyone else have anything to say from the plaintiffs?

Ms. Villafana, if you would be so kind as to maybe help us out. I appreciate the fact that you're here, and I know you're not a party to these cases and under no obligation to respond to my inquiries. But as I indicated, it would be helpful for me to understand the Government's position.

MS. VILLAFANA: Thank you, Your Honor. And we, of course, are always happy to try to help the Court as much as possible. But we are not a party to any of these lawsuits, and in some ways we are at a disadvantage because we don't have access. My access is limited to what's on Pacer. So I don't really know what positions Mr. Epstein may have taken either in correspondence or in discovery responses that aren't filed in the case file.

But your first order was really just what do you think about a stay, and then the second order related to this hearing and asked a much more specific question, which is whether we

believe that Mr. Epstein's defense was a breach of the agreement.

And I've tried to review as many of the pleadings as possible. As you know, they're extremely voluminous. And I haven't been through all of them. But we do believe that there has been a breach in the filing that Mr. Josefsberg referred to, and contrary to Mr. Critton, we do understand that we have an obligation to provide notice, and we are providing notice to Mr. Epstein today.

The pleading that we found to be in breach -- the non-prosecution agreement, sought to do one thing, which was to place the victims in the same position they would have been if Mr. Epstein had been convicted of the federal offenses for which he was investigated.

And that if he had been federally prosecuted and convicted, the victims would have been entitled to restitution, regardless of how long ago the crimes were committed, regardless of how old they were at the time, and how old they are today, or at the time of the conviction.

And it also would have made them eligible for damages under 2255.

And so our idea was, our hope was that we could set up a system that would allow these victims to get that restitution without having to go through what civil litigation will expose them to.

You have a number of girls who were very hesitant about even speaking to authorities about this because of the trauma that they have suffered and about the embarrassment that they were afraid would be brought upon themselves and upon their families.

So we did through the non-prosecution agreement tried to protect their rights while also protecting their privacy. So, pursuant to the non-prosecution agreement -- on the other hand, we weren't trying to hand them a jackpot or a key to a bank. It was solely to sort of put them in that same position.

So we developed this language that said if -- that provided for an attorney to represent them. Most of the victims, as you know from the pleadings, come from not wealthy circumstances, may not have known any attorneys who would be in a position to help them.

So we went through the Special Master procedure that resulted in the appointment of Mr. Josefsberg, and the goal was that they would be able to try to negotiate with Mr. Epstein for a fair amount of restitution/damages. And if Mr. Epstein took the position, which apparently he has, which is that the $50,000 or $150,000 floor under 2255 also would be a cap. That if they were to proceed to file suit in Federal Court to get fair damages under 2255, Mr. Epstein would admit liability, but he, of course, could fight the damages portion, which means that, of course, he would be entitled to depositions; of

course, he would be entitled to take discovery, and we don't believe that any of that violates the non-prosecution agreement.

The issue with the pleading that he filed, the motion to dismiss the case, I believe it's Jane Doe 101, represented by Mr. Josefsberg, is that that is a case that was filed exclusively under 18 U.S.C., Section 2255. She met that requirement. Mr. Epstein is moving to dismiss it, not on the basis of damages, he is saying that he cannot be held liable under 2255 because he was not convicted of an offense.

The reason why he was not convicted of an offense is because he entered into the non-prosecution agreement. So that we do believe is a breach.

The issue really that was raised in the motion to stay and that I addressed in our response to the motion to stay is that Mr. Epstein's -- Mr. Epstein wants to stay the litigation in order to leave, in order to sort of attack the cases of the victims whether they are fully within the non-prosecution or not, non-prosecution agreement or not, and leave the Government without a remedy if he does, in fact, breach those terms. And that is why we opposed the stay.

THE COURT: I'm not sure what you mean by that last statement.

MS. VILLAFANA: Well, because this issue related to the motion to dismiss on Mr. Josefsberg's client came up after

we had filed that response. And what we said in the response to the motion to stay is that the reason why he wants to stay the litigation is so that the non-prosecution agreement terminates based on a period of time, as he puts it. And then afterwards he would be able to come in here and make all of these arguments that clearly violate the non-prosecution agreement but we would be without remedy.

THE COURT: But you're not taking the position that other than possibly doing something in litigation which is a violation of an express provision of the non-prosecution agreement, any other discovery, motion practice, investigations that someone would ordinarily do in the course of defending a civil case would constitute a violation of the agreement?

MS. VILLAFANA: No, Your Honor. I mean, civil litigation is civil litigation, and being able to take discovery is part of what civil litigation is about. And while there may be, for example, if someone were to try to subpoena the Government, we would obviously resist under statutory reasons, all that sort of stuff. But, no, Mr. Epstein is entitled to take the deposition of a plaintiff and to subpoena records, etc.

THE COURT: And even if he seeks discovery from a Government agency, you have the right to resist it under the rules of procedure but that would not constitute a violation, again unless there's a provision in the prosecution agreement