

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' REQUEST FOR JUDICIAL NOTICE**

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), responds in opposition to the Request for Judicial Notice Pursuant to Florida Statutes Section 90.202 and 90.203 dated December 4, 2017 [D.E. 1104] filed by Defendant/Counter-Plaintiff, Bradley Edwards ("Edwards").

BACKGROUND

In support of his malicious prosecution Counterclaim, Edwards has identified as witnesses multiple women who filed civil tort claims against Epstein. [D.E. 1042.] These women include the three clients he represented plus other alleged victims. Neither Edwards' three clients nor the other women are parties to this litigation. Allowing any introduction or discussion of the other, unrelated lawsuits would create twenty-five mini-trials and result in a month-long trial in this case.

The Court, in an effort to keep this trial from turning into a circus, has already ruled that Edwards is limited at trial to discussing his three clients' (EW, LM and Jane Doe) claims. Specifically, the Court's January 16, 2018, Order provides:

[T]he parties may speak generally about the number of claims that Epstein was facing at the time he initiated, and during his continuance, of this proceeding against Edwards. The details, the merits and what may have been discovered in cases against Epstein which were not prosecuted by Edwards will not be admissible into evidence, subject to the Court's reconsideration at trial as the evidence is presented. (12/7/17 Tr. 4:25-5:24.) Edwards, however, will be permitted to discuss generally, without testifying about any specific case or claim, his leadership role in coordinating the prosecution of all of the claims. (12/7/17 Tr. 6:1-24.)

[D.E. 1147.] Epstein respects this Court's ruling, but preserves his objection that even these are irrelevant and will unduly confuse the jury and prejudice Epstein's right to a trial on the issues in *this* malicious prosecution action.

On December 4, 2017, before the Court's rulings, Edwards filed a Request for Judicial Notice asking the Court to take notice of twenty-five court actions. Only five of those actions involved Edwards' three clients as follows:

6. and 16. *Jane Doe No. 2 v. Jeffrey Epstein, Consolidated* Action, United States District Court, Southern District of Florida, Case No. 08-CV-80119 [as to Edwards' representation only]
13. *E.W. v. Jeffrey Epstein*, 15th Judicial Circuit Court, Palm Beach County, Case No. 50-2008-CA-028058-XXXXMB AD
15. *Jane Doe v. Jeffrey Epstein*, United States District Court, Southern District of Florida, Case No. 08-CV-80893
24. *L.M. v. Jeffrey Epstein*, 15th Judicial Circuit, Palm Beach County, Case No. 50-2008-CA-028051-XXXXMB
25. *L.M. v. Jeffrey Epstein*, United States District Court, Southern District of Florida, Case No. 09-CV-81092

ARGUMENT

Preserving his prior objections on the grounds of relevance and unfair prejudice, Epstein respects this Court's prior ruling that Edwards will be permitted to introduce some evidence relating to his three clients' cases. Based on the Court's December 7, 2017, ruling, Epstein understands the Court will likely take judicial notice of the five cases in which Edwards' three clients were involved (Nos. 6, 13, 15, 16 (duplicate), 24 and 25). However, Epstein opposes any reference, judicial notice, and admissibility of any other matter identified on Edwards' December 4, 2017, Request for Judicial Notice. [D.E. 1104.] The litany of twenty-five cases serves only to prejudice the jury and inflame or confuse them from the issues in this action.

Any mention of or use of information from cases of alleged victims who Edwards did not represent is absolutely improper, as such evidence has no bearing on the malicious prosecution Counterclaim and is unfairly prejudicial. *Honeywell Intern., Inc. v. Guilder*, 23 So. 3d 867 (Fla. 3rd DCA 2009); *Long Term Care Found., Inc. v. Martin*, 778 So. 2d 1100, 1102-03 (Fla. 5th DCA 2001) (allegations in a different lawsuit against defendant were not relevant and were highly prejudicial since "under section 90.403, Florida Statutes, any relevance the complaint might have had was outweighed by the unfair prejudice against the [defendant]"). "It is inconsistent with the notions of fair trial for the state to force a defendant to resurrect a prior defense against a crime for which the defendant is not on trial." *Jacobs v. Atl. Coast Ref., Inc.*, 165 So. 3d 714 (Fla. 4th DCA 2015) (finding that "because the prior case was settled, none of the allegations therein were proven").

As seen from Edwards' Request for Judicial Notice [D.E. 1104], it is apparent that he intends to use as much information from other cases as possible solely to impermissibly inflame the jury and appeal to the jury's emotions, or solely to prove bad character. *See Wright v. State*,

19 So. 3d 277 (Fla. 2009); *Byrd v. BT Foods, Inc.*, 26 So. 3d 600 (Fla. 4th DCA 2009). “If the introduction of the evidence tends in actual operation to produce a confusion in the minds of the jurors in excess of the legitimate probative effect of such evidence, if it tends to obscure rather than illuminate the true issue before the jury then such evidence should be excluded.” *City of Miami v. Calandro*, 376 So. 2d 271, 272 (Fla. 3d DCA 1979) (citing *Perper v. Edell*, 44 So. 2d 78 (Fla. 1949)); see also *Agrofollajes, SA v. El Du Pont De Nemours & Co.*, 48 So. 3d 976 (Fla. 3d DCA 2010) (probative value outweighed by prejudicial effect when evidence improperly becomes focus of trial).

A trial court’s discretion in determining the relevancy of evidence “is limited by the rules of evidence and applicable case law.” *Thigpen v. United Parcel Servs., Inc.*, 990 So. 2d 639, 645 (Fla. 4th DCA 2008) (citing *Johnson v. State*, 863 So. 2d 271, 278 (Fla. 2003)); *Hayes v. Wal-Mart Stores, Inc.*, 933 So. 2d 124, 126 (Fla. 4th DCA 2006); *DeVille v. State*, 917 So. 2d 1058, 1059 (Fla. 4th DCA 2006); *Dixon v. State*, 911 So. 2d 1260, 1262 (Fla. 4th DCA 2005); *Reed v. State*, 883 So. 2d 387, 389 (Fla. 4th DCA 2004). “Relevant evidence is inadmissible if its probative value is substantially outweighed by the danger of unfair prejudice.” § 90.403, Fla. Stat.

Here, as the Court has already ruled, these extrinsic and wholly unrelated cases are not relevant to the malicious prosecution Counterclaim against Epstein. Rather, these cases unduly prejudice Epstein and would only result in confusion or an attempt to mislead the jury into believing these cases had some relevance to this action.

CONCLUSION

Epstein respectfully requests that this Court deny Edwards' Request for Judicial Notice. If this Court remains consistent in allowing Edwards to introduce the cases involving his three clients, then the cases identified at Nos. 6, 13, 15, 16 (duplicate), 24 and 25 are the only ones pertaining to Edwards' clients.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on January 24, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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