

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

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

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

Defendants/Counter-Plaintiffs.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION TO
FILE AN AMENDMENT TO HIS ANSWER AND AFFIRMATIVE DEFENSES
TO DEFENDANT/COUNTER-PLAINTIFF'S FOURTH AMENDED
COUNTERCLAIM**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.190 of the *Florida Rules of Civil Procedure*, hereby moves this Honorable Court to permit the filing of the accompanying Amended Answer and Affirmative Defenses to Edwards's Fourth Amended Counterclaim to conform with the evidence. In support of this Motion, Epstein states:

Rule 1.190(a) of the *Florida Rules of Civil Procedure* governs amendments to pleadings, and provides, in relevant part, that "[l]eave of court shall be given freely when justice so requires." Fla. R.Civ. P. 1.190(a) (2013). Here, Epstein specifically reserved the right to amend his affirmative defenses when he filed his Answer and Affirmative Defenses to Edwards's Fourth Amended Counterclaim. Here, justice requires the amendment of Epstein's Affirmative Defenses because, if properly established, the

additional affirmative defense provides an absolute defense to at least one of the causes of action Edwards has asserted against Epstein. *See Royal Trust Bank, N.A. v. Von Zamft*, 511 So. 2d 654 (Fla. 3d DCA 1987). Consequently, Epstein should be permitted to amend his pleadings.

Furthermore, this amendment to Epstein's affirmative defenses will cause no prejudice to Edwards because Edwards has already sought discovery on this defense. Rule 1.190(b) of the *Florida Rules of Civil Procedure* provides that "[w]hen issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Fla. R.Civ. P. 1.190(b) (2013). *See also Anglo American Auto Auctions, Inc. v. Tuminello*, 732 So. 2d 1218, 1221 (Fla. 5th DCA 1999). The crucial consideration for the court is the test of prejudice. *New River Yachting Center v. Bacchiocchi*, 407 So. 2d 607, 609 (Fla. 4th DCA 1981), *rev. denied*, 415 So.2d 1360 (Fla.1982); Fla. R.Civ. P. 1.190(b). Leave to amend should not be denied unless the privilege has been abused or the pleading is clearly not amendable. *Osborne v. Delta Maintenance and Welding*, 365 So. 2d 425 (Fla. 2nd DCA 1978). This determination should be governed by a policy favoring resolution of cases on their merits, unless the privilege of amendment has abused. *Enstrom v. Dixon*, 354 So. 2d 1251 (Fla. 4th DCA 1978) (holding that "[i]t is the policy in this State to freely allow amendments to pleadings in order that causes may be tried on their merits and justice may be achieved. In exercising the discretion inherent in the trial court to allow or disallow amendments, all doubts should be resolved in favor of the former unless the privilege be abused."). As such, Epstein's pleading should be amended to conform with the evidence.

Here, Edwards's recently filed discovery request, in which he is seeking

information relating to advice of counsel, arguably constitutes implied consent to the litigation of this issue as contemplated by Rule 1.190(b). As such, the pleadings should confirm with the evidence that will be created through this discovery, as “the court may allow the pleadings to be amended to conform with the evidence and shall do so freely when the merits of the cause are more effectually presented thereby and the objecting party fails to satisfy the court that the admission of such evidence will prejudice the objecting party in maintaining an action or defense upon the merits.” *Trans World Marine Corp. v. Threlkeld*, 201 So. 2d 614 (Fla. 3d DCA 1967); FLA. R.CIV. P. 1.190(b) (2013).

WHEREFORE Plaintiff/Counter-Defendant Jeffrey Epstein seeks leave to file the proposed Amendment to his Answer and Affirmative Defenses to Edwards’s Fourth Amended Counterclaim as attached hereto.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served, via electronic service, to all parties on the attached service list, this September 11, 2013.

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JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendants.

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

CASE NO. 502009CA040800XXXXMBAG

JUDGE: CROW

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S AMENDED ANSWER
AND AFFIRMATIVE DEFENSES TO DEFENDANT/COUNTER-PLAINTIFF
BRADLEY EDWARDS'S FOURTH AMENDED COUNTERCLAIM**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.110 of the *Florida Rules of Civil Procedure*, hereby files this Amended Answer and Affirmative Defenses to Defendant/Counter-Plaintiff Bradley Edwards's ("Edwards") Fourth Amended Counterclaim ("Counterclaim"), and states:

1. Epstein admits that the Counterclaim alleges an amount within the jurisdictional purview of the Court, but denies that Edwards is entitled to said amount.

2. Epstein is without knowledge as to Edwards's residential status, but admits that he is an attorney licensed to practice law in the State of Florida.

3. Epstein admits that he is *sui juris*, but denies that he is a resident of Palm Beach County, Florida.

4. Epstein admits that he entered into a plea agreement that resulted in a felony conviction. Epstein further admits that the terms and conditions of the agreement speak for themselves. To the extent that Edwards has inaccurately summarized or interpreted any provision thereof in Paragraph 4 of his Counterclaim, Epstein denies the allegations.

5. Epstein admits that he was a party to civil actions brought forth by purported victims, but is without knowledge as to any further investigation by federal law enforcement, or Edwards's relationship with any other purported victims and therefore denies these allegations and demands strict proof thereof.

6. Epstein admits that, during certain times throughout the litigation, he asserted his rights against self-incrimination as afforded to him by the Fifth Amendment to the United States Constitution. Epstein denies the remaining allegations contained in Paragraph 6 and demands strict proof thereof.

7. Epstein denies Paragraph 7, except for the allegation therein stating that Edwards is involved in pending litigation in Federal Court under the Federal Crime Victims' Right's Act.

8. Epstein denies each and every allegation contained in Paragraph 8 and demands strict proof thereof.

9. Epstein denies each and every allegation contained in Paragraph 9 and demands strict proof thereof.

10. Epstein denies each and every allegation contained in Paragraph 10 and demands strict proof thereof.

11. Epstein admits that some of the causes of action filed by him against Edwards are delineated in Paragraph 11 and its subparts. To the extent that Edwards has inaccurately summarized or interpreted any provision thereof in Paragraph 11 of his Counterclaim, Epstein denies the allegations.¹

12. Epstein admits that in one of his Complaints he alleged some of the causes of action against Edwards as specifically stated in Paragraph 11 and its subparts, but denies that he has

¹ Edwards fails to attach a copy of Epstein's Complaint or even reference the version of the Complaint to which he refers in this allegation.

ever asserted a cause of action for Civil Theft against Edwards as alleged in Paragraph 12. To the extent that Edwards has inaccurately summarized or interpreted any provision of Epstein's "Complaint" in Paragraph 12 of his Counterclaim,² Epstein denies the allegations. Epstein further denies the remaining allegations contained in Paragraph 12 and demands strict proof thereof.

13. Epstein denies each and every allegation contained in Paragraph 13 and its subparts and demands strict proof thereof. With respect to subsection (d) of Paragraph 13, Epstein further denies that Edwards's actions were afforded absolute protection under the litigation privilege. *See Delmonico v Traynor*, 38 FLW S 106 (February 14, 2013).

14. Epstein denies each and every allegation contained in Paragraph 14 and demands strict proof thereof.

15. Epstein denies each and every allegation contained in Paragraph 15 and demands strict proof thereof.

16. Epstein denies each and every allegation contained in Paragraph 16 and demands strict proof thereof.

17. Epstein denies each and every allegation and claim for damages that is contained in Paragraph 17, including its subparts, and demands strict proof thereof.

Epstein denies that Edwards is entitled to any demand made in his "WHEREFORE" clause, including any assertion of alleged Punitive Damages.

18. Epstein admits that the Counterclaim alleges an amount within the jurisdictional purview of the Court, but denies that Edwards is entitled to said amount.

² Edwards fails to attach a copy of Epstein's Complaint or even reference the version of the Complaint to which he refers in this allegation.

19. Epstein is without knowledge as to Edwards' residential status, but admits that he is an attorney licensed to practice law in the State of Florida.

20. Epstein admits that he is *sui juris*, but denies that he is a resident of Palm Beach County, Florida.

21. Epstein admits that he entered into a plea agreement that resulted in a felony conviction. Epstein further admits that the terms and conditions of the agreement speak for themselves. To the extent that Edwards has inaccurately summarized or interpreted any provision thereof in Paragraph 21 of his Counterclaim, Epstein denies the allegations.

22. Epstein admits that he was a party to civil actions brought forth by purported victims, but is without knowledge as to any further investigation by federal law enforcement, or Edwards's relationship with any other purported victims and therefore denies these allegations and demands strict proof thereof.

23. Epstein admits that, during certain times throughout the litigation, he asserted his rights against self-incrimination as afforded to him by the Fifth Amendment to the United States Constitution. Epstein denies the remaining allegations contained in Paragraph 23 and demands strict proof thereof.

24. Epstein denies each and every allegation contained in Paragraph 24 and demands strict proof thereof.

25. Epstein denies each and every allegation contained in Paragraph 25 and demands strict proof thereof.

26. Epstein denies each and every allegation contained in Paragraph 26 and demands strict proof thereof.

27. Epstein admits that some of the claims initially filed by him against Edwards are delineated in Paragraph 27 and its subparts. To the extent that Edwards has inaccurately summarized or interpreted any provision thereof in Paragraph 27 of his Counterclaim, Epstein denies the allegations.³

28. Epstein admits that in one of his Complaints he alleged some of the causes of action against Edwards as specifically stated in Paragraph 27 and its subparts, but denies that he has ever asserted a cause of action for Civil Theft against Edwards as alleged in Paragraph 28. To the extent that Edwards has inaccurately summarized or interpreted any provision of Epstein's "Complaint" in Paragraph 28 of his Counterclaim,⁴ Epstein denies the allegations. Epstein denies the remaining allegations contained therein and demands strict proof thereof.

29. Epstein denies each and every allegation contained in Paragraph 29, including its subparts, and demands strict proof thereof. With respect to subsection (d) of Paragraph 29, Epstein further denies that Edwards's actions were afforded absolute protection under the litigation privilege. *See Delmonico v Traynor*, 38 FLW S 106 (February 14, 2013).

30. Epstein denies each and every allegation contained in Paragraph 30 and demands strict proof thereof.

31. Epstein denies each and every allegation contained in Paragraph 31 and demands strict proof thereof.

32. Epstein admits that he amended his Complaint over the course of the litigation, and that some counts contained in his Complaint were dismissed *by the Court without prejudice*. However, Epstein denies that this constitutes abandonment of his claims and/or a bona fide

³ Edwards fails to either attach the Complaint to his Counterclaim or reference the specific Complaint to which he is referring in Paragraph 27.

⁴ Edwards fails to either attach the Complaint to his Counterclaim or reference the specific Complaint to which he is referring in Paragraph 28.

termination of his claims in Edwards's favor. Epstein denies any and all remaining allegations contained in Paragraph 32 and demands strict proof thereof.

33. Epstein denies each and every allegation and claim for damages that is contained in Paragraph 33, including its subparts, and demands strict proof thereof.

Epstein denies that Edwards is entitled to any demand made in his "WHEREFORE" clause, including any assertion of alleged Punitive Damages.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

For his First Affirmative Defense, Epstein states that Edwards' Abuse of Process claim fails to state a claim upon which relief can be granted as is required under Rule 1.110 of the *Florida Rules of Civil Procedure*. Edwards did not, nor will he ever be able to, assert the three requisites required to properly plead same; to wit: 1) an illegal, improper, or perverted use of process *after it issues* ; 2) an ulterior motive or purpose in exercising the illegal, improper, or perverted process; and 3) damages resulting therefrom. *S & I Invs. v. Payless Flea Mkt., Inc.*, 36 So. 3d 909, 917 (Fla. 4th DCA 2010) (emphasis added); *Della-Donna v. Nova Univ., Inc.*, 512 So. 2d 1051, 1055 (Fla. 4th DCA 1987).

SECOND AFFIRMATIVE DEFENSE

For his Second Affirmative Defense, Epstein states that Edwards' Malicious Prosecution claim fails to state a claim upon which relief can be granted as is required under Rule 1.110 of the *Florida Rules of Civil Procedure*. Specifically, the requisite of a "bone-fide termination of the original proceeding in favor of the present plaintiff" as delineated by the Florida Supreme Court as one of the legally-mandated elements to bring forth a Malicious Prosecution claim, has not, nor can it, be satisfied. *See Alamo rent-A-Car v. Mancusi*, 632 So.

2d 1352, 1355 (Fla. 1994). The “original proceeding” to which Edwards refers in his Counterclaim is, in fact, the case Epstein voluntarily dismissed without prejudice and could re-file at any time. A “bona-fide termination” would prohibit re-filing. As such, there has not been the required “ending in a manner indicating [Edwards’] innocence of the charges or allegations contained in the first suit.” *See Doss v. Bank of America, N.A.*, 857 So. 2d 991, 994 (Fla. 5th DCA 2003). *See also Yoder v. Adriatico*, 459 So. 2d 449, 451 (Fla. 5th DCA 1984) (stating that the tort of malicious prosecution requires, as an element, the prior termination of that claim and therefore malicious prosecution may not be brought as a counterclaim).

Indeed, it is well-settled law that an action for Malicious Prosecution cannot be filed until the original action is concluded, and that counts of a Complaint that are **dismissed without prejudice** are not deemed a “bona fide termination” in that party’s favor. “Where dismissal is on technical grounds, for procedural reasons, or any other reason not consistent with the guilt of the accused, it does not constitute a favorable determination.” *Union Oil of California v. John Watson*, 468 So. 2d 349 (3d DCA 1985). Accordingly, Edwards fails to state a claim upon which relief may be granted.

THIRD AFFIRMATIVE DEFENSE

For his Third Affirmative Defense, Epstein states that Edwards’ Counterclaim fails to properly plead his damages as required under the *Florida Rules of Civil Procedure*. *See Miami National Bank v. Nunez*, 541 So. 2d 1259, 1260 (Fla. 3d DCA 1989) (stating that a litigant cannot recover as damages his own time for participating in a litigation when counsel is engaged to represent him). Edwards further pleads damages for injury to his reputation, mental anguish, anxiety, and embarrassment, which are impermissible and improperly plead.

Finally, Edwards fails to properly plead punitive damages as required by the *Florida Rules of Civil Procedure*.

Most importantly, however, Epstein states that Edwards has not, nor will he, suffer any damages as a result of any actions allegedly taken by Epstein. In fact, this litigation with Epstein catapulted Edwards from an unknown solo practitioner to a partner at Rothstein, Rosenfeldt, Adler. Moreover, Edwards still utilizes his litigious association with Mr. Epstein at his new firm Farmer, Jaffe, Weissing, Edwards, Fistos, & Lehrman, both on its firm website and firm Facebook page, to disparage Epstein, to seek new clients on whose behalf he can sue Epstein, to attract additional plaintiffs for whom he can file suit, and to achieve notoriety with the press. *See Composite Exhibit A attached hereto.*

FOURTH AFFIRMATIVE DEFENSE

For his Fourth Affirmative Defense, Epstein asserts that he is afforded absolute immunity pursuant to the “Litigation Privilege” because his actions were connected with, relevant to, and material to, the cause at hand. The Litigation Privilege protects actions taken that are related to the judicial proceeding. Litigation privilege “arises immediately upon the doing of any act required or permitted by law in the due course of the judicial proceedings or as necessarily preliminary thereto.” *Fridovich v. Fridovich*, 598 So. 2d 65 (Fla. 1992). This absolute immunity afforded to Epstein pursuant to the Litigation Privilege appears on the face of the Counterclaim as filed by Edwards. As such, Edwards is barred from proceeding with this litigation.

FIFTH AFFIRMATIVE DEFENSE

For his Fifth Affirmative Defense, Epstein asserts that the causes of action described in Edwards’s Fourth Amended Counterclaim were commenced based upon the good faith

advice of an attorney, Roy Black, Esq. *Royal Trust Bank, N.A. v. Von Zamft*, 511 So. 2d 654 (Fla. 3d DCA 1987).

Epstein specifically reserves the right herein to amend these defenses and plead other affirmative defenses that may become known during his continuing investigation of this action and during discovery in this case.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served, via electronic service, to all parties on the attached service list, this September 9, 2013.

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