

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

JEFFREY EPSTEIN,
Plaintiff,

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

vs.

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

CASE NO.: 502009CA040800XXXXMBAG

JUDGE: CROW

Defendants.
_____ /

PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S
MOTION TO BIFURCATE TRIAL

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.270(b) of the *Florida Rules of Civil Procedure*, hereby files this Motion to Bifurcate the Trial in this matter. In support thereof, Epstein states:

INTRODUCTION

On December 19, 2012, this Honorable Court granted Defendant/Counter-Plaintiff Bradley J. Edwards's (hereinafter "Edwards") Motion for Leave to Assert Claim for Punitive Damages against Epstein. This case is currently scheduled on this Court's October 2013 Trial Calendar. Edwards has alleged two causes of action in this matter against Epstein; one for malicious prosecution and one for abuse of process. Damages are a requisite for each cause of action.

Before Edwards is permitted to present a case for punitive damages, he must first prove these claims against Epstein. Epstein has denied liability as to these claims and has asserted various affirmative defenses, which include Edwards's failure to state a cause of action in both abuse of process and malicious prosecution; Edwards's failure to properly plead damages; Edwards's inability to overcome the absolute immunity afforded to

Epstein under the litigation privilege; and Edwards's failure to suffer any damages. Unless Edwards is able to overcome these affirmative defenses and prove actual damages, he will not be entitled to an award in punitive damages. Accordingly, and as explained more fully below, the punitive damages phase of trial should be bifurcated from the liability phase of trial.

MEMORANDUM OF LAW

Rule 1.270(b) of the *Florida Rules of Civil Procedure* grants courts the authority to bifurcate a case between the liability and the damages issues. FLA. R.CIV. P. 1.270 (2013). Rule 1.270 states, in relevant part that "[t]he court in furtherance of convenience or to avoid prejudice may order a separate trial of any claim, crossclaim, counterclaim, or third-party claim or of any separate issue or of any number of claims, crossclaims, counterclaims, third-party claims, or issues." FLA. R.CIV. P. 1.270 (2013). This Rule states a liberal standard, allowing the court to use discretion. *Microclimate Sales Co., Inc. v. Doherty*, 731 So. 2d 856, 858 (Fla. 5th DCA 1999); Fla. R.Civ. P. 1.270 (2013). Bifurcation is proper "absent a specific threat of inconsistent verdicts or prejudice to a party." *Roseman v. Town Square Ass'n, Inc.*, 810 So. 2d d516, 520 (Fla. 4th DCA 2002). Thus, the effect of bifurcating the case is to promote judicial economy; if the Plaintiff fails to prevail at trial on the issue of liability, there is no trial on the issue of damages. As such, Judicial resources are thereby conserved.

The Florida Supreme Court addressed the special issue of bifurcating a case in which the plaintiff seeks punitive damages in *W. R. Grace & Co. v. Waters*, 638 So. 2d 502 (Fla. 1994). In *Waters*, the Court established the following procedure for bifurcating the punitive damages phase of trial from the liability phase of trial:

We hold that henceforth trial courts, when presented with a timely motion, should bifurcate the determination of the amount of punitive damages from the remaining issues at trial. At the first stage of a trial in which punitive damages are an issue, the jury should hear evidence regarding liability for actual damages, the amount of actual damages, and liability for punitive damages, and should make determinations on those issues. If, at the first stage, the jury determines that punitive damages are warranted, the same jury should then hear evidence relevant to the amount of punitive damages and should determine the amount for which the defendant is liable.

Id. at 506. Therefore, based upon the holding in this case, it is proper for this court to bifurcate the punitive damages phase from the liability phase of trial.

Here, Edwards asserts Epstein is liable in abuse of process and malicious prosecution and seeks punitive damages for both claims. Under the holding in *Waters*, this Court should bifurcate this trial into two separate stages. In the first stage, the jury should hear evidence regarding liability for the damages stemming from the claims in abuse of process and malicious prosecution, the amount of actual damages claimed by Edwards, if any, and liability for punitive damages. After hearing these claims, the jury should make a determination on these issues. Then, if at the first stage, the jury determines that punitive damages are warranted, the same jury should proceed to the second stage. Therefore, the second stage of trial is only reached if Edwards proves his claims and the jury determines that punitive damages are warranted.

CONCLUSION

Based on the argument presented above and the authorities cited in support thereof, Plaintiff/Counter-Defendant Jeffrey Epstein respectfully requests that this Court enter an Order bifurcating the punitive damages phase of trial from the liability phase of trial, and grant such other and further relief as deemed necessary and proper.

WE HEREBY CERTIFY that a true and correct copy of the foregoing was served upon all parties listed below, via Electronic Service, this August 7, 2013.

s/s Tonja Haddad Coleman
Tonja Haddad Coleman, Esq.
Fla. Bar No.: 0176737
LAW OFFICES OF TONJA HADDAD, PA
315 SE 7th Street
Suite 301
Fort Lauderdale, Florida 33301
954.467.1223
954.337.3716 (facsimile)
Tonja@tonjahaddad.com

Electronic Service List

Jack Scarola, Esq.
Searcy Denney Scarola et al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409
JSX@SearcyLaw.com
MEP@Searcylaw.com

Jack Goldberger, Esq.
Atterbury, Goldberger, & Weiss, PA
250 Australian Ave. South
Suite 1400
West Palm Beach, FL 33401
jgoldberger@agwpa.com

Marc Nurik, Esq.
1 East Broward Blvd.
Suite 700
Fort Lauderdale, FL 33301
marc@nuriklaw.com

Bradley J. Edwards, Esq.
Farmer Jaffe Weissing Edwards Fistos Lehrman
425 N Andrews Avenue
Suite 2
Fort Lauderdale, Florida 33301
staff.efile@pathtojustice.com

Fred Haddad, Esq.
1 Financial Plaza
Suite 2612
Fort Lauderdale, FL 33301
Dee@FredHaddadLaw.com