

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

JEFFREY EPSTEIN,

CASE NO.: 2009CA040800XXXXMB
CIVIL DIVISION "AG"

Plaintiff/Counter-Defendant,

v.

SCOTT ROTHSTEIN,
BRADLEY J. EDWARDS,

Defendants/Counter-Plaintiffs.

ORDER GRANTING MOTION FOR FEES AND COSTS

THIS CAUSE came before the Court on Counter-Defendant's, Jeffrey Epstein's, Motion for Fees and Costs filed on June 2, 2014. A hearing was held on December 8, 2014, at which counsel presented argument on the Motion. On December 23, 2014, Jeffrey Epstein filed an additional memorandum of law. This Court has carefully reviewed the Motion, Response, Reply and all applicable legal authority, and is otherwise fully advised in the premises.

I. BACKGROUND

This case arises from Plaintiff/Counter-Defendant Jeffery Epstein's lawsuit against Defendants/Counter-Plaintiffs Bradley Edwards and Scott Rothstein. Edwards then countersued Epstein for malicious prosecution. Epstein voluntarily dismissed his initial suit. On August 25, 2011, Epstein served an Offer of Judgment ("Offer") on Edwards in the amount of \$300,000 on the counterclaim. The Offer included a general release, specifically a confidentiality provision. Edwards did not accept the Offer. On January 27, 2014, the Court granted summary judgment in favor of Epstein on both counts and issued an order to this effect on May 19, 2014. A final judgment was entered in favor of Epstein on May 27, 2014.

Epstein now seeks fees and costs pursuant to Florida Statutes Section 768.79 and Florida Rule of Civil Procedure 1.442. Edwards argues that the Offer of Judgment was not valid and therefore Epstein is not entitled to fees and costs.

II. ANALYSIS

The requirements for a valid proposal for settlement are set forth in section 768.79, Florida Statutes, and Florida Rule of Civil Procedure 1.442. The offer of judgment statute and rule must be strictly construed, as they are in derogation of the common law rule that each party pay its own attorney's fees. *Alamo Fin., L.P. v. Mazoff*, 112 So. 3d 626, 628 (Fla. 4th DCA 2013). "The rule does not demand the impossible. It merely requires that the settlement proposal be sufficiently clear and definite to allow the offeree to make an informed decision without needing clarification." *Id.* "Therefore, parties should not 'nit-pick' the validity of a proposal for settlement based on allegations of ambiguity unless the asserted ambiguity could 'reasonably affect the offeree's decision' on whether to accept the proposal for settlement." *Id.* at 629.

Releases are generally treated as conditions or nonmonetary terms that must be described with particularity. *State Farm Mut. Auto. Ins. Co. v. Nichols*, 932 So. 2d 1067, 1078 (Fla. 2006). A proposal for settlement can contain either the proposed release or a summary of the terms of the proposed release, provided that the summary eliminates any reasonable ambiguity about its scope. *Mix v. Adventist Health Sys./Sunbelt, Inc.*, 67 So. 3d 289, 292 (Fla. 5th DCA 2011). "Without the attachment of the agreements for release, indemnity, and contribution, or an inclusion of their terms in the proposals of settlement, the proposals did not satisfy the particularity requirement of Rule 1.442(c)(2), which requires the settlement proposals to 'state with particularity any relevant conditions' and 'non-monetary terms.'" *Ziadie v. Feldbaum*, 84 So. 3d 435, 436 (Fla. 4th DCA 2012).

In the present case, Epstein attached he proposed general release in its entirety to the offer of judgment. (See Epstein's Exhibit A). The terms of the release include language that specifically requires Edwards to keep the details of the settlement confidential. Therefore, it the Court finds that the non-monetary terms of the offer of judgment were sufficiently described to meet the requirements of section 768.79.

Edwards next argues that because it is impossible to determine the value of the confidentiality clause, it is therefore impossible to find that the final judgment in favor of Epstein (which has no confidentiality provision) is "better" than the proposed settlement.

In general, releases and confidentiality clauses are typical and valid as part of a proposal for settlement. *See Bd. of Trustees of Florida Atl. Univ. v. Bowman*, 853 So. 2d 507, 509 (Fla. 4th DCA 2003) ("In the instant case, the language in the General Release, even though expansive, is typical of other general releases and is clear and unambiguous. The fact that Plaintiffs are required to release Defendant for all claims which had accrued as of the date of the Proposal for Settlement does not invalidate the Proposal for Settlement. The Florida Supreme Court has held that general releases contained in proposals for settlement are enforceable to further the policy of encouraging settlements.")

The standard for determining whether a proposed settlement is eligible under section 768.89 is not whether the final judgment is "better" than the offered settlement. "Under section 768.79, a defendant in any civil action for damages is entitled to reasonable costs and attorney's fees if the defendant's offer of judgment is not accepted and if the judgment is for no liability or is at least 25% less than the offer." Section 768.79, Florida Statutes (2009); *Disney v. Vaughen*, 804 So. 2d 581, 583 (Fla. 5th DCA 2002).

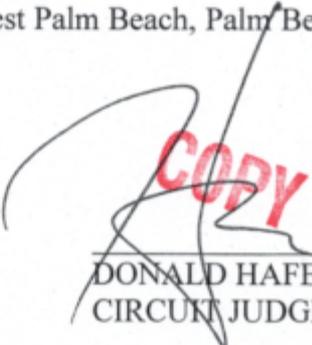
In the case at hand, the final judgment in favor of Epstein made a finding of no liability. Therefore it is clear that the value of the confidentiality clause is not necessary in order to determine whether the judgment obtained was better than the judgment offered. Because the final judgment was for no liability, Epstein's offer makes him eligible under this section for fees and costs.

At the hearing on this Motion, counsel for Edwards claimed a practical effect of the confidentiality clause in the offer of judgment. Edwards argues that compliance with the confidentiality clause would have been imposing an unethical restriction upon his legal obligations to existing clients. The Court finds that the language of the confidentiality clause is clear and allows for disclosure of the details of the settlement pursuant to "valid order of a Court of competent jurisdiction whether directly or indirectly." This allows for any required disclosure of the settlement to Edwards' clients. Moreover, to the extent there is any conflict between the outcome of this matter and Edwards' obligations to existing clients, Edwards knew or should have know of that conflict when he brought the counterclaim against Epstein while representing clients in other matters that may have involved Epstein.

Accordingly, it is

ORDERED and ADJUDGED that Defendant's Motion for Fees and Costs is **GRANTED.**

DONE and ORDERED in Chambers in West Palm Beach, Palm Beach County, Florida
this 3 day of Feb., 2015.


COPY

DONALD HAFELE
CIRCUIT JUDGE

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FEB 09 2012