

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION
CASE NO. 502009CA040800XXXXMBAG
Judge David F. Crow

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiffs.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MEMORANDUM OF
LAW IN OPPOSITION TO DAMAGES PLED IN BRADLEY EDWARDS' SECOND
AMENDED COUNTERCLAIM**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel, pursuant to this Court's Order on _____, respectfully submits this Memorandum Of Law In Opposition To Damages Pled In Bradley Edwards' Second Amended Counterclaim, and states as follows:

In his Second Amended Counterclaim, Edwards seeks the following damages from Epstein for alleged abuse of process: injury to reputation, "interference in his professional relationships, the loss of the value of [Edwards'] time required to be diverted from his professional responsibilities, and the cost of defending against Epstein's spurious and baseless claims." (Second Amended Counterclaim, ¶17). Edwards seeks precisely the same damages for alleged malicious prosecution. (*See* Second Amended Counterclaim, ¶33).

The compensatory damages demanded by Edwards are not recoverable as a matter of law.

First, under Florida law, Edwards cannot recover compensatory damages for the alleged loss or use of his own time participating in the subject litigation, regardless of whether it resulted in time "diverted from his professional responsibilities" (§17) or "interfere[d] in his professional relationships" (*id.*). The court stated in *Miami Nat'l Bank v. Nunez*, 541 So. 2d 1259, 1260 (Fla. 3d DCA 1989) that "[w]e find no precedent for awarding a litigant compensatory damages *for her own...participation in the preparation for litigation.*" (Emphasis added). *See also Maulden v. Corbin*, 537 So. 2d 1085 (Fla. 1st DCA 1989) (ruling that an attorney was not entitled to compensation for his time participating in litigation when he engaged counsel to represent him in the matter). Since Edwards has engaged Mr. Scarola from the outset of this case, Edwards cannot claim his time assisting counsel or participating in this case as damages which would include his involvement in the subject litigation that purportedly interfered with his professional relationships.

Second, Edwards cannot recover damages for injury to his reputation based upon the allegations in the Corrected Second Amended Complaint – which is the basis of his Second Amended Counterclaim – because all statements made in a complaint are subject to an absolute privilege. *See, e.g., Ball v. ██████ Enters.*, 65 So. 3d 637, ___ (Fla. 4th DCA 2011). (*Argument to be expanded*)

Edwards makes no claim that the allegedly wrongful conduct by Epstein – abuse of process based on each pleading, motion, discovery request and deposition (*see* Second Amended Counterclaim, §16) and malicious prosecution based on the filing of priors claim for violation of §772.101, Fla. Stat., Florida RICO, abuse of process, fraud and conspiracy to commit fraud (*id.*, §27) -- is inherently defamatory. (*To be expanded*) Accordingly, Edwards' claim for damages to reputation should be stricken.

Third, Edwards is not entitled to recover damages for "the cost of defending against Epstein's spurious and baseless claims" (§17) for abuse of process because the mere *filing* of a spurious claim does not itself form the basis of an abuse of process claim, which requires abuse of the judicial system subsequent to the filing of a complaint – not purportedly unfounded allegations in a complaint. *See, e.g., McMurray v. U-Haul Co.*, 425 So. 2d 1208, 1209 (Fla. 4th DCA 1983); *Blue v Weinstein*, 381 So. 2d 308, 310 (Fla. 3d DCA 1980).

Finally, to the extent that Edwards is entitled to recover any attorney's fees for malicious prosecution, such damages would necessarily be limited to those spent defending the "abandoned" claims in the initial Complaint that Edwards erroneously claims in §32 of the Second Amended Counterclaim constitute a bona fide termination in his favor. *See, e.g., Ruskin v. Ryan*, 859 So. 2d 1218, 1219 (Fla. 4th DCA 2003)(attorney's fees that are not incurred in defense of prior malicious proceeding are not recoverable).(To be expanded).

WHEREFORE, Epstein respectfully requests that Edwards' damages claims be stricken.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been duly furnished via G Email, G Facsimile, G U.S. Mail, G Hand Delivery, G Federal Express this ____ day of April, 2012 to:

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