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,

v.

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

Defendants.

_____/

PLAINTIFF'S MOTION TO QUASH SUBPOENA AND FOR PROTECTIVE ORDER TO PREVENT DEPOSITION OF ALFRED SECKEL

Plaintiff Jeffrey Epstein moves the Court, pursuant to Rule 1.280 and Rule 1.410, Florida Rules of Civil Procedure, for entry of a protective order and an order quashing a subpoena commanding non-party Alfred Seckel to appear for deposition in Los Angeles, California on May 23, 2011 which subpoena Defendant Bradley J. Edwards ("Edwards") has noticed over the Plaintiff's objection. The grounds for this Motion are:

1. On or about April 7, 2011, counsel to Edwards noticed the deposition of Mr. Seckel, despite the fact that counsel to Edwards was advised by Plaintiff's counsel that Mr. Seckel has no knowledge of any issue in this case and is barely known to the Plaintiff at all. A copy of the Notice and Subpoena is attached as **Exhibit A**.

2. The Plaintiff seeks an order quashing the subpoena and entry of a protective order to prevent the taking of this deposition indefinitely because Mr. Seckel has no relevant information about this case and to allow the deposition would effectively condone harassment.

3. Mr. Seckel is not a friend or business colleague of the Plaintiff, who is barely acquainted with him. The Plaintiff, who admittedly has met Mr. Seckel, knows him only through a common interest in a scientific forum [**what is the connection? ____],** but did not even meet Mr. Seckel until about eighteen months ago, after the alleged and actual events giving rise to the claims in this lawsuit – including the counterclaim – arose.

4. **[See attached Affidavit of _____; I suggest we say what is known about Seckel to shift the burden and possibly refute Scarola, e.g., Mr. Seckel is a scientist, businessman, etc.: Mr. Seckel has never been in the presence of the Plaintiff in the company of young women, under aged or otherwise. He has never met any "high-profile" acquaintances of the Plaintiff when in his presence. He has never _____]**

5. Accordingly, Mr. Seckel has no information relevant to any issue in this case nor does he possess any information likely to lead to the discovery of admissible evidence in this case.

6. The taking of Mr. Seckel's deposition, without Edwards first showing that Mr. Seckel does, in fact, have relevant information material to this case or that is likely to lead to admissible evidence, would allow defendant Edwards to use the rules of discovery as a litigation tactic rather than to obtain admissible evidence.

7. Moreover, the taking of this deposition would amount to the harassment of a disinterested non-party for the seemingly sole purpose of harassing and embarrassing the Plaintiff.

8. A deposition without some explanation of what the witness allegedly knows – not based on rumor or a secret source -- will simply waste the time and resources of all concerned.

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Legal Argument

9. Discovery in Florida civil cases is permitted only as to matters which are relevant or which are reasonably calculated to lead to the discovery of admissible evidence in the case in which the discovery is sought. Fla. R. Civ. P. 1.280(b)(1); *Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995).

10. "Pretrial discovery was implemented to simplify the issues in a case, to eliminate the element of surprise, to encourage the settlement of cases, to avoid costly litigation, and to achieve a balanced search for the truth to ensure a fair trial." *Elkins v. Syken,* 672 So. 2d 517 (Fla. 1996) *(citing Dodson v. Persell*, 390 So. 2d 704 (Fla. 1980); *Surf Drugs, Inc. v. Vermette*, 236 So. 2d 108 (Fla. 1970)).

11. In *Elkins,* the Florida Supreme Court commented on the purpose of pretrial discovery:

> Discovery was never intended to be used as a tactical tool to harass an adversary in a manner that actually chills the availability of information by non-party witnesses; nor was it intended to make the discovery process so expensive that it could effectively deny access to information and witnesses or force parties to resolve their disputes unjustly.

Id. at 522.

12. The Court continued its explanation of why discovery must be used only for proper purposes:

> To allow discovery that is overly burdensome and that harasses, embarrasses, and annoys one's adversary would lead to a lack of public confidence in the credibility of the civil court process. The right to a jury trial in the constitution means nothing if the public has no faith in the process and if the cost and expense are so great that access is basically denied to all but the few who can afford it.

Id.

13. Likewise, in *Allstate*, the Court had reasoned:

> Discovery of certain kinds of information 'may reasonably cause material injury of an irreparable nature.' This includes 'cat out of the bag' material that could be used to injure another person or party outside the context of the litigation….

Id. at 94 (citations omitted). That Court, in quashing the district court's decision to permit discovery even after it had been established that such discovery was neither relevant nor likely to lead to the discovery of relevant information, concluded that carte blanche discovery of irrelevant information ought not be sanctioned:

> [a]though we cannot say that irrelevant materials sought in a discovery request necessarily cause irreparable harm, we do not believe that a litigant is entitled carte blanche to irrelevant discovery.

Id. at 95.

14. Rule 1.280(c) affords the Court discretion to grant protective orders for good cause shown and to protect a party from annoyance, embarrassment, oppression, or undue burden or expense. Subsection (c) affords the court broad discretion to limit or prohibit discovery in order "to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense that justice requires." Id.; *see also Logitech Cargo v. J.W. Perry*, 817 So. 2d 1033 (Fla. 3d DCA 2002).

15. Among other things, this Court may enter an order that the requested discovery not be had at all. Rule 1.280(c)(1), Fla. R. Civ. P.; *compare Medero v. Fla. Power & Light Co*., 658 So. 2d 566, 568 (Fla. 3d DCA 1995)(reversing trial court order denying deposition of material witness).

16. The Rule has been successfully invoked to prevent invasion of privacy of non-parties as well as to prevent the dissemination of defamatory content. *Smith v. State*, 827 So. 2d 1026, 1030-31 (Fla. 2d DCA 2002)(petition for certiorari granted to protect privacy interests); s*ee also Pescod v. Wells Rd. Veterinary Med. Ctr., Inc*., 748 So. 2d 1095 (Fla. 1st DCA 2000) (discovery protective order reasonable within the spectrum of Rule 1.280(c)).

17. In this case, the mere taking of the deposition constitutes waste and harassment. It is anticipated, given the general notice of taking deposition, that counsel to defendant Edwards will ask any and all manner of questions whether they are relevant to this litigation or not. The witness has no direct knowledge and will likely be intimidated or even feel obliged to search for answers he cannot know if required to give testimony at this time.

18. This type of discovery amounts to a litigation tactic which will elicit no relevant information and would, if permitted, merely serve to permit a stream of embarrassing questions about events which have not been shown to have occurred and which could be of no relevance to this case even if they had occurred. Significantly, to be relevant an examination of Mr. Seckel cannot be based on events that occurred well before Mr. Seckel became acquainted with the Plaintiff.

WHEREFORE, for the above stated reasons, Plaintiff Jeffrey Epstein moves for entry of a protective order to preventing the taking of the deposition of Alfred Seckel and for such other relief as the Court deems proper in the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by mail and _____ this __ day of May, 2011 on Gary M. Farmer, Jr., Farmer, Jaffe, Weissing, Edwards, Fistos, et al, 425 N. Andrews Avenue, Suite 2, Fort Lauderdale, FL 33301; Jack Alan Goldberger, Atterbury, Goldberger & Weiss, P.A., 250 Australian Avenue South, Suite 1400, West Palm Beach, FL 33401-5012; Marc S. Nurik, Law Offices of Marc S. Nurik, One East Broward Boulevard, Suite 700, Fort Lauderdale, FL 33301; and Jack Scarola, Searcy Denney Scarola et al., 2139 Palm Beach Lakes Boulevard, P.O. Drawer 3626, West Palm Beach, FL 33409.

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