

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

CASE NO. 502009CA040800XXXXMB

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

vs.

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

Defendants/Counter- Plaintiffs.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION FOR FEES
AND COSTS AND INCORPORATED MEMORANDUM OF LAW**

Plaintiff/Counter-Defendant Jeffrey Epstein (“Epstein”), by and through his undersigned counsel and pursuant to §768.79 of the *Florida Statutes*, §57.041 of the *Florida Statutes*, §57.105 of the *Florida Statutes*, and Rule 1.442 of the *Florida Rules of Civil Procedure*, hereby files this Motion requesting that the Court enter an Order of entitlement to costs and attorneys’ fees against Defendant/Counter-Plaintiff Bradley Edwards (“Edwards”). In support of thereof, Epstein states as follows:

INTRODUCTION

On August 25, 2011, Epstein served an Offer of Judgment on Edwards in the amount of three hundred thousand dollars (\$300,000.00) pursuant to Rule 1.442 of the *Florida Rules of Civil Procedure* and §768.79 of the *Florida Statutes* (the “Offer”). A true and correct copy of same is attached hereto as “Exhibit A.” Edwards failed to accept Epstein’s Offer. On January 27, 2014, this Honorable Court granted summary judgment in favor of Epstein on both counts. This Court entered

an Order reflecting same on February _____, 2014. A true and correct copy of the Order is attached hereto as “Exhibit B.” **A Final Judgment has been entered in favor of Epstein against Edwards, and is attached hereto as “Exhibit C.”** Pursuant to Rule 1.442 of the *Florida Rules of Civil Procedure* and §768.79 of the *Florida Statutes*, Epstein is entitled to recover his reasonable attorneys’ fees against Edwards that were incurred from the date of the Offer. Furthermore, Epstein is entitled to taxable costs pursuant to §57.041 of the *Florida Statutes* as the prevailing party in this litigation.

Alternatively, Epstein submits that he is entitled to recover his reasonable attorneys’ fees against Edwards pursuant to **§57.105 of the *Florida Statutes*.**

MEMORANDUM OF LAW

A. A Fee Award is Proper Pursuant to §768.79 of the *Florida Statutes*.

Section 768.79 of the *Florida Statutes* governs offers of judgment, and provides, in relevant part:

- (1) In any civil action for damages filed in the courts of this state, if a defendant files an offer of judgment which is not accepted by the plaintiff within 30 days, the defendant shall be entitled to recover reasonable costs and attorney’s fees incurred by him... from the date of filing of the offer if the judgment is one of no liability...

§768.79 FLA. STAT. (2013). “The statute creates a mandatory right to attorney’s fees when the statutory ‘prerequisites have been fulfilled: i.e., (1) when a party has served ...an offer of judgment, and (2) that party has recovered a judgment ...less than the ... offer.’” *Levine v. Harris*, 791 So. 2d 1175, 1177 (Fla. 4th DCA 2001)(citing *Schmidt v. Fortner*, 629 So. 2d 1036,1040 (Fla. 4th DCA 1993). Likewise, pursuant to this statute, “once an offer of judgment has been made and rejected and a judgment of no liability has been entered, the defendant has a right to an award of attorney’s fees unless the offer was found to have been made in bad faith.” *Florida Gas Transmission Co. v. Lauderdale Sand & Fill. Inc.*, 813 So. 2d 1013,1014 (Fla. 4th DCA 2002). Accordingly, if the

moving party satisfies the above requisites, the court has very limited discretion to deny attorney's fees.

The court may only deny attorney's fees, even if the above requisites are satisfied, "if the court determines the qualifying offer was not made in good faith." But, absent a finding that a party's offer of judgment was not made in good faith, the trial court cannot disallow an entitlement to an award of fees." *Downs v. Coastal Sys. Int'l, Inc.*, 972 So. 2d 258, 261 (Fla. 3d DCA 2008) (citing *Vines v. Mathis*, 867 So.2d 548 (Fla. 1st DCA 2004)). See also *McMahan v. Toto*, 311 F.3d 1077,1083 (11th Cir. 2002). An offer of judgment is typically deemed to be a "bad faith" offer when it is a nominal amount in light of the valuation of the case, although many nominal offers have been accepted by the courts as made in good faith. See *Fox v. McCaw Cellular Communications of Florida, Inc.*, 745 So. 2d 330 (Fla. 4th DCA 1998); *Neptune Beach v. Smith*, 740 So. 2d 25, 27 (Fla. 1st DCA 1999).

In the case at hand, Edwards filed a Counterclaim against Epstein for abuse of process and malicious prosecution; a Counterclaim against which Epstein vigorously litigated. Throughout his defense of the Counterclaim, Epstein repeatedly asserted several defenses, including that all allegations contained in Edwards's Counterclaim were barred by the litigation privilege. This Court concluded that both of Edwards's causes of action were barred by the litigation privilege, and entered Summary Judgment in favor of Epstein. Epstein timely, and in complete accordance with §768.79 of the *Florida Statutes*, tendered an Offer of Judgment to Edwards in the sum of three hundred thousand dollars (\$300,000.00); an offer Edwards rejected. Undeniably, this is neither a nominal amount nor an offer made in bad faith. Accordingly, an award of attorney's fees in favor of Epstein is proper.

B. A Fee and Costs Award is Proper Pursuant to Rule 1.442 of the *Florida Rules of Civil Procedure*

Rule 1.442 of the *Florida Rules of Civil Procedure* applies to all proposals for settlement authorized by Florida law, and provides, in pertinent part:

(1) A proposal shall be in writing and shall identify the applicable Florida law under which it is being made.

(2) A proposal shall: (A) name the party or parties making the proposal and the party or parties to whom the proposal is being made; (B) identify the claim or claims the proposal is attempting to resolve; (C) state with particularity any relevant conditions; (D) state the total amount of the proposal and state with particularity all nonmonetary terms of the proposal; (E) state with particularity the amount proposed to settle a claim for punitive damages, if any; (F) state whether the proposal includes attorneys' fees and whether attorneys' fees are part of the legal claim; and (G) include a certificate of service in the form required by Rule 1.080(f).

(3) A proposal may be made by or to any party or parties and by or to any combination of parties properly identified in the proposal. A joint proposal shall state the amount and terms attributable to each party.

(h) Costs and Fees.

(1) If a party is entitled to costs and fees pursuant to applicable Florida law, the court may, in its discretion, determine that a proposal was not made in good faith. In such case, the court may disallow an award of costs and attorneys' fees.

FLA.R.CIV.P 1.442 (2013). Under this Rule, which is analogous to §768.79 of the *Florida Statutes*, “[a]bsent a finding that a party’s offer of judgment was not made in good faith, the court cannot disallow an entitlement to an award of fees.” *Downs v. Coastal Systems International, Inc.*, 972 So. 2d 258, 261 (Fla. 3d DCA 2008). Here, Epstein served his proposal for settlement in good faith and fulfilled the requisites of Rule 1.442 of the *Florida Rules of Civil Procedure* to create valid and enforceable proposal as a matter of law. Consequently, Epstein is entitled to an award of his fees and costs as permitted thereby.

C. An Award of Costs is Proper Pursuant to §57.041 of the *Florida Statutes*

Section 57.041 of the *Florida Statutes* provides that a prevailing party may recover costs from the losing party:

(1) The party recovering judgment shall recover all his or her legal costs and charges which shall be included in the judgment; but this section does not apply to executors or administrators in actions when they are not liable for costs

(2) Costs may be collected by execution on the judgment or order assessing costs.

§ 57.041 FLA. STAT. (2013). This statutory provision requires the trial court to award costs to the prevailing party, and a zero award for a plaintiff deems a defendant the prevailing party. *See Tacher v. Mathews*, 845 So. 2d 332 (Fla. 3d DCA 2003); *Connell v. City of Plantation*, 901 So. 2d 317, 320

(Fla. 4th DCA 2005). In the case at hand, this Court granted summary judgment in favor of Counter-Defendant Epstein, rendering Epstein the prevailing party and mandating an award of costs in his favor.

D. Epstein is Entitled to Costs and Fees Pursuant to §57.105 of the *Florida Statutes*

On _____, Epstein served upon Edwards a letter and Motion pursuant to §57.105 of the *Florida Statutes*, which provides, in relevant part:

(1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:

(a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

(2) At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay.

§ 57.105 FLA. STAT. (2012). A true and correct copy is attached hereto as "Exhibit D." Pursuant to §57.105 of the *Florida Statutes*, attorneys' fees may be awarded if the party, or its counsel, knew or should have known that the claim or defense asserted was not supported by the facts or an application of then-existing law. *See, e.g., Read v. Taylor*, 832 So. 2d 219 (Fla. 4th DCA 2002).

Epstein served another motion and letter pursuant to §57.105 on August 29, 2013, based upon the Third District Court of Appeal's decision in *Wolfe v. Foreman*, 38 FLA. L. WEEKLY D1540 (July 17, 2013), which analyzed all of the law germane to the litigation privilege upon which Epstein previously relied in his first motion and its applicability to Edwards's abuse of process and malicious

prosecution causes of action. Edwards, however, did not withdraw his claim, and Epstein moved for summary judgment on both causes of action, which was granted due to the applicability of the litigation privilege.

The purpose of the requisites delineated in §57.105 of the *Florida Statutes* is to give the party against whom sanctions are sought a last clear chance to withdraw a frivolous claim and avoid liability. *Burgos v. Burgos*, 948 So. 2d 918 (Fla. 4th DCA 2007). Here, Epstein's second letter to Edwards's counsel specifically stated: "[w]hile we are aware that our predecessor counsel has served these letters and motions upon you before, the fact that Mr. Edwards's Counterclaim cannot stand is further supported by the recent decision in *Wolfe v. Foreman*, 38 FLA. L. WEEKLY D1540 (July 17, 2013), in which the court conducts a detailed analysis of the law applicable to both of Mr. Edwards's causes of action, and unequivocally reaches the same undeniable conclusion; there is no cause of action. A copy of the decision is enclosed herewith for your reference and consideration." See Letter and Motion pursuant to §57.105 of the *Florida Statutes*, attached hereto as "Exhibit E." Despite repeated opportunities, Edwards failed to do withdraw his claims, warranting an award of attorneys' fees as sanctions.

CONCLUSION

For the reasons stated above, and in reliance upon the law cited herein, Epstein respectfully requests that this Court enter an Order entitling him to an award of costs and fees.

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 _____, 2014.

/s/ Tonja Haddad Coleman
Tonja Haddad Coleman, Esq.
Florida Bar No.: 176737
Tonja Haddad, PA
5315 SE 7th Street
Suite 301
Fort Lauderdale, Florida 33301



Attorneys for Epstein