

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* 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 May

19, 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 §768.79 of the *Florida Statutes* and Rule 1.442 of the *Florida Rules of Civil Procedure*, Epstein is entitled to recover his reasonable costs and attorneys’ fees against Edwards that were incurred from the date of the Offer.

MEMORANDUM OF LAW

A. A Fee and Cost 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). In addition to an award of reasonable costs, “[t]he 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 and costs.

If the above requisites are satisfied, the court may only deny attorney's fees "if the court determines the qualifying offer was not made in good faith." 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 a good faith Offer of Judgment to Edwards in the sum of three hundred thousand dollars (\$300,000.00); an offer Edwards rejected. Undeniably, this offer was not for a nominal amount. Additionally, this offer cannot be deemed as one made in bad faith, especially in light of the fact that throughout his defense of this action, Epstein maintained that he had no liability to Edwards and that Edwards's actions were barred by, among other things, the litigation privilege. Accordingly, an award of attorney's fees and costs in favor of Epstein

is required under Section 768.79 of the *Florida Statutes*.

B. A Fees 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.

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, retain jurisdiction to determine the amount of costs and fees to which Epstein is entitled pursuant to the above-referenced authorities, and such other and further relief as this Court deems just and proper.

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 May 22, 2014.

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