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

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiffs.
_____/

PLAINTIFF/COUNTER-DEFENDANT'S MOTION FOR CONTINUANCE AND TO EXTEND PRE-TRIAL DEADLINES OR BIFURCATION OF TRIAL[1]

Plaintiff/Counter-Defendant Jeffrey Epstein ("Plaintiff") moves under Rule 1.460 of the Florida Rules of Civil Procedure for a brief 90-day continuance of the special set 10-day trial commencing on December 5, 2017, and to extend the pre-trial deadlines. In the alternative, Plaintiff moves under Rule 1.270 of the Florida Rules of Civil Procedure to bifurcate the trial and limit the first stage of the proceedings to: (i) Plaintiff's damages against Defendant Scott Rothstein and (ii) the absence of probable cause element of Defendant/Counter-Plaintiff Bradley Edwards' ("Defendant") malicious prosecution claim.

BACKGROUND

Although this case has been pending since December 2009, in May 2014, this Court granted final summary judgment in Plaintiff's favor. Defendant appealed, and the Fourth District Court of Appeal reversed and remanded in November 2015, with the Mandate issuing in December

[1] Counsel for Plaintiff has contacted counsel for Defendant, who [opposes] this motion.

2015. The matter was sent to the Florida Supreme Court and, in large part, there were no substantive filings in this case until June 2017, after the Supreme Court declined jurisdiction. Defendant noticed this matter for trial shortly before the Supreme Court's decision and, in July 2017, the Court entered its trial order, special setting a ten-day trial less than five months away.

INTRODUCTION

The trial should focus on a handful of narrow issues: (1) Plaintiff's damages caused by Rothstein's[2] criminal conspiracy; (2) whether Defendant can prove that Plaintiff never had probable cause -- both at the inception of filing suit and throughout the proceeding -- to allege Defendant's connection to Rothstein's criminal activities; (3) whether the proceeding against Plaintiff concluded with a bona fide termination in favor of him; (4) whether Defendant can prove that Plaintiff acted with malice; and (5) whether Defendant was damaged.

First, Defendant must have changed his mind about the relevancy of printed or published media about him associating his name with Plaintiff because despite an "irrelevant" objection to an interrogatory served in September 2017, Defendant one month later in October 2017 disclosed a damages expert that focuses on just this type of publication damage. This expert disclosure changing position from "irrelevant" to "highly relevant" requires that Plaintiff have an opportunity to depose the expert, obtain a rebuttal expert, and review the extensive claim of over nine million viewers of the publication. Florida courts do not condone, nor does Plaintiff believe Defendant's counsel intended, trial by ambush. A brief continuance allows for Defendant to amend the discovery answers and Plaintiff to conduct the necessary discovery as to the new damages claim.

Second, it has become clear that Defendant has no intention of litigating these issues. Instead, he intends to re-litigate each of his clients' cases (and other alleged victims' cases) against

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[2] The Clerk of this Court entered a default against Rothstein on January 21, 2010.

Plaintiff and to turn the jury against Plaintiff with inflammatory allegations of sexual misconduct that have nothing to do with the elements of his malicious prosecution claim. The Court should not allow many mini-trials of matters that have been concluded or are irrelevant within this one. (*See generally* Plaintiff's Motion in Limine.) If the Court allows Defendant to pursue this strategy, then Plaintiff either needs more time to prepare for trial or the trial should be bifurcated in the manner Plaintiff proposes.

Following the Court's advice at the October 3, 2017, hearing to fortify lead counsel in the preparation and defense of his claim, on October 13, 2017, Plaintiff retained new trial counsel, who appeared in the case on November 1, 2017. Plaintiff also retained a team of lawyers from the Gunster law firm as trial support. None of the things Plaintiff is asking for in this Motion, however, is based on lack of manpower. But even using all of these resources, there is still not enough time to get everything needed done before the December 5, 2017, trial date.

ARGUMENT

I. PLAINTIFF NEEDS ADDITIONAL TIME TO PREPARE FOR TRIAL DUE TO EVENTS OUTSIDE OF HIS CONTROL.

There are several important tasks that must be addressed before trial. First, Plaintiff needs to identify and hire an expert to address the extent to which Plaintiff's allegations damaged Defendant's reputation and the testimony of Defendant's newly disclosed expert who will be testifying on this subject. Second, counsel need to interview the attorney who filed the initial Complaint on Plaintiff's behalf and review his files. Third, Defendant claims he may call more than 150 witnesses at trial, but only a handful of those witnesses have been deposed, and Plaintiff's counsel need time to ask the Court to have Defendant identify the witnesses who will actually be called at trial so Plaintiff can determine if their depositions are necessary, and to conduct the depositions. Finally, substantive motions, which will direct the path the trial will take, need to be

resolved by the Court, but the hearing on those motions is currently set only a few days before the trial is to commence. It is difficult for Plaintiff to properly prepare for trial without knowing which case will be tried.

Generally, a motion for continuance has three requirements: it must be in writing, it must be signed by the movant, and it must state all of the facts that entitle the movant to a continuance. Fla. R. Civ. P. 1.460. *See also* Fla. R. Jud. Admin. 2.545(e) ("Continuances should be few, good cause should be required, and all requests should be heard and resolved by a judge."). This motion satisfies these requirements and Plaintiff has made this request in good faith. The Court should grant the motion in the interest of justice.

a. Plaintiff's Expert

Throughout the pendency of this litigation, Plaintiff has served multiple discovery requests to determine how Defendant's reputation was damaged and how he suffered monetarily. On October 20, 2017, Defendant served his expert's report which, for the first time, disclosed damages which appear to be based on defamation, instead of the malicious prosecution claim that he has brought, and relies on the same type of documents Defendant early claimed were "irrelevant." Because of this new development, Plaintiff needs to retain a rebuttal expert witness and have the expert prepare a report.

Specifically, in interrogatories, Plaintiff asked Defendant about his use of Plaintiff's name to promote his practice and the evidence Defendant intended to rely on to prove damage to his reputation. Defendant responded that the requests were "irrelevant":

> 34. Please describe in detail and identify with specificity every social media outlet, website, blog, printed materials, seminar materials, or any other printed or published media on which you, your law firm, or any association with which you are affiliated has ever advertised, references, or otherwise places the name of Jeffrey Epstein, and include a detailed description and the date(s) of each

> and every such reference, advertisement, placement, publication, dissemination, or promotion, identify the persons or groups of persons to whom the same was made, and state the locations where made, and state whether or not the materials used in connection with such reference, advertisement, placement, publication, dissemination, or promotion are in your possession or control, or are still available on line or in print, and identify the persons or website from whom such materials may be obtained.
>
> RESPONSE: Objection: The information sought is not relevant, material or reasonably calculated to lead to the discovery of admissible evidence. . . .
>
> 35. Please describe with particularity any and all evidence, circumstances and events upon which you rely in asserting that your reputation was damaged as alleged in your Counterclaim, including, without limitation, specifically describing how that damage is attributable to Epstein's lawsuit against you.
>
> RESPONSE: The allegations of Epstein's maliciously filed Complaint are defamatory per se.

Plaintiff's Interrogatories dated September 5, 2017, and Defendant's Responses dated September 25, 2017, Nos. 34 and 35.

Just recently, however, Defendant disclosed through his expert that he is relying on this same type of information that he earlier refused to provide:

> 15. The defaming statements associating Mr. Bradley J. Edwards with the illegal activities of Mr. Scott Rothstein as a result of Mr. Jeffrey Epstein's lawsuit against Mr. Edwards have been disseminated to at least 74 online media or other sites in 104 separate stories or articles with a combined 9,669,542 potential daily visitors since the lawsuit was filed to the date that I filed this report, inclusive.

Dr. Bernard J. Jansen, October 20, 2017, Report, ¶ 15.

Because of this late disclosure and change in position of relevance of printed or published media relating Defendant with Plaintiff, Plaintiff now needs to identify and retain an expert to testify about, among other things, the number of people who may have read articles discussing Plaintiff's allegations tying Defendant to Rothstein's Ponzi scheme, and the impact this may or

may not have had on Defendant's reputation. The expert will need time to study Defendant's expert's analysis, perform his own study, draft his own report, and assist Plaintiff's counsel in preparing to take the deposition of Defendant's expert. Plaintiff's expert's deposition will need to be taken as well. All of this cannot be accomplished in a single month.

b. Plaintiff's Original Counsel

A central focus to this case is what Plaintiff knew at the time the original Complaint was filed to show that he had a legitimate basis for bringing this lawsuit. Plaintiff was represented by Robert D. Critton, Jr., at the time the Original complaint was filed. Plaintiff's new trial counsel needs time to review Mr. Critton's files and speak with Mr. Critton to ensure that Plaintiff's case is properly presented to the Court. Unfortunately, Mr. Critton has been dealing with personal health issues. While he is still practicing law, these health issues have affected his availability. Furthermore, Mr. Critton is attending to his own case load and needs time to review his files and refresh his recollection. Mr. Critton expects it will be a few weeks before he can devote that time to this matter.

Plaintiff's counsel cannot fairly and adequately present Plaintiff's case without speaking with Mr. Critton, and the continuance should be granted. *Cf. Ziegler v. Klein*, 590 So. 2d 1066, 1067 (Fla. 4th DCA 1991) ("[W]hen undisputed facts reveal that the physical condition of either counsel or client prevents fair and adequate presentation of a case, failure to grant a continuance is reversible error.").

c. Witnesses

Defendant has identified 159 witnesses on his Sixth Amended Witness List, but only a handful of those witnesses have been deposed. Plaintiff has moved to exclude the testimony of twenty witnesses and one category of witness that Defendant describes as "witnesses expected to

be presented." (Omnibus Motion in Limine at 21–22.) In addition, until the Court determines what case will be tried (i.e., Defendant's malicious prosecution claim or Defendant's "victim" cases), it is premature, a practical impossibility, and a financial burden to both parties to take the depositions of more than a hundred witnesses. The hearing on these trial issues, however, is not set until November 29, 2017 – just a few days before the trial date. If this Court denies Plaintiff's motion to exclude the witnesses—despite their lack of firsthand knowledge concerning the elements of Defendant's malicious prosecution claim and any affirmative defenses Plaintiff may offer—then the Court should order Defendant to identify the witnesses he actually intends to present at trial and grant a continuance so Plaintiff can take their depositions and determine what, if anything, they know regarding the elements of Defendant's claim. In any event, Plaintiff's counsel will not have sufficient time from the date of the Court's ruling to trial to conduct this substantial deposition discovery.

d. Pre-Trial Deadlines

If the continuance is granted, Plaintiff also requests that the current trial deadlines be reset based upon the new trial date, including allowing the parties to file amended Exhibit and Witness Lists and to identify experts.

II. THE COURT SHOULD BIFURCATE THE TRIAL IN THE INTEREST OF EFFICIENCY AND TO MINIMIZE THE RISK OF PREJUDICE TO PLAINTIFF.

Despite these obstacles, Plaintiff could be prepared to proceed to trial as scheduled on December 5, 2017, if the Court bifurcated the proceedings and limited the first stage to: (i) Plaintiff's damages caused by Rothstein's conspiracy to commit abuse of process and (ii) whether Plaintiff had probable cause to commence these proceedings against Defendant. This Court "in furtherance of convenience or to avoid prejudice may order a separate trial of . . . any separate issue." Fla. R. Civ. P. 1.270(b). "[B]ifurcation is generally proper absent a specific threat

of inconsistent verdicts or prejudice to a party." *Johansen v. Vuocolo*, 125 So. 3d 197, 200 (Fla. 4th DCA 2013) (citation and quotation marks omitted).

Bifurcation on the terms proposed by Plaintiff is appropriate here. There is substantial overlap between (i) the facts that Plaintiff will present to explain Rothstein's Ponzi scheme and the damages he incurred as a result of it and (ii) the facts known to Plaintiff when he commenced these proceedings against Defendant, *i.e.*, the facts this Court will consider when it determines whether Defendant has proved Plaintiff lacked probable cause. *See Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1357 (Fla. 1994) (jury decides disputed issues of fact, but court determines whether those facts establish probable cause) (citation omitted). In all events, the jury will have to determine the dollar amount of Plaintiff's damages caused by Rothstein. And in all events, the jury will have to decide what Plaintiff knew about Rothstein's Ponzi scheme when he commenced these proceedings so the Court can determine whether Plaintiff "had a reasonable belief, based on facts and circumstances known to him, in the validity of his claim." *See Wright v. Yurko*, 446 So. 2d 1162, 1166 (Fla. 5th DCA 1984) (defining probable cause) (citing *Goldstein v. Sabella*, 88 So. 2d 910 (Fla. 1956)).

Bifurcating the trial and first addressing Plaintiff's damages and the related issue of what Plaintiff knew when he commenced these proceedings will expedite the resolution of Defendant's malicious prosecution counterclaim, minimize the parties' expenses, and conserve judicial resources. If the Court holds that Plaintiff had probable cause, Defendant cannot win and the case is over. *See Burns v. GCG Beverages, Inc.*, 502 So. 2d 1217, 1218 (Fla. 1986) (malicious prosecution has six required elements, and the absence of any one of them is fatal) (citation omitted). If that happens, the parties will not have wasted time and money preparing for trial on the other elements of Defendant's counterclaim (expenses that would include the fees associated

with deposing Defendant's proposed witnesses, since their testimony would no longer be necessary) and the Court, likewise, will not have devoted time and attention to issues that had no effect on the outcome of the case.

Finally, bifurcation avoids unnecessary prejudice to Plaintiff. Defendant obviously intends to re-litigate every part of his clients' (and other victims') claims against Plaintiff. But this evidence is simply not relevant to the narrow issue of whether Plaintiff reasonably believed—based on public information from the government and investors about Rothstein's Ponzi scheme, allegations and news reports that Rothstein had used Defendant's cases against Plaintiff to trick third parties into investing in non-existent settlements, Defendant's abusive use of discovery, and Defendant's commencement of a case in federal court when a duplicative case was already pending in state court—that he had a case against Defendant. If the Court allows Defendant to tar Plaintiff with inflammatory allegations of sexual battery before the jury makes its findings about what Plaintiff knew when he filed suit against Defendant, it is likely that the jurors will ignore relevant evidence and find against Plaintiff just because they despise him. Bifurcation of the trial avoids this unnecessary prejudice to Plaintiff.

CONCLUSION

Plaintiff moves this Court to grant his motion for a brief 90-day continuance of the parties' trial date and an extension of the pre-trial deadlines. In the alternative, Plaintiff moves this Court to bifurcate the upcoming trial and limit the first stage of the proceedings to (i) Plaintiff's damages caused by Rothstein and (ii) the absence of probable cause element of Defendant's malicious prosecution claim.

DATED: November __, 2017.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on November __, 2017, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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TRIAL CONTINUANCE APPROVED:

_____

Jeffrey E. Epstein
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Dated: November __