

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

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

Case No. 50 2009 CA 040800XXXXMBAG

v.

BRADLEY J. EDWARDS, et al.,

JUDGE HAFELE

Defendants/Counter-Plaintiff.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION FOR
SUMMARY JUDGMENT ON DEFENDANT/COUNTER-PLAINTIFF BRADLEY
EDWARDS' FOURTH AMENDED COUNTERCLAIM AND SUPPORTING
MEMORANDUM OF LAW**

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.510 of the *Florida Rules of Civil Procedure*, hereby files this Motion for Summary Judgment on the sole remaining count of Defendant/Counter-Plaintiff Bradley Edwards' ("Edwards") Fourth Amended Counterclaim, Malicious Prosecution.

INTRODUCTION

In order to prevail on his claim of Malicious Prosecution, Edwards must prove, among other things, that Epstein did not have probable cause to initiate his lawsuit against Edwards at the time that he did so. The threshold of facts required to establish probable cause that will defeat Edwards' claim for malicious prosecution, is "extremely low and easily satisfied." *Gill v. Kostroff*, 82 F.Supp. 2d 1354, 1364 (M.D. Fla. 2000). The specific facts cited herein, which are independently verifiable from numerous independent sources, including multiple court filings, are indisputable, far exceed the minimal threshold, and establish as a matter of law that Epstein had legally sufficient probable cause to file suit against Edwards at the time he did so.

At the previously held Summary Judgment hearing, this Court deferred oral argument on the issue of probable cause, focusing on the applicability of the litigation privilege to Edwards' claim for malicious prosecution due to the then recently published decision in *Wolfe v. Foreman*, 128 So. 3d 67 (Fla. 3d DCA 2013). A determination that probable cause existed to file suit as a matter of law would prevent a time-consuming and costly trial for which there is no legal basis.

SUMMARY OF THE ARGUMENT

Summary Judgment should be entered in favor of Epstein on Edwards's cause of action for Malicious Prosecution. Edwards has not, and will never be able to, prove a want of probable cause, as the undisputed facts delineated below irrefutably establish that there was probable cause as a matter of law at the time Epstein filed his Complaint. Accordingly, Epstein is entitled to judgment as a matter of law.

STATEMENT OF UNDISPUTED FACTS

In November 2009, it became national news that Defendant Scott Rothstein ("Rothstein"), a law partner of Defendant/Counter-Plaintiff Bradley Edwards, fled to Morocco to evade criminal prosecution for using their law firm, Rothstein, Rosenfeldt, Adler ("RRA"), to perpetrate a massive Ponzi scheme. It was widely reported that RRA, Rothstein, Rothstein's partners, and other co-conspirators whose identities had not yet been determined, defrauded investors into purchasing fake settlements of cases purportedly being litigated at RRA. *See Affidavit of Jeffrey Epstein filed in support of this Motion (hereinafter "Epstein Affidavit"); Amended Complaint in Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19); *Deposition Transcript of Bradley Edwards dated March 23, 2010; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA; 09-34791-RBR and Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19); *Deposition Transcript of Jeffrey Epstein. Rothstein*

returned to South Florida a short time later to face federal criminal charges and civil claims brought by private investors arising out of what was reported to be a \$1.2 Billion Ponzi scheme; the largest in Florida's history (the "Ponzi Scheme"). *See Epstein Affidavit; Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein*, 09-60331-CR-COHN; *Epstein's Answer and Affirmative Defenses to Edwards' Fourth Amended Counterclaim; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR and *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19).

On December 1, 2009, the Federal Government filed a thirty-six (36) page Information against Rothstein charging that RRA (of which Edwards was then a partner) was a racketeering "Enterprise" and that Rothstein, and his partners at RRA, as well as other unidentified co-conspirators, used RRA to defraud investors out of \$1.2 Billion by inducing them to invest in bogus settlements of alleged RRA cases (the "Rothstein Information"). *See Epstein Affidavit; Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein*, 09-60331-CR-COHN The Rothstein Information asserted that Rothstein, his partners at RRA, and his yet unidentified co-conspirators engaged in multiple felonious acts, and were able to lure investors into their Ponzi scheme by fraudulently advising potential investors of fabricated lawsuits in which they falsely claimed there were confidential settlement agreements, ranging in value from hundreds of thousands of dollars to millions of dollars, available for purchase at a discounted rate. It further alleged that Rothstein and his other unnamed co-conspirators utilized the offices of RRA to convince potential investors of the legitimacy of these fabricated settlements and the success of the law firm, which enhanced the apparent credibility of the purported investment opportunities in the Ponzi Scheme, and utilized funds obtained through the fraudulent Ponzi Scheme to supplement and support the operation and activities of RRA, to expand RRA by hiring additional attorneys

and support staff, to fund salaries and bonuses, and to acquire larger and more elaborate office space and equipment in order to enrich the personal wealth of persons employed by and associated with the RRA criminal Enterprise. *See Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein*, 09-60331-CR-COHN. Scott Rothstein admitted to, and was convicted for, the fraudulent scheme perpetrated at RRA. He is serving a 50 year sentence. *See Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein*, 09-60331-CR-COHN; *Plea Agreement between United States of America and Scott W. Rothstein*, 09-60331-CR-COHN.

Epstein also became aware of news reports that Rothstein was disbarred and that the Florida Bar was actively investigating at least half of the attorneys employed by RRA in connection with the Ponzi Scheme. *See Epstein Affidavit; See also, e.g., Miami Herald, Scott Rothstein Scandal: Scott Rothstein Partners Probed* (January 14, 2010)(“The **Florida Bar** is investigating at least 35 former senior lawyers in the now-bankrupt Fort Lauderdale law firm headed by Scott **Rothstein**, who was disbarred before he was criminally charged last month with using the firm to run a \$1.2 billion investment racket.”).

On November 20, 2009, the law firm of Conrad Scherer initiated a lawsuit against Rothstein and others, *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19) (hereinafter referenced as the “Razorback Complaint”), for the fraudulent scheme perpetrated at RRA involving, among other deceptive practices, RRA’s efforts to perpetuate the Ponzi Scheme through the use of fraudulent discovery and pleadings in the cases RRA, through Edwards, was litigating against Epstein. During the time of the Ponzi Scheme, RRA was, in fact, prosecuting three civil cases against Epstein (the “Epstein Cases”) through lead counsel Brad Edwards. *See pleadings in LM v. Jeffrey Epstein*, 502008CA028051XXXXMB AB; *EW v. Jeffrey*

Epstein, 502008CA028058XXXXMB AB; and *Jane Doe v. Jeffrey Epstein*, 08-80893-CIV Marra/Johnson; *Deposition Transcript of Jeffrey Epstein*, p. 23; line 4-p. 38; line 22. The Razorback Complaint specifically avowed that such fraudulent discovery and pleadings in the Epstein Cases were being used by RRA to overinflate the supposed monetary value of the Epstein Cases and to attempt to legitimize the false claims made to potential investors, i.e., that Epstein was willing to pay hundreds of millions of dollars in settlements (to additional fictional plaintiffs in fabricated RRA cases) to avoid what RRA claimed would be devastating publicity about Epstein and the world famous celebrities, politicians and other dignitaries associated with him. *See Epstein Affidavit; Razorback Complaint*. Specifically, the Razorback Complaint stated:

purported settlements, albeit fraudulent, were based on actual cases being handled by RRA. For example, one of the settlements involved herein was based upon facts surrounding Jeffrey Epstein, the infamous billionaire financier. . . Representatives of D3 were offered ‘the opportunity’ to invest in a pre-suit \$30,000,000.00 court settlement against Epstein involving a different underage female plaintiff.

See Razorback Complaint. The female described in the Razorback Complaint was not an actual client of RRA and there was, in fact, no such “pre-suit \$30,000,000 court settlement.” The Razorback Complaint further provided:

To augment his concocted story, Rothstein invited D3 to his office to view the thirteen banker’s boxes of actual case files in Jane Doe in order to demonstrate that the claims against Epstein were legitimate and that the evidence against Epstein was real.

See Razorback Complaint. The Razorback Complaint further alleged that Rothstein falsely told investors that his team of investigators uncovered high profile “celebrities, dignitaries and international figures” onboard Epstein’s private jet. In order to corroborate the claims that such high-profile persons were implicated in the Epstein scandal, Rothstein “showed D3 copies of a flight log purportedly containing names of celebrities, dignitaries and international figures.” *See Razorback Complaint*. Additionally, the Razorback Complaint asserted that Rothstein exploited

RRA's representation in the Epstein Cases to fraudulently pursue "issues and evidence unrelated to the underlying litigation but which was potentially beneficial to lure investors into the Ponzi scheme," including discovery to obtain information and documentation of famous individuals who, at some point in time, may have flown on Epstein's plane and noticing the depositions of celebrities that had no involvement in the specific claims of Edwards' clients. *See Razorback Complaint*. In fact, none of the alleged conduct for which Edwards' three clients in the Epstein Cases sought recovery was alleged in the Epstein Cases to take place on or otherwise involve Epstein's aircraft or a single celebrity, politician, or dignitary associated with Epstein. *See pleadings in LM v. Jeffrey Epstein*, 502008CA028051XXXXMB AB; *EW v. Jeffrey Epstein*, 502008CA028058XXXXMB AB; and *Jane Doe v. Jeffrey Epstein*, 08-80893-CIV Marra/Johnson.

According to the defrauded investors in the Razorback Complaint, the fraudulent pleadings and discovery on behalf of Edwards' three clients in the Epstein Cases were deliberately crafted to present a salacious, sexually charged tale of explosive facts that would convince investors to believe the false claims urgently made to investors that "Epstein had allegedly offered \$200,000,000.00 for settlement of the claims held by various young women who were his victims." *See Razorback Complaint*. The fraudulent discovery in the Epstein Cases that the Razorback Complaint declared took place solely to further the Ponzi Scheme at RRA did, in fact, take place. This discovery was conducted by Plaintiff Edwards, Rothstein's partner at RRA and the lead attorney in charge of the Epstein cases.¹

During the time in question, Edwards himself personally pursued discovery in the Epstein

¹ Edwards was a partner at Rothstein Rosenfeldt Adler ("RRA") from April 2009 through November 2009, which was during the same period when, according to the Razorback Complaint, the fraudulent pleadings and discovery were used to perpetuate the Ponzi Scheme. *See Deposition Transcript of Bradley Edwards dated March 23, 2010; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA; 09-34791-RBR and Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al., Case No. 09-062943(19)*.

Cases to identify the celebrities, politicians, and dignitaries associated with Epstein who flew on Epstein's plane, and noticed for deposition various famous dignitaries and celebrities, such as Bill Clinton and David Copperfield. Edwards pursued this discovery knowing that his clients made no allegations of improper conduct against them taking place on Epstein's planes or implicating any celebrities, politicians, or dignitaries. *See letter dated July 22, 2009 from Edwards, attached as Exhibit 3 to his deposition of March 23, 2010; dockets and pleadings in LM v. Jeffrey Epstein, 502008CA028051XXXXMB AB; EW v. Jeffrey Epstein, 502008CA028058XXXXMB AB; LM v. Jeffrey Epstein, 09-81092 Marra/Johnson and Jane Doe v. Jeffrey Epstein, 08-80893-CIV Marra/Johnson; copies of subpoenas; Deposition Transcript of Jeffrey Epstein, p. 23; line 4-p. 38; line 22; Initial Complaint filed by Epstein dated December 9, 2009, pages 13-20; Razorback Amended Complaint; pp. 16-17; ¶¶ 48, 49.*

While he was a partner at RRA and in the height of the Ponzi Scheme, on July 24, 2009, Edwards filed a two hundred thirty four (234) page, one hundred fifty-six (156) count federal complaint against Epstein on behalf of the same plaintiff for whom there was already a lawsuit pending in state court; a case that Edwards had been prosecuting against Epstein for the better part of a year. *See LM v. Jeffrey Epstein, 09-81092 Marra/Johnson; Deposition Transcript of Jeffrey Epstein, p. 23; line 4-p. 38; line 22; LM v. Jeffrey Epstein, 502008CA028051XXXXMB AB.* The federal complaint, signed by Edwards himself, was based on the same allegations made in the complaint filed by Edwards in the state case, but the allegations were highly sensationalized in the federal complaint. For example, the federal complaint alleged that:

- a. LM was identified by the FBI and U.S. Attorney's office in a criminal investigation against Epstein. However, LM was not on the FBI's or the U.S. Attorney's "list" referenced in paragraph 19 of the Complaint.
- b. Epstein "coerc[ed] or forc[ed] the then-minor L.M. to perform oral sex on him" However, in her September 24, 2009 deposition, LM testified under oath (at page 71), that she never had oral sex with Epstein.

- c. Epstein “knowingly transported LM and other minors in interstate commerce with the intent that the [sic] LM engage in prostitution . . .” However, in her February 9, 2010 deposition, LM testified under oath (at page 611) she never traveled with Epstein.

See L.M. Federal Complaint; Epstein’s Motion to Dismiss Complaint and Incorporated Memorandum of Law (§14) in LM v. Jeffrey Epstein, 09-81092 Marra/Johnson. Consistent with its purpose as a prop to show investors in the Ponzi Scheme, which collapsed only a few months later, Edwards filed the complaint in federal court but never served it on Epstein and never prosecuted it.²

In another of the Epstein Cases that the Razorback Complaint proclaimed was fraudulently touted to investors in the Ponzi Scheme, Edwards filed a motion in which he requested that the Court order Epstein to post a fifteen million dollar bond. *See Jane Doe v. Jeffrey Epstein, 08-80893-CIV Marra/Johnson; See Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al., Case No. 09-062943(19).* The court, in reviewing this motion, confirmed that there was no legitimate basis for Edwards to file it; calling it “devoid of evidence.” *See Order in Jane Doe No. 2 v. Epstein Dated November 5, 2009, 08-cv-80119.* In this motion Edwards not only described, at length, Epstein’s net worth, but also filed supplemental papers that listed in great detail Epstein’s personal belongings, including his vehicles, planes, and other items of substantial value, all at the time when the Epstein Cases were the lynchpin to keeping the Ponzi Scheme from unraveling. *See Jane Doe v. Jeffrey Epstein, 08-80893-CIV Marra/Johnson; Epstein Affidavit; Razorback Complaint; Depositions taken of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA; 09-34791-RBR.*

² Additionally, on September 18, 2009 when, according to the reports and Rothstein himself, the need for new investor money in the Ponzi Scheme was becoming dire, Edwards instructed his assistant at RRA to review and prepare for filing a “complaint in Federal Court similar to the one we did for LM.” *See email dated September 18, 2009 from Brad Edwards to Beth Williamson.* This complaint was to be filed on behalf of EW, another of Edwards’ clients in the Epstein Cases for whom he also had been litigating a state court case for almost a year, arising out of the same alleged facts. Edwards gave these instructions to his assistant two months after filing the federal complaint against LM that he neither served on nor prosecuted against Epstein.

The Razorback Complaint's detailed synopsis of the massive fraud that occurred with and in the Epstein Cases, Edwards' filing of a federal complaint while a state complaint arising out of the same matters was already pending on behalf of Edwards' same client, Edwards's discovery practice and bond motion in the Epstein Cases during the time in question that corroborated the claims about the Epstein Cases made in the Razorback Complaint, Rothstein's Indictment and the repeated statements in the Rothstein Information regarding Rothstein's unidentified partners and co-conspirators at RRA who were under investigation by the federal government as well as the Florida Bar, and the countless media reports daily unveiling the further extent of RRA's fraudulent conduct, were the facts upon which Epstein relied in filing suit against Rothstein, as the front man of the Ponzi Scheme, and against Edwards, Rothstein's partner at RRA and the lead attorney responsible for what investors in the Razorback Complaint confirmed was fraudulent activity in the Epstein Cases used to perpetuate the Ponzi Scheme. The undisputed facts set forth herein were the same facts alleged in Epstein's second amended complaint, were determined by the Court to have stated a cause of action for abuse of process, and survived Edwards' motion to dismiss. *See Order on Motion to Dismiss Plaintiff's Second Amended Complaint*, dated October 4, 2011.

PROCEDURAL HISTORY

In its May 19, 2014 order granting Epstein's motion for Summary Judgment, this Court recounted the following procedural history with respect to Epstein's suit:

[Epstein] filed suit against [Edwards]. Edwards then filed a counter-claim against Epstein. Epstein subsequently dismissed his Complaint without prejudice. The counter-claim proceeded, undergoing several amendments. As it now stands, the Fourth Amended Counterclaim has two causes of action: abuse of process and malicious prosecution. Epstein moved for summary judgment arguing that the litigation privilege applies to both the abuse of process and malicious prosecution claims.

See Order Granting Epstein's Motion for Summary Judgment. While Epstein had asserted other

grounds upon which he relied in support of his Motion, the court directed the parties to only address the litigation privilege issue. The Court entered its written order granting Summary Judgment in favor of Epstein solely upon application of the litigation privilege as required by the then binding precedent of *Wolfe v. Foreman*, 128 So. 3d 67 (Fla. 3d DCA 2013). Final Judgment was thereafter entered in favor of Epstein.

Edwards appealed the judgment as it pertained to his malicious prosecution action, during which time the Fourth District issued *Fischer v. Debrincat*, 169 So. 3d 1204 (Fla. 4th DCA 2015), holding that the litigation privilege did not apply to a malicious prosecution action and certifying to the Supreme Court of Florida conflict with *Wolfe*. The Fourth District Court of Appeal reversed this Court's decision based upon *Fischer*, and again certified conflict. *Edwards v. Epstein*, 178 So. 3d 942 (Fla. 4th DCA 2015). Epstein filed for review in the Supreme Court. The Supreme Court resolved the conflict in *Debrincat v. Fischer*, No. SC15-1477, 2017 WL 526508 (Fla. Feb. 9, 2017), holding that the litigation privilege does not bar a malicious prosecution action where all of the elements to support such a claim are met. Based upon *Debrincat*, the Supreme Court declined to review the decision of the Fourth District Court of Appeal in this case.

Upon remand by Fourth District Court of Appeal, and as permitted by law, Epstein renews his Motion for Summary Judgment based on the critical failure of Edwards to establish a "want of probable cause" for Epstein's suit against Edwards. The material undisputed facts in this case, coupled with the applicable law germane thereto, demonstrate that Summary Judgment in favor of Epstein on this issue is mandated.

STANDARD FOR SUMMARY JUDGMENT

Summary judgment is proper if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Volusia County v. Aberdeen at Ormond Beach*,

760 So. 2d 126, 130 (Fla. 2000); *Smith v. Shelton*, 970 So. 2d 450, 451 (Fla. 4th DCA 2007). It is mandated when the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials in evidence on file show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. FLA. R.CIV. P. 1.510(c).

When an appellate court enters a reversal of summary judgment and remands the case for further proceedings, it is proper for trial court to again consider a motion for summary judgment if such should be presented. *Pan-American Life Ins. Co. v. Tunon*, 179 So. 2d 382 (Fla. 3d DCA 1965). *See also B & B Const. Co. of Ohio, Inc. v. Rinker Materials Corp.*, 294 So. 2d 131 (Fla. 4th DCA 1974) (filing of further motions for summary judgment are permissible if it could be clearly demonstrated there was no genuine issues of fact remaining). It is also preferred if, as is true in this case, consideration of a motion for summary judgment would be in the best interests of the parties and the public, inasmuch as it would avoid needless expense and conserve precious judicial resources. *Walker v. Atlantic Coast Line Railroad Co.*, 121 So. 2d 713 (Fla. 1st DCA 1960). Here, the undisputed and incontrovertible facts establish that Edwards has not, and cannot as a matter of law, prove that there was an absence of probable cause for Epstein to file suit against Edwards. As this is a critical element of Edwards' Malicious Prosecution cause of action against Epstein, the inability to establish it as a matter of law mandates Summary Judgment in Epstein's favor.

SUMMARY JUDGMENT MUST BE GRANTED WHEN SUFFICIENT PROBABLE CAUSE EXISTED AT THE TIME EPSTEIN FILED SUIT AGAINST EDWARDS

In Florida, "an action for malicious prosecution is a serious matter." *Cent. Fla. Mach. Co., Inc. v. Williams*, 424 So. 2d 201, 203 (Fla. 2d DCA 1983). Malicious prosecution actions are "not generally favored" in Florida. *Id.* at 202. A malicious prosecution action requires that a plaintiff prove *each* of the following six elements: 1) a criminal or civil judicial proceeding was commenced against the plaintiff; 2) the proceeding was instigated by the defendant in the

malicious prosecution action; 3) the proceeding ended in the plaintiff's favor; 4) the proceeding was instigated with malice; 5) the defendant lacked probable cause; and 6) the plaintiff was damaged. See *Doss v. Bank of America, N.A.*, 857 So. 2d 991, 994 (Fla. 5th DCA 2003); *Kalt v. Dollar Rent-A-Car*, 422 So. 2d 1031, 1032 (Fla. 3d DCA 1982) (holding that “[t]he absence of any one of these elements will defeat a malicious prosecution action.”)(emphasis added); *Adams v. Whitfield*, 290 So. 2d 49, 51 (Fla. 1974); *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1355 (Fla. 1994). The fifth element; the absence of probable cause, is the element that as a matter of law Edwards cannot prove, warranting Summary Judgment.

In *Goldstein v. Sabella*, 88 So. 2d 910 (Fla. 1956), the Supreme Court of Florida explained the meaning of probable cause in the context of a malicious prosecution action as follows:

Probable cause is defined as “A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged.” *Dunnavant v. State*, Fla., 46 So. 2d 871, 874 [(Fla. 1950)]. This, as well as other acceptable definitions of the term, indicates that one need not be certain of the outcome of a criminal or civil proceeding to have probable cause for instituting such an action.

Id. at 910. “Probable cause in the context of a civil suit is measured by a lesser standard than in a criminal suit.” *Wright v. Yurko*, 446 So. 2d 1162, 1166 (Fla. 5th DCA 1984). “The standard for establishing probable cause in a civil action is extremely low and easily satisfied.” *Gill v. Kostroff*, 82 F.Supp. 2d 1354, 1364 (M.D. Fla. 2000). Even in the criminal context, such as when analyzing probable cause to support a search warrant, probable cause can be inferred from the facts. See *State v. Powers*, 388 So. 2d 1050, 1051 (Fla. 4th DCA 1980).

Under the higher standard for finding probable cause in the criminal context, it is well settled that probable cause must be judged by the facts that existed at the time of the defendant's arrest, not evidence subsequently learned or provided to the prosecution. *Maily v. Jenne*, 867 So.

2d 1250, 1251 (Fla. 4th DCA 2004) (“Probable cause is judged by the facts and legal state of affairs that existed at the time of the arrest.”); *Fla. Game & Freshwater Fish Comm’n v. Dockery*, 676 So. 2d 471, 474 (Fla. 1st DCA 1996) (“Hindsight should not be used to determine whether a prior arrest or search was made with probable cause. Events that occur subsequent to the arrest cannot remove the probable cause that existed at the time of the arrest.”) (citations omitted); *McCoy v. State*, 565 So. 2d 860, 861 (Fla. 2d DCA 1990) (holding that hindsight should not be used to determine whether a prior arrest or search was made with probable cause); *Dodds v. State*, 434 So. 2d 940, 942 (Fla. 4th DCA 1983) (holding that events that occur subsequent to the arrest cannot remove the probable cause that existed at the time of the arrest).

The same principle requiring that the existence of probable cause be determined at the time suit is commenced applies in a malicious prosecution case. *See Gill v. Kostroff*, 82 F.Supp. 2d 1354, 1364 (M.D. Fla. 2000) (“A determination of whether probable cause exists is based on the facts known by the defendant in the malicious prosecution action at the time the underlying action was initiated, not some later point in time.”)(applying Florida law); *see also Fee, Parker & Lloyd, P.A.*, 379 So. 2d at 418 (“[W]e find the facts within Mr. Parker’s knowledge at the time suit was filed sufficient to constitute probable cause for the commencement of the malpractice action.”); *Florida Standard Jury Instruction 406.4* (“Probable cause means that at the time of [instituting] [or] [continuing] a [criminal] [civil] proceeding against another, the facts and circumstances known to [(defendant)] [(other person)] were sufficiently strong to support a reasonable belief that (claimant) [had committed a criminal offense] [the [claim] [proceeding] was supported by existing facts].”). The law is clear that courts must only look to the facts within the Plaintiff’s knowledge at the time suit was filed to determine if they were sufficient to satisfy extremely low threshold of probable cause for the commencement of the lawsuit. *Fee, Parker & Lloyd, P. A. v.*

Sullivan, 379 So. 2d 412, 418 (Fla. 4th DCA 1980). However, while the time frame to which the courts must look to determine the existence of probable cause is the same, the standard for satisfying probable cause is much lower in a civil case than in a criminal case.

In the case at bench, at the time Epstein filed suit against Edwards and Rothstein, Edwards was a partner at RRA and the lead attorney on the cases being prosecuted by RRA against Epstein. As a result of widely distributed media reports,³ and criminal and civil case filings, it was a matter of public knowledge that RRA was operating as a front for a \$1.2 Billion Ponzi Scheme in which real RRA cases were being used to defraud investors. The cases Edwards was prosecuting against Epstein had, undeniably, been used to defraud investors in the RRA Ponzi Scheme. *See Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein*, 09-60331-CR-COHN; *Epstein's Answer and Affirmative Defenses to Edwards's Fourth Amended Counterclaim; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR and *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19). Multi-million dollar lawsuits regarding the Ponzi Scheme filed against RRA, Rothstein, and others contained detailed allegations of fraudulently prepared documents and discovery from the Epstein Cases that were shown to investors to lure them into the Ponzi Scheme. *See Razorback Amended Complaint*; pp. 16-17; ¶¶ 48 – 49. These are the very same cases that Edwards was then litigating against Epstein at the same time that the federal government and defrauded investors asserted that RRA, through its agents and their co-conspirators, was operating the Ponzi Scheme.

Furthermore, the Information filed against Scott Rothstein by the Federal government repeatedly references RRA as the Enterprise with which Rothstein and his co-conspirators were

³ In fact, one could not read a newspaper or turn on the television without hearing about RRA and the Ponzi Scheme for several months.

associated and by which they were employed. The Rothstein Information charged that “Rothstein and his conspirators, known and unknown,” participated in or conspired to participate in “racketeering activity” to further the Ponzi scheme at RRA. *See Information charging Scott W. Rothstein*. This, coupled with Edwards being the lead attorney responsible for the very same Epstein Cases which the investors in the Razorback Complaint alleged were utilized to defraud them in the Ponzi Scheme, created sufficient cause for Epstein to file suit.

Moreover, as delineated in the statement of undisputed facts above, at the same time that the Ponzi Scheme was in dire need of funding to keep it alive, Edwards filed a Federal case against Epstein on behalf of the same plaintiff for whom Edwards was already litigating a case based on the same matters in state court. *See LM v. Jeffrey Epstein*, 09-81092 Marra/Johnson; and *LM v. Jeffrey Epstein*, 502008CA028051XXXXMB AB. However, the facts delineated in the federal complaint were embellished and included deceitful allegations, thereby making the federal complaint a more effective tool to enhance the apparent value of the “Epstein Cases,” which the investors alleged in the Razorback Complaint were fraudulently used to lure them into the Ponzi Scheme. *See Epstein’s Motion to Dismiss Complaint and Incorporated Memorandum of Law (§14) in LM v. Jeffrey Epstein*, 09-81092 Marra/Johnson. Edwards neither served the federal complaint nor prosecuted it against Epstein corroborating the logical conclusion that it was filed solely to further the Ponzi Scheme. Moreover, while he was a partner at the law firm that the federal government asserted was a criminal Enterprise, and consistent with the allegations in the Razorback Complaint, Edwards also conducted questionable discovery and filed an unsupportable bond motion for millions of dollars against Epstein detailing Epstein’s financial net worth in Federal court during the exact time the cases were being shown to the investors. *See Statement of Undisputed Facts, above*.

The foregoing incontrovertible facts; the facts known to Epstein at the time the underlying action was initiated, satisfy the extremely low threshold of probable cause required to defeat a malicious prosecution claim. *See Wright v. Yurko*, 446 So. 2d 1162, 1166 (Fla. 5th DCA 1984). Accordingly, Epstein is entitled to judgment because Edwards cannot, as a matter of law, establish an absence of probable cause, which is an indispensable element of Edwards' cause of action against Epstein for malicious prosecution. *Thompson McKinnon Securities, Inc. v. Light*, 534 So. 2d 757, 759 (Fla. 3d DCA 1988).

CONCLUSION

Summary Judgment must be granted in favor of Epstein because there is no material dispute as to any of the numerous facts demonstrating as a matter of law that Probable Cause existed at the time Epstein filed suit. Accordingly, in reliance upon the foregoing arguments and authorities, Plaintiff/Counter-Defendant Jeffrey Epstein respectfully requests that the Court grant his Motion for Summary Judgment.

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 June 30, 2017.

/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
954.467.1223
954.337.3716 (facsimile)
Tonja@TonjaHaddad.com

SERVICE LIST

CASE NO. 502009CA040800XXXXMBAG

Jack Scarola, Esq.
jsx@searcylaw.com; mep@searcylaw.com
Searcy Denney Scarola et al.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

Jack Goldberger, Esq.
jgoldberger@agwpa.com; smahoney@agwpa.com
Atterbury, Goldberger, & Weiss, PA
250 Australian Ave. South
Suite 1400
West Palm Beach, FL 33401

Marc Nurik, Esq.
1 East Broward Blvd.
Suite 700
Fort Lauderdale, FL 33301

Bradley J. Edwards, Esq.
brad@pathtojustice.com
Farmer Jaffe Weissing Edwards Fistos Lehrman
425 N Andrews Avenue, Suite 2
Fort Lauderdale, Florida 33301

Fred Haddad, Esq.
Dee@FredHaddadLaw.com
315 SE 7th Street, Suite 301
Fort Lauderdale, FL 33301

Tonja Haddad Coleman, Esquire
Tonja@tonjahaddad.com; efiling@tonjahaddad.com
Law Offices of Tonja Haddad, P.A.
315 SE 7th Street, Suite 301
Fort Lauderdale, FL 33301
Attorneys for Jeffrey Epstein