

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

Case No. 50 2009CA040800XXXXMB AG

JEFFREY EPSTEIN

Plaintiff,

v.

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

Defendants.

FILED
2010 APR 16 PM 4:47
ARON R. BOCK, CLERK
PALM BEACH COUNTY, FLORIDA

MOTION TO STRIKE AFFIDAVIT OF SCOTT ROTHSTEIN

Plaintiff, JEFFREY EPSTEIN ("Epstein"), move to strike the affidavit of Defendant, Scott Rothstein filed in support of his Motion to Set Aside Default, and states:

1. Epstein filed the instant action against Rothstein and others on December 9, 2009.
2. Rothstein was the former Chairman and CEO of the now defunct law firm, Rothstein, Rosenfeldt & Adler, P.A. ("RRA"). Rothstein was indicted and pled guilty to five counts including racketeering, money laundering and fraud related to a massive Ponzi scheme he conducted through RRA.
3. On December 14, 2009, Rothstein was served with the summons and Complaint in this action.
4. On December 31, 2009, Epstein filed a Motion for Default due to Rothstein's failure to respond to the Complaint.
5. A default was entered by the Clerk on January 21, 2010.

6. Rothstein filed a Motion to Set Aside Default on February 17, 2010.
7. On March 8, 2010, Rothstein filed an affidavit in support of his Motion to Set Aside Default (attached as **Exhibit A**).
8. On March 9, 2010, a hearing was conducted on Rothstein's Motion to Set Aside Default and the Court deferred ruling so the parties could conduct discovery related to the motion (3/9/10 Order attached as **Exhibit B**).
9. The Court re-set the hearing on Rothstein's Motion to Set Aside Default for April 30, 2010.
10. Epstein set the deposition of Rothstein to occur on April 15, 2010 (notice attached as **Exhibit C**).
11. On April 9, 2010, Mark Nurik, counsel for Rothstein, wrote the undersigned essentially stating that he could not produce Rothstein for deposition because he is detained in the Federal Bureau of Prisons (correspondence attached as **Exhibit D**).
12. Mr. Nurik directed the undersigned to coordinate Rothstein's deposition with U.S. Attorney Paul Schwartz. As Rothstein's counsel, Mr. Nurik is in a far better position to work with Mr. Schwartz to produce Rothstein for deposition. Indeed, Mr. Nurik was able to provide Rothstein with his affidavit and obtain his notarized signature despite his detention in prison.
13. On the other hand, Epstein's counsel has contacted U.S. Attorney Schwartz via letter and telephone to attempt to coordinate Rothstein's deposition, but to no avail.

14. Since it appears that Epstein will not have the opportunity to depose Rothstein relative to his affidavit prior to the April 30, 2010 hearing, Epstein requests the Court strike said affidavit.

15. It would be inequitable to permit Rothstein to rely on his self-serving affidavit without Epstein having the ability to question Rothstein relative to same.

16. The Court specifically deferred ruling on the Motion to Set Aside Default so the parties could "conduct discovery relative to this motion." See Exhibit B.

17. Epstein, through no fault of his own, has been prohibited from conducting said discovery. The Court should not consider Rothstein's affidavit in a vacuum in determining Rothstein's Motion to Set Aside Default and therefore requests the Court strike said affidavit.

18. In Jordan v. Statement Farm Ins. Co., 515 So. 2d 1317, 1319 (Fla. 2d DCA 1987), the court struck plaintiff's affidavit in opposition to defendant's summary judgment. The Second District Court of Appeals concluded that "it [was] evident that the statements in the affidavit contradict the testimony in deposition and [] the trial court was correct in striking the affidavit."

19. Here, Epstein does not even have the opportunity to elicit testimony from Rothstein relative to his affidavit. Admission of the affidavit "is a matter within the sound discretion of the court." See West Town Plaza Associates, Ltd. v. Pines Properties, inc., 600 So. 2d 477, 478-79 (Fla. 4th DCA 1992); Scott v. NCNB Nat'l Bank of Fla., 489 So. 2d 221, 223 (Fla. 2d DCA 1986).

20. For the foregoing reasons, the Court should strike Rothstein's affidavit.

WHEREFORE, Defendant, JEFFREY EPSTEIN, respectfully requests the Court strike the affidavit of Defendant, SCOTT ROTHSTEIN, in support of his Motion to Set Aside Default and grant any additional relief the Court deems just and proper.

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was sent by fax and U.S. Mail to the following addressees on this 15th day of April, 2010:

Gary M. Farmer, Jr., Esq.
Farmer, Jaffe, Weissing, Edwards, Fistos
& Lehrman, PL
425 N. Andrews Avenue, Suite 2
Fort Lauderdale, FL 33301

[REDACTED] – fax
Attorneys for Defendant, L.M.

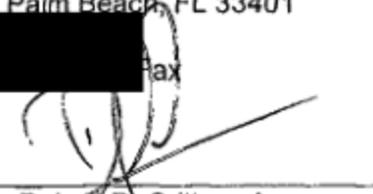
Jack Alan Goldberger, Esq.
Atterbury Goldberger & Weiss, P.A.
250 Australian Avenue South
Suite 1400
West Palm Beach, FL 33401-5012
Fax: [REDACTED]
Co-Counsel for Defendant Jeffrey Epstein

Jack Scarola, Esq.
Searcy Denney Scarola Barnhart &
Shipley, P.A.
2139 Palm Beach Lakes Blvd.
West Palm Beach, FL 33409

[REDACTED] F
Attorneys for Defendant Bradley Edwards

Law Offices of Marc S. Nurik
Counsel to Scott Rothstein
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BURMAN, CRITTON, LUTTIER & COLEMAN, LLP
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West Palm Beach, FL 33401

[REDACTED] Fax
By: 
Robert D. Critton, Jr.
Florida Bar #224162
Michael J. Pike
Florida Bar #617296
David A. Yarema
Florida Bar #12492
(Counsel for Defendant Jeffrey Epstein)

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

CASE NO.: 2009 CA 040800 XXXXMB
HONORABLE JUDGE DAVID F. CROW

JEFFREY EPSTEIN,

Plaintiff,

vs.

SCOTT ROTHSTEIN, BRADLEY
J. EDWARDS, and LM,

Defendants.
_____ /

AFFIDAVIT OF SCOTT W. ROTHSTEIN
IN SUPPORT OF MOTION TO SET ASIDE DEFAULT

STATE OF FLORIDA)
) ss.:
COUNTY OF)

Before me, the undersigned authority, personally appeared, SCOTT W. ROTHSTEIN, who after being by me first duly sworn, on oath, deposes and states as follows:

1. I am a Defendant in the above-captioned matter.
2. I did not respond to the Summons and Complaint in this lawsuit because I did not have knowledge of its existence until February, 2010. In February 2010, I learned that this lawsuit was filed against me and that a default judgment had been entered against me for failure to respond.
3. From December 1, 2009 until March 1, 2010, I was detained at the Federal Detention Center in Miami, Florida¹.

¹ On March 1, 2010, I was transferred to the Port St. Lucie jail.

4. During that time frame I was pulled out of my cell many times by the Bureau of Prisons staff to receive service of lawsuits at all hours.

5. Inasmuch as the Bureau of Prisons rules and regulations do not allow a prisoner to hand any documents to any visitors, including counsel, upon service of various lawsuits, I simply informed my attorney who would then look up the case with the appropriate court and contact the attorney for the plaintiff(s) in such cases and/or take whatever appropriate action was necessary.

6. To the best of my knowledge and belief, I do not recall being served with this lawsuit. If I was properly served with this lawsuit, it has been misplaced within the pile of numerous lawsuits and voluminous amount of other legal papers and has not been located. Even to date, I have not located the Complaint or Plaintiff's Motion for Default.²

7. I state in good faith that if I had actual knowledge of this lawsuit I would have advised my attorney as I have done with various other lawsuits currently pending against me.

8. As soon as I learned of the lawsuit, I immediately contacted my attorney and advised him of same which prompted the filing of my Motion to Set Aside Default and this Affidavit in Support thereof.

9. I have a viable defense to the allegations contained in the Plaintiff, Jeffrey Epstein's ("Plaintiff" or "Epstein"), Complaint. Without providing a detailed response to the Complaint herein, just one of many meritorious defenses to the Complaint is that at least one, if not more, of the lawsuits against Plaintiff which he references as the basis of this instant lawsuit (the "Civil Actions"), was filed with the court on behalf of certain clients by a defendant herein, Bradley Edwards ("Edwards"), *prior to* his employment as an attorney at the law firm Rothstein Rosenfeldt Adler ("RRA"). The fact that Edwards, *prior to his employment with RRA, and prior*

² Since learning of this lawsuit, my attorney obtained a copy of the Complaint.

to our introductions with one another, already had client(s) suing Epstein in Civil Actions, goes against several counts in the Complaint, including, but not limited to, the RICO count. In fact, the Civil Actions filed by Edwards and/or other attorneys at RRA were and are *real* cases, with *real* plaintiffs that have *real* claims against Epstein and, this instant lawsuit is Plaintiff's feeble attempt to take advantage of my unfortunate circumstances to disqualify claims by real persons that deserve to have their day in court.

10. I respectfully submit that if the Court were to disallow my Motion to Set Aside Default, not only would I be extremely prejudiced inasmuch as I have viable defenses to the allegations contained in Plaintiff's Complaint, but the plaintiffs in the Civil Actions that Edwards and others at RRA filed against Epstein which he references in his Complaint in this matter would be prejudiced as well. A default entered against me in this matter would have the same effect as my admission to the assertions made by Plaintiff which would, in essence, allow Epstein to prevail against the plaintiffs in the Civil Actions on the basis that they are frivolous and fraudulent lawsuits, which they are not.

Under penalties of perjury, I declare that I have read the foregoing affidavit and the facts stated in it are true.



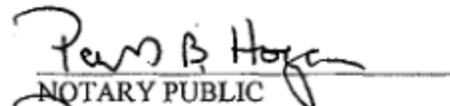
SCOTT W. ROTHSTEIN

STATE OF FLORIDA)
)ss.:
St. Lucie County)

BEFORE ME the undersigned authority, personally appeared SCOTT W. ROTHSTEIN, who after being by me first duly sworn on oath deposes and says that he is the Defendant in the above-styled cause; that he has read the foregoing Affidavit and the facts contained herein are true and correct.


SCOTT W. ROTHSTEIN

SWORN TO AND SUBSCRIBED before me this 28 day of March, 2010, by SCOTT W. ROTHSTEIN, who is personally known to me or who has produced St. Lucie County Jail I.Q. as identification.


NOTARY PUBLIC
Patrick B. Hogan
Typed or Printed Name of
Notary Public

My commission expires:

NOTARY PUBLIC-STATE OF FLORIDA
Patrick B. Hogan
Commission # DD910543
Expires: SEP. 25, 2013
BONDED THROUGH ATLANTIC BONDING CO., INC.

2

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

JEFFREY EPSTEIN

Complex Litigation, Fla. R. Civ. Pro.1201

Plaintiff,

Case No. 50 2009CA040800XXXXMB AG

v.

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

Defendants.

ORDER ON DEFENDANT SCOTT ROTHSTEIN'S MOTION TO SET ASIDE DEFAULT

THIS CAUSE came before the Court on Defendant Scott Rothstein's Motion to Set Aside Default, and the Court having heard argument of counsel and being fully advised in these premises, it is hereby

ORDERED and ADJUDGED that said Defendant's Motion is hereby granted/

~~denied~~ *deferral pending a special set hearing to be. Parties are given leave to present discovery in regard to the motion*

DONE AND ORDERED at Palm Beach County Courthouse, West Palm Beach, Florida, this 2nd day of Mar., 2010

David F. Crow
Circuit Judge

EXHIBIT B

Copied furnished to:

ROBERT D. CRITTON, JR., ESQ., Burman, Critton, Luttier & Coleman, 303 Banyan Boulevard, Suite 400, West Palm Beach, FL 33401, MARC S. NURIK, ESQ., Law Offices of Mark S. Nurik, One East Broward Boulevard, Suite 700, Fort Lauderdale, FL 33301, GARY M. FARMER, JR., ESQ., Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, PL. 425 N. Andrews Avenue, Suite 2, Fort Lauderdale, FL 33301, JACK SCAROLA, ESQ., Searcy Denney Scarola Barnhart & Shipley, P.A. 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409, and JACK ALAN GOLDBERGER, ESQ., Atterbury Goldberger & Weiss, P.A., 250 Australian Avenue South, Suite 1400, West Palm Beach, FL 33401-5012

cc: J.E.D.

Depo

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

JEFFREY EPSTEIN

Complex Litigation, Fla. R. Civ. Pro.1201

Plaintiff,

Case No. 50 2009CA040800XXXXMB AG

v.

SCOTT ROTHSTEIN,
Individually,
BRADLEY J. EDWARDS,
Individually, and L.M.,
Individually,

Defendants.

NOTICE OF TAKING VIDEO DEPOSITION

To: See Service List below

PLEASE TAKE NOTICE that the undersigned attorney will take the deposition
via video of:

<u>DEPONENT</u>	<u>DATE & TIME</u>	<u>LOCATION OF DEPOSITION</u>
Scott Rothstein c/o Marc S. Nurik, Esq.. Law Offices of Marc S. Nurik One East Broward Boulevard Suite 700 Fort Lauderdale, FL 33301	April 15, 2010 10:00 a.m.	Prose Court Reporting 250 Australian Avenue South Suite 1500 West Palm Beach, FL 33401

upon oral examination, before Prose Court Reporting Agency, Inc., a Notary Public, or
any other officer authorized by law to take depositions in the State of Florida. The oral
examination is being taken for the purpose of discovery, for use at trial, or for such other
purposes as are permitted under the applicable Statutes of Rules of Court.

Certificate of Service

I HEREBY CERTIFY that a true copy of the foregoing was sent by fax and U.S.

Mail to the following addressees on this 5th day of April, 2010:

EXHIBIT C

Epstein v. Rothstein, et al.
Page 2

Marc S. Nurik, Esq.,
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Attorneys for Defendant Scott Rothstein

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Searcy Denney Scarola Barnhart &
ShIPLEY, P.A.
2139 Palm Beach Lakes Blvd.
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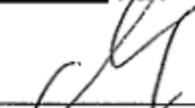
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Attorneys for Defendant, L.M.

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Co-Counsel for Defendant Jeffrey Epstein

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Suite 400
West Palm Beach, FL 33401

[REDACTED] Fax
By: 
Robert D. Critton, Jr.
Florida Bar #224162
Michael J. Pike
Florida Bar #617296
(Counsel for Defendant Jeffrey Epstein)

cc: Prose Court Reporting which will also provide Videographer service

Law Offices of Marc S. Nurik

One East Broward Boulevard

Suite 700

Fort Lauderdale, FL 33301

Phone [REDACTED]

Fax [REDACTED]

Marc S. Nurik
Admitted to Practice in
Florida and New York

Of Counsel:
Julio E. Gonzalez
Admitted to Practice in
Florida and New York

Writer's Email:
[REDACTED]

April 9, 2010

BY EMAIL & U.S. MAIL

Robert D. Critton, Jr., Esq.
Burman, Critton, Luttier & Coleman, LLP
303 Banyan Boulevard, Suite 400
West Palm Beach, FL 33401

Re: Epstein v. Rothstein, et al
Case No. 50 2009CA040800XXXXMB AG

Dear Mr. Critton:

I am in receipt of your letter and Notice dated April 5, 2010 scheduling the deposition of my client, Scott Rothstein, for April 15, 2010 in connection with the issues associated with our Motion to Set Aside the Default.

Please be advised that as my client is currently pre-trial detained in the Federal Bureau of Prisons system, I have no control over, or ability to, arrange for his appearance at any particular location.

Furthermore, due to the unique circumstances of my client's incarceration, I suggest that any effort on your part to schedule my client's testimony in connection with the Motion to Set Aside the Default be directed to the United States Marshal's Service with a copy to me. In an effort to be as helpful as possible, I suggest that you try to contact Assistant United States Attorney Paul Schwartz (954-356-7255) for further direction.

Please be advised that at the present time, any questions relating to the subject matter of my client's criminal case will result in my client invoking his 5th Amendment privilege.

Please contact me if you have any other questions concerning this matter.

Sincerely,


Marc S. Nurik

EXHIBIT D