

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

JEFFREY EPSTEIN,

Plaintiff,

vs.

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

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

Case No. 502009CA040800XXXXMB
Division AG

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S RESPONSE IN
OPPOSITION TO DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS'
MOTION TO DISMISS THE CORRECTED SECOND AMENDED COMPLAINT**

Plaintiff/Counter-Defendant, JEFFREY EPSTEIN ("EPSTEIN"), by and through his undersigned counsel, hereby offers the following Response in Opposition to Defendant/Counter-Plaintiff EDWARDS' ("EDWARDS") Motion to Dismiss the Corrected Second Amended Complaint and states:

1. EDWARDS' two-page, five-paragraph Motion to Dismiss is perfunctory and conclusory. EPSTEIN's Corrected Second Amended Complaint satisfies each and every element of the abuse of process cause of action with allegations that EDWARDS made perverted use of process, had an ulterior purpose in doing so, and caused damages to EPSTEIN, and EDWARDS has **not** established otherwise. EDWARDS' bare-bones Motion to Dismiss does not cite a single supporting authority, and contains no valid arguments warranting dismissal.

2. Initially, it must be noted that this litigation has at its core a law firm which has been described by a U.S. Attorney as a criminal enterprise. Its founder, Scott Rothstein – EDWARDS' partner – is currently serving a 50-year sentence in federal prison for selling fake

settlements to unsuspecting investors. Through the law firm of Rothstein, Rosenfeldt and Adler, P.A. ("RRA"), Rothstein and others in this criminal enterprise conducted a \$1.2 billion Ponzi scheme which was perpetrated with fake agreements, forged signatures and a fundamental corruption of the many legal protections that the legal system has in place. By claiming to be engaged in what was essentially legal extortion, Rothstein persuaded investors that he could pressure defendants, including EPSTEIN, into paying astronomical settlements and further defrauded investors by convincing them to purchase fake interests in assignments of fictitious structured settlements, including those falsely claimed to have been reached by RRA for EDWARD' clients with claims against EPSTEIN, to the detriment of EPSTEIN. Defendant EDWARDS made improper use of the judicial system and civil process by *inter alia* filing a complaint in federal court, although a state court complaint had been pending on behalf of the same plaintiff for almost a year, engaged in unreasonable and vexatious discovery and motion practice in certain underlying actions against EPSTEIN, made unfounded and highly charged sexual allegations in these underlying actions, that caused damage to EPSTEIN.

3. EDWARDS' Motion to Dismiss for failure to state a cause of action admits all well-pled facts of the Corrected Second Amended Complaint as true and the allegations and reasonable inferences therefrom must be construed in the light most favorable to EPSTEIN. *Salit v. Ruden, McClosky, Smith, Schuster & Russell, P.A.*, 742 So. 2d 381,383 (Fla. 4th DCA 1999). *See also Morris v. Fla. Power & Light Co.*, 753 So. 2d 153, 154 (Fla. 4th DCA 2000) ("[A] complaint should not be dismissed for failure to state a cause of action 'unless the movant can establish beyond any doubt that the claimant could prove no set of facts whatever in support of his claim.'"). EDWARDS has utterly failed to meet his substantial burden of establishing

“beyond any doubt” that EPSTEIN cannot prove any set of facts and circumstances which support his abuse of process claim.

4. EDWARDS’ first argument that the “Introduction” to the Corrected Second Amended Complaint is “surplusage apparently intended to defame Mr. Edwards . . .” does **not**, on its face, state a legally-recognized basis for dismissal of the Corrected Second Amended Complaint. Defendant EDWARDS’ critique of the “Introduction” does **not** indicate any substantive deficiencies in the abuse of process claim, and it should be rejected and disregarded by this Court.

5. Equally baseless and legally meritless is EDWARDS’ contention that the Corrected Second Amended Complaint does not identify the “process,” the first element of the cause of action, that was allegedly abusive, or when, or on whom, it was served. EDWARDS misapprehends the nature of an abuse of process claim. Under Florida law, the tort of abuse of process requires proof that the judicial system was misused for an ulterior purpose *after* an action was filed and process served. *See, e.g., Della-Donna v. Nova University, Inc.*, 512 So. 2d 1051, 1055 (Fla. 4th DCA 1987); *McMurray v. U-Haul Co, Inc.*, 425 So. 2d 1208, 1209-10 (Fla. 4th DCA 1983). The filing of a lawsuit, with an ulterior motive of harassment, which is what EDWARD’s argument is, does not constitute abuse of process. *Della-Donna*, 512 So. 2d at 1056. Furthermore, Defendant EDWARDS blatantly ignores the numerous instances of actionable abuse of process by EDWARDS which are meticulously and with great detail outlined in the Corrected Second Amended Complaint. (*See* Corrected Second Amended Complaint ¶¶ 30-33). For example, Paragraph 30(c) alleges that “Epstein believes that the federal complaint in *L.M. v. Epstein* was shown to [Attorney] Legamaro and [his client, potential investor] Ritchie

[on or about October 13, 2009] and that it was prepared by Edwards with highly-charged sexual allegations *solely* to be shown to induce investment in the Epstein Actions and advance the Ponzi scheme, as demonstrated by the fact that Edwards never served Epstein with a summons and complaint in that federal action, which action was filed long *after* Edwards filed and served a state court civil action on behalf of L.M.” Paragraph 31 asserts that “[o]n or about October 17, 2009, Edwards, who had filed a state complaint against Epstein on behalf of E.W., emailed Edwards' assistant to file a federal complaint against Epstein on behalf of E.W., like the one Edwards had filed in federal court on behalf of L.M.” Paragraph 32 then states “Edwards also made illegal, improper and perverted use of the civil process in order to bolster the case to investors by utilizing it to conduct unreasonable and unnecessary ‘discovery,’ making unfounded allegations, and engaging in improper motion practice,” ***and*** sets forth ten (10) different and specific instances of EDWARDS’ abuse of process. Thus EPSTEIN has sufficiently pled the first element, the process that was abused.

6. Equally overlooked by EDWARDS are the allegations in Paragraph 33 which expressly identify EDWARDS’ three specific “ulterior motives for making these improper uses of civil process,” the second element of the tort.

7. EDWARDS’ next argument - that the Corrected Second Amended Complaint does not “articulate a cognizable theory of damages” caused by his wrongdoing - is **not** supported by Florida law. Actual damages, as opposed to a “theory of damages,” is all that Florida jurisprudence requires a claimant to allege. *See Valdes v. GAB Robins N. Am., Inc.*, 924 So. 2d 862, 867 n.2 (Fla. 3d DCA 2006) (an abuse of process cause of action requires “damage to the plaintiff as a result of the defendant’s action”), *rev. den.*, 949 So. 2d 200(Fla. 2007).

Additionally, EDWARDS flatly ignores the allegations of the Corrected Second Amended Complaint at ¶ 34, that set forth the damages caused by his abuse of process (i.e. “additional and unnecessary attorney’s fees and costs”). Moreover, nominal damages, as well as attorneys’ fees and costs are sufficient to support a claim for abuse of process. *See, e.g., Stoler v. Levinson*, 394 So. 2d 462, 462 (Fla. 3d DCA 1981). Thus EPSTEIN has satisfactorily pled the third element of the claim.

8. Equally flawed is Defendant’s penultimate argument that the Corrected Second Amended Complaint does not “identify any conduct outside the protection of the litigation privilege.” EDWARDS fails to advance any legal analysis concerning how the litigation privilege applies to the facts asserted, and does **not** cite a single supporting authority requiring dismissal of a complaint based on the litigation privilege.

9. Furthermore, the litigation privilege is an affirmative defense and EDWARDS has **not** shown that such a defense appears on the face of the pleading. *See Ingalesbe v. Stewart Agency, Inc.*, 869 So. 2d 30, 34-5 (Fla. 4th DCA 2004) (dismissal of claim for interference with fee contract on basis of litigation immunity reversed where affirmative defense did not appear on face of complaint). The four corners of the Corrected Second Amended Complaint do **not** suggest, much less establish, that any of EDWARDS’ acts of misconduct were in furtherance of the underlying litigation. *See Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. United States Fire Ins. Co.*, 639 So. 2d 606, 608 (Fla. 1994); *SCI Funeral Services of Florida, Inc. v. Henry*, 839 So. 2d 702, 710 n.4 (Fla. 3d DCA 2002) (noting that a cause of action for malicious prosecution is not barred by the litigation privilege). That determination must be made

by the fact finder. The reasoning in *Gen. Refractories Co. v. Fireman's Fund Ins. Co.*, 337 F.3d 297, 312 (3d Cir. 2003) makes EPSTEIN's point very well:

GRC mainly argues that the judicial privilege cannot possibly apply to these circumstances because “[i]t is illogical on the one hand to say that discovery abuses and filing frivolous motions can support an abuse of process claim because those actions are incident to the litigation process, and on the other hand to say that those actions are absolutely privileged because they are communications issued in the litigation process.” GRC’s argument has a good deal of logical appeal. The mere existence of the abuse of process tort is evidence that judicial privilege applies to a much narrower range of activity than the attorney appellees urge. Where judicial process is being perverted, immunity would impede, not further, the interests protected by the judicial privilege.

Id. The Corrected Second Amended Complaint identifies numerous instances of conduct by EDWARDS outside the parameters of the litigation privilege. Accordingly, the litigation privilege does not categorically bar EPSTEIN’s claims

10. The litigation privilege is not an absolute bar for any act occurring during the course of a judicial proceeding; otherwise, the Supreme Court would not have added “...so long as the act has some relationship to the proceeding.” *Levin*, at 608. Clearly this does not mean that just because it took place in the proceeding automatic immunity attaches, otherwise the litigation privilege would act as a bar to perjury and other misconduct, typically punishable by contempt. *See Montejo v. Martin Memorial Medical Center, Inc.*, 935 So.2d 1244, n. 2 (Fla. 4th DCA 2004) which stated that the litigation privilege discussed in *Levin* does not apply when the Court lacked jurisdiction and entered a void order. Even *judicial* immunity may be lost when a judge acts in clear absence of all jurisdiction, *Montejo*, n. 3. The Supreme Court in *Echevarria*,

McCalla, Raymer, Barret & Frappier v. Cole, 950 So.2d 380 (Fla. 2007) did not change the rule that it must have some relation to the proceeding. EPSTEIN alleges this act had *no* relationship. Moreover, the opinion of the *Levin* Court and *Echevarria* Court focus on communication in pleadings, not conduct having no bearing to the claims. *Echevarria* at 384. The mere existence of the litigation does not attach the privilege to every communication or act between the litigants; rather the communication or act must be analyzed in light of its relation to the litigation. See *North State Capital Acquisition v. Krig*, 61 F. Supp. 2d 1324, 1331 (M.D. Fla. 2009); *Perez v. Bereans Ins. Group No. II, LLC*, 2009 WL 1973476 (S.D. Fla. 2009). The other cases relied upon by EDWARDS, *Delmonico v. Traynor*, 50 So.2d 4 (Fla. 4 DCA 2000) and *Stewart v. Sun Sentinel Company*, 695 So.2d 360 (Fla. 4 DCA 1997), are not applicable because they address words in pleadings not use of proceedings that are unrelated under any circumstances to the action.

11. EDWARDS' reliance on arguments he raised in his previously-filed Motion for Summary Judgment is unavailing. Obviously, the standards are not the same for a motion to dismiss for failure to state a claim and a motion for summary judgment. It is well-established that on a motion to dismiss, the court is limited to review of only the "four corners" of the complaint. References to another pleading or exhibits is inappropriate. Second, EDWARDS' Motion for Summary Judgment was directed to a *prior* complaint, and significantly, the Motion was *denied* by this Court. EDWARDS has **not** shown, and **cannot** possibly show, how a summary judgment motion directed to the allegations of the *prior* complaint, which motion was *denied* on the ground that it was "premature, due to incomplete discovery, a situation that still persists," - supports dismissal of the Corrected Second Amended Complaint with *new*

allegations. Moreover, EDWARDS argued in support of summary judgment on the *prior* abuse of process claim that EPSTEIN alleged only that he “was unhappy with some motion or argument made by Edwards”; that the facts established that “every action Edwards took was entirely proper”; and that there was no evidence that EDWARDS had an ulterior motive. What the *evidence* may or may not *ultimately* prove with respect to the propriety of EDWARDS’ conduct, and whether he had an ulterior motive, is entirely irrelevant to the issue of whether the allegations in the Corrected Second Amended Complaint, taken as true and with all reasonable inferences therefrom drawn in favor of the Plaintiff, state a valid claim for abuse of process.

WHEREFORE, Plaintiff/Counter-Defendant JEFFREY EPSTEIN respectfully submits that Defendant/Counter-Plaintiff BRADLEY EDWARDS’ Motion to Dismiss the Corrected Second Amended Complaint should be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Plaintiff/Counter-Defendant Jeffrey Epstein's Response in Opposition to Defendant/Counter-Plaintiff Bradley Edwards' Motion to Dismiss the Corrected Second Amended Complaint was served on this 21st day of September, 2011 via hand delivery and e-mail to Jack Scarola, Esq., Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Blvd., West Palm Beach, FL 33409; by Federal Express and e-mail to Jack A. Goldberger, Esq., Atterbury, Goldberger & Weiss, P.A., 250 Australian Avenue South, Suite 1400, West Palm Beach, FL 33401-5012; and by Federal Express and e-mail to Marc S. Nurik, Esq., Law Offices of Marc S. Nurik, One East Broward Boulevard, Suite 700, Fort Lauderdale, FL 33301.

Epstein v. Rothstein, Edwards
Case No.. 502009CA040800XXXXMB/Div. AG
Epstein's Response in Opposition to Edwards'
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Respectfully submitted,

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