

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

B.B.,

CASE NO. 502008CA037319XXXMB AB

Plaintiff,

v.

JEFFREY EPSTEIN,
and [REDACTED]

Defendants.

**DEFENDANT EPSTEIN'S MOTION TO AMEND ANSWER & AFFIRMATIVE DEFENSES, &
MOTION TO STRIKE DIRECTED TO PLAINTIFF'S SECOND AMENDED COMPLAINT**

Defendant, JEFFREY EPSTEIN, (hereinafter "EPSTEIN"), by and through his undersigned attorneys, hereby moves this Court for an order allowing amendment to his previously filed *Answer & Affirmative Defenses, & Motion To Strike Directed To Plaintiff's Second Amended Complaint*, dated April 13, 2010, pursuant to Rule 1.190, Fla.R.Civ.Proc. (2010). In support of granting his motion, EPSTEIN states:

1. On April 13, 2010, EPSTEIN previously served and filed his *Answer & Affirmative Defenses, & Motion To Strike Directed To Plaintiff's Second Amended Complaint*, (hereinafter "original answer").

2. In the motion to strike contained in Defendant's original answer, Defendant sought to strike allegations pertaining to Count III – "*Racketeer Influenced & Corrupt Organization Act, Pursuant to §§895.01, et seq., Fla. Stat. (2009)*," ("RICO"), of Plaintiff's Second Amended Complaint because it had been voluntarily dismissed without prejudice by Plaintiff. The remaining counts of Plaintiff B.B.'s Second Amended Complaint attempt to allege claims for Count I – "*Sexual Battery against EPSTEIN*," and

Count II – “*Intentional and/or Reckless Infliction of Emotional Distress against EPSTEIN.*” Thus, Defendant seeks to strike those allegations that relate to the dismissed count and are immaterial and impertinent to the two remaining counts.

3. In moving to strike the RICO allegations Defendant inadvertently left out reference to paragraph 4 of the Second Amended Complaint, which is also a RICO allegation. Thus, EPSTEIN's proposed *Amended Answer & Affirmative Defenses, & Motion To Strike Directed To Plaintiff's Second Amended Complaint*, attached hereto as **Exhibit A**, only amends the original answer by also seeking to strike ¶4. There are no other changes.

4. Pursuant to Rule 1.190(a), leave to amend shall be freely given when justice so requires. The proposed amendment is simple and does not even change the basis asserted for the motion to strike in the original answer. Justice requires that the amendment be allowed.

5. Also pursuant to Rule 1.190(a), a party is allowed to amend a pleading “by written consent of the adverse party.” Plaintiff's counsel agreed/did not agree to the proposed amendment, Exhibit A hereto.

WHEREFORE, Defendant EPSTEIN requests that this Court enter an order allowing the amendment and deeming the *Amended Answer & Affirmative Defenses, & Motion To Strike Directed To Plaintiff's Second Amended Complaint* filed as of the date of the Court's order granting the motion to amend.

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 10 day of ~~April~~^{May}, 2010:

Theodore J. Leopold, Esq.
Spencer T. Kuvin, Esq.
Leopold-Kuvin, P.A.

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(Counsel for Defendant Jeffrey Epstein)

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Defendants.

DEFENDANT EPSTEIN'S AMENDED ANSWER & AFFIRMATIVE DEFENSES, &
MOTION TO STRIKE DIRECTED TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Defendant, Jeffrey Epstein, (hereinafter "Epstein"), by and through his undersigned attorneys, files his amended answer and affirmative defenses to Plaintiff B.B.'s Amended Complaint, and further, moves to strike specified allegations therein. Rule 1.140, Fla.R.Civ.P. (2009). Accordingly, Defendant states:

Motion to Strike, Rule 1.140(f), Fla.R.Civ.P. (2010)

Without waiving his Fifth Amendment privilege (see ¶1 below), Defendant moves to strike the heading – "Summary of Action," and the unnumbered paragraph below the heading at page 1 of Plaintiff's Second Amended Complaint, (hereinafter "summary"). Defendant also seeks to strike ¶¶4, 5, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30. By Notice Of Voluntary Dismissal, dated April 2, 2010, Plaintiff voluntarily dismissed without prejudice Count III of her Second Amended Complaint, dated March 8, 2010. The remaining two counts attempt to allege claims for: Count I – "Sexual Battery Against Epstein," and Count II – "Intentional and/or

EXHIBIT A

Reckless Infliction of Emotional Distress against EPSTEIN.” The summary and specified paragraphs are required to be stricken as they are immaterial and impertinent to the claims alleged. In addition, the summary violates the general rules of pleading as set forth in Rule 1.110(b) *Claims for Relief*, and (f) *Separate Statements*, Fla.R.Civ.P. (2010). Plaintiff’s Second Amended Complaint includes allegations that do not constitute “a short and plain statement of the ultimate facts showing that the pleader is entitled to relief.”

The only factual allegations that should be pled are those that support Plaintiff’s alleged claims for sexual battery in Count I and intentional or reckless infliction of emotional distress in Count II. Only those factual allegations specific to the Plaintiff B.B. should remain. According to the complaint allegations, B.B. had one encounter with EPSTEIN at his Palm Beach mansion. Allegations concerning a “scheme” or “pattern” and involving other alleged girls and their alleged encounters with EPSTEIN are immaterial and impertinent to Plaintiff claims and the relief sought and, thus, are required to be stricken.

WHEREFORE, Defendant requests that this Court enter an order striking the specified summary and paragraphs.

Answer & Affirmative Defenses to Second Amended Complaint

Accordingly, without waiving his motion to strike, Defendant EPSTEIN answers and asserts his affirmative defenses to Plaintiff’s Second Amended Complaint:

1. As to the “Summary of Action” at page 1, Defendant asserts his Fifth Amendment privilege against self-incrimination. See DeLisi v. Bankers Ins. Company, 436 So.2d 1099 (Fla. 4th DCA 1983); Malloy v. Hogan, 84 S.Ct. 1489, 1495 (1964)(the Fifth

Amendment's Self-Incrimination Clause applies to the states through the Due Process Clause of the Fourteenth Amendment - "[i]t would be incongruous to have different standards determine the validity of a claim of privilege based on the same feared prosecution, depending on whether the claim was asserted in state or federal court."); 5 Fed.Prac. & Proc. Civ. 3d §1280 *Effect of Failure to Deny – Privilege Against Self-Incrimination* ("...court must treat the defendant's claim of privilege as equivalent to a specific denial."). See also 24 Fla.Jur.2d *Evidence* §592. *Defendants in civil actions.* – "... a civil defendant who raises an affirmative defense is not precluded from asserting the privilege [against self-incrimination], because affirmative defenses do not constitute the kind of voluntary application for affirmative relief" which would prevent a plaintiff bringing a claim seeking affirmative relief from asserting the privilege. Defendant is seeking to strike the summary as set forth above herein.

Parties, Jurisdiction, and Venue

2. As to ¶1, Defendant asserts his Fifth Amendment privilege against self-incrimination.

3. Without waiving his 5th Amendment privilege, as to ¶2, Defendant is without knowledge and denies the same.

4. As to ¶¶3, 4, and 5, Defendant asserts his 5th Amendment privilege against self-incrimination.

5. Without waiving his 5th Amendment privilege, Defendant denies the allegations of ¶6.

6. As to ¶7, Defendant asserts his 5th Amendment privilege against self-incrimination.

Factual Allegations

7. As to the allegations contained in ¶¶8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, Defendant asserts his Fifth Amendment privilege against self-incrimination. Defendant also seeks to strike ¶9, and ¶¶11 through 30, as stated above herein.

Facts Specific to B.B.

8. As to the allegations contained in ¶¶31, 32, 33, 34, 35, and 36, Defendant asserts his 5th Amendment privilege against self-incrimination.

Count I- Sexual Battery

9. As to ¶37, Defendant realleges and incorporates his answers to ¶¶1 through 36 of Plaintiff's complaint as set forth in ¶¶1 through 8 above herein.

10. As to the allegations in ¶¶38, 39, 40, 41, 42, 43, 44, 45, and 46, Defendant asserts his Fifth Amendment privilege against self-incrimination.

Count II- Intentional and/or Reckless Infliction of Emotional Distress

11. As to ¶47, Defendant realleges and incorporates his answers to ¶¶1 through 36 of Plaintiff's complaint as set forth in ¶¶1 through 8 above herein.

12. As to the allegations in ¶¶48, 49, 50, 51, 52, and 53, Defendant asserts his Fifth Amendment privilege against self-incrimination.

Affirmative Defenses

1. As to all counts, Plaintiff consented to and was a willing participant in the acts alleged, and therefore her claims are barred, or her damages are required to be reduced accordingly.

2. As to all counts, Plaintiff actually consented to and participated in conduct similar and/or identical to the acts alleged with other persons which were the sole or contributing cause of Plaintiff's alleged damages.

3. As to all counts, Plaintiff impliedly consented to the acts alleged by not objecting, and therefore, her claims are barred, or her damages are required to be reduced accordingly.

4. As to all counts, Defendant reasonably believed or was told that the Plaintiff had attained the age of 18 years old at the time of the alleged acts.

5. As to all counts, Plaintiff's alleged damages were caused in whole or part by events or circumstances completely unrelated to the incident alleged in the complaint.

6. Plaintiff's claims are barred by the applicable statute of limitations.

7. Counts I and II are duplicative of each other and thus, Plaintiff has failed to state a cause of action in one or the other.

8. As to Plaintiff's claims for punitive damages in Count I – "Sexual Battery," and Count II – "Intentional and/or Reckless Infliction of Emotional Distress," such claims are subject to the limitations as set forth in §768.72, et seq., Florida Statutes.

9. As to Plaintiff's claims for punitive damages in Count I – "Sexual Battery," and Count II – "Intentional and/or Reckless Infliction of Emotional Distress," such claims are subject to the constitutional limitations and guideposts as set forth in BMW of North America v. Gore, 116 S.Ct 1589 (1996); Philip Morris USA v. Williams, 127 S.Ct. 1057 (2007); State Farm v. Campbell, 123 S.Ct 1513 (2003); Engle v. Liggett Group, Inc., 945 So.2d 1246 (Fla. 2006). The Due Process Clause of the Fourteenth Amendment of the

United States Constitution and Florida's Constitution, Art. I, §§2 and 9, prohibit the imposition of grossly excessive or arbitrary punishments

10. As to Plaintiff's claims for punitive damages in Count I – "Sexual Battery," and Count II – "Intentional Infliction and/or Reckless Infliction of Emotional Distress," the determination of whether or not Defendant is liable for punitive damages is required to be bifurcated from a determination of the amount to be imposed.

11. Plaintiff has failed to state a cause of action for sexual assault and/or battery under Count I.

12. Plaintiff is not entitled to the recovery of any damages on each of her claims under the doctrine of *in pari delicto*. Plaintiff participated in the alleged wrongdoing and, thus, may not recover damages from the wrongdoing. Plaintiff is equally at fault with Defendant.

WHEREFORE Defendant requests that this Court dismiss the action and award costs against the Plaintiff.

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 10 day of ^{May}~~April~~, 2010:

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