

IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CASE NO. 502009CA040800XXXXMB AG

Jeffrey Epstein,
Plaintiff,

-vs-
SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS, individually,
and L.M. individually,
Defendants.

HEARING BEFORE THE HONORABLE
DAVID F. CROW

PLAINTIFF'S MOTION FOR JUDGMENT ON THE PLEADINGS OR
IN THE ALTERNATIVE A MOTION FOR SUMMARY JUDGMENT ON
THE COUNTERCLAIM

Tuesday, May 11, 2010
Palm Beach County Courthouse
West Palm Beach, Florida 33401
8:15 - 8:32 a.m.

Reported By:
Cynthia Hopkins, RPR, FPR
Notary Public, State of Florida
Prose Court Reporting
Job No.: 1783

PROCEEDINGS

THE BAILIFF: All rise. Court is now in session. The Honorable David Crow presiding.

MR. CRITTON: Good morning.

MR. SCAROLA: Good morning, Judge.

THE WITNESS: We're here on Epstein versus Rothstein, et al. So, I've read the materials you guys submitted on both sides and also read the counterclaim.

MR. SCAROLA: Thank you. We rest.

MR. CRITTON: When he tries to talk, remember that, Judge Crow.

THE COURT: Go ahead.

MR. CRITTON: May it please The Court. Your Honor, Bob Critton on behalf of Mr. Epstein.

Basically it's a motion for judgment on the pleadings or in the alternative a motion for summary judgment on the counterclaim. I think it's more appropriately a summary judgment than it is a claim for a judgment on the pleadings.

Mr. Edwards argues through his counsel that, in essence, Mr. Epstein's a bad person.

APPEARANCES:

On behalf of the Plaintiff:

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On behalf of the Defendants:

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So no matter what happens in any case, Mr. Epstein loses. It's a consistent argument I hear all the time. The good part about it is we get to apply the law to the facts of the case and therefore, I think that very clearly my client is entitled to a summary judgment.

The reasons there are as follows: And I am going to touch first a little bit on the response because they claim that there is additional discovery to be done, but they don't identify any discovery that they wish to do. The depositions of Mr. Edwards have been taken. It has not been completed because we have a motion to compel which is set in front of The Court or at least we filed. The deposition of Mr. Epstein is done.

No doubt neither portion of Mr. Edwards nor of Mr. Epstein's affidavits were filed. There is no deposition testimony of any kind opposing that says that somehow Mr. Epstein was using the process; that is, the complaint post-filing for the purposes for a bad purpose which is the key legal issue in all of these cases; that is, something has to occur after the issuance of process, nor have any

1 affidavits been filed.
 2 The key portions or the operative portions
 3 of the allegations in the complaint directed to
 4 my client in the counterclaim are really
 5 Paragraphs 9, 10, and 11. And the key is the
 6 action was filed for the sole purpose to
 7 intimidate Edwards into settling these cases.
 8 In Paragraph 10 they talk about there is a
 9 lack of notice under the criminal, under the
 10 Civil Theft Statute 772.11. One, we think it's
 11 not applicable. Two is we don't think notice
 12 is required. It's part of the -- that is, it
 13 doesn't go to the issue of the motion for
 14 summary judgment.
 15 Secondly, there is no 772.11 claim in the
 16 case. The closest thing to it is the 772.103
 17 and 104 claim that has been filed, therefore,
 18 it is not applicable.
 19 And in Paragraph 11 of the counterclaim
 20 they say: Epstein has ulterior motives and
 21 purposes in exercising such illegal, improper,
 22 or perverted use of the process.
 23 In this particular instance, as I
 24 indicated I think that -- of course, well, you
 25 are familiar with the summary judgment

1 standard. I won't belabor that issue, but the
 2 key issue is there any evidence by Mr. Epstein,
 3 of anyone that Mr. Epstein was using the
 4 process or using the lawsuit post-filing of the
 5 lawsuit; that is, other than the filing the
 6 lawsuit for a wrongful purpose or for a
 7 wrongful act. And in this instance the
 8 allegations of the counterclaim, and again, the
 9 complete lack of any supporting affidavit
 10 indicates, affidavits or testimony, indicates
 11 that there is absolutely no evidence in that
 12 regard.
 13 The two key cases I believe that are
 14 applicable here are the McMurray case versus
 15 U-Haul which we have cited, 425 So.2nd 1208;
 16 and the Della-Donna case which is 512 So.2nd
 17 1051. Within the Della-Donna case there were
 18 claims for malicious prosecution. And it's a
 19 Fourth District, so I am going to go to that
 20 case first.
 21 They sued for malicious, Mr. Della-Donna
 22 sued for malicious prosecution, abuse of
 23 process, and liable. And at page, at the
 24 Footnotes 5, 6, and 7 dealing with the abuse of
 25 process claim, the court said the trial court

1 denied error in granting summary judgment.
 2 There is nothing to suggest that anything
 3 occurred post-filing.
 4 And they go down and they cite relying on
 5 McMurray versus U-Haul which is the Fourth
 6 District case, which holds that the mere filing
 7 of a complaint and having process served is not
 8 enough to show abuse of process. The trial
 9 court properly found that Russell showed -- and
 10 again this is in the McMurray case -- the
 11 non-existence of a genuine issue of material
 12 fact and dispute. Furthermore Russell
 13 established that Della-Donna failed to allege
 14 and there was no evidence of any act by Russell
 15 which constitutes a misuse of the process after
 16 it was served.
 17 And again if you want, the court goes to
 18 the McMurray case, the heart of the McMurray
 19 case which is the Fourth DCA case at Footnote
 20 2, I'm sorry, Keynote 2. But within the
 21 confines of the case they describe the
 22 allegations, abuse of process. Then they go on
 23 and they talk about why it's not applicable and
 24 they say, abuse of process -- and they talk
 25 about: In essence the alleged that the

1 appellee's complaint had been filed and summons
 2 issued for a multitude of improper purposes, to
 3 bankrupt Mr. McMurray, to coerce him to pay
 4 monies, to coerce settlement, to coerce
 5 concessions from him and appellee's competitor,
 6 to bankrupt a competitor to get back at him,
 7 all of these parade of horrors under these
 8 circumstances.
 9 And they said: As we discussed
 10 hereinafter, this parade of horrors may well
 11 sustain an ultimate action against appellee for
 12 malicious prosecution should it not prevail on
 13 its complaints against the appellants.
 14 However, all appellee has done is file a
 15 complaint and have process served upon
 16 appellee. Abuse of process in this case
 17 requires more; namely, an act which constituted
 18 misuse of the process after it was issued.
 19 There is no such allegation of a post-issuance
 20 act other than service of what was issued under
 21 the circumstances.
 22 And it goes on and describes abuse of
 23 process. In Am.Jur. it stays: An abuse of
 24 process differs from an action for malicious
 25 prosecution and that the later is concerned

1 with maliciously causing process to issue,
2 while the former is concerned with the improper
3 use of the process after it has been issued.

4 My last point, Your Honor, is they cite a
5 case called Scozari, and within the Scozari
6 case it involved abuse of process involving
7 extortion. The difference in that case and
8 what that case turned on is Scozari, within the
9 confines of the case, testified that he was
10 using the lawsuit as a bargaining chip to
11 resolve a collateral custody dispute. So he
12 testified within the case: I am using this
13 case as a bargaining chip.

14 So, what he is doing with that process
15 after it is issued is to use it as a bargaining
16 process within the custody case. And the
17 second aspect is he also was trying to get a
18 lien imposed post-service of process or service
19 of process itself.

20 So very clear in Scozari, which cites
21 again back to Della-Donna and it cites to
22 McMurray is there was something that occurred
23 after the issuance. And I think based on,
24 based upon at least the facts as they exist at
25 this point, there is no basis for the abuse of

1 It is not our obligation to come forward
2 at this point to demonstrate that all of the
3 allegations of the complaint can, in fact, be
4 substantiated. It is the burden of the moving
5 party, and I am telling the Court something
6 that the Court is well aware of, but it's his
7 burden to demonstrate that those allegations
8 cannot be substantiated by competent evidence.

9 The only depositions that have been taken
10 in this case are the depositions of Mr. Epstein
11 and the depositions of, and the deposition of
12 Mr. Edwards. Mr. Epstein did what Mr. Epstein
13 has been doing and knew he would do at the time
14 of filing of this complaint; and that is, he
15 refused to provide absolutely any substantive
16 information about anything and asserted his
17 Fifth Amendment privilege. There is no
18 substantive evidence from Mr. Epstein at all.

19 THE COURT: What is the case that you are
20 relying upon? I mean, I am familiar with the
21 general proposition that abuse of process as
22 compared to malicious prosecution, it is not a
23 matter of whether the case has merit to begin
24 with but there is something after the filing of
25 the suit for which you're seeking something

1 process cause, cause of action which is the
2 only cause of action pled. And we're entitled
3 to a summary judgment and it's a matter of law.
4 Thank you.

5 THE COURT: Thank you. Yes, sir.

6 MR. SCAROLA: Good morning, Your Honor.

7 THE COURT: Good morning.

8 MR. SCAROLA: Your Honor, this case
9 presents a very clear issue for determination
10 by the Court. If there is a factual and legal
11 basis for the filing of an action, then the
12 existence of an improper motive does not
13 provide the basis alone for the filing of an
14 abusive process case. If, however, there is no
15 factual basis and no legal basis for the filing
16 of a cause of action, and the issuance of
17 process is done without any reasonable
18 justification for the purpose of accomplishing
19 some extortionate objective, then the case law
20 says there is an abuse of process.

21 Now, discovery in this case has not been
22 completed. The issuance of a summary judgment
23 under these circumstance would clearly be
24 premature, and Mr. Critton has reversed the
25 burden of proof on a summary judgment matter.

1 that is for improper purpose.

2 Do you understand what I am saying? And
3 like if you sued, if even though the lawsuit
4 may have collateral effect in doing something,
5 it's not necessarily the fact that you filed
6 the lawsuit. It may be a malicious prosecution
7 if it is thrown out, but it doesn't constitute
8 an abuse of process. Abuse of process, you
9 file a suit and then as a part of that suit,
10 you issue some kind of subpoena to somebody in
11 order to force them to stop prosecuting a
12 criminal procedure.

13 MR. SCAROLA: Those are the cases that the
14 Counter-Defendant relies upon and has cited to
15 the Court.

16 THE COURT: Right.

17 MR. SCAROLA: The case upon which we rely
18 is the Scozari case and the Miami Herald
19 Publishing Company versus Ferre case. They are
20 cited in our memo. And the holding in Scozari
21 that is instructive here is -- this is a Third
22 DCA case: If there was a reasonable basis in
23 law and fact to initiate the judicial
24 proceedings, then processes were justified even
25 though they may have served some other

1 collateral purpose. And the court talks about
2 the fact that the purpose may have been
3 entirely improper, but if you had a reasonable
4 basis for filing the claim, no abuse of
5 process.

6 The important part for our purpose today
7 is the qualification of that statement. The
8 court says: However, if there was no
9 reasonable basis in law and fact to bring the
10 action, and in this case it was to impress a
11 lien upon property, and this was done without
12 any reasonable justification under the law and
13 to force and to compel the appellant to resolve
14 some custody dispute, induce the appellant to
15 pay money, or tie up the appellant's property,
16 then there has been an abuse of process simply
17 by the filing of the complaint itself.

18 THE COURT: And you have alleged in your
19 complaint that there is absolutely no evidence
20 to support these, and therefore are false
21 assertions?

22 MR. SCAROLA: Yes, sir. That allegation
23 specifically appears in the complaint, no
24 reasonable basis whatsoever, an expectation
25 that he was going to assert his Fifth Amendment

1 effort to try to intimidate those Plaintiffs
2 who are suing Mr. Epstein and the lawyers who
3 are bringing those suits, letting them know
4 that this very wealthy individual is willing to
5 stop at nothing in order to try to deter them
6 from pursuing their just claims.

7 So, I suggest to you that these facts are
8 extraordinary. They are unique. And they fall
9 well within the recognized exception to the
10 general rule upon which the Counter-Defendant
11 is relying and seeking summary judgment.

12 THE COURT: Okay. Thank you. Briefly, I
13 have another hearing. Thirty seconds,
14 Mr. Critton.

15 MR. CRITTON: That should be more than
16 enough for a rare occasion.

17 THE COURT: Seldom enough for you.

18 MR. CRITTON: There is no discovery, again
19 Plaintiff's counsel or Mr. Scarola has told you
20 no discovery that needs to be done under the
21 circumstances. He has filed nothing in
22 response.

23 Look at the Scozari case because I think
24 if the Court looks at that case, there is no
25 exception to the rule what Scorsese -- it's not

1 right and could not possibly support this
2 claim.

3 THE COURT: And the burden now would be on
4 him to show that there was some basis for it
5 rather than you to show --

6 MR. SCAROLA: That's our position. That
7 is what it comes down to. And he has failed to
8 meet that burden particularly as he has
9 acknowledged the only discovery in this case is
10 basically no discovery at all.

11 When he took Mr. Edwards' deposition for
12 purposes we contend of simply trying to get
13 discovery in this case that he would not have
14 been permitted to get in the underlying actions
15 that Mr. Edwards is prosecuting, Mr. Edwards
16 appropriately asserted attorney-client
17 privilege and work-product privilege.

18 This lawsuit, and if you look at the
19 allegations of the complaint, it's full of
20 speculation about things that Mr. Edwards may
21 have done because there is no evidence that
22 Mr. Edwards ever did anything wrong at all.

23 This lawsuit was nothing but a press
24 release under the cloak of the immunity that
25 attaches to the filing of a complaint, and an

1 Martin Scorsese -- what Scozari says is it says
2 there is no abuse of process however when the
3 process is used to accomplish the result for
4 which it was created, i.e., filing a lawsuit
5 for damages which it has done, regardless of an
6 incidental or concurrent motive or spite or
7 ulterior purpose.

8 It goes on and on and Headnote 8 and not
9 the headnote but the actual facts, and it says
10 this case is different. It is not an exception
11 to the rule. The rule is the rule. But this
12 case is different because they filed testimony
13 of Scozari, of Barone (phonetic).

14 THE COURT: Which showed his purpose to be
15 to do something other than the purpose for
16 which the lawsuit was filed.

17 MR. CRITTON: Correct.

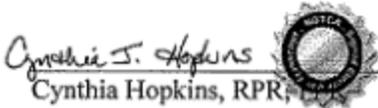
18 THE COURT: Okay.

19 MR. CRITTON: I am using it as a
20 bargaining chip.

21 THE COURT: Okay. Stay with me. He has
22 alleged that. Okay. He has alleged that. He
23 has alleged exactly what you just said the
24 testimony was in that case.

25 MR. CRITTON: Okay. But --

1 THE COURT: It's your motion. It's your
 2 burden to show that's not true; not his burden
 3 to show it is true.
 4 MR. CRITTON: But the cases say if they
 5 allege an ulterior purpose; Mr. Epstein filed
 6 this case for an ulterior purpose.
 7 THE COURT: Mr. Critton, you're
 8 misunderstanding me. What he is saying is that
 9 you not, did not file it for an ulterior
 10 purpose. The whole purpose here is you had no
 11 basis for filing this suit. That's what he is
 12 saying, which is the same thing as if he had
 13 your client say under oath, I did this for no
 14 other purpose than to, this, just like in that
 15 case. And it's your obligation at summary
 16 judgment to come forward and say, no, that's
 17 not true.
 18 MR. CRITTON: I disagree, Your Honor,
 19 because under the circumstance what these cases
 20 say, if the case was filed for its apparent
 21 purpose with the four causes of action --
 22 THE COURT: That's not what it says.
 23 That's not what his complaint says.
 24 MR. CRITTON: Well, of course. It says
 25 it's filed for an ulterior purpose.

1 CERTIFICATE
 2
 3 STATE OF FLORIDA
 4 COUNTY OF PALM BEACH
 5
 6
 7 I, Cynthia Hopkins, Registered Professional
 8 Reporter and Florida Professional Reporter, State of
 9 Florida at large, certify that I was authorized to
 10 and did stenographically report the foregoing
 11 proceedings and that the transcript is a true and
 12 complete record of my stenographic notes.
 13 Dated this 26th day of May, 2010.
 14
 15
 16 
 17 Cynthia Hopkins, RPR
 18 Job #1783
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 22
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 25

1 THE COURT: No, no, no, no. He says more
 2 than that. He says there is no, absolutely no
 3 factual basis for it; therefore there can be no
 4 legitimate purpose for it.
 5 MR. CRITTON: But under those
 6 circumstances, there has been no motion to
 7 dismiss. He doesn't come in and argue that
 8 under the circumstances, Judge. And under that
 9 set of circumstances, every case would be is
 10 there is really no factual basis for it under
 11 those circumstances.
 12 THE COURT: I'm not sure. I will go back
 13 and look at these cases again. Do you-all have
 14 a proposed order?
 15 MR. SCAROLA: I have a blank order.
 16 THE COURT: I do understand the issue and
 17 I am going to look at the Scozari case.
 18 MR. CRITTON: Scozari.
 19 THE COURT: Whatever it is.
 20 MR. SCAROLA: S-c-o-r-a-z-i.
 21 THE COURT: I understand you, Mr. Critton.
 22 I have been there before. I understand the law
 23 issue, but I am going to look at this case.
 24 MR. CRITTON: All right.
 25 (The hearing was concluded.)