

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION  
CASE NO. 08-80119-CIV-MARRA

		WEST PALM BEACH, FLORIDA
JANE DOE, et al.,		
Plaintiffs,		JUNE 12, 2009
vs.		
JEFFREY EPSTEIN,		
Defendant.		
	x	

TRANSCRIPT OF MOTION HEARING  
BEFORE THE HONORABLE KENNETH A. MARRA,  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS:

ADAM D. HOROWITZ, ESQ.  
Mermelstein & Horowitz  
[REDACTED]  
Miami, FL 33160 [REDACTED]  
For Jane Doe

BRADLEY J. EDWARDS, ESQ.  
Rothstein Rosenfeldt Adler  
[REDACTED]  
Fort Lauderdale, FL 33301  
Jane Doe 3, 4, 5, 6, 7

ISIDRO M. GARCIA, ESQ.  
Garcia Elkins Boehringer  
[REDACTED]  
West Palm Beach, FL 33401  
Jane DOE II [REDACTED]  
RICHARD H. WILLITS, ESQ.  
[REDACTED]  
Lake Worth, FL 33461  
For [REDACTED] [REDACTED]

"A"

1           THE COURT: That's not my concern. So, again, I just  
2 want to make sure that if the cases go forward and if  
3 Mr. Epstein defends the case as someone ordinarily would defend  
4 a case that's being prosecuted against him or her, that that in  
5 and of itself is not going to cause him to be subject to  
6 criminal prosecution.

7           MR. JOSEFSBERG: I agree, Your Honor.

8           THE COURT: Any other plaintiff's counsel want to  
9 chime in?

10          MR. WILLITS: Richard Willits on behalf of [REDACTED]. I  
11 would join, to weigh in on what Mr. Josefsberg said.

12          MR. JOSEFSBERG: Your Honor, I could not hear.

13          THE COURT: We'll get him to a microphone.

14 Mr. Willits is speaking.

15          MR. WILLITS: On behalf of my client, [REDACTED], we join  
16 in what Mr. Josefsberg said, and we also want to point out  
17 something to the Court.

18                 First, we want to make a representation to the Court,  
19 we have no intention of complaining to the U.S. Attorney's  
20 Office, never had that intention, don't have that intention in  
21 the future, but, of course, subject to what occurs in the  
22 future.

23                 I want to point out to the Court that Mr. Epstein went  
24 into this situation with his eyes wide open, represented by  
25 counsel, knowing that civil suits had to be coming. If he

1 didn't know it, his lawyers knew it.

2 He appears to be having second thoughts now about he  
3 could have negotiated this way or he could have negotiated that  
4 way with the U.S. Attorney's Office. And they want to impose  
5 their second thoughts on the innocent plaintiffs. We don't  
6 think that's fair. We think it's in the nature of invited  
7 error, if there was any error whatsoever.

8 Thank you.

9 THE COURT: You agree he should be able to take the  
10 ordinary steps that a defendant in a civil action can take and  
11 not be concerned about having to be prosecuted?

12 MR. WILLITS: Of course. And we say the same thing  
13 Mr. Josefsberg said. It's all subject to your rulings and the  
14 direction of this Court as to what is proper and what is not  
15 proper. And we're prepared to abide by the rulings of this  
16 Court, and we have no intention of running to the State's  
17 Attorney.

18 THE COURT: The U.S. Attorney?

19 MR. WILLITS: I'm sorry. The U.S. Attorney.

20 THE COURT: Mr. Garcia.

21 MR. GARCIA: Thank you, Your Honor.

22 If I may briefly, I think perhaps defense counsel  
23 forgot about this, but on pages 17 and 19 of my memorandum of  
24 law in opposition to the motion to dismiss, I did make  
25 reference to the non-prosecution agreement, and I did say that

1 the contesting of the jurisdiction of this Court was a  
2 potential breach of the non-prosecution agreement.

3           So my client happens to have, and they have filed with  
4 the Court a copy of her state court complaint, given the fact  
5 that the non-prosecution agreement limits the non-contesting of  
6 jurisdiction to claims exclusively brought under the federal  
7 statute.

8           I'm going to go ahead and withdraw those contentions  
9 on pages 17 and 19 of my memo of law because it doesn't apply  
10 to my case. So to the extent that I raised this issue with  
11 defense counsel and the Court, I'm going to withdraw that  
12 aspect of it.

13           THE COURT: Can you file something in writing on that  
14 point with the Court?

15           MR. GARCIA: Yes.

16           THE COURT: What do you say about this issue that  
17 we're here on today?

18           MR. GARCIA: I think that the problem that I have with  
19 it is that this non-prosecution agreement is being used by  
20 defense counsel for the exact opposite purpose that it was  
21 intended. My perception of this thing, and I wasn't around, is  
22 that Mr. Epstein essentially bought his way out of a criminal  
23 prosecution, which is wonderful for the victims in a way, and  
24 wonderful for him, too.

25           Now he's trying to use the non-prosecution agreement

1 as a shield against the plaintiffs that he was supposed to make  
2 restitution for.

3 And, certainly, he can take my client's depo. He's  
4 done extensive discovery in the state court case -- very  
5 intrusive, I might add. And we don't care, because we can win  
6 this case with the prosecution agreement or without the  
7 prosecution agreement. We are ready to go forward.

8 THE COURT: You're not going to assert to the United  
9 States Government that what he's doing in defending the case is  
10 a violation for which he should be further prosecuted?

11 MR. GARCIA: Absolutely not.

12 THE COURT: Anyone else for the plaintiffs?

13 MR. HOROWITZ: Judge, Adam Horowitz, counsel for  
14 plaintiffs Jane Doe 2 through 7.

15 I just wanted to address a point that I think you've  
16 articulated it. I just want to make sure it's crystal clear,  
17 which is that we can't paint a broad brush for all of the  
18 cases.

19 The provision relating to Mr. Epstein being unable to  
20 contest liability pertains only to those plaintiffs who have  
21 chosen as their sole remedy the federal statute. My clients,  
22 Jane Doe 2 through 7, have elected to bring additional causes  
23 of action, and it's for that reason we were silent when you  
24 said does anyone here find Mr. Epstein to be in breach of the  
25 non-prosecution agreement. That provision, as we understand

1 it, it doesn't relate to our clients.

2 THE COURT: Okay. But, again, you're in agreement  
3 with everyone else so far that's spoken on behalf of a  
4 plaintiff that defending the case in the normal course of  
5 conducting discovery and filing motions would not be a breach?

6 MR. HOROWITZ: Subject to your rulings, of course,  
7 yes.

8 THE COURT: Thank you.

9 Anyone else have anything to say from the plaintiffs?

10 Ms. Villafana, if you would be so kind as to maybe  
11 help us out. I appreciate the fact that you're here, and I  
12 know you're not a party to these cases and under no obligation  
13 to respond to my inquiries. But as I indicated, it would be  
14 helpful for me to understand the Government's position.

15 MS. VILLAFANA: Thank you, Your Honor. And we, of  
16 course, are always happy to try to help the Court as much as  
17 possible. But we are not a party to any of these lawsuits, and  
18 in some ways we are at a disadvantage because we don't have  
19 access. My access is limited to what's on Pacer. So I don't  
20 really know what positions Mr. Epstein may have taken either in  
21 correspondence or in discovery responses that aren't filed in  
22 the case file.

23 But your first order was really just what do you think  
24 about a stay, and then the second order related to this hearing  
25 and asked a much more specific question, which is whether we

1 believe that Mr. Epstein's defense was a breach of the  
2 agreement.

3           And I've tried to review as many of the pleadings as  
4 possible. As you know, they're extremely voluminous. And I  
5 haven't been through all of them. But we do believe that there  
6 has been a breach in the filing that Mr. Josefsberg referred  
7 to, and contrary to Mr. Critton, we do understand that we have  
8 an obligation to provide notice, and we are providing notice to  
9 Mr. Epstein today.

10           The pleading that we found to be in breach -- the  
11 non-prosecution agreement, sought to do one thing, which was to  
12 place the victims in the same position they would have been if  
13 Mr. Epstein had been convicted of the federal offenses for  
14 which he was investigated.

15           And that if he had been federally prosecuted and  
16 convicted, the victims would have been entitled to restitution,  
17 regardless of how long ago the crimes were committed,  
18 regardless of how old they were at the time, and how old they  
19 are today, or at the time of the conviction.

20           And it also would have made them eligible for damages  
21 under 2255.

22           And so our idea was, our hope was that we could set up  
23 a system that would allow these victims to get that restitution  
24 without having to go through what civil litigation will expose  
25 them to.

1           You have a number of girls who were very hesitant  
2 about even speaking to authorities about this because of the  
3 trauma that they have suffered and about the embarrassment that  
4 they were afraid would be brought upon themselves and upon  
5 their families.

6           So we did through the non-prosecution agreement tried  
7 to protect their rights while also protecting their privacy.  
8 So, pursuant to the non-prosecution agreement -- on the other  
9 hand, we weren't trying to hand them a jackpot or a key to a  
10 bank. It was solely to sort of put them in that same position.

11           So we developed this language that said if -- that  
12 provided for an attorney to represent them. Most of the  
13 victims, as you know from the pleadings, come from not wealthy  
14 circumstances, may not have known any attorneys who would be in  
15 a position to help them.

16           So we went through the Special Master procedure that  
17 resulted in the appointment of Mr. Josefsberg, and the goal was  
18 that they would be able to try to negotiate with Mr. Epstein  
19 for a fair amount of restitution/damages. And if Mr. Epstein  
20 took the position, which apparently he has, which is that the  
21 \$50,000 or \$150,000 floor under 2255 also would be a cap. That  
22 if they were to proceed to file suit in Federal Court to get  
23 fair damages under 2255, Mr. Epstein would admit liability, but  
24 he, of course, could fight the damages portion, which means  
25 that, of course, he would be entitled to depositions; of

1 course, he would be entitled to take discovery, and we don't  
2 believe that any of that violates the non-prosecution  
3 agreement.

4           The issue with the pleading that he filed, the motion  
5 to dismiss the case, I believe it's Jane Doe 101, represented  
6 by Mr. Josefsberg, is that that is a case that was filed  
7 exclusively under 18 U.S.C., Section 2255. She met that  
8 requirement. Mr. Epstein is moving to dismiss it, not on the  
9 basis of damages, he is saying that he cannot be held liable  
10 under 2255 because he was not convicted of an offense.

11           The reason why he was not convicted of an offense is  
12 because he entered into the non-prosecution agreement. So that  
13 we do believe is a breach.

14           The issue really that was raised in the motion to stay  
15 and that I addressed in our response to the motion to stay is  
16 that Mr. Epstein's -- Mr. Epstein wants to stay the litigation  
17 in order to leave, in order to sort of attack the cases of the  
18 victims whether they are fully within the non-prosecution or  
19 not, non-prosecution agreement or not, and leave the Government  
20 without a remedy if he does, in fact, breach those terms. And  
21 that is why we opposed the stay.

22           THE COURT: I'm not sure what you mean by that last  
23 statement.

24           MS. VILLAFANA: Well, because this issue related to  
25 the motion to dismiss on Mr. Josefsberg's client came up after

1 we had filed that response. And what we said in the response  
2 to the motion to stay is that the reason why he wants to stay  
3 the litigation is so that the non-prosecution agreement  
4 terminates based on a period of time, as he puts it. And then  
5 afterwards he would be able to come in here and make all of  
6 these arguments that clearly violate the non-prosecution  
7 agreement but we would be without remedy.

8 THE COURT: But you're not taking the position that  
9 other than possibly doing something in litigation which is a  
10 violation of an express provision of the non-prosecution  
11 agreement, any other discovery, motion practice, investigations  
12 that someone would ordinarily do in the course of defending a  
13 civil case would constitute a violation of the agreement?

14 MS. VILLAFANA: No, Your Honor. I mean, civil  
15 litigation is civil litigation, and being able to take  
16 discovery is part of what civil litigation is about. And while  
17 there may be, for example, if someone were to try to subpoena  
18 the Government, we would obviously resist under statutory  
19 reasons, all that sort of stuff. But, no, Mr. Epstein is  
20 entitled to take the deposition of a plaintiff and to subpoena  
21 records, etc.

22 THE COURT: And even if he seeks discovery from a  
23 Government agency, you have the right to resist it under the  
24 rules of procedure but that would not constitute a violation,  
25 again unless there's a provision in the prosecution agreement