

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

JEFFREY EPSTEIN,

No. 50 2009 CA 040800XXXXMBAG

Plaintiff/Counter-Defendant, JUDGE HAFELE

v.

BRADLEY J. EDWARDS, et al.,

Defendant/Counter-Plaintiffs.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S RENEWED MOTION
FOR SUMMARY JUDGMENT ON DEFENDANT/COUNTER-PLAINTIFF BRADLEY
EDWARDS'S FOURTH AMENDED COUNTERCLAIM, OR, IN THE ALTERNATIVE,
MOTION FOR RECONSIDERATION OF ORAL SUMMARY JUDGMENT RULING,
REQUEST FOR ORAL ARGUMENT AND SUPPORTING MEMORANDUM OF LAW**

Plaintiff/Counter-Defendant, Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.510 of the *Florida Rules of Civil Procedure*, hereby files this Renewed Motion for Summary Judgment on the sole remaining count of Defendant/Counter-Plaintiff Bradley Edwards's Fourth Amended Counterclaim, Malicious Prosecution. In the alternative, pursuant to **[Rule 1.540? – on the grounds of Mistake?]** of the *Florida Rules of Civil Procedure*, Epstein moves for reconsideration of this Court's non-final oral ruling denying summary judgment. For the reasons stated in this motion, Defendant/Counter Plaintiff Bradley J. Edwards' malicious prosecution claim fails as a matter of law on an essential element: the absence of probable cause for Epstein's underlying lawsuit. The Court has yet to hear argument from the parties on the issue of probable cause. Oral argument is therefore respectfully requested.

STATEMENT OF UNDISPUTED FACTS¹

In November 2009, the New York Times, the Wall Street Journal, the Florida Sun-Sentinal and other media outlets reported that Scott Rothstein had fled to Morocco to evade criminal prosecution for using his law firm, Rothstein, Rosenfeldt, Adler (“RRA”), to perpetrate a massive Ponzi scheme. It was widely reported that RRA, Rothstein and other conspirators whose identities had not yet been determined defrauded investors into purchasing fake settlements of cases purportedly being litigated at RRA. [PROVIDE CITATION FROM NYT ARTICLE, WSJ ARTICLE, SUN-SENTICAL ARTICLE AND EPSTEIN AFFIDAVIT]; *Amended Complaint in Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19); *see Deposition Transcript of Bradley Edwards dated March 23, 2010; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR and *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19); *Deposition Transcript of Jeffrey Epstein*. 502008CA028058XXXXMB AB; and *Jane Doe v. Jeffrey Epstein*, 08-80893-CIV Marra/Johnson. Rothstein returned to South Florida in November 2009 to face federal criminal charges and civil claims by private investors arising out of what was reported to be a \$1.2 Billion Ponzi scheme, the largest in Florida history (the “Ponzi Scheme”). *See [Epstein Affidavit – Provide Cite]²; Information Charging Scott W. Rothstein in*

¹ The following facts are well documented by media reports and publicly available case files and were detailed in Epstein’s Statement of Undisputed Facts in his original summary judgment motion, a copy of which is attached as Exhibit ___ hereto and is incorporated by reference herein.

² Although Epstein’s subject beliefs regarding probable cause are not relevant to the determination of probable cause, [cite pages in the motion below], Epstein’s awareness of the media reports and case files regarding wrongdoing at RRA and the misuse of the Epstein Cases, as well as the facts stated in those reports and files that demonstrate the existence of probable

United States of America v. Scott W. Rothstein, 09-60331-CR-COHN; *Epstein's Answer and Affirmative Defenses to Edwards's Fourth Amended Counterclaim; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR and *Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al.*, Case No. 09-062943(19).

On December 1, 2009, the Federal Government filed a 36 page Information against Rothstein charging that RRA was a racketeering "Enterprise" and that Rothstein and his then unidentified co-conspirators used RRA to defraud investors out of \$1.2 Billion by inducing them to invest in bogus settlements of cases litigated by RRA (the "Rothstein Information").³ See *[Epstein Affidavit – Provide Cite]; Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein*, 09-60331-CR-COHN

On November 20, 2009, the lawfirm of Conrad Scherer filed a complaint, *Razorback*

cause in this case, is well established by his affidavit filed in support of his original summary judgment motion. [cite affidavit; attach as exhibit]

³ It was alleged in the Rothstein Information that Rothstein and his yet unidentified co-conspirators engaged in a racketeering conspiracy, money laundering conspiracy, mail and wire fraud conspiracy, and wire fraud, and more specifically that (a) potential investors were told by Rothstein and other co-conspirators that confidential settlement agreements were available for purchase; (b) settlements were allegedly available in amounts ranging from hundreds of thousands of dollars to millions of dollars and could be purchased at a discount and repaid to the investors at face value over time; (c) Rothstein and other co-conspirators utilized the offices of RRA and the offices of other co-conspirators to convince potential investors of the legitimacy and success of the law firm, which enhanced the credibility of the purported investment opportunity; (d) Rothstein and other co-conspirators utilized funds obtained through the Ponzi Scheme to supplement and support the operation and activities of RRA, to expand RRA by the hiring of additional attorneys and support staff, to fund salaries and bonuses, and to acquire larger and more elaborate office space and equipment in order to enrich the personal wealth of persons employed by and associated with the RRA Enterprise. See *Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein*, 09-60331-CR-COHN. Scott Rothstein, Edwards's partner at RRA, admitted to and was convicted for these acts that occurred at RRA. He is serving a fifty (50) year sentence. See *Information Charging Scott W. Rothstein in United States of America v. Scott W. Rothstein*, 09-60331-CR-COHN; *Plea Agreement between United States of America and Scott W. Rothstein*, 09-60331-CR-COHN.

Funding, LLC, et al. v. Scott W. Rothstein, et al., Case No. 09-062943(19) (hereinafter referenced as the “Razorback Complaint”), against Scott Rothstein and others detailing abusive litigation practices specifically in active RRA cases against Epstein (the “Epstein Cases”)⁴ that were being used to defraud investors in the Ponzi Scheme.⁵ [Cite Epstein Affidavit]. News outlets also reported at that time that the Florida Bar had begun actively investigating dozens of attorneys employed by RRA in connection with the Ponzi Scheme. [Cite Epstein Affidavit]; Miami Herald, *Scott Rothstein Scandal: Scott Rothstein Partners Probed* (January 14, 2010)(“The **Florida Bar** is investigating at least 35 former senior lawyers in the now-bankrupt Fort Lauderdale law firm headed by Scott **Rothstein**, who was disbarred before he was

⁴ While the Ponzi Scheme was ongoing, RRA was prosecuting three civil cases against Epstein (the “Epstein Cases”). *See pleadings in LM v. Jeffrey Epstein*, 502008CA028051XXXXMB AB; *EW v. Jeffrey Epstein*, 502008CA028058XXXXMB AB; and *Jane Doe v. Jeffrey Epstein*, 08-80893-CIV Marra/Johnson; *Deposition Transcript of Jeffrey Epstein*, p. 23; line 4-p. 38; line 22.

⁵ Among the allegations in the Razorback Complaint regarding the Epstein cases are the following: “In certain instances, the purported settlements, albeit fraudulent, were based on actual cases being handled by RRA. For example, one of the settlements involved herein was based upon facts surrounding Jeffrey Epstein, the infamous billionaire financier. . . . Representatives of D3 were offered ‘the opportunity’ to invest in a pre-suit \$30,000,000.00 court settlement against Epstein involving a different underage female plaintiff. To augment his concocted story, Rothstein invited D3 to his office to view the thirteen banker’s boxes of actual case files in Jane Doe in order to demonstrate that the claims against Epstein were legitimate and that the evidence against Epstein was real. In particular, Rothstein claimed that his investigative team discovered that there were high-profile witnesses onboard Epstein’s private jet where some of the alleged sexual assaults took place and showed D3 copies of a flight log purportedly containing names of celebrities, dignitaries and international figures. Because of these potentially explosive facts, putative defendant Epstein had allegedly offered \$200,000,000.00 for settlement of the claims held by various young women who were his victims.... Additionally, Rothstein used RRA’s representation in the Epstein case to pursue issues and evidence unrelated to the underlying litigation but which was potentially beneficial to lure investors into the Ponzi scheme. For instance, RRA relentlessly pursued flight data and passenger manifests regarding flights Epstein took with other famous individuals ... RRA also inappropriately attempted to take the depositions of these celebrities in a deliberate effort to bolster Rothstein’s lies.” (Ex. *** 2 at 2-3; R. 810-11).

criminally charged last month with using the firm to run a \$1.2 billion investment racket.”).

The litigation practices described in the Razorback Complaint did indeed take place in the Epstein Cases, as did other litigation practices in the Epstein Cases that appeared to further the ends of the Ponzi Scheme. [Cite Epstein Affidavit]. These litigation practices were conducted personally by and under the supervision of the lead attorney of the Epstein Cases, Brad Edwards.⁶ *See letter dated July 22, 2009 from Edwards, attached as Exhibit 3 to his deposition of March 23, 2010; dockets and pleadings in LM v. Jeffrey Epstein, 502008CA028051XXXXMB AB; EW v. Jeffrey Epstein, 502008CA028058XXXXMB AB; LM v. Jeffrey Epstein, 09-81092 Marra/Johnson and Jane Doe v. Jeffrey Epstein, 08-80893-CIV Marra/Johnson; copies of subpoenas; Deposition Transcript of Jeffrey Epstein, p. 23; line 4-p. 38; line 22; Initial Complaint filed by Epstein dated December 9, 2009, pages 13-20; Razorback Amended Complaint; pp. 16-17; ¶¶ 48, 49.*

The litigation practices giving rise to probable cause to file Epstein’s claims included Edwards personally serving discovery requests for passenger flight manifests in the Epstein Cases, which were local Palm Beach cases where no air travel was alleged by Edwards’s clients, and noticing the depositions of famous dignitaries and celebrities, such as Bill Clinton, Donald Trump and David Copperfield, who were not alleged to have had any connection whatsoever to any specific claims of misconduct against the plaintiffs in the Epstein Cases. *See letter dated*

⁶ Edwards was a partner at Rothstein Rosenfeld Adler (“RRA”) from April 2009 through November 2009, which was during the same period when, according to the Razorback Complaint, the Epstein cases were allegedly misused. *See Deposition Transcript of Bradley Edwards dated March 23, 2010; Deposition Transcripts of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA; 09-34791-RBR and Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al., Case No. 09-062943(19).*

July 22, 2009 from Edwards, attached as Exhibit 3 to his deposition of March 23, 2010; dockets and pleadings in LM v. Jeffrey Epstein, 502008CA028051XXXXMB AB; EW v. Jeffrey Epstein, 502008CA028058XXXXMB AB; LM v. Jeffrey Epstein, 09-81092 Marra/Johnson and Jane Doe v. Jeffrey Epstein, 08-80893-CIV Marra/Johnson; copies of subpoenas; Deposition Transcript of Jeffrey Epstein, p. 23; line 4-p. 38; line 22; Initial Complaint filed by Epstein dated December 9, 2009, pages 13-20.

In addition, on July 24, 2009, Edwards filed a 234-page, 156-count federal complaint against Epstein on behalf of a plaintiff in the Epstein Cases, LM, arising out of the same facts alleged in a state court complaint that Edwards already had been prosecuting against Epstein on behalf of that same plaintiff for the better part of a year. *See LM v. Jeffrey Epstein, 09-81092 Marra/Johnson; Deposition Transcript of Jeffrey Epstein, p. 23; line 4-p. 38; line 22.* The federal complaint, signed by Edwards, himself, was filed in federal court, but was never served on Epstein or prosecuted, leading to a reasonable conclusion that the only reason it was filed was to enhance the case files shown at the offices of RRA to potential investors in the Ponzi Scheme.

While he was a partner at RRA, Edwards also filed a motion in Federal court in which Edwards requested that the court order Epstein to post a fifteen million dollar bond in one of the Epstein Cases, which according to the Razorback Complaint, were being touted at that time to investors in the Ponzi Scheme. *See Jane Doe v. Jeffrey Epstein, 08-80893-CIV Marra/Johnson; See Razorback Funding, LLC, et al. v. Scott W. Rothstein, et al., Case No. 09-062943(19).* In connection with this motion, Edwards discussed, at length, Epstein's net worth and filed supplemental papers listing in great detail Epstein's vehicles, planes and other items of substantial value, all at a time when, according to the accounts in the press, the Information and

Razorback Complaint, the Ponzi Scheme was unraveling and the need for new investors in the Ponzi Scheme was becoming urgent. *Depositions taken of Scott W. Rothstein in In re: Rothstein Rosenfeldt Adler, PA*; 09-34791-RBR. The court rejected Edwards's Motion, calling it "devoid of evidence." *See Order in Jane Doe No. 2 v. Epstein Dated November 5, 2009, 08-cv-80119.*

The connection between many of these practices and the specific events for which the plaintiffs in the Epstein Cases sought recovery was tenuous and tangential. The federal complaint was inexplicably filed and then never prosecuted, and the Court had determined that there was no basis for Edwards to file his bond motion against Epstein. Moreover, it was only after the lead attorney for the Epstein Cases, Brad Edwards, who commenced the Epstein Cases while in solo practice, joined RRA that the level of activity in the Epstein Cases increased drastically⁷ and the relevance, necessity and validity of new litigation activity in the Epstein Cases became suspect. Epstein incurred significant fees, costs and expenses in defending against the challenged litigation practices conducted by Edwards while he was a partner at RRA.

Based on the foregoing facts and developments, on December ____, 2009, Epstein filed suit against Rothstein, as the front man of the Ponzi Scheme, and against Edwards, Rothstein's partner at RRA, and the lead attorney responsible for the abusive litigation practices used in the Epstein Cases featured in the Ponzi scheme, as detailed in the Razorback Complaint. Epstein revised his claims against Edwards, and by order dated October 4, 2011, the factual allegations

⁷ Edwards admitted in his March 23, 2010 deposition that there were between \$300,000 and \$500,000 in litigation and investigation related expenditures on the Epstein Cases during that short period of time during which he was a partner at RRA. Yet, Edwards testified that expenditures on the Epstein Cases during the preceding eight months, when the cases were not being prosecuted by RRA, may not have even exceeded \$25,000. (App.* at 6; [USE * R. 813-14])

contained in Epstein's second amended complaint were held by Judge Crow as sufficient to withstand Edwards's motion to dismiss for failure to state a cause of action. [Cite Judge Crow's Order on Motion to Dismiss] The undisputed facts set forth herein are those which were alleged in Epstein's second amended complaint and survived Edwards's motion to dismiss.⁸

PROCEDURAL HISTORY

In its May 19, 2014 order granting Epstein's motion for summary judgment, this Court recounted the following procedural history with respect to Epstein's suit:

[Epstein] filed suit against [Edwards]. Edwards then filed a counter-claim against Epstein. Epstein subsequently dismissed his Complaint without prejudice. The counter-claim proceeded, undergoing several amendments. As it now stands, the Fourth Amended Counterclaim has two causes of action: abuse of process and malicious prosecution. Epstein moved for summary judgment arguing that the litigation privilege applies to both the abuse of process and malicious prosecution claims.

(App. 1). In addition to arguing the application of the litigation privilege, Epstein's motion for summary judgment alleged that the suit he filed against Edwards, which is the basis of Edwards' malicious prosecution action, was supported by probable cause.

At the outset of the hearing held January 27, 2014 on Epstein's motion for summary judgment, the Court orally denied summary judgment as to probable cause, and directed the

⁸ The Court is familiar with the allegations in Epstein's original and amended complaints. The second amended complaint named Edwards in a cause of action for abuse of process, arising out of a fraudulent Ponzi scheme perpetrated by attorneys and staff of the law firm of Rothstein, Rosenfeldt, and Adler ("RRA"), where Edwards was a partner who prosecuted actions against Epstein which were marketed by RRA to investors with the promise of multi-million dollar recoveries. Epstein's allegations included harassing investigations, vexatious and irrelevant discovery, unjustified motion practice, and duplicative federal pleadings.

parties to address the litigation privilege issue.⁹ The Court entered its written order granting summary judgment in favor of Epstein upon application of the litigation privilege based upon the then binding precedent of *Wolfe v. Foreman*, 128 So. 3d 67 (Fla. 3d DCA 2013). Final judgment was thereafter entered in favor of Epstein.

Edwards appealed the judgment as it pertained to his malicious prosecution action, during which time the Fourth District issued *Fischer v. Debrincat*, 169 So. 3d 1204 (Fla. 4th DCA 2015), holding that the litigation privilege did not apply to a malicious prosecution action and certifying to the Supreme Court of Florida conflict with *Wolfe*. In Edwards' appeal, the Fourth District reversed based upon *Fischer*, and again certified conflict. *Edwards v. Epstein*, 178 So. 3d 942 (Fla. 4th DCA 2015). Epstein filed for review in the Supreme Court. The Supreme Court resolved the conflict in *Debrincat v. Fischer*, No. SC15-1477, 2017 WL 526508 (Fla. Feb. 9, 2017), holding that the litigation privilege does not bar a malicious prosecution action. Based upon *Debrincat*, the Supreme Court declined to review the decision of the Fourth District in this case. [TO BE VERIFIED]

Epstein renews his motion for summary judgment and seeks reconsideration of the Court's oral ruling on the ground that the record and applicable law demonstrate that the issue of probable cause does indeed present a question of law for determination by the Court.

⁹ The entirety of the Court's oral ruling on probable cause was the following: "But I just feel like the probable cause aspect just carries with it too many factual issues for me to rule as a matter of law, so I don't think that I can grant relief on the probable cause issue vel non. So if you will, please move on...." (App. * at 19-20). Thereafter, the Court heard argument solely as to the litigation privilege.

**SUMMARY JUDGMENT MUST BE GRANTED WHERE IT CANNOT BE SHOWN
THAT THERE WAS AN ABSENCE OF PROBABLE CAUSE WHEN EPSTEIN FILED
SUIT AGAINST EDWARDS**

Summary judgment is proper if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Volusia County v. Aberdeen at Ormond Beach*, 760 So. 2d 126, 130 (Fla. 2000); *Smith v. Shelton*, 970 So. 2d 450, 451 (Fla. 4th DCA 2007). Summary Judgment is mandated when the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials in evidence on file show that there are no genuine issues as to any material fact and that the moving party is entitled to judgment as a matter of law. FLA. R.CIV. P. 1.510(c).

When an appellate court enters a reversal of summary judgment and remands the case for further proceedings, it is proper for trial court to again consider a motion for summary judgment if such should be presented. *Pan-American Life Ins. Co. v. Tunon*, 179 So. 2d 382 (Fla. 3d DCA 1965). *See also B & B Const. Co. of Ohio, Inc. v. Rinker Materials Corp.*, 294 So. 2d 131 (Fla. 4th DCA 1974) (filing of further motions for summary judgment are permissible if it could be clearly demonstrated there was no genuine issues of fact remaining.). It is also preferred if consideration of a renewed motion for summary judgment would be in the best interests of the parties and the public, inasmuch as it would avoid needless expense and conserve precious judicial resources. *Walker v. Atlantic Coast Line Railroad Co.*, 121 So. 2d 713 (Fla. 1st DCA 1960). As explained below, the undisputed and incontrovertible facts establish that Edwards has not, and cannot, prove a cause of action for Malicious Prosecution against Epstein, warranting Summary Judgment.

In Florida, “an action for malicious prosecution is a serious matter.” *Cent. Fla. Mach. Co., Inc. v. Williams*, 424 So. 2d 201, 203 (Fla. 2d DCA 1983). Malicious prosecution actions are “not generally favored” in Florida. *Id.* at 202.

There are six elements that must be established in order to prove malicious prosecution: 1) the commencement of a judicial proceeding; 2) its legal causation by the present defendant against the plaintiff; 3) its bona fide termination in favor of the plaintiff; 4) the absence of probable cause for the prosecution; 5) malice; 6) damages. *Duval Jewelry Co. v. Smith*, 102 Fla. 717, 136 So. 878, 880 (1931). The fourth element, the absence of probable cause, is at issue here.

In *Goldstein v. Sabella*, 88 So. 2d 910 (Fla. 1956), the Supreme Court of Florida explained the meaning of probable cause in the context of a malicious prosecution action as follows:

Probable cause is defined as “A reasonable ground of suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief that the person accused is guilty of the offense with which he is charged.” *Dunnavant v. State*, Fla., 46 So. 2d 871, 874 [(Fla. 1950)]. This, as well as other acceptable definitions of the term, indicates that one need not be certain of the outcome of a criminal or civil proceeding to have probable cause for instituting such an action.

Id. at 910.

“Probable cause in the context of a civil suit is measured by a lesser standard than in a criminal suit.” *Wright v. Yurko*, 446 So. 2d 1162, 1166 (Fla.5th DCA 1984). “The standard for establishing probable cause in a civil action is extremely low and easily satisfied.” *Gill v. Kostroff*, 82 F.Supp. 2d 1354, 1364. Even in the criminal context, such as when analyzing probable cause to support a search warrant, probable cause can be inferred from the facts. *See State v. Powers*, 388 So. 2d 1050, 1051 (Fla. 4th DCA 1980).

Under the higher standard for probable cause in the criminal context, it is well settled that probable cause must be judged by the facts that existed at the time of the defendant's arrest, not evidence subsequently learned or provided to the prosecution. *Maily v. Jenne*, 867 So. 2d 1250, 1251 (Fla. 4th DCA 2004) ("Probable cause is judged by the facts and legal state of affairs that existed at the time of the arrest."); *Fla. Game & Freshwater Fish [REDACTED] v. Dockery*, 676 So.2d 471, 474 (Fla. 1st DCA 1996) ("Hindsight should not be used to determine whether a prior arrest or search was made with probable cause. Events that occur subsequent to the arrest cannot remove the probable cause that existed at the time of the arrest.") (citations omitted) (emphasis added); *McCoy v. State*, 565 So. 2d 860, 861 (Fla. 2d DCA 1990) (holding that hindsight should not be used to determine whether a prior arrest or search was made with probable cause); *Dodds v. State*, 434 So. 2d 940, 942 (Fla. 4th DCA 1983) (holding that events that occur subsequent to the arrest cannot remove the probable cause that existed at the time of the arrest).

The same principles of probable cause apply in a malicious prosecution case, *see, e.g., Gill v. Kostroff*, 82 F.Supp. 2d 1354, 1364 ([REDACTED], Fla. 2000) ("A determination of whether probable cause exists is based on the facts known by the defendant in the malicious prosecution action at the time the underlying action was initiated, not some later point in time.") (applying Florida law), *see, also, Fee, Parker & Lloyd, [REDACTED]*, 379 So. 2d at 418 ("[W]e find the facts within Mr. Parker's knowledge at the time suit was filed sufficient to constitute probable cause for the commencement of the malpractice action."), and Fla. Std. Jury Instruction 406.4 ("Probable cause means that at the time of [instituting] [or] [continuing] a [criminal] [civil] proceeding against another, the facts and circumstances known to [(defendant)] [(other person)] were sufficiently strong to support a reasonable belief that (claimant) [had committed a criminal

offense] [the [claim] [proceeding] was supported by existing facts].”), but with even greater deference to the decision to seek redress through the filing of a civil lawsuit because, as noted, the standard for satisfying probable cause is lower than that applicable to a criminal case. *Wright, supra*.

Once the movant for summary judgment tenders competent evidence to support his motion, the opposing party must come forward with counter-evidence sufficient to reveal a genuine issue of material fact. *Glasspoole v. Konover Constr. Corp. South*, 787 So. 2d 937, 938 (Fla. 4th DCA 2001). A failure of proof of any essential element of a party’s cause of action necessarily renders all other facts offered by the non-moving party immaterial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

“Just because conflicting evidence exists does not mean probable cause is a jury question.” *C.A. Hansen Corp. v. Wicker, Smith, Blomqvist, Tutan, O’Hara, McCoy, Graham & Lane*, ■■■, 613 So. 2d 1336 (Fla. 3d DCA 1993) (emphasis supplied); *see also Rivernider v. Meyer*, 174 So. 3d 602, 604-05 (Fla. 4th DCA 2015) (trial court properly entered summary judgment against malicious prosecution claimant where underlying proceeding was commenced with probable cause); *Northwest Florida Home Health Agency v. Merrill*, 469 So. 2d 893 (Fla. 1st DCA 1985)(in a malicious prosecution suit for reporting the termination of a nurse to the Board of Nursing, whether the defendant had probable cause to report the nurse was a question of law even though the nurse’s testimony denied the truth of the charges leading to the termination); *Dorf v. Usher*, 514 So.2d 68, 68 (Fla. 4th DCA 1987) (“Although some of the facts may be in dispute, the trial court correctly found that there was no dispute with respect to the material facts on those elements. Probable cause then became a question of law for the court.”).

“Probable cause only becomes a question for the jury when *material* facts are disputed.” *Endacott v. Int’l Hospitality, Inc.*, 910 So. 2d 915, 922 (Fla. 3d DCA 2005). “When the facts relied upon to show probable cause are undisputed, ‘the existence or nonexistence of probable cause is a pure question of law to be determined by the court under the facts and circumstances of each case.’” *Id.* (citations omitted) (citing *City of Pensacola v. Owens*, 369 So.2d 328 (Fla.1979)).

UNDISPUTED GROUNDS FOR SUMMARY JUDGMENT

The well-documented and undisputed facts in existence at the time Epstein filed suit against Edwards are detailed in Epstein’s original summary judgment motion and recounted herein. Edwards does not dispute that in filing the lawsuit, Epstein relied upon public documents. Probable cause to file suit is properly found where the plaintiff relied upon public records in filing suit. *See, e.g., EMI Sun Village, Inc. v. Catledge*, No. 13-cv-21594, 2013 WL 5435780 (■■■■, Fla. 2013) (dismissing malicious prosecution action where “ample probable cause to bring the underlying litigation based on the evidence of a fraudulent scheme” was shown by public records). *Id.* at *4. “[A]n identification or a report from a single credible victim or eyewitness can provide the basis for probable cause” *City of St. Petersburg v. Austrino*, 898 So.2d 955, 960 (Fla. 2d DCA 2005) (emphasis added).¹⁰

¹⁰ Paragraph 20 of Epstein’s original complaint demonstrates his reliance upon such a report from a single credible victim or eyewitness sufficient to demonstrate for probable cause: “Ft. Lauderdale attorney William Scherer represents multiple Rothstein related investors. He indicated in an article that RRA/Rothstein had used “the Epstein ploy ... as a showpiece as bait. That’s the way he raised the money. He would use ... cases as bait for luring investors into fictional cases. All the cases he allegedly structured were fictional. I don’t believe there was a

Based on the widely distributed media reports and case filings open to the public, it was a matter of public knowledge that RRA was operating a Ponzi Scheme in which real RRA cases were being used to defraud investors into purchasing bogus legal settlements. The federal government charged that RRA was a criminal enterprise and that RRA's head partner and other co-conspirators at RRA were engaged in that criminal enterprise. The Florida Bar was reportedly investigating dozens of the attorneys at RRA in connection with that criminal enterprise. Investors defrauded in that criminal enterprise at RRA filed court papers claiming that abusive litigation practices in the Epstein Cases prosecuted by RRA attorneys were used to perpetrate that fraud. In fact, the litigation practices detailed in those court papers actually occurred in the Epstein Cases, as did several other practices that appeared to further the Ponzi Scheme. Certain of the challenged litigation practices appeared to be only tenuously related to the underlying claims of the plaintiffs in the Epstein Cases, others were determined by the Court to have been unfounded, and others had no obvious purpose apart from furthering the Ponzi Scheme. All of the challenged litigation practices were conducted by or under the direct supervision of the lead counsel in the Epstein Cases, Brad Edwards. Moreover, none of the litigation practices complained of occurred until after Edwards joined as a partner the lawfirm which the federal government deemed a criminal enterprise operating the largest Ponzi Scheme in Florida history. Had those litigation practices not occurred, Epstein would not have incurred the fees, costs and expenses paid to defend against them.

Under the circumstances, the reasonable ground of suspicion that: (1) the litigation practices were in furtherance of the Ponzi Scheme perpetrated by the criminal enterprise at RRA;

real on in there.”

and (2) Brad Edwards, as the lead partner on the Epstein Cases conducting those litigation practices, was implicated in that criminal enterprise established by these facts well exceeds the “extremely low and easily satisfied” threshold of probable cause for Epstein’s suit as a matter of law. That inevitable conclusion is only further strengthened by Judge Crow’s ruling that the allegations in Epstein’s second amended complaint, based on these same undisputed facts and circumstances, stated a cause of action for abuse of process and survived Edwards’s motion to dismiss. Where probable cause existed for Epstein’s suit as a matter of law, the claim for malicious prosecution must fail and summary judgment must be granted.

EDWARDS DOES NOT DISPUTE EPSTEIN’S MATERIAL FACTS

Although Edwards has made statements generally denying the existence of probable cause for Epstein’s underlying suit against Edwards, nowhere in Edwards’s Response in Opposition to Epstein’s original motion for summary judgment (“Edwards’s Opposition”) does Edwards actually dispute any specific material fact cited by Epstein as grounds for probable cause against Edwards. Instead, Edwards claims that the asserted facts, as strung together by Epstein, constitute “impermissible inferences.” [Cite in Edwards Opposition] However, Edwards’s claim is nonsensical because the reasonable “suspicion” on which probable cause is based is nothing more than an inference of guilt founded on facts and circumstances. Even under the more demanding standard in a criminal context, such as when analyzing probable cause to support a search warrant, “interpretation of the facts in a “commonsense and realistic fashion,” may result **in an inference** of probable cause to believe that criminal objects are located in a particular place to which they have not been tied by direct evidence.” State v. Powers, 388 So.

2d 1050, 1051 (Fla. Dist. Ct. App. 1980) (emphasis added) (citations omitted)

Edwards further claims that the facts cited by Epstein are immaterial, and posits a series of conclusory arguments relating to Epstein's alleged guilt of sexual misconduct, Edwards's innocence of wrongdoing and Epstein's state of mind and motivations to support Edwards claim of immateriality. [Cite Edwards's Opposition] Edwards further argues that Epstein had no probable cause because he had no and would be unable to prove any damages. [Cite Edwards's Opposition] Finally Edwards insists that Epstein should be precluded from summary judgment as a result of adverse inferences to which Edwards is entitled based on Epstein's invocation of his Fifth Amendment rights at Epstein's deposition. [Cite Edwards's Opposition] The entirety of Edward's ineffectual attempts to dispute the existence of probable cause is encapsulated by the following paragraph from Edward's Opposition:

Epstein knew that he had in fact molested each of the minors represented by Brad Edwards. He also knew that each litigation decision by Brad Edwards was grounded in proper litigation judgment about the need to pursue effective discovery against Epstein, particularly in the face of Epstein's stonewalling tactics. Epstein also knew that he suffered no legally cognizable injury proximately caused by the falsely alleged wrongdoing on the part of Edwards. Moreover, Epstein had no intention of waiving his Fifth Amendment privilege against self-incrimination in order to avoid providing relevant and material discovery that Epstein would need in the course of prosecuting his claims and to which Edwards was entitled in defending those claims. . . Epstein was motivated by a single ulterior motive to attempt to intimidate Edwards and his clients and others into abandoning or settling their legitimate claims for less than their just and reasonable value. . . to require Edwards to expend time, energy and resources on his own defense, to embarrass Edwards and impugn his integrity and deter others with legitimate claims against Epstein from pursuing those claims.

Edwards's Opposition, p. 2. However, as explained below, none of these arguments has any bearing on the issue of whether, based on the facts cited by Epstein, probable cause existed for Epstein's claims at the time he filed suit.

EDWARDS'S ARGUMENTS DO NOT REFUTE PROBABLE CAUSE

In order to succeed in opposing Epstein's renewed motion for summary judgment, Edwards must come forward with counter-evidence sufficient to reveal a genuine issue of material fact that might enable him to affirmatively prove the absence of probable cause at trial. *Glasspoole v. Konover Constr. Corp. South*, 787 So. 2d 937, 938 (Fla. 4th DCA 2001). However, Edwards's legal and factual arguments have absolutely nothing to do with an objective evaluation of the existence of probable cause in this case. They reveal no genuine issue of material fact that could even conceivably enable Edwards to satisfy his burden to prove an absence of probable cause a trial.

Edwards's claim that Epstein was guilty of the sexual misconduct alleged by the plaintiffs in the Epstein Cases and that Edwards legitimately initiated those cases is entirely irrelevant. Epstein's undisputed reliance upon the public records and the specific litigation practices in which Edwards undeniably engaged is sufficient to support probable cause to file suit. Epstein's suit was based upon the fraudulent scheme advanced by RRA, third party allegations of litigation misconduct in the Epstein cases consistent with what Epstein himself experienced in those cases, and Edwards's personal responsibility for that litigation misconduct as lead attorney in the Epstein Cases, separate and apart from the underlying merits of the Epstein Cases.

As Edwards, himself, acknowledged in Edwards's Opposition:

An abuse of process claim requires pleading and proof of the following three elements: 1) that the defendant made an illegal, improper or perverted use of process; 2) that the defendant had ulterior motives or purposes in exercising such illegal, improper, or perverted use of process; and 3) that, as a result of such action on the part of the defendant, the plaintiff suffered damage.

Edwards's Opposition, p. 9. A claim for abuse of process will lie so long as there is an illegal, improper or perverted use of process, regardless of the legitimacy of the underlying claim in which process is abused. The propriety of the underlying claim is simply not at issue. [cite case law].

Because the validity of the underlying claim is not at issue in an abuse of process case, process may be abused even where the underlying claim is valid. [cite]. Thus, Epstein's knowledge of his own guilt and the legitimacy of Edwards's claims would not free Edwards from suspicion of impropriety based on the facts and circumstances in existence at the time Epstein filed suit.¹¹

Second, Edwards's assertion of his own innocence is equally unavailing. In Edwards's Opposition, Edwards's claims that Epstein could not have had probable cause for abuse of process based on third party claims of Edwards's abusive litigation practices because Edwards's litigation practices had a "sound legal basis". (Edwards' Opp. at 6). Edwards' argument, while a potential defense on the merits, is not relevant to the determination of whether there was probable cause at the time Epstein filed suit based upon an objectively reasonable suspicion of misconduct by Edwards in connection with RRA's fraudulent Ponzi Scheme. *Gill*, 82 F.Supp. 2d at 1364 ("A determination of whether probable cause exists is based on the facts known by the defendant in the malicious prosecution action at the time the underlying action was initiated, not

¹¹ Edwards's attempt to fabricate a probable cause dispute based upon Epstein's filing the Second Amended Complaint against Edwards after Epstein settled the Epstein Cases is equally irrelevant. The argument that Epstein's settlement of the Epstein Cases is evidence that the cases were validly initiated says nothing about whether in fact abusive litigation practices were conducted for ulterior purposes in purportedly legitimate lawsuits.

some later point in time.”) (applying Florida law).

Edwards further claims that Epstein could not rely on the third party claims in Razorback Complaint because Epstein knew that Edwards’s litigation practices were proper:

As discussed above, the evidence warrants the finding that Epstein knew that Edwards was legitimately pursuing the claims on behalf of his clients which included the effort to secure testimony from Epstein's close confidants. Therefore, Epstein cannot rely upon the referenced public documents to support his claims against Edwards given he knows that information to be untrue . . .”

(Edwards’ Opp. at 11-12) (exhibit reference omitted).

Putting aside the unsubstantiated, wholly conclusory nature of the knowledge of Edwards’s innocence which Edwards’s attributes to Epstein, the possibility that there was an alternate explanation for Edwards’s litigation practices and that Edwards was properly pursuing his clients’ interests by conducting some of the process in question does not preclude a determination of probable cause as a matter of law based on the facts cited by Epstein. “[O]ne need not be certain of the outcome of a criminal or civil proceeding to have probable cause for instituting such an action.” *Goldstein v. Sabella*, 88 So. 2d 910 (Fla. 1956) at 910. “Just because conflicting evidence exists does not mean probable cause is a jury question.” *C.A. Hansen Corp. v. Wicker, Smith, Blomqvist, Tutan, O’Hara, McCoy, Graham & Lane, P.A.*, 613 So. 2d 1336 (Fla. 3d DCA 1993); *see, also, Northwest Florida Home Health Agency v. Merrill*, 469 So. 2d 893 (Fla. 1st DCA 1985)(in a malicious prosecution suit for reporting the termination of a nurse to the Board of Nursing, whether the defendant had probable cause to report the nurse was a question of law even though the nurse’s testimony denied the truth of the charges leading to the termination). All that is required are reasonable grounds for suspicion, which were in abundance on the facts cited by Epstein.

For example, at the time Epstein filed suit against Edwards, Edwards neither disputed nor provided any explanation for filing a federal lawsuit against Epstein on behalf of one of the clients for whom Edwards had already been prosecuting one of the Epstein Cases for almost a year. This 234-page, 156-count federal complaint, signed by Edwards, himself, arising out of the identical facts alleged in one of the Epstein Cases was filed against Epstein (but never served on him and never prosecuted) at the same time during which the Ponzi Scheme was reportedly unraveling. A logical conclusion regarding the purpose for filing this superfluous, highly charged, federal complaint at the time the Ponzi Scheme was unraveling and new investor money was urgently needed was that it was filed to increase investor interest in RRA cases against Epstein to bring additional money into the Ponzi Scheme. By itself, this inexplicable filing provided reasonable grounds of suspicion against Edwards, and when combined with other litigation practices that appeared to have no direct relation to the specific claims made by Edwards's clients, or were determined by Judge Crow to have been "devoid of evidence," provided ample basis for suspicion that Edwards's conduct was more than merely zealous advocacy.

Moreover, Edwards' speculations about Epstein's subjective beliefs, even if true (which they are not), are irrelevant. So, too, are Edwards's claims about Epstein's ulterior motives in pursuing suit against Edwards. Probable cause to act is not measured by the subjective belief of the actor, even under the more stringent standard of probable cause applicable to criminal cases. "[T]he concept of probable cause is grounded upon a standard of objective reasonableness." *Hawxhurst v. State*, 159 So. 3d 1012, 1013 (Fla. 3d DCA 2015). "The existence of probable cause is measured by an objective standard, not based on an officer's underlying intent or subjective

motivation.” *Hernandez v. State*, 784 So.2d at 1128 (quoting *State v. T.P.*, 588 So. 2d 286, 287 (Fla. 3d DCA 1991)).

Accordingly, “[t]he principal components of a determination of reasonable suspicion or probable cause will be the events which occurred leading up to the stop or search, and then the decision whether these historical facts, viewed from the standpoint of an *objectively reasonable* police officer, amount to reasonable suspicion or to probable cause”. *Ornelas v. United States*, 517 U.S. 690, 696 (1996). “Therefore, a police officer’s subjective belief regarding the existence or non-existence of probable cause for a warrantless arrest is neither dispositive of, nor generally relevant to, this issue.” *Hawxhurst*, 159 So. 3d at 1014. *See also State v. Jennings*, 968 So. 2d 694, 696 (Fla. 4th DCA 2007) (“The officers in this case had probable cause to search the occupants of the vehicle once they smelled the marijuana. That they may have articulated a subjective intent to search for officer safety did not change the fact that the smell of marijuana smoke provided an objectively reasonable basis for the search.”). Edwards’ contention that Epstein’s subjective intent and motivation are relevant for determining the essential element of the absence of probable cause to support the underlying lawsuit must be rejected.

Edwards also argues that Epstein would not have been able to prove damages in his case against Edwards because (1) Epstein was not an investor in the Ponzi Scheme, (2) Edwards did not speak to any investors in the Ponzi Scheme so he could not have pumped up the Epstein Cases as alleged in Epstein’s complaint, and (3) Edwards was otherwise innocent of the allegations made against him in Epstein’s complaint. [Pull all Cites from the Opposition](Edwards’ Opp. at 5). None of these arguments has any merit.

The fact that Epstein was not an investor in the Ponzi Scheme is simply irrelevant to

Epstein's claims against Edwards. Epstein did not allege that the Ponzi Scheme damaged him; he alleged that the litigation practices used in the Epstein Cases to further the Ponzi Scheme caused the damage, and that Edwards was responsible for and personally conducted the litigation practices at issue. So long as there was probable cause to assert that the litigation practices were improper, any fees, costs and expenses paid by Epstein to defend against those litigation practices would have been recoverable as damages in respect of those litigation practices and would have been recoverable from Edwards as the lead attorney who conducted and was responsible for them.

Edwards's claim that he never spoke to investors in the Ponzi Scheme is yet another red herring. Epstein does not claim that Edwards spoke to investors in the Ponzi Scheme. He claims that certain litigation practices conducted by and under the supervision of Edwards, as lead attorney in the Epstein Cases, were used to further the Ponzi Scheme and were improper. There is no necessity for Edwards to have spoken to investors to have furthered the Ponzi Scheme or abused process in the Epstein Cases. Consequently, this issue has no bearing whatsoever on Epstein's claim for damages.

As noted, whether Epstein would have ultimately prevailed on the merits of his lawsuit is irrelevant to the determination whether there was probable cause at the time he filed it. *See Goldstein v. Sabella*, 88 So. 2d 910 (Fla. 1956) at 910. All that was required was a reasonable ground of suspicion of litigation misconduct by Edwards which, if ultimately proven, would have resulted in Epstein recovering damages for the fees, costs and expenses Epstein incurred to defend against such litigation misconduct.

Finally, Edwards's attempts to negate the probable cause that existed at the time Epstein

filed suit based upon adverse inferences to be drawn from Epstein's subsequent invocations of his Fifth Amendment privilege must also be flatly rejected. Edwards's argument fails for several reasons. First, the Fifth Amendment invocations took place after Epstein filed his complaint and are therefore irrelevant to the determination of whether probable cause existed at the time the lawsuit was filed. *Gill, supra*.

Second, Epstein's abuse of process claim against Edwards was based on misconduct by RRA, Rothstein, Edwards and others, demonstrable from public records and extrinsic evidence, and was not based on anything Epstein said or did. So, Epstein's testimony was not needed to establish such misconduct or to defend against the allegations of misconduct. Third, As noted above, Epstein's subjective beliefs about the legality of Edwards's conduct are simply irrelevant to an objective evaluation of whether probable cause existed at the time Epstein filed his complaint. [Cite Page in Brief]. Thus, detailed testimony from Epstein regarding the misconduct alleged in Epstein's complaint would not be required to prove Epstein's case, and would certainly not be required to demonstrate the existence of probable cause in the defense of Edwards's malicious prosecution action. Moreover, deposition questions posed to Epstein asking Epstein to identify specific conduct by Edwards which Epstein believed was illegal would have required Epstein to render legal opinions which in any event would not be proper subjects for an adverse inference. [Find Cite]

In addition, to the extent that any adverse inference might have been permissible, Epstein's invocation of the Fifth Amendment would have only entitled a jury to make an adverse inference, if the jury desired to do so. It would not have required an adverse inference from the jury, particularly if other extrinsic evidence were available to demonstrate Edwards's guilt of the

offenses claimed by Epstein and the existence of probable cause to assert those claims. Inasmuch as no inference would be required, even if it were true that Epstein intended to invoke his Fifth Amendment rights when he filed his claims, such invocation would not have precluded recovery for Edwards's abuse of process and in no way diminishes the probable cause that existed to file suit against Edwards.

CONCLUSION

The undisputed facts delineated above clearly establish that there was probable cause as a matter of law at the time Epstein filed his complaint, or, at the very least, that Edwards would not be able to demonstrate an absence of probable cause if the matter were to proceed to trial. Edwards's purported factual disputes have no bearing on an objective evaluation of whether probable cause existed at the time Epstein filed suit and should not deter this Court from evaluating whether probable cause existed as a matter of law and finding a failure of this essential element of Edwards malicious prosecution claim against Epstein.

WHEREFORE, Epstein respectfully asks this Court to grant his renewed motion for summary judgment, or, in the alternative, his motion for reconsideration of this Court's oral ruling on the issue of probable cause, and an opportunity for the parties to be heard at oral argument on this motion.

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