IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

Appellate Case No.: 4D18-0762
LT Case No: 502009CA040800XXXXMB AG

JEFFREY EPSTEIN,

Petitioner/Plaintiff,

v.

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

Respondents/Defendants.
_____/

MOTION TO STRIKE UNAUTHORIZED AND INAPPROPRIATE "JOINDER" FILED BY NON-PARTIES

Petitioner, Jeffrey Epstein, pursuant to Florida Rule of Appellate Procedure 9.300, moves to strike the "Joinder by Victims in Edwards' Motion for Partial Relief from Stay with Request for Expedited Consideration" and as grounds states:

Introduction

No legal standing or basis exists for non-parties, L.M., E.W., and Jane Doe, to "join" any appellate motion or action by Edwards.[1] The unnecessary intervention appearance below by E.W., L.M. and Jane Doe, while never reduced to any written

[1] By order of this Court dated March 16, 2018, Paul G. Cassell, Esq.'s request to appear pro hac vice in order to appear on behalf of the non-parties was appropriately denied pursuant to Florida Rule of Judicial Administration 2.510(b)(4).

order, was solely limited to "seal exhibits." The sealing of allegedly "confidential" exhibits was accomplished through Epstein's repeated initiative and cooperation: (1) Epstein's notice of no objection to sealing, (2) Epstein's counsel's verbal stipulation to temporarily seal during the March 8, 2018 hearing, and (3) Epstein's counsel's assistance to Edwards in securing entry of an Agreed Order *nunc pro tunc* for the clerk to seal the docket entries. Because the documents at issue are indisputably sealed and no issue regarding the sealed documents is pending in this petition for writ of mandamus (nor in the consolidated petition for writ of certiorari regarding bifurcation of the claim and counterclaim, Case No. 4D18-0787), the "Joinder" is unauthorized, unnecessary and inappropriate, and should be so stricken.

Furthermore, and significantly, the non-parties' "Joinder" should be stricken because the statements made by the non-parties' counsel, Jay Howell and Paul Cassell (now unauthorized to appear pro hac vice), are out of place professionally, and lodge at least ten unfounded, scandalous and inappropriate references of misconduct against counsel which this Court should reject. The trial court specifically found, "I'm not finding fault with anything you [Scott Link] or Miss Rockenbach or Miss Campbell did. That's not the issue. You've done your job."

(**App. D-2, 59:24**).[2] The heightened and false sense of urgency exhibited by Paul Cassell is understandable given the sealed documents' content. However, the time and place for a public viewing of the documents will occur below once the trial judge appropriately reviews the documents in camera, concludes no protection exists, and the information finds its light of truth in a court. Until then, the documents are under seal and the "no dissemination" ruling by Judge Hafele has been fully complied with by Epstein and his counsel.

The Record Truth is that the Extraordinary Documents Remain Under Seal and No Partial Relief from Stay (or Relinquishment) is Necessary

It is indeed curious how arduously Mr. Cassell works to ignore Epstein's continued cooperation, once a "claim" of privilege was raised, with Edwards' efforts to seal the exhibits, the disc from which they originated, and the two circuit court docket entries which relate to the exhibits.

Indisputably, it was Epstein who – even before the March 8, 2018 hearing – agreed to seal the documents by filing a Notice of No Objection to Edwards Moving to Seal Court Records Until the Court Makes a Determination of How the Documents Shall be Treated. (**App. A**.) At the March 8, 2018, hearing, Epstein's counsel again verbally stipulated to sealing the two docket entries at issue. (**App. D-**

[2] References to "App." cites refer to the Appendix to Petitioner's Response in Opposition to Respondent Bradley J. Edwards' Motion for Partial Relief From Stay.

1, 4:19-5:1; App. D-2, 62:20-63:2). Moreover, it was Epstein's counsel, without being required to do so, who served a Notice of Service of Court's March 8, 2018 Hearing Transcripts and *Compliance* with Court's Rulings. **(App. D.)** Finally, because Edwards failed to bring a proposed written Order to the trial judge at the March 8, 2018, hearing, in order for the clerk to seal the two docket entries before this Court granted the emergency stay of proceedings, it was Epstein's counsel who worked with opposing counsel over the weekend and appeared at 8:30 a.m. before Judge Hafele the following Monday in order to enter an Agreed Order *nunc pro tunc* so the clerk could seal the records temporarily. (**App. E**.) Therefore, the "Joinder" for relief from this Court's stay order is completely unnecessary.

Epstein also notes the irony of Mr. Cassell's belated claims of privacy on behalf of his clients who settled their claims in 2010. In fact, the actual client information Mr. Cassell claims he now seeks to protect is already in the public domain and has been for years. It was admitted to in Edwards' clients' depositions and it is sprinkled throughout the pleadings in the cases Edwards' clients brought against Epstein, as well as pleadings below in this case.

Moreover, Epstein has been careful throughout the course of his litigation with Mr. Cassell's clients, as well as in this litigation with Rothstein and Edwards, to use initials and pseudonyms in order to maintain the identities of Mr. Cassell's

clients in confidence, including in connection with Epstein's filings that Mr. Cassell and Edwards now complain about.[3] On the other hand, Edwards and his team of attorneys, including Mr. Cassell, have been far less diligent. As but one example, without even a peep from Mr. Cassell, Edwards has repeatedly identified by full name, without initials or pseudonyms, each of his and Mr. Cassell's clients (as well as the names of other alleged tort plaintiffs represented by other counsel) and placed those names in the public record on no less than three Witness Lists filed by Edwards on July 21, 2017, October 6, 2017, and November 9, 2017, in this action on the circuit court's docket. Edwards' counsel acknowledged this was done inadvertently, yet he has months later still not taken *any* steps to correct it:

> 13 MR. LINK: If I might.
> 14 The witness list of Mr. Edwards
> 15 actually names these folks by name.
> 16 MR. SCAROLA: That was inadvertent,
> 17 Your Honor, and we plan to address it.

(December 5, 2017, Tr. 104:13-17.)

In addition, Edwards filed in the public records an unredacted deposition transcript of E.W. Nevertheless, Epstein has endeavored to respect Mr. Cassell's clients' privacy interests by redacting their names, and he will continue to do so.

---

[3] Epstein's counsel made clear at the hearing: "…we filed redacted documents. We redacted all of the names of E.W., L.M. and Jane Doe, as this Court has instructed. So their initials were wiped out." (**App. D-2, 74:13-15**).

The "Joinder" Should be Stricken Based on Pejorative Rhetoric that Improperly and Without Foundation Claims Misconduct by Counsel

The now sealed exhibits have never been deemed "apparently stolen" by any court. (Joinder, p. 1.) And neither Epstein nor his counsel has taken the "position that he need not immediately comply because of this Court's recent stay." (Joinder, p. 2.) In fact, the record proves the opposite! Despite this Court's stay, Epstein's counsel worked with Edwards' counsel to professionally and appropriately have Judge Hafele enter an agreed order for the clerk to seal the docket entries on March 12, 2018 *nunc pro tunc* March 8, 2018.[4] After that, Epstein served a notice of compliance with the trial court's rulings – despite this Court's stay. (**App. D.**)

Further, Epstein has never "improperly obtained" "apparently stolen emails…." which are now sealed. (Joinder, pp. 1, 2.) To the contrary, Epstein's undersigned counsel properly and plainly set out their chain of custody and ethical handling of the documents-turned-exhibits. (**App. B** and **App. C**.) "I'm not finding fault with anything you [Scott Link] or Miss Rockenbach or Miss Campbell did. That's not the issue. You've done your job." (**App. D-2, 59:24.**)

[4] Even though this Court's stay order did not occur for an entire 24 hours after Judge Hafele's oral ruling on March 8, 2018, Epstein and his counsel took into account that the attendance by the trial judge and counsel at the Palm Beach County Bench Bar Conference likely delayed Edwards' efforts at submitting an order.

For Mr. Cassell, through Mr. Howell, to suggest anything contrary to Epstein's counsel's complete cooperation and compliance with the trial court's rulings is unfounded, scandalous, inappropriate and simply offensive and should be stricken:

> Statements which appear in the briefs of counsel that tend to reflect upon the character, standing, and conduct of opposing counsel are out of place and will be regarded as stricken. There is nothing in the present record to sustain a charge of misconduct on the part of any of the counsel who were engaged in the handling of the controversy for any of the parties. If statements to the contrary are to be found in any of the briefs, such statements, being violative of this court's rules which require briefs to be founded wholly upon the points of law intended to be argued, have been disregarded and are to be considered as stricken.

See Borson v. Lisenby, 115 Fla. 333, 347, 156 So. 10, 15 (1934). (Emphasis added.)

This Court's Stay is Appropriate While the Eight-Year-Old Documents at Issue Remain Under Seal Until Either this Court or the Trial Court Rules Otherwise

Furthermore, Judge Hafele never performed the requisite in camera inspection to ascertain whether, in fact, the exhibits were "attorney-client" or "work-product" protected. *See Marshalls of M.A., Inc. v. Witter*, 186 So. 3d 570, 572 (Fla. 3d DCA 2016)("When a party asserts the work-product privilege, Florida law requires that the trial court "hold an in-camera inspection of the discovery material at issue in order to rule on the applicability of the privilege.") This simply did not yet occur.

The "Joinder" misstates the trial court's ruling and misleads this Court by claiming that "Epstein, apparently acting through his attorneys, had obtained

confidential and attorney-client privileged information about the [tort plaintiffs]. Epstein's attorneys appear to have surreptitiously obtained this information in violation of a federal bankruptcy court order." (Joinder, pp. 2-3). Then the non-parties' "Joinder" errantly alleges that "Epstein's lawyers appear to have flagrantly disregarded the judge's clear instructions by creating a separate disk containing all the confidential materials…" (Joinder, p. 3). There is no dispute that the documents maintained on a disc transferred from Fowler White are eight years old. There is further no dispute that Edwards and Cassell are fully aware of the documents contained on the disc – they claim the content is their very own creation by either attorney-client or work product. If the disc somehow improperly came into the possession of Fowler White and Mr. Ackerman (of which Mr. Cassell has not even the slightest of proof), then the most one could say is that for eight years Fowler White and Mr. Ackerman held a disc but never used any of the information contained on it. Frankly, no competent lawyer could review the materials that are now sealed and not insist on an in camera review of their contents. Fowler White and Mr. Ackerman's failure to do so makes it much less likely that they knew what was on the disc. There can be no urgency created by the revelation of eight-year-old documents now under seal and counsel's compliance with the trial court's ruling of "no dissemination."

In contrast to the repeated allegations of "stolen" emails and "flagrant violation" of a bankruptcy court order pled in the "Joinder," the trial court simply deemed the exhibits "untimely" identified by Epstein's current counsel. Attempting to discern the origin of the emails (clearly legally and properly obtained by Scott Link and Kara Rockenbach), the trial judge ultimately concluded that he would deal after trial, if at all, with the *how* predecessor counsel, Fowler White, obtained the documents. The trial judge made no ruling on the admissibility of the emails. He simply ruled on the issue of untimeliness. (**App. D-2, pp. 33-34.**) Epstein consistently maintains that under the circumstances here, the search for truth should trump any concerns regarding the administration or process of justice. (**App. D-2, 53:23-54:8**.)

Epstein does, however, agree with one partial statement in the non-parties' Joinder – "things" need to "be sorted out." (Joinder, p. 4). Epstein intends to expressly seek review of the now sealed documents. No court has conclusively or appropriately determined whether they implicate attorney-client privilege or work-product protection. Rather, the revelation of the existence of these emails caused a flurry of fear in Edwards' camp, including Mr. Cassell's flight from Utah, and a skewed focus on "how" they were obtained as opposed to "what" they contain. "And that is that [the documents] are detrimental to the position taken by Mr. Edwards and

that they are helpful to the position taken by Mr. Epstein." (**App. D-2, 52:2-5.**) Judicial light needs to be shed on the items so fervently fought over. Epstein submits the emails involved something critical in this case, though it has nothing to do with privilege and should not be concealed as work product.

Conclusion

The non-parties, L.M., E.W., and Jane Doe, have no standing to "join" any appellate motion or action by Edwards. An Agreed Order having the clerk seal the allegedly "confidential" exhibits was accomplished and Epstein took the further initiative to serve a notice of compliance with court order regarding the documents pending this Court's stay. Therefore, the "Joinder" is unauthorized, unnecessary and inappropriate, and should be so stricken. The "Joinder" should further be stricken because the statements made by the non-parties' counsel are out of place professionally, and lodge at least ten unfounded, scandalous and inappropriate references of misconduct against counsel which this Court should reject by striking the "Joinder."

WHEREFORE, Petitioner, Jeffrey Epstein, respectfully requests that the Joinder to Edwards' Motion for Partial Relief From Stay With Request for Expedited Consideration be stricken.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Response was furnished **via email** this 19th day of March, 2018:

Jack Scarola Karen E. Terry David P. Vitale, Jr. Searcy, Denny, Scarola, Barnhart & Shipley, P.A. 2139 Palm Beach Lakes Boulevard West Palm Beach, FL 33409 [redacted] *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*	Philip M. Burlington Nichole J. Segal Burlington & Rockenbach, P.A. Courthouse Commons, Suite 350 444 West Railroad Avenue West Palm Beach, FL 33401 [redacted] *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*
Bradley J. Edwards Edwards Pottinger LLC 425 N. Andrews Avenue, Suite 2 Ft. Lauderdale, FL 33301-3268 [redacted] *Co-Counsel for Defendant/Counter-Plaintiff Bradley J. Edwards*	Marc S. Nurik Law Offices of Marc S. Nurik One E. Broward Boulevard, Suite 700 Ft. Lauderdale, FL 33301 [redacted] *Counsel for Defendant Scott Rothstein*
Jack A. Goldberger Atterbury, Goldberger & Weiss, P.A. 250 Australian Avenue S., Suite 1400 West Palm Beach, FL 33401 [redacted] *Co-Counsel for Plaintiff/Counter-Defendant Jeffrey Epstein*	***VIA U.S. MAIL*** The Honorable Donald W. Hafele Palm Beach County Courthouse 205 N. Dixie Highway, Room 10.1216 West Palm Beach, FL 33401

LINK & ROCKENBACH, PA
1555 Palm Beach Lakes Boulevard
Suite 301
West Palm Beach, Florida 33401
[redacted] [fax]

By: */s/*
Scott J. Link [redacted]
Kara Berard Rockenbach [redacted]
Rachel Jenny Glasser ([redacted]
Primary: [redacted]
Primary: [redacted]
Primary: [redacted]
Secondary: [redacted]
Secondary: [redacted]

Counsel for Petitioner, Jeffrey Epstein