

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

CASE NO.: 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff,

vs.

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

Defendants.

**SUPPLEMENT TO MOTION FOR SEPARATE TRIALS OR, IN THE ALTERNATIVE
TO ADJUST THE ORDER OF PROOF**

Counter-Plaintiff Bradley J. Edwards, pursuant to Florida Rules of Civil Procedure 1.270 and 1.440, hereby files this Supplement to Motion for Separate Trials or, in the Alternative, to Adjust the Order of Proof, and as grounds thereof states as follows:

Summary

Epstein is attempting to try a damages-only claim regarding a clerk's default entered against Defendant Rothstein on January 21, 2010. As the Court will see, however, that clerk's default was entered against the Initial Complaint. Epstein has since amended his complaint **twice** and has **abandoned every count** pled against Rothstein in the Initial Complaint. Thus, in addition to the reasons set forth in Edwards' Motion to Separate Trials, the Court should sever Epstein's claim against Rothstein because the only pending claim against Rothstein is a Conspiracy to Commit Abuse of Process count contained in the Second Amended Pleading, to which no default has been entered and which has not been set for trial.

Supplement

1. Epstein filed his Initial Complaint against Defendant Rothstein on December 7, 2009, which pled the following counts against Rothstein:

- a. (1) Violation of § 772,101 – Florida Civil Remedies for Criminal Practices Act
- b. (2) Violation of § 895.01 – Florida’s RICO Act
- c. **(3) Abuse of Process**
- d. (4) Fraud
- e. (5) Conspiracy to Commit Fraud

2. On January 21, 2010, a clerk’s default was entered against Defendant Rothstein as to the Initial Complaint and the five counts listed above (see Exhibit A).

3. On April 12, 2011, Epstein filed an Amended Complaint against Defendant Rothstein. The Amended Complaint asserted a single count against Defendant Rothstein, **Abuse of Process**. The remaining counts against Rothstein in the Initial Complaint (Florida Civil Remedies for Criminal Practices Act, Florida’s RICO Act, Fraud, and Conspiracy to Commit Fraud), were abandoned.

4. Pursuant to black-letter Florida law, the Amended Complaint against Rothstein superseded the Initial Complaint. See State Farm Fire & Cas. Co. v. Higgins, 788 So. 2d 992, 995 (Fla. 4th DCA 2001), approved, 894 So. 2d 5 (Fla. 2004) (“An amended complaint supersedes an earlier pleading where it does not express an intention to save any portion of the original pleading.”) (internal quotations omitted); accord Downtown Investments, Ltd. v. Segall, 551 So. 2d 561, 562 (Fla. 3d DCA 1989). Moreover, the Initial Complaint against Rothstein was not only superseded, but “**cease[] to be a part of the record**” in Epstein’s case against him. Babb v. Lincoln Auto Finance Co., 133 So. 2d 566, 568 (Fla. 3d DCA 1966) (emphasis added).

5. Thus, although a tenuous argument remained that the clerk's default applied to the Abuse of Process claim that was re-pled, the clerk's default as to the four abandoned counts in an inoperative pleading that was no longer part of the record was now a nullity.

6. On August 21, 2011, Epstein filed a Second Amended Complaint against Defendant Rothstein. In his Second Amended Complaint, which supersedes the Amended Complaint, Epstein abandoned his Abuse of Process claim against Rothstein and instead asserted a brand-new count: Conspiracy to Commit Abuse of Process.

7. Thus, Epstein had now abandoned every count pled in the Initial Complaint to which the clerk's default applied. The clerk's default was rendered a nullity.

8. No default has been entered against Rothstein as to the Second Amended Complaint, which is the operative pleading against that party, and the brand-new Conspiracy to Commit Abuse of Process count contained therein.

9. Moreover, even if Epstein were to proceed without a default as to liability, the Second Amended Complaint has not been noticed for trial. Pursuant to Rule 1.440, the Court may not set Epstein's Conspiracy to Commit Abuse of Process case for trial against Rothstein without first entering an order fixing the date for that trial, which "shall be set not less than 30 days from the service of the notice for trial."

10. Given that the damages being sought by Epstein against Rothstein for Conspiracy to Commit Abuse of Process are unliquidated, it would be reversible error for the Court to permit Epstein to try his case against Rothstein on March 13th. Wells Fargo Bank, Nat. Ass'n v. Sawh, 194 So. 3d 475, 481 (Fla. 3d DCA 2016) ([T]he setting of unliquidated damages without the required notice and without proof is regarded as fundamental error.").

Conclusion

Thus, in addition to the reasons set forth in Edwards' Motion to Separate Trials, et al, the Court should grant that Motion for the reasons stated above.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 2nd day of March, 2018.

/s/ David P. Vitale Jr. _____

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DAVID P. VITALE JR.

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IN AND FOR PALM BEACH
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Case Number: 502009CA040800XXXXMB
Division: AG

JEFFREY EPSTEIN
Plaintiff(s),

-vs-

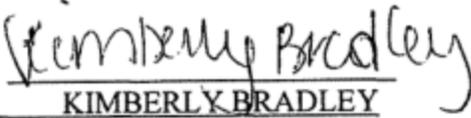
SCOTT ROTHSTEIN, individually,
BRADLEY J. EDWARDS individually
and L.M. individually
Defendant(s),

DEFAULT

A default is entered in the above styled cause against: **SCOTT ROTHSTEIN, individually** for failure to serve a pleading at the time required by law.

DONE AND ORDERED at the Clerk's Office, City of West Palm Beach, this 21 day of JANUARY, 2010.

Sharon R. Bock
Clerk & Comptroller

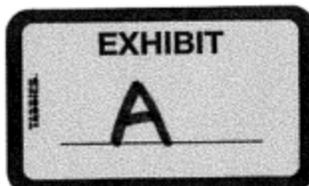
By: 

KIMBERLY BRADLEY

Deputy Clerk



Copies furnished to:
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FILED

2010 JAN 21 AM 10:01

SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FLORIDA

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