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

Case No. 50-2009CA040800XXXXMBAG

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiff.
_____/

PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S RESPONSE IN OPPOSITION TO EDWARDS' MOTION TO BE PERMITTED TO TAKE HIS LIMITED DEPOSITION

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein") responds in opposition to Counter-Plaintiff Bradley J. Edwards' ("Edwards") Motion to take his limited deposition, and states:

INTRODUCTION

Edwards is asking this Court to allow him to take Epstein's deposition to determine "Epstein's knowledge, use, possession and distribution of the *privileged materials,"* "Epstein's knowledge of Judge Ray's Order and the timing of when he first acquired that knowledge," and "the extent of [Epstein's] review of Edwards' privileged materials, the timing of that review, the identity of all persons with whom Epstein shared the privileged materials or its contents, as well as all other topics reasonably necessary **to allow Edwards to identify and object at trial to all attempts by Epstein to utilize Edwards' privileged materials** …" (Mot. ¶¶ 9, 10.)

However, no determination of privilege has ever been made. In addition, the Bankruptcy Court has already issued an Order to show cause allowing discovery focused on whether Fowler White and/or Epstein violated the November 2010 Agreed Bankruptcy Order. Moreover, this Court has ruled that at this point, the 47 exhibits are not coming into evidence. Link & Rockenbach, officers of this Court, will not violate this Court's ruling and try to "back door" the exhibits in. No additional information is needed by Edwards or this Court to ensure this, including the information Edwards seeks from the expansive deposition of Epstein that Edwards proposes.

Edwards presents this request for Epstein's deposition *months* after the expiration of a discovery deadline, already strictly enforced by this Court, based on a tortured line of reasoning premised on privileges this Court has never determined and an obviously misguided view that this Court is unable to make its own determinations as to the admissibility of evidence or to enforce its own orders. Does this Court need Edwards to take Epstein's deposition in order to enforce at trial its rulings on admissibility? Obviously, the answer is "No."

None of the materials about which Edwards seeks to depose Epstein have ever been determined to be privileged. This very issue, in fact, is currently before this Court. This Court's confirmation that no such privilege exists with respect to those materials will eliminate any conceivable reason (no matter how questionable) to seek Epstein's deposition and will expose Edwards' current Motion as yet another attempt to hide critical case-ending evidence from the jury that vindicate Epstein's actions in filing suit against Edwards.

In the meantime, all of those materials are currently under seal and subject to an order prohibiting their use, and this Court (as well as Edwards) is fully capable of recognizing if and when its orders are being violated and fashioning an appropriate remedy should that ever occur.

This Court has express statutory authority to control its courtroom and the evidence that will be presented.[1] It neither needs nor should it be required to upset the schedule it imposed for the orderly administration of the trial in this matter just so Edwards may have another opportunity to harass Epstein. If an attempt is made at trial to use evidence improperly, this Court will address that if and when that happens. Neither the Court nor Edwards has any need of an additional deposition of Epstein to recognize, object to and address the improper use at trial of evidence that has already been specifically identified and excluded from trial.

This Court recognized that the alleged violation of the November 2010 Agreed Bankruptcy Order was an issue for the Bankruptcy Court, rather than one to be resolved in this forum. Edwards agreed and sought relief from the Bankruptcy Court. The Bankruptcy Court has now entered its Order setting an evidentiary hearing and allowing discovery, including a focused deposition of Epstein, in order to determine whether, in fact, the November 2010 Agreed Bankruptcy Order was violated and, if so, by whom. In other words, the issue of civil contempt and sanctions is now pending before the Bankruptcy Judge.

Notwithstanding the Bankruptcy Court's review of the issues related to its Order, Edwards is asking this Court to reopen discovery and allow Edwards to go outside the scope of inquiry permitted by the Bankruptcy Court by allowing Edwards to ask Epstein questions that have no relevance even to the issues to be tried in this case. Incomprehensibly, Edwards' justification for Epstein's deposition in this proceeding is that Edwards needs to question Epstein outside of the scope of inquiry authorized by the Bankruptcy Court so that Edwards will know whether or when to object at trial to attempts to use evidence that has already been specifically identified and excluded by this Court. The reasons he offers makes no sense at all. Edwards should be denied the transparent attempt to harass Epstein and circumvent the Bankruptcy

[1] *See* § 90.612, Fla. Stat. (Mode and order of interrogation and presentation).

Court's jurisdiction. If Edwards is unsatisfied with the Bankruptcy Court's process to evaluate whether Epstein or his counsel ever actually violated the November 2010 Agreed Bankruptcy Order, then Edwards' recourse is before the Bankruptcy Court, not the judicial forum shopping and harassment Edwards is pursuing.

ARGUMENT

Edwards argued to the Bankruptcy Court that extensive discovery was needed in order to determine **the true extent of his damages**. The Bankruptcy Court rejected this argument, allowing discovery targeted to the issues of civil contempt to determine if the November 2010 Agreed Bankruptcy Order was violated. Being denied broad discovery at the Bankruptcy Court level, Edwards now runs to this Court with the ever-evolving yet nonsensical claim that Edwards needs the discovery **to allow him to object at trial to Epstein's attempt to utilize Edwards' privileged materials**.

1. A Privilege Determination Has Not Been Made

Just because Edwards identified documents on his privilege log does not mean the documents are privileged[2]. In fact, in 2012, Edwards produced to Epstein more than 80 documents identified on his privilege log, consisting largely of communications between Edwards and the media, for which, when challenged, Edwards could muster no legal justification to withhold them. The determination of privilege can only be made by this Court after an *in camera* review. On April 4, 2018, Epstein filed his Supplement to Motion for Court to Declare Relevance and Non-Privileged Nature of Documents with a Specific Request for *In Camera* Review to Determine Relevance, Inapplicability and/or Waiver of Attorney-Client Privilege and Attorney Work Product With Regard to Sealed Documents. Until that Motion is resolved by this

[2]Epstein disagrees that the documents are privileged, but the documents and disc have been sealed and are currently the subject of a request for an *in camera* review.

Court, and unless the Court finds that the documents are privileged, no additional deposition could possibly be justified by Edwards.

2. Edwards' Claim of Violations of the Bankruptcy Court's Order is Properly Before the Bankruptcy Court

Edwards has already brought the alleged violations of the November 2010 Agreed Bankruptcy Order to the Bankruptcy Court's attention. Specifically, on March 19, 2018, Edwards[3] moved the Bankruptcy Court to issue an order to show cause why Fowler White and Epstein should not be held in contempt of court, to permit discovery, to assess sanctions and costs and for other appropriate relief. (**Exhibit A,** without exhibits**.**) The Bankruptcy Court held a hearing on April 13, 2018[4] and entered its Order to show cause setting an evidentiary hearing in August[5]. The Bankruptcy Court is allowing Edwards to take targeted deposition discovery focused on the issues that concern both this Court and the Bankruptcy Court. That is, whether or not Fowler White and/or Epstein violated the November 2010 Agreed Bankruptcy Order. In its April 20, 2018, Order, the Bankruptcy Court stated, "If the parties find that additional depositions are necessary, the party seeking to take the deposition shall file a motion with the Court in a timely manner so as not to delay the Show Cause Hearing." (**Exhibit C**.) If after taking the depositions allowed, including the deposition of Epstein, Edwards believes a broader scope of questioning of Epstein should be allowed, he can and should address those issues with the Bankruptcy Court. There is simply no issue before this Court that requires Epstein's deposition beyond that which already has been authorized by the Bankruptcy Court.

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[3]Edwards filed the Motion on behalf of Farmer, Jaffe, Weissing, Edwards, Fistos & Lehrman, [redacted]., and then joined the Motion individually. For purposes of this Motion, Farmer Jaffee and Edwards shall be collectively referred to as "Edwards."

[4]A copy of the April 13, 2018, Bankruptcy Court hearing transcript is attached as **Exhibit B.**

[5]A copy of the April 20, 2018, Order to Show Cause is attached as **Exhibit C.**

3. <u>This Court Has Already Ordered that Epstein Cannot Use the Documents</u>

Epstein's counsel has repeatedly advised the Court by affidavits and representation how current counsel obtained the disc, that Epstein received copies of select e-mails, and how he and his counsel complied with the Court's rulings at the March 8, 2018, hearing. *See* Epstein's March 11, 2018, and March 23, 2018, Notices of Compliance. Epstein's counsel has already told the Court and Edwards' counsel that Epstein was never provided with the disc and that in 2018 only Epstein, his ethics experts and his trial team were provided with key e-mails identified on Epstein's Clerk's Trial Exhibit List and Appendix. Both the Court and Edwards' counsel accepted Epstein's counsel's representations:

> And Mr. Link [Epstein's counsel] has already represented to the Court that other than Mr. Epstein and his co-counsel, that there have been no eyes laid upon these documents. Hence, [redacted] **<u>accepting that representation, as Mr. Scarola has accepted those representations</u>** during the hearing as well.

(3/8/18 Aft. Tr. 78:20-25)[6] (emphasis added).

The disputed documents and disc have been sealed by Agreed Order and, until this Court reviews the documents *in camera* and rules, first on relevance and, second, if any privilege exists, they will not be presented as evidence at trial. That is, to quote this Court, nothing from the "front door" will come through the "back door." Epstein and his counsel, who are officers of this Court, will abide by the Court's rulings and will not use or refer to the excluded exhibits unless the Court allows them to do so. Edwards' suggestion that Epstein's deposition is necessary in order to enable this Court to enforce its own order is absurd on its face.

Edwards' request to ask Epstein questions about the 47 exhibits is nonsensical. What could Edwards learn from Epstein's deposition to "allow him to object at trial"?

1. The universe of documents is 47 exhibits.

[6]Excerpts of the March 8, 2018, afternoon hearing transcript are attached as **Exhibit D**.

2. Whether Epstein studied the exhibits for five minutes or five hours does not change that fact that at this point in time, this Court has ruled the 47 exhibits are not coming into evidence and may not be referred to at trial.

3. To suggest that Link & Rockenbach would try to put a third party on the stand to circumvent this Court's ruling is absurd.

There is a defined set of documents subject to the Court's ruling. Epstein's deposition would not be necessary to help Edwards or this Court determine whether any attempt is made at trial to either introduce those documents or have a witness refer to them in some way. Moreover, Epstein is not calling witnesses or questioning them at trial. Rather, his counsel will do that work, and they have already said they would not violate the Court's rulings. If Edwards is concerned about an attempt by Epstein or his counsel to violate the Court's ruling at trial, the only time to address that is if and when it happens, not before because it hypothetically *may* happen. That is, if Epstein or Epstein's counsel attempt to utilize the 47 exhibits at trial, the time to raise an objection is at the trial. Predictions that Epstein and his counsel, Link & Rockenbach, will intentionally violate this Court's rulings are absurd and serve no basis for allowing Epstein's deposition.

CONCLUSION

Edwards' request to take Epstein's deposition will not help Edwards or the Court determine whether an attempt may be made to use or refer to the finite set of documents at trial. Moreover, if the Bankruptcy Court finds no violation of its November 2010 Agreed Bankruptcy Order or this Court determines that none of the documents are in fact subject to a privilege, any remotely conceivable basis for Epstein's deposition is eliminated. Both of those issues need to

be resolved first before considering opening discovery to allow Edwards to conduct depositions outside the parameters already set by the Bankruptcy Court.

In any event, Edwards' questions have already been answered and taking Epstein's deposition, outside of the scope of inquiry authorized by the Bankruptcy Court, is unwarranted and should not be allowed. Factual issues relating to the November 2010 Agreed Bankruptcy Order are properly before the Bankruptcy Court. This Court, on the other hand, is in charge of its courtroom and is certainly able to make the decisions at trial regarding what testimony and evidence may be allowed. The Court does not require Epstein's deposition to control its own courtroom or enforce its own order. Accordingly, Epstein respectfully requests that Edwards' Motion be denied.

CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on April __, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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