

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.

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**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S  
RESPONSE IN OPPOSITION TO DEFENDANT/COUNTER-PLAINTIFF  
BRADLEY J. EDWARDS' SECOND SUPPLEMENT TO MOTION IN LIMINE  
ADDRESSING SCOPE OF ADMISSIBLE EVIDENCE**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), opposes Defendant/Counter-Plaintiff Bradley J. Edwards' ("Edwards") December 11, 2017, Second Supplement to Motion in Limine Addressing Scope of Admissible Evidence (D.E. 1113) and states:

**INTRODUCTION**

Edwards seeks to prevent Epstein from introducing any testimony and evidence regarding the criminal misconduct that occurred with the Rothstein, Rosenfeldt & Adler law firm ("RRA") during the six months that he was employed there, but that was not known to Epstein until after December 9, 2009. Epstein agrees that the existence of probable cause for initiating a claim is determined based on information known at the time the original civil proceeding is filed. However, Edwards' counsel placed the "continuation" of probable cause at issue before this Court at a recent hearing. Additionally, Edwards' counsel added the "continuation" of the original civil proceeding

as an issue in the parties' Pretrial Stipulation. (D.E. 1132, ¶C.2.B.) The Pretrial Stipulation specifically recognizes that the continuation must be based on evidence and information that was learned subsequent to the original filing. *Id.* Therefore, it makes no logical sense, and would in fact be reversible error, to hold that Epstein cannot offer evidence to the jury of his reasons for continuing the lawsuit.

As for Edwards' invocation of the "absolute litigation privilege," the privilege may be an affirmative defense to an abuse of process action where the conditions of the absolute privilege are satisfied; however, this is not an abuse of process action. What is material to this case is that not all of the conditions of the absolute litigation privilege were satisfied on the facts alleged in Epstein's Corrected Second Amended Complaint. Significant to this case and Epstein having probable cause to continue with this suit against Edwards was Judge Crow's finding when he denied Edwards' Motion to Dismiss Epstein's Second Amended Complaint. Edwards' Motion to Dismiss asserted the litigation privilege as an absolute bar to Epstein's cause of action. The Court found that the absolute litigation privilege did not bar this proceeding and found that Epstein's allegations were sufficient to plead a cause of action for abuse of process. (D.E. 389.) (**Exhibit A.**) Thus, the litigation privilege does not serve to bar Epstein from offering testimony and evidence to support his good-faith belief that Edwards was engaged in litigation misconduct that bore no relation to the claims of Edwards' clients, and, thus, provided Epstein with a reasonable basis to believe in the connection between Rothstein's Ponzi scheme and Edwards' misconduct.

## ARGUMENT

### **1. Edwards Placed the “Continuation” of Epstein’s Original Civil Proceeding at Issue Which Entitles Epstein to Defend by Introducing Evidence that Formed the Basis for His Continuing Probable Cause**

Edwards has the burden of establishing, by the greater weight of the evidence, that Epstein commenced *and continued* the judicial proceeding against him without probable cause. *See Burns v. GCC Beverages, Inc.*, 502 So. 2d 1217, 1219 (Fla. 1986); *Endacott v. Int’l Hospitality, Inc.*, 910 So. 2d 915, 923 (Fla. 3d DCA 2005) (“plaintiff must show that probable cause was lacking at all stages of the underlying proceeding.”). A civil litigant has probable cause to bring a suit when he has “a reasonable belief, based on facts and circumstances known to him, in the validity of the claim.” *Wright v. Yurko*, 446 So. 2d 1162, 1166 (Fla. 5<sup>th</sup> DCA 1984) (citing *Goldstein v. Sabella*, 88 So. 2d 910 (Fla. 1956)). A litigant may rely on first-hand knowledge or “trustworthy information that was provided” to him. *Gill v. Kostroff*, 82 F. Supp. 2d 1354, 1364 (M.D. Fla. 2000).

Significantly, counsel for Epstein, Scott Link, at a recent hearing indicated that Edwards’ burden was proving no probable cause at the time Epstein filed the original civil proceeding and Edwards’ counsel, Jack Scarola, corrected him and stated:

We contend there was no probable cause to continue the proceeding. The initiation and continuation of the proceeding caused damage to Bradley Edwards, both because no probable cause ever existed. So it was both initiated and continued in the absence of probable cause.

(12/5/17 Tr. 46:1-9.)<sup>1</sup>

Additionally, the parties’ Joint Pretrial Stipulation submitted after that hearing identified the continuation as an “issue[] of fact for determination at trial on Edwards’ Counterclaim against Epstein”:

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<sup>1</sup> Excerpts of the December 5, 2017, hearing transcript are attached as **Exhibit B**.

If Epstein had probable cause to initiate the original civil proceeding against Edwards at the time the case was initially filed, whether a reasonably cautious person would have continued to prosecute the civil proceeding against Edwards, based on new information acquired by Epstein after the case was filed. (The parties agree that in the absence of material disputed facts, the issue of whether Epstein's claim against Edwards was maintained when probable cause no longer existed is an issue to be determined by the Court.)

(D.E. 1132, C.2.B, e.s.)

Clearly, any and all of the testimony and evidence that supports Epstein's probable cause for the initiation *and continuation* of his original civil proceeding against Rothstein and Edwards is admissible. The evidence and testimony Epstein seeks to introduce tends to show Rothstein's connection to Edwards and the cases Edwards was litigating against Epstein, specifically during the six-month period in which Rothstein was alleged by Ponzi scheme investors to be using those same Epstein cases to defraud them. Even if such evidence was discovered by Epstein after the initiation of the original civil proceeding against Rothstein and Edwards, the allegations of the Ponzi scheme investors were known to Epstein prior to initiating the original suit, and Epstein's subsequent discovery of such evidence served to corroborate those allegations and supported Epstein's probable cause to have continued the original suit. Any judicial limitation on Epstein's efforts to introduce that testimony and evidence at trial would interfere with Epstein's right to defend against Edwards' erroneous assertion that Epstein lacked probable cause to continue this action, and would be reversible error.

## **2. The Absolute Litigation Privilege Does Not Apply to Edwards**

Edwards wants the Court to find that Epstein could not have had probable cause to initiate the civil proceeding because the conduct upon which Epstein based his Complaint against Edwards (Edwards' abuse of process of the claims of his three clients in other lawsuits brought against Epstein) is absolutely protected by the litigation privilege, such that any such conduct could not have formed the basis for any claim against Edwards. Under this thought process, for the absolute privilege to preclude a showing of probable cause by Epstein, then Edwards would need to show that Epstein knew when he initiated the civil proceeding, and at all times before he filed his Notice of Voluntary Dismissal Without Prejudice, that the litigation privilege precluded every cause of action asserted therein without any possibility that his claims would survive.

In August 2011, in his Supplement to Motion to Dismiss Epstein's Second Amended Complaint, Edwards argued that the litigation privilege was an absolute bar to Epstein's claims. **(Exhibit C.)** The Court disagreed with this argument and found that Epstein's allegations in support of his abuse of process claims were sufficient to plead a cause of action. (D.E. 389) **(Exhibit A)**. Thus, in continuing his action, Epstein had a reasonable basis to believe the absolute litigation privilege did not apply. Judge Crow's 2011 Order (two years after the filing of the original Complaint) denying Edwards' Motion to Dismiss Epstein's Second Amended Complaint is compelling evidence that Epstein had a reasonable basis for continuing with the lawsuit.

The absolute litigation privilege does not apply to prevent Epstein from defending his continuation of the original civil proceeding against Rothstein and Edwards. If Epstein sued Edwards for some statement or act performed during litigation between them, Edwards might have this privilege available as an affirmative defense to *that* action if the conduct occurred during *that* proceeding and it related to *that* action. However, Edwards is seeking to apply the absolute litigation privilege to his conduct in representing clients in other actions against Epstein for work he performed that had no relationship to the furtherance of those matters. If the conduct that forms the basis of the complaint does not relate to the proceeding, then it would not be covered by the litigation privilege and it could serve as a basis for probable cause to bring a claim. *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. United States Fire Ins. Co.*, 639 So. 2d 606, 608 (Fla. 1994).

Epstein's Complaints identified numerous instances of conduct by Edwards that were outside the parameters of the litigation privilege. Acts that bear no relation to and are not in furtherance of a judicial proceeding do not have immunity. *Levin* at 608. "Where judicial process is being perverted, immunity would impede, not further, the interests protected by the judicial privilege." *Gen. Refractories Co. v. Fireman's Fund Ins. Co.*, 337 F.3d 297, 312 (3d Cir. 2003).

Epstein is allowed to defend by showing the jury Edwards' overzealous litigation behavior had no relationship to the furtherance of his clients' claims – exhaustive fourteen hours of depositions of pilots who Edwards knew had no interaction with Edwards' three clients, a request to the federal court for Epstein to post a \$15 million bond because of alleged asset diversion, the filing of a 234-page federal court complaint when a state court action was already pending, and requests for depositions of former President Clinton, now President Trump, and other notable friends or acquaintances of Epstein. These unusual litigation tactics combined with information

known by Epstein, formed the basis for his probable cause to question whether a connection between Rothstein and Edwards existed.

Furthermore, Edwards intends to present evidence and testimony to prove the validity of his clients' claims and the propriety of his overzealous litigation conduct of which Epstein has complained to establish that Epstein had no probable cause to initiate and continue his action against Edwards. The Court should not allow Edwards to use the absolute litigation privilege to bar Epstein from introducing contrary evidence, particularly where the contrary evidence includes an Order from Judge Crow ruling that Epstein's Second Amended Complaint properly stated a cause of action for abuse of process.

It would be a tortured application of the Florida Supreme Court's *Levin* decision to allow Edwards to bar Epstein from presenting his defense and constitutes reversible error.

#### **CONCLUSION**

Epstein respectfully requests that Edwards' Second Supplement to Motion in Limine Addressing Scope of Admissible Evidence be denied.

**CERTIFICATE OF SERVICE**

I certify that the foregoing document has been furnished to the attorneys listed on the Service List below on January 8, 2018, through the Court's e-filing portal pursuant to Florida Rule of Judicial Administration 2.516(b)(1).

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