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IN THE FIFTEENTH JUDICIAL CIRCUIT COURT IN AND FOR
PALM BEACH COUNTY, FLORIDA
CASE NO. 502009CA040800XXXXMBAG

JEFFREY EPSTEIN,
Plaintiff,

vs.

SCOTT ROTHSTEIN, individually, BRADLEY
J. EDWARDS, individually, and [REDACTED],
individually,
Defendants,

_____ /

- - -

PROCEEDINGS HELD BEFORE
THE HONORABLE DAVID F. CROW

- - -

Palm Beach County Courthouse
West Palm Beach, Florida 33401
February 17, 2011
9:13 A.M. - 9:25 A.M.
Before Antoinette Garza, R.P.R.
Notary Public, State of Florida

Appearances on Page 2.

1 APPEARANCES:

2

3 SEARCY, DENNEY, SCAROLA, BARNHART & SHIPLEY

4 BY JACK SCAROLA, ESQUIRE

5 2139 Palm Beach Lakes Blvd.

6 West Palm Beach, Florida 33409

7 Appearing on behalf of the Plaintiff.

8

9 FOWLER, WHITE, BURNETT, P.A.

10 BY JOSEPH L. ACKERMAN, JR., ESQUIRE

11 901 Phillips Point West

12 777 S. Flagler Drive

13 West Palm Beach, Florida 33401-6170

14 Appearing on behalf of the Defendant.

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1 BE IT REMEMBERED that the following
2 proceedings were had before the HONORABLE DAVID F. CROW
3 at the Palm Beach County Courthouse, in the City of
4 West Palm Beach, County of Palm Beach, beginning at the
5 hour of 9:13 A.M., on February 17, 2011, with
6 appearances as hereinabove noted, to wit:

7 ** *** **

8 P R O C E E D I N G S

9 ** *** **

10 THE COURT: Yes, sir. Go ahead.

11 MR. SCAROLA: Your Honor, this is the
12 defendant, Bradley Edwards' Motion to Compel
13 Compliance with Your Honor's pretrial order.
14 Attached to the motion is a copy of Mr. Epstein's
15 exhibit list. If you take a look at the exhibit
16 list, I think you will find that it clearly on its
17 face fails to identify documents with sufficient
18 particularity for us to know what the documents
19 are or how we can frame objections to those
20 documents. There are broad categories that don't
21 identify anything, which is further indication of
22 the fact that there isn't anything but...

23 THE COURT: And I guess your position is
24 that you don't have them yet so, therefore, you
25 can't specifically identify them.

1 MR. ACKERMAN: Yes, sir. Those are all the
2 documents as framed upon the subpoenas that we
3 sent to the trustee.

4 THE COURT: I will tell you what I did,
5 guys. I went back yesterday and I looked at this
6 file again and I took your motion into
7 consideration and I granted the motion and removed
8 the case from the trial docket, but what I did was
9 I set a pretrial or a conference requiring you to
10 comply with the rule regarding complex litigation.
11 So I want you guys to get together, and the order
12 will say it when you prepare that, and it sets
13 forth what you have to do and when you are going
14 to do it. If you can't agree, I will set up a
15 criteria or a time frame or something.

16 This case, this is like the third time it's
17 been continued, or the second time, at least, it's
18 been continued, and I know the reasons but we have
19 got to get to this case at some point, and I don't
20 want to get held up because of what is happening
21 in the bankruptcy if it can be helped. So we're
22 going to have to, I want something to set out in
23 an order that gets us to the point where we know
24 where we're going to go and when you are going to
25 do things. Okay? Because the way we're going

1 right now is just haphazard and it's
2 disconcerting. This case needs to get to trial.

3 So I'm going to deny the motion because
4 essentially the trial is off -- no, I'm not. I'm
5 going to grant your motions and I'm not requiring
6 you to do anything at this time because obviously
7 you can't list things like this, that is number
8 one.

9 MR. ACKERMAN: I understand that, Judge.
10 And he is correct, I understand what the rule is,
11 but that is the best that we can describe them
12 until we get the records. And when we do, we will
13 comply with the Court's order requiring
14 specificity.

15 THE COURT: What happened yesterday in the
16 bankruptcy, are we any further along?

17 MR. ACKERMAN: Well, what happened, we had
18 a meeting yesterday, a hearing with a special
19 master. We reached some tentative agreements that
20 we're going to try and work out in terms of, I
21 understand they are going to produce the proper
22 privilege log by next Wednesday. The following
23 Friday we are to make any objections to it. We're
24 working on a proposed deadline of either 10 to 15
25 days where we will identify the documents that we

1 claim are not privileged for whatever reason and
2 have a briefing schedule list as to what the
3 standard is.

4 Mr. Scarola's clients will then provide a
5 response. If we can't agree on the process --

6 THE COURT: These are tentative agreements?

7 MR. ACKERMAN: We are finalizing them
8 today.

9 THE COURT: Not going into the detail of
10 it, is there a time frame this is going to get
11 decided by somebody?

12 MR. SCAROLA: May I make a suggestion, Your
13 Honor?

14 THE COURT: Yes, sir.

15 MR. SCAROLA: That cuts through all of
16 this. The only reason the bankruptcy court has
17 been involved in these production issues is
18 because the bankruptcy trustee had custody of
19 documents. Those documents have now been turned
20 over to Mr. Edwards.

21 THE COURT: So why can't I rule on this
22 then?

23 MR. SCAROLA: That is the point that I
24 tried to make to Your Honor last time. And quite
25 frankly, I think what happened was, because

1 Mr. Ackerman represented that there were other
2 pending discovery issues that the bankruptcy court
3 was dealing with other than this Court's subpoena,
4 Your Honor felt obliged to defer to the bankruptcy
5 judge. The only outstanding discovery request
6 directed to the trustee was the third party
7 subpoena issued in this case.

8 If Your Honor were to direct the plaintiff
9 to file a Request to Produce to Brad Edwards in
10 this case, since Mr. Edwards is the defendant, now
11 has custody of those documents, and were to
12 appoint Judge Carney, who is willing to serve as
13 special master, as special master to deal with the
14 discovery issues before this court, all of the
15 procedural concerns that have been a hang up
16 disappear.

17 And to repeat briefly, and I'm sorry if I'm
18 saying things that Your Honor has heard before or
19 remembers. The primary issues here are
20 attorney/client privilege and work product
21 privilege. In order for the attorney/client
22 privilege to be waived it is the client who must
23 be a participant in the crime or fraud. What that
24 means is the plaintiff has got to show not that
25 Mr. Rothstein was committing a crime or fraud,

1 they must show that the client, Rothstein's child
2 victims were participants in a crime or fraud in
3 order for the privilege that belongs to that child
4 to have been waived. If the child wasn't a
5 participant, the child retains the protection of
6 the attorney/client privilege, the lawyer can't
7 waive it.

8 With regard to the work product privilege,
9 we have agreed we'll turn over every document to
10 the special master to take a look at it. The
11 special master can determine whether there is one
12 shred of evidence that tends to indicate that Brad
13 Edwards was a participant in some kind of
14 wrongdoing and turn it over. We'll waive a right
15 to appeal with regard to those issues if the
16 special master says, I think this could be
17 probative, give it to them.

18 The one thing we don't want to happen is
19 because we have other claims that are being
20 prosecuted against Mr. Epstein is to have
21 everything that has been done in the prior cases,
22 which clearly relate to the subsequent
23 prosecutions as well, turned over to the defendant
24 in those other claims. That clearly would be
25 inappropriate.

1 So I think it's an extremely easy solution.
2 It gives Your Honor the control Your Honor has
3 recognized in prior orders that Your Honor has
4 over the discovery in your case. It relieves Your
5 Honor of the burden of having to do an In camera
6 review of tens of thousands of documents because
7 this subpoena is so broad that it covers every
8 piece of paper that was generated during the
9 period of time that this Ponzi scheme was ongoing.
10 So I don't know that there is any easier way to do
11 it.

12 THE COURT: I'm not going to rule on that
13 this morning, but that is something we will
14 consider and take up at the time of the hearing.

15 MR. ACKERMAN: Your Honor, we have been
16 through this. I don't want to rehash it, but I
17 have to respond to a couple of things.

18 First of all, there was an outstanding
19 subpoena of the bankruptcy trustee from Razor
20 Back. Every time someone sends a subpoena to the
21 bankruptcy trustee, the trustee either enters into
22 a stipulated protective order or we go forward
23 with Judge Rey, every time there is a subpoena.

24 Now there are two, as I said before, there
25 are two other sets of documents that, possibly

1 three that we have not received from the trustee
2 which still necessitates, the Q-test documents and
3 the Fortress documents, which the trustee has
4 acknowledged they have not been produced. So to
5 that extent Judge Rey needs to be in it.

6 Now yesterday we were talking about, and I
7 believe we reached an outline, we're going to put
8 it in writing in the next day or so to see if we
9 can have Judge Carney produce a recommendation as
10 to how we're going to proceed with the rest of
11 these documents.

12 THE COURT: I understand you all --

13 MR. ACKERMAN: The other thing is that
14 Mr. Scarola -- I'm sorry, Judge. I don't mean to
15 interrupt.

16 THE COURT: I'm really not interested in
17 the posturing right now. What I'm interested in
18 is you guys putting this together and you are
19 required to give me a pre -- I don't know what
20 they call it -- stipulation or statement or
21 whatever they call it under the rule now.

22 MR. SCAROLA: Case management plan.

23 THE COURT: Case management or statement or
24 something like that. And I have used it in these
25 complex cases to a real benefit because it

1 requires you guys to sit down and give me ahead of
2 time something that I could look at and really
3 understand this case before you ever walk in here
4 and then be able to set some parameters based on
5 an order entered at that time. So that is the
6 reason I did that, so we could get this flushed
7 out.

8 I still believe that ultimately I have to
9 make the decisions in this case as to what
10 documents are or are not relevant, one,
11 discoverable, two, and whether or not there are or
12 not any privileges associated with any of these
13 documents, and if so, whether there has been a
14 waiver of any privilege. And that not only
15 concerns the bankruptcy documents, the documents
16 of Mr. Edwards, but also your client's testimony.
17 I have to make determinations on that as well.

18 MR. ACKERMAN: I understand. Mr. Scarola,
19 when we sent the original Request to Produce out
20 to his client for documents within his possession,
21 we have had a bunch of objections that are set for
22 hearing in April. So there is more to this than
23 is being presented.

24 THE COURT: I know it's not easy. We're
25 going to have a hearing and hopefully get some of

1 these things in order, at least get a road map of
2 where we could go.

3 Thank you, guys. If you could get that to
4 me, Mr. Scarola, I'd really appreciate it.

5 MR. SCAROLA: I will.

6 (The proceedings were concluded at 9:25

7 a.m.)

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