

**WEST PALM BEACH OFFICE:**

2139 PALM BEACH LAKES BLVD.  
WEST PALM BEACH, FLORIDA 33409

P.O. BOX 3626  
WEST PALM BEACH, FLORIDA 33402



SEARCY  
DENNEY  
SCAROLA  
BARNHART  
& SHIPLEY P.A.

*Attorneys  
at Law*

**TALLAHASSEE OFFICE:**

THE TOWLE HOUSE  
517 NORTH CALHOUN STREET  
TALLAHASSEE, FL 32301-1231

P.O. BOX 1230  
TALLAHASSEE, FLORIDA 32302



May 03, 2010

Hearing Date: 5/11/10 8:15

**ATTORNEYS AT LAW:**

ROSALYN SIA BAKER-BARNES

\*F. GREGORY BARNHART

T. HARDEE BASS, III

LAURIE J. BRIGGS

BRIAN R. DENNEY

\*EARL L. DENNEY, JR.<sup>5</sup>

BRENDA S. FULMER

JAMES W. GUSTAFSON, JR.

JACK P. HILL

DAVID K. KELLEY, JR.

WILLIAM S. KING<sup>7</sup>

\*DARRYL L. LEWIS<sup>1</sup>

\*WILLIAM A. NORTON

PATRICK E. OUNLAN<sup>3</sup>

EDWARD V. RICCI

\*DAVID J. SALES<sup>4</sup>

\*JOHN SCAROLA

\*CHRISTIAN D. SEARCY

\*JOHN A. SHIPLEY III

CHRISTOPHER K. SPEED<sup>100</sup>

BRIAN P. SULLIVAN<sup>146</sup>

KAREN E. TERRY

\*C. CALVIN WARRINER III

**SHAREHOLDERS**

\*BOARD CERTIFIED

**ALSO ADMITTED**

<sup>1</sup> KENTUCKY

<sup>2</sup> MAINE

<sup>3</sup> MARYLAND

<sup>4</sup> MASSACHUSETTS

<sup>5</sup> MISSISSIPPI

<sup>6</sup> NEW HAMPSHIRE

<sup>7</sup> NEW JERSEY

<sup>8</sup> VIRGINIA

<sup>9</sup> WASHINGTON DC

**PARALEGALS:**

VIVIAN AYAN-TEJEDA

ALYSSA A. DIEDWARD

RANDY M. DUFFRESNE

DAVID W. GILMORE

JOHN C. HOPKINS

DEBORAH M. KNAPP

VINCENT L. LEONARD, JR.

JAMES PETER LOVE

CHRISTOPHER J. PELATO

ROBERT W. PITCHER

MARK P. PONCY

KATHLEEN SIMON

STEVE M. SMITH

BONNIE S. STARK

WALTER A. STEIN

The Honorable David F. Crow  
Palm Beach County Courthouse  
205 North Dixie Highway, Room 9.1215  
West Palm Beach, FL 33401

Re: EPSTEIN V. ROTHSTEIN, et al.  
Case No. 502009CA040800XXXXMBAG  
Our File No.: 291874

Dear Judge Crow:

Enclosed please find Defendant/Counterplaintiff, Bradley J. Edwards' Response and Supporting Legal Authorities in Opposition to Counterdefendant's Motion for Judgment on the Pleadings and/or Motion for Summary Judgment on Edwards' Counterclaim for Abuse of Process.

Respectfully,

JACK SCAROLA  
JS/mep  
Enc.

cc: Jack A. Goldberger, Esq.  
Robert D. Critton, Jr., Esq.  
Gary M. Farmer, Esq.  
Marc S. Nurik, Esq.



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  
█, individually,

Defendant,

DEFENDANT/COUNTERPLAINTIFF'S RESPONSE AND SUPPORTING LEGAL  
AUTHORITIES IN OPPOSITION TO COUNTERDEFENDANT'S MOTION FOR  
JUDGMENT ON THE PLEADINGS AND/OR MOTION FOR SUMMARY JUDGMENT  
ON EDWARDS' COUNTERCLAIM FOR ABUSE OF PROCESS

Defendant/Counterplaintiff, Bradley J. Edwards, files this Response and Supporting Legal Authorities in Opposition to Plaintiff/Counterdefendant, Jeffrey Epstein's Motion for Judgment on the Pleadings and/or Motion for Summary Judgment on Edwards' Counterclaim for Abuse of Process and states:

Epstein is a convicted felon having entered into a plea agreement pursuant to which he effectively conceded his having engaged in illicit sexual activity with a large number of female children. (See Counterclaim at ¶4) A large number of his victims have filed civil suits, many of which remain pending and which potentially subject Epstein to large judgments for both compensatory and punitive damages. (Counterclaim at ¶5) Edwards' clients, including █, are among those victims who continue the prosecution of their claims against Epstein. (Counterclaim at ¶7) Epstein has no substantive defense to these claims, as he has repeatedly invoked the Fifth Amendment and refused to answer any substantive questions regarding his

sexual exploitation of his minor victims. (Counterclaim at ¶6) Epstein has employed the extraordinary financial resources at his disposal to intimidate his victims into abandoning or compromising their legitimate claims. *Id.* Epstein has initiated claims against Edwards and [REDACTED] for the sole purpose of intimidating Edwards, [REDACTED], and others to abandon legitimate claims against Epstein or to coerce them into settling these claims for less than their value. (Counterclaim at ¶9) Epstein's Complaint alleges that Edwards was a knowing participant in a civil theft and criminal enterprise. (Counterclaim at ¶10) Epstein is well aware that there is no evidence to support these false assertions. *Id.* Epstein's actions in filing his baseless lawsuit are tantamount to extortion and form the basis for Edwards' Counterclaim for abuse of process.

Judgment on the pleadings should be granted only where the Court concludes, based upon the pleadings alone, that the movant is clearly entitled to judgment as a matter of law, after taking every fact alleged by the non-moving party as true and all facts alleged by the moving party and denied by the non-moving party as false. See *Harris v. Kearney*, 786 So. 2d 1222, 1225 (Fla. 4th DCA 2001). In most instances, a motion for judgment on the pleadings will end up being much the same, in practice, as a motion to dismiss, although made after an answer is served.<sup>1</sup>

The pleadings in this case establish a cause of action for abuse of process. A cause of action for abuse of process requires proof of the following elements: (1) the defendant made an illegal, improper, or perverted use of process; (2) the defendant had an ulterior motive or purpose

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<sup>1</sup> Epstein previously filed a Motion For More Definite Statement and/or Motion to Dismiss with respect to Edwards' Counterclaim. The motion was denied. While the prior motion did not raise the same grounds raised herein, it is worth noting that this Court previously determined that Counterplaintiff's Counterclaim could stand.

in exercising the illegal, improper or perverted process; and (3) the plaintiff was injured as a result of defendant's action. *Della-Donna v. Nova Univ., Inc.*, 512 So.2d 1051 (Fla. 4th DCA 1987). In an abuse of process action, process may mean an action that is initiated independently such as the commencement of a suit, or one initiated collaterally, such as an attachment or the filing of a counterclaim. *Peckins v. Kaye*, 443 So. 2d 1025, 1026 (Fla. 2d DCA 1984). The gravamen of the cause of action involves the use of process to accomplish some wrongful purpose for which it was not designed. *Id.*, see also *Scozari v. Barone*, 546 So. 2d 750, 751-52 (Fla. 3d DCA 1989). The usual case involves some form of extortion. *Scozari*, 546 So. 2d at 751, citing *Bothmann v. Harrington*, 458 So. 2d 1163, 1169 (Fla. 3d DCA 1984). The allegations contained in Edwards' Counterclaim, which must be taken as true for purposes of deciding a motion for judgment on the pleadings, establish these necessary elements. The Counterclaim alleges that Epstein has commenced a lawsuit against Edwards for the sole purpose of attempting to intimidate Edwards and his clients, including [REDACTED], into either abandoning or settling legitimate claims for less than their just and reasonable value. (See Counterclaim at ¶ 9 and 11) The Counterclaim also alleges that Epstein's Complaint has no basis in law or fact and that Edwards has been injured as a result. (Counterclaim at ¶¶ 10 and 12)

Edwards acknowledges that there is no abuse of process when the process is used to accomplish the result for which it was intended, regardless of an incidental or concurrent motive of spite or ulterior purpose, such as harassment. *Scozari*, 546 So. 2d at 751. However, in this case, it is alleged that the claims against Edwards for participating in a civil theft and criminal enterprise have no factual basis or legal merit whatsoever (i.e. Epstein's lawsuit was not filed to

accomplish the result intended (to either prevail or settle a meritorious claim). Indeed, Epstein completely ignored the statutory requirement for written notice prior to the initiation of a civil theft claim. (Counterclaim at ¶10) This is one manner in which the cases cited by Epstein are distinguishable. Additionally, many of the cases cited by Epstein note that the mere filing a complaint with an ulterior motive of harassment will not alone constitute abuse of process. However, Counterplaintiff's allegations involve more than mere harassment, they involve allegations of an attempt by Epstein to coerce Edwards into compromising the legitimate claims his clients have against Epstein for molestation. Even the cases cited by the Counterdefendant recognize that allegations of a coercive or collateral effect, like the kind set forth in Edwards' counterclaim, will be sufficient. For example, in *Miami Herald Publishing Co. v. Ferre*, 636 F.Supp. 970 (█. Fla. 1985), the Court notes that an improper motive is not sufficient and explains that what is needed is an allegation of a collateral, coercive effect. Quoting *McMurray v. U-Haul Co.*, 425 So. 2d 1208, 1209 n.1 (Fla. 4<sup>th</sup> DCA 1983), the *Ferre* Court states that:

An abuse of process arises only when there has been a perversion of court processes to accomplish some end which the process was not intended by law to accomplish, or which *compels the party against whom it has been used to do some collateral thing which he could not legally and regularly be compelled to do.*

The case of *Scozari, supra* is instructive. In *Scozari* an attorney was sued for abuse of process after filing an action to impose an equitable lien and *lis pendens* against the home of his client's former live-in boyfriend who had left the state with the couple's child. 546 So. 2d at 751. The Third District held that summary judgment should not have been entered where the lawyer's

own testimony indicated that he filed the action at least in part as a bargaining chip. The Court noted:

If there was a reasonable basis in law and fact to initiate the judicial proceedings, then these processes were justified even though they may have served some other collateral purpose. However, if there was no reasonable basis in law and fact to bring the action to impress a lien on property, and this was done without any reasonable justification under the law and to force or compel the appellant to resolve some custody dispute, induce the appellant to pay money, or tie up the appellant's property, then there has been an abuse of process. (emphasis added).

*Id.* at 752. Likewise, the counterclaim in this case alleges that Epstein filed this action with no reasonable basis in law or fact in order to force or compel Edwards to resolve other pending cases against Epstein. *See also, Bothmann, supra*, 458 So. 2d at 1169, n 8 (noting that in an abuse of process claim, the improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club). Based upon the foregoing authorities, the pleadings in this matter set forth a cause of action for abuse of process and Epstein's Motion for Judgment on the Pleadings must be denied.

Epstein has also moved for summary judgment on Edwards' abuse of process claim. It is axiomatic that summary judgment may not be granted unless the moving party is able to show that no genuine issues of material fact exist. *Payne v. Cudjoe Gardens Property Owners Ass'n, Inc.*, 837 So. 2d 458, 461 (Fla. 3d DCA 2002). Epstein has failed to establish an absence of the disputed issues of fact created by the pleadings. Furthermore, summary judgment is premature because discovery is not complete. Epstein just answered the counterclaim on March 15, 2010. Where discovery is not complete, the facts are not sufficiently developed to enable the trial court

to determine whether genuine issues of material facts exist. *Id.*, see also *Singer v. Star*, 510 So. 2d 637, 639 (Fla. 4<sup>th</sup> DCA 1987). As the court noted in *Payne, supra*, 837 So.2d at 461:

Where discovery is not complete the facts are not sufficiently developed to enable the trial court to determine whether genuine issues of material facts exist. See *Singer v. Star* 510 So.2d 637, 639 (Fla. 4th DCA 1987). Thus where discovery is still pending the entry of summary judgment is premature. See *Smith v. Smith*, 734 So.2d 1142, 1144 (Fla. 5th DCA 1999) ("Parties to lawsuit are entitled to discovery as provided in the Florida Rules of Civil Procedure including the taking of depositions and it is reversible error to enter summary judgment when discovery is in progress and the deposition of party is pending."); *Henderson Reyes* 702 So.2d 616, 616 (Fla. 3d DCA 1997) (reversing the entry of Summary Judgment where depositions had not been completed and request for the production of documents was outstanding); *Collazo v. Hupert* 693 So.2d 631, 631 (Fla. 3d DCA 1997) (holding that a trial court should not entertain motion for summary judgment while discovery is still pending); *Spradley v. Stick* 622 So.2d 610, 613 (Fla. 1st DCA 1993).

See also, *Brandauer v. Publix Supermarkets, Inc.*, 657 So. 2d 932 (Fla. 2nd DCA 1995) (abuse of discretion to grant summary judgment where opposing party has not had an opportunity to complete discovery).

Wherefore, the Defendant/Counterplaintiff, Bradley J. Edwards respectfully requests this Court to enter an Order denying Plaintiff/Counterdefendant, Jeffrey Epstein's Motion for Judgment on the Pleadings and/or Motion for Summary Judgment on Edwards' Counterclaim for Abuse of Process.

Case No.: 502009CA040800XXXXMBAG

Defendant/Counterplaintiff's Response and Supporting Legal Authorities in Opposition to Counterdefendant's  
Motion for Judgment on the Pleadings and/or Motion for Summary Judgment

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I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by

U.S. Mail to all counsel on the attached list, this 3rd day of May, 2010.



Jack Scarola

Florida Bar No.: 169440

Searcy Denney Scarola Barnhart & Shipley, 

2439 Palm Beach Lakes Boulevard

West Palm Beach, Florida 33409



Attorneys for Plaintiff(s)

