

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

3 CASE NO.: 502009 CA 040800XXXMBAG

4 JEFFREY EPSTEIN,

5 Plaintiff,

6 vs.

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

9 Defendants.

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12 HEARING BEFORE: THE HONORABLE DAVID F. CROW

13 DATE TAKEN: Wednesday, September 28, 2011

14 TIME: 8:15 a.m. - 8:45 a.m.

15 PLACE: Palm Beach County Courthouse
16 205 North Dixie Highway
West Palm Beach, Florida 33401

17 REPORTED BY: BARBARA L. KENT, RMR, RPR, FPR, CSR-MI
18 Court Reporter and Notary Public

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A P P E A R A N C E S

JOSEPH L. ACKERMAN, JR., ESQUIRE
CHRISTOPHER E. KNIGHT, ESQUIRE
OF: Fowler, White, Burnett, P.A.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

APPEARING ON BEHALF OF THE PLAINTIFF,

JACK SCAROLA, ESQUIRE
OF: Searcy, Denney, Scarola, Barnhart & Shipley

[REDACTED]
[REDACTED]
[REDACTED]

APPEARING ON BEHALF OF BRADLEY J. EDWARDS.

ALSO PRESENT: Bradley J. Edwards.

P R O C E E D I N G S

* * * *

THE COURT: Okay. Have a seat, please.

We're here on Epstein versus Rothstein, and it's the Motion to Dismiss. I guess, the second point, as well as your new Motion for Punitive Damages.

I have read the motions. I have read all the cases you guys provided to me, and I have read them, too, when they were submitted to me earlier, at least most of them.

So I think we should deal with the Motion to Dismiss, first.

So, I guess, that is your motion.

Mr. Scarola.

MR. SCAROLA: Thank you, Your Honor.

With the Court's permission, may I address the Court from counsel table?

THE COURT: That's fine, yes. Certainly.

MR. SCAROLA: Thank you very much.

Your Honor, what I think will be most helpful is, if we went through the second amended complaint and addressed what that complaint does or does not do in some detail.

Obviously, the introduction, which is

1 unnumbered, and does not constitute any of the
2 allegations against Mr. Edwards, is nothing more
3 than a press release incorporated into a pleading,
4 for purposes of cloaking it in litigation, in
5 unity. I think we can effectively ignore it.

6 The first five numbered paragraphs are,
7 basically, jurisdictional, and then paragraphs six,
8 seven, eight, nine, ten, 11, 12, 13, 14, all the
9 way through paragraph 22, are paragraphs that
10 describe in substantial detail the uncontested
11 misconduct of Scott Rothstein, and his involvement
12 in a Ponzi scheme.

13 Paragraph 21 alleges that Mr. Edwards was
14 aware that RRA's offices were monitored and
15 recorded various discussions. Obviously, that is
16 immaterial to any claim of abusive process. And
17 paragraph 22 talks about the level of
18 communications going on within the firm, relating
19 to the prosecution of what clearly was, and
20 continued to be, an extremely important case within
21 the firm.

22 The substantive allegations on which I
23 suggest we must focus, to the extent there's any
24 substance in them at all, begin at paragraph 23.
25 And that paragraph says that, that there were a lot

1 of e-mails that went back and forth with regard to
2 the prosecution of this -- these major pending
3 cases within the law firm. There is nothing about
4 that exchange of e-mails that would suggest
5 Mr. Edwards' knowledge of, or involvement in an
6 Ponzi scheme.

7 Paragraph 24 describes a variety of events
8 that clearly have, from Mr. Edwards' perspective,
9 an entirely innocent explanation, and dove-tie him
10 into that Ponzi scheme. But as we're going to see,
11 even if Mr. Edwards were tied into the Ponzi
12 scheme, that's got nothing to do with any damage
13 suffered by the plaintiff, Mr. Epstein.

14 Paragraph 25 says that, given the
15 interdependence of so many RRA lawyers,
16 investigators, and other staff, the wide
17 communications that necessarily accompanied the
18 involvement of so many people, Edwards knew or
19 should have known, there was a Ponzi scheme going
20 on.

21 Well, that clearly is a conclusion that is
22 based upon the pyramiding of a variety of
23 inferences, and is not a reasonable conclusion,
24 based upon the preceding allegations about nothing
25 more than an exchange of e-mails and meetings going

1 on, none of which, Edwards is alleged to have been
2 involved in, in terms of the -- the attempt to sell
3 investments.

4 Then we get to paragraphs 26, 27, and 28, and
5 we're back to Mr. Rothstein, again. And now we
6 have the abusive process claim against Mr. Edwards.

7 In paragraph 30, we learned that on
8 September 11, 2008, Mr. Edwards filed a state court
9 action on behalf of a client seeking damages. Now,
10 we know that those were legitimate claims. There's
11 no allegation anywhere in this complaint that they
12 were anything other than well-founded legitimate
13 claims.

14 30 B says that there was a federal court
15 complaint that was filed against somebody with a
16 different name, that because it was filed against
17 somebody with a different name, Mr. Epstein never
18 learned about it. Because not only was it filed
19 against somebody with a different name, it was
20 never served, according to the allegations in the
21 complaint on Mr. Epstein.

22 Now, clearly, there can be no abuse of
23 process, and no damages arising out of a complaint
24 against someone else with a different name that is
25 never served on this plaintiff.

1 Then we have allegations in 30 C, that state
2 what Mr. Epstein believes about the federal
3 complaint; and he believes that it was filed to
4 show to prospective Ponzi scheme investors. Well,
5 again, assuming those -- assuming that belief to be
6 accurate, and a belief is not an allegation of
7 fact, except as to the subjective understanding of
8 Mr. Epstein. It doesn't say, this is what did
9 occur, it says that's what Mr. Epstein believed
10 occurred.

11 Even assuming that to be the case, the filing
12 of a federal court action to show to somebody else,
13 to defraud someone else, clearly cannot produce
14 damages to Mr. Epstein. And, in fact, when we get
15 to the damage allegations, the only allegation of
16 damages are, that Mr. Epstein was obliged to pay
17 attorney's fees to defend against state court
18 actions taken in the prosecution of the filed and
19 served state court claim. So there can be no
20 causal connection between what is alleged in
21 paragraph 30 C, and any damages to Mr. Epstein.

22 Now, the same is true when we get to
23 paragraph 32. Edwards also made illegal, improper,
24 and perverted use of civil process in order to
25 bolster the case to investors by using it to

1 conduct unreasonable and unnecessary discovery,
2 making unfounded allegations, and we're going to
3 get to that. That clearly can't be the federal
4 court case, because the federal court case is never
5 served. So we must be talking about the state
6 court case, and paragraph 31 makes reference to the
7 state court case.

8 Then, we take a look at what it is that
9 Mr. Edwards is alleged to have done, that
10 constituted abuse of process. And we go to
11 subparagraphs one through ten, about actions
12 alleged to have been taken directly in the state
13 court action during the course of the prosecution
14 of the state court action, that are alleged to have
15 caused Mr. Epstein to spend money on attorney's
16 fees to defend against those actions alleged to
17 have been directly involved in the prosecution of
18 the state court claim.

19 Now, there is an allegation in paragraph 33
20 that Mr. Edwards had ulterior motives.
21 Significantly, there is no allegation that these
22 "ulterior" motives were the sole motives involved
23 in all of the actions described in paragraph 32.
24 And these ulterior motives are maintaining a Ponzi
25 scheme, of which Mr. Epstein was never, and could

1 not have been a victim, because he didn't know
2 about it. So, that's got no relevance, and it's
3 not alleged that it was the sole motive.

4 And then there are two other very curious
5 motives alleged; obtaining funds for the continued
6 investigation and prosecution of the Epstein
7 actions, and obtaining operating revenues so that
8 RRA could continue to operate.

9 Now, I don't know how the plaintiff's law
10 firm business is conducted, but there isn't any law
11 firm that I'm aware of, that doesn't engage in the
12 practice of law for purposes of obtaining funds to
13 investigate and prosecute other cases; or to obtain
14 operating revenue so that the firm could continue
15 to operate. I don't know how that constitutes some
16 form of improper motive, that you are in business
17 to make a profit, and to continue to be able to
18 fund other cases to make profits.

19 So those allegations, even if they were
20 allegations that those were the sole motives, are
21 not allegations of some malicious and improper
22 motivation.

23 That's where the allegations of wrongdoing
24 end, and then paragraph 34 is the -- is the damage
25 paragraph, as a result of Mr. Edwards doing all of

1 these things to prosecute his legitimate claims.
2 It is alleged that the plaintiff suffered damages
3 by incurring additional and unnecessary attorney's
4 fees.

5 There are four cases that are entirely
6 dispositive of this third attempt to try to
7 fabricate some justification for the extortion
8 attempt that Mr. Epstein began back in 2009, and
9 continues to pursue today.

10 The first of those is, SI Investments versus
11 Payless Flea Market, it appears at tab 18 in the
12 notebook that Your Honor was provided by the
13 defendants. You might just make --

14 THE COURT: Okay. Because I didn't see any
15 cases, other than the litigation for those cases
16 cited in your motion.

17 MR. SCAROLA: Your Honor, the Motion to
18 Dismiss incorporates the legal authorities that are
19 described in detail in the Motion to Assert a Claim
20 for Punitive Damages, and all of these cases are
21 cited by both parties.

22 So, SI Investments stands for the following
23 propositions, and these are quotes. Plaintiff must
24 prove that the process was used for an immediate
25 purpose other than that for which it was designed.

1 Where the process was used to accomplish the result
2 for which it was intended, regardless of an
3 incidental or concurrent motive of spite or
4 ulterior purpose, there is no abusive process.
5 That's the case the defendants themselves are
6 relying upon.

7 So if you have two motives, one's a good one,
8 because what you want to do is, you want to recover
9 damages against Mr. Epstein for his serial abuse of
10 young children. If you have --

11 THE COURT: Well, isn't the -- isn't the
12 distinction, or as I understand it, correct me if
13 I'm wrong, but the -- while the initial process may
14 be for profit purpose, the issue on abuse of
15 process is something occurring subsequent. Even
16 though it may be filed for legitimate purpose, the
17 abuse process occurs, as compared to malicious
18 prosecution when it's filed for an improper
19 purpose; right?

20 MR. SCAROLA: In order for an abusive process
21 claim.

22 THE COURT: Right.

23 MR. SCAROLA: To be based upon an initial
24 filing.

25 THE COURT: Right.

1 MR. SCAROLA: It must be demonstrated that
2 the sole purpose was an improper purpose. And the
3 case law is, that subsequent use of process where
4 there is a concurrent legitimate purpose, does not
5 constitute an abuse of process. That's the Fourth
6 DCA, 2010 recent law, that clearly describes the
7 scope of an abuse of process claim and the elements
8 involved.

9 THE COURT: Well, it also says, the mere
10 filing of a complaint having process served is not
11 enough to show abusive process. The plaintiff must
12 prove improper use of the process after it issues.

13 MR. SCAROLA: Yes, sir, that's correct.

14 THE COURT: Okay.

15 MR. SCAROLA: Okay. And that's what they
16 attempt to do, when they lay out in paragraph 32,
17 all of these alleged improper uses of the
18 litigation.

19 THE COURT: Where -- where -- I mean, I don't
20 mean to cut you off, but I mean you're running
21 short of time here, and, you know, if we started
22 right on time -- but I do have to give them an
23 opportunity.

24 You said this is the dispositive -- SI
25 Investments is dispositive. I thought you were

1 going to talk about damages, but is there something
2 about damages in here?

3 MR. SCAROLA: There are. Your Honor, there
4 are four cases, which together, I suggest are
5 dispositive.

6 THE COURT: Give me the names of them,
7 because I want to read them.

8 MR. SCAROLA: Yes, sir.

9 The next case, and I will hand Your Honor a
10 copy of these others.

11 THE COURT: Are they all in the book here?

12 MR. SCAROLA: They are. Two of them are in
13 the book, I think the third one is, as well.

14 THE COURT: Okay.

15 MR. SCAROLA: Tab number four --
16 Levin-Middlebrook is tab number 18.

17 THE COURT: Gotcha. I've read that 1,000
18 times.

19 MR. SCAROLA: Yes, sir, I'm sure you have.
20 And --

21 THE COURT: You can give it to me, again,
22 though.

23 MR. SCAROLA: I will be happy to do that.

24 THE COURT: Yeah. This deals with litigation
25 privilege.

1 MR. SCAROLA: Yes, sir. It does deal with
2 litigation privilege. Echevarria also deals with
3 the litigation privilege, and Delmonico stands for
4 the proposition that the issues with regard for
5 privilege, are issues of law for the court to
6 determine.

7 And I've provided Your Honor with highlighted
8 copies, I'm providing opposing counsel with
9 highlighted copies, as well.

10 THE COURT: Okay.

11 MR. SCAROLA: The basic point here is, Your
12 Honor, that the litigation privilege is an absolute
13 privilege. Once it is established that the actions
14 occur within the course and scope of the
15 litigation, the privilege applies absolutely as a
16 matter of public policy.

17 The basis of those decisions is, that if
18 there's misconduct in the course of the litigation,
19 if you're taking improper discovery, if you're
20 filing improper motions, there are remedies that
21 are available to the court through the court's
22 inherent power to control its own litigation,
23 through the contempt powers of the court, through
24 Florida Statute 57.105, and through the filing of
25 bar grievances, and it will cripple the system, if

1 litigants are obliged to respond to separate
2 litigation, just because somebody is alleged, you
3 notice the deposition that shouldn't have been
4 noticed, you filed a motion that shouldn't have
5 been filed.

6 THE COURT: Are you saying it's a matter of
7 law, there can be no abuse of process by an
8 attorney, then?

9 MR. SCAROLA: No, sir. I'm not saying as a
10 matter of law there can be no abuse of process by
11 an attorney.

12 THE COURT: Just the --

13 MR. SCAROLA: Because if there -- because the
14 test is, it must be related to the litigation. So,
15 if I were to issue a subpoena to my next-door
16 neighbor in a pending case, just because I want to
17 inconvenience him and bring him down to the
18 courthouse, knowing that he just moved to Florida
19 two weeks ago, and this case involves an automobile
20 accident that occurred three years ago, that he
21 couldn't absolutely know anything about, that would
22 be an abuse of process.

23 THE COURT: Here's my question.

24 MR. SCAROLA: Yes.

25 THE COURT: Whether or not that litigation --

1 and generally speaking, a privilege is an
2 affirmative defense. Whether or not something is,
3 or is not within the process, or within the
4 lawsuit, and falls within the immunity, is
5 certainly something that the judge will have to
6 decide rather than the jury. But it may be
7 dependent on specific facts under specific
8 circumstances, may it not?

9 MR. SCAROLA: It may be.

10 THE COURT: Okay. But you're saying, as a
11 matter of law -- I'm sorry.

12 MR. SCAROLA: I am sorry. I didn't mean to
13 interrupt the Court.

14 THE COURT: I guess what you're saying, it's
15 a matter of law, these allegations are such that I
16 can determine from the law -- looking at the
17 pleadings themselves, that it falls within the
18 privilege?

19 MR. SCAROLA: First, absolute privilege, as
20 distinguished from qualified privilege. Qualified
21 privilege is -- almost always involves questions of
22 fact, but this is an absolute privilege. And
23 secondly, you can determine from the face of the
24 complaint, that this was related to the litigation
25 itself.

1 THE COURT: Okay.

2 MR. SCAROLA: You can see that on the face of
3 the complaint.

4 THE COURT: Okay.

5 MR. SCAROLA: So that's the basis of -- of
6 this dismissal argument, and the -- the allegations
7 of the nature of the damages that were incurred, as
8 well.

9 The nature of the damages are, I had to incur
10 attorney's fees in the context of this litigation.

11 THE COURT: Yes, sir.

12 MR. ACKERMAN: Your Honor, it's our position
13 that the corrected second amended complaint
14 satisfies on its four corners, every element of the
15 tort of abuse of process.

16 We have alleged a misuse of the judicial
17 system through a legal, improper, perverted use of
18 process. We have set those examples out.

19 We have alleged in the complaint, that they
20 were for ulterior purposes, not intended by the
21 law, after the action was, that resulted in
22 damages. We can clearly show that, by looking at
23 paragraph 30 A-C, when the LM case is filed in
24 state court against Mr. Epstein, and it is pending
25 for some time, that this 234-page, 156-count

1 complaint is filed in Federal Court seeking in
2 excess of \$23 million in damages, and it was
3 against Mr. Epstein. We can prove that. And was
4 intended there, we believe, with highly charged
5 allegations, to assist Mr. Rothstein in attracting
6 investors to invest in the Epstein cases.

7 Mr. Epstein's damages include filing motions
8 to dismiss that. That occurred approximately nine
9 months later. So, on that -- on its face, that is
10 a process that is issued after LM, involving the LM
11 case.

12 We then proceeded to list 32 separate
13 instances of abuse of process, and not all of them
14 are in the state cases, a couple are in the federal
15 cases.

16 Paragraph 33 alleges the motives, and we
17 believe that Mr. Edwards was attempting to assist
18 Mr. Rothstein, which is why all the allegations of
19 Mr. Rothstein's conduct with Mr. Edwards' cases,
20 that Mr. Scarola clearly wants to dismiss as
21 unrelated, are appropriate. Because the Court can
22 see on the face of the complaint that there is a
23 link. Mr. Edwards' investigators, Mr. Edwards'
24 cases are ultimately involved with Mr. Rothstein,
25 with the Ponzi scheme.

1 We've also alleged in paragraph 24, and I
2 believe if the Court looks at the 15 e-mails
3 in camera, the Court will see that link; and what
4 Mr. Scarola wants to clearly dismiss as e-mails on
5 a case, is on the day that there is contact with
6 Mr. Rothstein and the investors, Mr. Rothstein
7 extends an e-mail, which we've alleged, to the
8 investors, who subsequently invest in the Epstein
9 cases, which is the purpose we've alleged, not
10 recovering money on a cause of action, that state,
11 here are the causes of action we have against
12 Mr. Epstein.

13 And based on the privileged log information
14 that we've received, you can see Mr. Rothstein
15 asking Mr. Adler, and Mr. Edwards in August, and
16 then again in October, what are the causes of
17 action against Mr. Epstein? On the day that he
18 communicates -- the day that Mr. Rothstein
19 communicates with the investors, there's a series
20 of e-mails that involve Mr. Adler, that involve
21 Mr. Edwards, that involve investigators and other
22 people, contrary to what Mr. Edwards has testified
23 to, that show a clear link that they are providing
24 the information that Mr. Rothstein asked for -- on
25 the causes of action against Mr. Epstein, that he

1 subsequently gives to the investors.

2 Now, it is our position that links
3 Mr. Edwards to Mr. Rothstein's scheme. And that
4 therein, provides the necessary element that we can
5 prove that the actions that were taken, that we've
6 alleged to be an abuse of process, aren't protected
7 by any privilege, and were in furtherance of that
8 scheme, as alleged.

9 We've also alleged special damages. The law
10 is very clear, that if a person has to defend
11 themself against the conduct of another party, that
12 they are allowed to come in in separate litigation
13 and claim those damages as special damages. Those
14 have been specifically pled. And right now
15 everything that Mr. Scarola is arguing, are issues
16 of fact that need to be properly pled as
17 affirmative defenses.

18 THE COURT: Let me understand the damages
19 here. The damages are not the defending the
20 lawsuit, because nowhere in here do you contend
21 that the lawsuits are frivolous or not supported by
22 facts.

23 MR. ACKERMAN: No, the damages --

24 THE COURT: Let me finish.

25 MR. ACKERMAN: I apologize, Your Honor.

1 THE COURT: I think you know where I am
2 going.

3 MR. ACKERMAN: Yes, sir.

4 THE COURT: But there were things done in
5 those lawsuits that were outside of -- or that were
6 an abuse of process, that he had to respond to, or
7 otherwise defend, that he would not have defended
8 but for the alleged abuse of process.

9 MR. ACKERMAN: Correct.

10 THE COURT: Is that the gist of it?

11 MR. ACKERMAN: Yes, sir.

12 THE COURT: Okay. So not defending the
13 underlying lawsuit.

14 MR. ACKERMAN: No. It's defending the
15 specific acts that we have said were outside what
16 was permitted in the lawsuit, that Mr. Edwards did,
17 that we believe we can link to assisting
18 Mr. Rothstein in the Ponzi scheme.

19 THE COURT: Okay. Because the reason I ask
20 that is, because I've read the complaint in detail,
21 and nowhere in there -- because you're alleging an
22 attorney's abuse of defense, but nowhere in there,
23 did you allege that the actions were not -- not
24 frivolous, or something like that, that you had to
25 defend them.

1 MR. ACKERMAN: I think we did allege that,
2 Your Honor. We alleged that --

3 THE COURT: That -- the entire, the actions
4 themselves were --

5 MR. SCAROLA: I think you missed the
6 question.

7 MR. ACKERMAN: I missed the question, Your
8 Honor.

9 THE COURT: Okay.

10 MR. ACKERMAN: I'm alleging that the
11 attorney's fees were incurred, and are claimed
12 defending the inappropriate --

13 THE COURT: I got you.

14 MR. ACKERMAN: -- use of the system.

15 THE COURT: I understand.

16 MR. ACKERMAN: Not the rest of the case.

17 THE COURT: I gotcha, okay.

18 MR. ACKERMAN: Okay. With regard to the
19 litigation privilege, if the Court looks at those
20 cases, the Court will see that this is an absolute
21 required. There is a predicate in all of those
22 cases that say that if -- if it is done, it must be
23 done as an act bearing -- having some relationship
24 to the proceeding here. We have alleged that is
25 not.

1 The immunity only attaches if it's required
2 or permitted by the law. We have alleged that the
3 law does not permit these acts that we have
4 alleged. That is sufficient. And also, would
5 require the Court to make a factual finding, that
6 is sufficient to defeat Mr. Scarola's claim that
7 you can dismiss it, because an affirmative defense
8 appears on the face of the pleadings.

9 THE COURT: You would agree, that ultimately
10 it is a question of law for the Court, whether it
11 falls or does not fall within the -- within the
12 privilege? Perhaps not at this stage, but at some
13 point.

14 MR. ACKERMAN: Not at this stage, but the
15 Court may need to take facts.

16 THE COURT: I understand that.

17 MR. ACKERMAN: Take evidence.

18 THE COURT: The jury is not going to
19 determine whether or not this is --

20 MR. ACKERMAN: That's correct. I believe
21 that's correct.

22 THE COURT: Okay. Briefly, Mr. Scarola, and
23 it looks like we don't have time for the motion --
24 on the other -- the other motion, I got 8:45's
25 beginning.

1 MR. SCAROLA: I would prefer to take the time
2 on the Motion for Punitive Damages, it will only
3 take me two minutes. Your Honor has read it.

4 THE COURT: I prefer not to do it today.

5 MR. SCAROLA: Okay.

6 THE COURT: And I will tell you why. And I'm
7 going to give you instructions as to why, after
8 reading the materials, I want some further --
9 further thought on it. Okay?

10 So go ahead, if you want to spend any further
11 time on your motion, just -- I think I got -- I
12 understand both sides. I really do.

13 And this is not -- I mean I understand it, so
14 anything else you want me to know that --

15 MR. SCAROLA: I would be pleased to answer
16 any other questions you have, or address any
17 concerns that you may have with regard to the
18 motion.

19 THE COURT: Here -- let me, on the punitive
20 damage aspects, here's what I want you to deal
21 with. Okay?

22 Aside from the facts of the allegations --
23 and here's one of my concerns I want you to address
24 when you reset this hearing, and it's really
25 directed, I guess, at the counterclaim.

1 I ruled on the Motion to Dismiss the
2 Counterclaim, and I think it was 8:45, it may have
3 been a short hearing. But after reading all this,
4 I have serious concerns as to whether there is a
5 cause of action for abuse of process as pled. And
6 let me suggest to you the reason.

7 As I understand the theory is, that this is,
8 basically, what we used to call in products
9 liability, you know, a slap-suit, or something like
10 that, against somebody. You know, your -- this
11 case, the plaintiff's case is. You're just doing
12 this for the purpose of preventing the valid
13 prosecution of Mr. Edwards' clients' rights. Okay?

14 As I -- and it really gets confusing, is that
15 may -- if that's true, that's a wonderful malicious
16 prosecution suit. I'm not sure it's an abuse of
17 process suit. If you win this case, and the jury
18 finds that this is -- this is a frivolous lawsuit,
19 or it's not valid, or whatever; then, there's a
20 malicious prosecution suit. But is it -- is it an
21 abuse of process suit? And if it's not an abuse of
22 process suit, because it -- where it gets confusing
23 to me -- again, I don't mean to -- because --
24 because the elements, to give rise to punitive
25 damages, must arise out of the tort itself. Okay?

1 And it -- if it --

2 MR. SCAROLA: If there's no underlying tort,
3 there are no punitive damages.

4 THE COURT: And where the problem arises is,
5 is the maliciousness is in filing the lawsuit, I
6 guess, or filing the lawsuit that essentially is
7 frivolous, and intended for purposes -- so I'm not
8 making a ruling on it. That's one of the issues
9 that came up when I read this stuff.

10 So I would like you, before you reschedule,
11 to talk about that issue. Because it was -- it
12 really wasn't vetted, I guess, originally, to me,
13 anyway.

14 So I will take a look at this and get you a
15 ruling out in a day or two, and you-all reschedule
16 the motion on punitive damages. I'd appreciate it.
17 Okay?

18 MR. SCAROLA: I will tell you, Your Honor,
19 that this has been extensively argued before the
20 Court. It wasn't just an 8:45 hearing, and the
21 Motion to Dismiss the Counterclaim was denied
22 following those arguments. But I understand that,
23 in effect, what you are saying is, you are
24 sui sponte, reconsidering that, and we'd be happy
25 to address it.

1 THE COURT: Well, let me put it this way.
2 Maybe, perhaps, I didn't understand. I mean, the
3 Courts have problems, at least at the trial level,
4 on the differences, and the distinctions between
5 malicious prosecution and abuse of process, and
6 which ones are dichotomy that dovetail, and I just
7 want to make sure that that is completely vetted
8 before we get to the issue -- or when we get to the
9 issue of damages.

10 MR. SCAROLA: Yes, sir.

11 THE COURT: Okay.

12 MR. ACKERMAN: Thank you, Your Honor.

13 THE COURT: Thank you, guys.

14 (Hearing concluded at 8:45 a.m.)

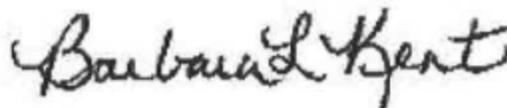
15 (Court came back at 8:48 a.m., added to the
16 record, reported by Christine Phipps, Phipps Reporting,
17 85171 Legend Club Drive, West Palm Beach, FL, 33412,
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25

C E R T I F I C A T E

STATE OF FLORIDA
COUNTY OF PALM BEACH

I, Barbara L. Kent, RMR, RPR, FPR, CSR-MI, Court Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript is a true and complete record of my stenographic notes.

Dated this 28th day of September, 2011.



BARBARA L. KENT
CERTIFIED COURT REPORTER

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