

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

JEFFREY EPSTEIN,

Plaintiff, Counter-Defendant,

Case No. 50 2009 CA 040800XXXXMBAG

vs.

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

Judge: CROW

Defendants/Counter-Plaintiffs.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S
MOTION FOR ATTORNEYS' FEES PURSUANT TO
§57.105 OF THE FLORIDA STATUTES**

Plaintiff/Counter-Defendant Jeffrey Epstein ("Epstein"), by and through his undersigned counsel and pursuant to §57.105 of the *Florida Statutes*, hereby moves this Court for an award of attorneys' fees incurred in defending against Defendant/Counter-Plaintiff Bradley Edwards's Counterclaim. In support thereof, Epstein states as follows:

FACTS

Epstein originally filed this action to recover damages from Defendant Scott Rothstein ("Rothstein") and Edwards, based upon Epstein's well-founded belief at the time of filing his Complaint that these two individuals, and other unknown partners, engaged in serious misconduct involving a widely publicized illegal pyramid scheme operated through their law firm, Rothstein, Rosenfeldt & Adler. Rothstein himself admitted to, and was convicted for, this pyramid scheme, which featured civil cases against Epstein in which Edwards was lead counsel as bait to lure unsuspecting

investors into the fraudulent scheme. After taking the deposition of Scott Rothstein, and receiving numerous rulings from this Court prohibiting Epstein from receiving discovery germane to proving his case, Epstein dismissed his case against Edwards, without prejudice.

In response to Epstein's original lawsuit, Edwards filed a Counterclaim, and after a series of dismissals thereof and five (5) drafts, he has stated two causes of action against Epstein: abuse of process and malicious prosecution. Epstein has denied liability as to these claims and has asserted various affirmative defenses, which include Edwards's failure to state a cause of action in both abuse of process and malicious prosecution; Edwards's failure to properly plead his damages; Edwards's inability to overcome the absolute immunity afforded to Epstein under the litigation privilege; and Edwards's failure to suffer any damages. As demonstrated fully below, neither cause of action can stand against Epstein; Edwards's Complaint is meritless, and sanctions are warranted.

MEMORANDUM OF LAW

Epstein is entitled to his attorneys' fees and costs as sanctions, as Edwards has filed, and failed to withdraw, a meritless Complaint. Section 57.105 of the *Florida Statutes* provides as follows:

- (1) Upon the court's initiative or motion of any party, the court shall award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on any claim or defense at any time during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
 - (a) Was not supported by the material facts necessary to establish the claim or defense; or

(b) Would not be supported by the application of then-existing law to those material facts.

(2) At any time in any civil proceeding or action in which the moving party proves by a preponderance of the evidence that any action taken by the opposing party, including, but not limited to, the filing of any pleading or part thereof, the assertion of or response to any discovery demand, the assertion of any claim or defense, or the response to any request by any other party, was taken primarily for the purpose of unreasonable delay, the court shall award damages to the moving party for its reasonable expenses incurred in obtaining the order, which may include attorney's fees, and other loss resulting from the improper delay.

§ 57.105 FLA. STAT. (2012). Pursuant to §57.105 of the *Florida Statutes*, attorneys' fees may be awarded if the party, or its counsel, knew or should have known that the claim or defense asserted was not supported by the facts or an application of then-existing law. *See, e.g., Read v. Taylor*, 832 So. 2d 219 (Fla. 4th DCA 2002). As fully explained below, Edwards's claims against Epstein are meritless and in direct contravention with the law, and sanctions are therefore warranted.

LITIGATION PRIVILEGE MANDATES DISMISSAL OF THIS CASE

Florida's litigation privilege provides to all persons involved in judicial proceedings an absolute privilege from civil liability for actions taken in relation to those proceedings, including for an action for abuse of process or malicious prosecution. *Levin, Middlebrooks, Moves & Mitchell, ■■■ v. U.S. Fire Ins. Co.*, 639 So.2d 606, 608 (Fla. 1994). The Florida Supreme Court explained the policy reasons for the litigation privilege and in so doing stated:

In balancing policy considerations, we find that absolute immunity must be afforded to any act occurring during the course of a judicial proceeding, regardless of whether the act involves a defamatory statement or other tortious behavior such as the alleged misconduct at issue, so long as the act has some relation to the proceeding. The rationale behind the immunity afforded to defamatory statements is equally applicable to other misconduct occurring during the course of a judicial proceeding. **Just as participants in litigation must be free to**

engage in unhindered communication, so too must those participants be free to use their best judgment in prosecuting or defending a lawsuit without fear of having to defend their actions in a subsequent civil action for misconduct.

Levin, 639 So.2d at 608 (emphasis added).

The recent decision of *Wolfe v. Foreman*, 38 FLA. L. WEEKLY D1540 (July 17, 2013), is instructive, as it is directly on point with the facts and law presented in the case at hand. In *Wolfe*, the Third District Court of Appeal affirmed the trial court's order granting a motion for judgment on the pleadings in an abuse of process and malicious prosecution action, finding that the litigation privilege applied to, and barred, **both** causes of action. *Id.*(emphasis added). The court's focus was on "whether the acts alleged 'occurred[ed] during the course of a judicial proceeding.'" *Id.* (citing *Levin*, 639 So.2d at 608). The court, relying upon Florida Supreme Court Cases, held that because the acts relating to abuse of process occurred *after* the complaint was filed and were *related to* the judicial proceedings, the abuse of process cause of action was completely barred. *Id.* (emphasis added); *see also Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole*, 950 So. 2d 380 (Fla.2007); *Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, ■■■ v. U.S. Fire Ins. Co.*, 639 So. 2d 606 (Fla. 1994); *DelMonico v. Traynor*, 2013 WL 535451 (Fla.2013); *Am. Nat'l Title & Escrow of Fla. v. Guarantee Title & Trust Co.*, 748 So.2d 1054, 1055 (Fla. 4th DCA 2000) (affirming the trial court's order granting summary judgment in favor of the law firm in an action for abuse of process on the basis of absolute immunity and on the authority of *Levin*).

Likewise, in conducting its analysis of the cause of action for malicious prosecution, which was based on the filing of a complaint, the court stated that it is:

guided and restrained by the broad language and application of the privilege

articulated by the Florida Supreme Court in *Levin* and *Echevarria*. In *Levin*, the Florida Supreme Court held that absolute immunity must be afforded to any act occurring during the course of a judicial proceeding . . . so long as the act has some relation to the proceeding.” *Levin*, 639 So. 2d at 608. In *Echevarria*, the Court reiterated its broad application of privilege “applies in all causes of action, statutory as well as common law.” *Echevarria*, 950 So. 2d at 380-81.

The *Wolfe* court continued, unequivocally stating that:

It is difficult to imagine any act that would fit more firmly within the parameters of *Levin* and *Echevarria* than the actual filing of a complaint. The filing of a complaint, which initiates the judicial proceedings, obviously “occurs during the course of a judicial proceeding” and “relates to the proceeding . . .

Because the Florida Supreme Court has clearly and unambiguously stated, not once, but twice, that the litigation privilege applies to *all* causes of actions, and specifically articulated that its rationale for applying the privilege so broadly was to permit the participants to be “free to use their best judgment in prosecuting or defending a lawsuit without fear of having to defend their actions in a subsequent civil action for misconduct,” we are obligated to conclude that the act complained of here -- the filing of the complaint -- is protected by the litigation privilege.

Wolfe v. Foreman, 38 FLA. L. WEEKLY D1540 (July 17, 2013).

Similarly, in the case at hand, Edwards’s sole basis for his cause of action for abuse of process against Epstein is “[e]ach and every pleading filed by and on behalf of EPSTEIN in his prosecution of every claim against EDWARDS, every motion, every request for production, every subpoena issued, and every deposition taken as detailed on the docket sheet” as the “perversion of process after its initial service.” *See Edwards’s Fourth Amended Counterclaim*. Additionally, in response to Epstein’s Interrogatories requesting that Edwards provide an exact and detailed description of any actions, or process, alleged to be abusive, Edwards stated: “every pleading, motion, notice and discovery request served by the Plaintiff on Bradley Edwards in this case.” *See Answers to Interrogatories filed June 10, 2011*. When Epstein asked for the dates upon which each and every purported abuse of process occurred, Edwards again replied: “the

date of service of each of the above as reflected on the Certificate of Service of each.”
See Answers to Interrogatories filed June 10, 2011. Edwards has not pointed to, and indeed cannot point to, one act either *outside of or extrinsic to the litigation.*

Furthermore, the sole basis for Edwards’s cause of action for malicious prosecution is Epstein’s filing of a civil complaint against Edwards. *See Edwards’s Fourth Amended Counterclaim.* Irrefutably, and as stated by the *Wolfe* court in its analysis of the malicious prosecution claim, “[i]t is difficult to imagine any act that would fit more firmly within the parameters of Levin and Echevarria than the actual filing of a complaint.” *Wolfe v. Foreman*, 38 FLA. L. WEEKLY D1540 (July 17, 2013).

Accordingly, as unequivocally proven by Edwards’s own pleadings and discovery responses, the events giving rise to Edwards’s purported claims against Epstein occurred *solely* in the conduct of the litigation, just as occurred in the *Wolfe* case. Edwards has failed to plead or assert any action “outside the context of the judicial proceeding, such as . . . actions extrinsic to the litigation;” rendering his claims “not supported by the material facts necessary to establish the claim or defense,” and not “supported by the application of then-existing law to those material facts,” warranting sanctions. § 57.105 FLA. STAT. (2012); *Wolfe v. Foreman*, 38 FLA. L. WEEKLY D1540 (July 17, 2013); *American Nat. Title & Escrow of Florida, Inc. v. Guarantee Title & Trust, Co.*, 748 So. 2d 1054, 1056 (Fla. 4th DCA 1999); *see also Montejo v. Martin Memorial Medical Center, Inc.*, 935 So. 2d 1266, 1269 (Fla. 4th DCA 2006).

Finally, a copy of this Motion was provided to Edwards twenty- one (21) days prior to filing of same, as required by law. § 57.105 FLA. STAT. (2012); *Burgos v.*

Burgos, 948 So.2d 918 (Fla. 4th DCA 2007) (stating that the purpose of this requirement is to give the party against whom sanctions are sought a last clear chance to withdraw a frivolous claim.) As of this date, Plaintiff has failed to withdraw its frivolous claim. A true and correct copy of the letter sent with this Motion on August 29, 2013, is attached hereto as "Exhibit A."

WHEREFORE Plaintiff/Counter-Defendant Jeffrey Epstein respectfully requests that this Court grant his Motion for Attorneys' Fees Pursuant to §57.105 of the *Florida Statutes*, and grant such other and further relief as deemed necessary and proper.

Respectfully submitted,

/s/ Tonja Haddad Coleman
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