

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 L.M.
individually,

Defendants.

TRANSCRIPT OF HEARING PROCEEDINGS

DATE TAKEN: December 17, 2012
TIME: 11:02 a.m.
PLACE: Palm Beach County Courthouse
205 North Dixie Highway
West Palm Beach, Florida
BEFORE: DAVID CROW, Circuit Judge

This cause came on to be heard at the time and
place aforesaid, when and where the following
proceedings were stenographically reported by:

Christine Phipps, RPR, FPR, CLR
Realtime Systems Administrator

APPEARANCES :

On behalf of Jeffrey Epstein:

TONJA HADDAD, P.A.
315 Southeast 7 Street
Suite 301
Fort Lauderdale, Florida 33301
[REDACTED]

BY: TONJA HADDAD COLEMAN, ESQ.
[REDACTED]

and

ATTERBURY, GOLDBERGER & WEISS, P.A.
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West Palm Beach, Florida 33401
[REDACTED]

BY: JACK GOLDBERGER, ESQ.
[REDACTED]

On behalf of Bradley J. Edwards:

SEARCY, DENNEY, SCAROLA
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[REDACTED]

BY: JACK SCAROLA, ESQ.
[REDACTED]

1 Thereupon,
2 the following proceedings began at 10:02 a.m.:

3 **THE COURT:** Okay. This is
4 Epstein vs. Rothstein. This is the motion of
5 the counterplaintiff for -- to add punitive
6 damages. I reviewed the materials you guys had
7 sent to me. I got the motion and the
8 plaintiff's response to the motion. I don't
9 know if there's anything else specifically.

10 **MR. SCAROLA:** There was a reply that was
11 filed as well, your Honor.

12 **THE COURT:** Oh, yes, I got the reply too,
13 I'm sorry, you're right.

14 **MS. COLEMAN:** Your Honor, before we
15 commence the hearing, I know that Mr. Haddad
16 has been trying to reach your office, and I
17 tried to reach everybody this morning. He
18 suffered an accident this morning.

19 **THE COURT:** I'm sorry to hear that. Is he
20 okay?

21 **MS. COLEMAN:** He is okay. He's having his
22 foot set, but he's more concerned right now
23 about his ability to ski later on in the year
24 than being able to walk at the moment. He was
25 unable to be here today, and while I am here

1 for this hearing, we had called to see if we
2 could get it reset, and we did try to reach
3 Mr. Scarola to have it reset. While I am here
4 and Mr. Goldberger is here, the client was very
5 adamant that he wanted Mr. Haddad to be here
6 representing him.

7 **THE COURT:** Aren't you the one that did
8 all the memos and everything?

9 **MS. COLEMAN:** Yes, Judge, I'm usually the
10 one that drafts and files all the pleadings; it
11 doesn't mean I argue them all. If the Court
12 pushes me to go forward, I will. But as I
13 said, it's not -- it's not my personal choice,
14 it's my client's choice, and my client wanted
15 Mr. Haddad here.

16 **THE COURT:** Can Mr. Haddad appear by
17 phone?

18 **MR. GOLDBERGER:** He has an 11:00 o'clock
19 appointment with his orthopedic surgeon.

20 **THE COURT:** Your position, sir?

21 **MR. SCAROLA:** Your Honor, you may recall
22 repeated statements from Mr. Haddad in the
23 context of the motion to disqualify Mr. Haddad,
24 where he told us that he was entering this case
25 solely for purposes of appearing at the trial,

1 until your Honor entered the order denying the
2 motion to disqualify late last week. He could
3 not have been anticipating being the one to
4 argue this motion.

5 Ms. Coleman prepared all of these
6 pleadings. We have been waiting a very long
7 time for this special set hearing. And while I
8 am sorry that he has suffered an injury to his
9 foot, he is adequately represented at these
10 proceedings by lawyers who have been involved
11 in this case for a very long time.

12 The case law is such that your Honor is
13 not even obliged to hold a hearing at all. And
14 if there is some disadvantage that the
15 counterdefendant feels in this regard, I'm
16 willing to let your Honor decide this motion on
17 the papers that have been submitted because I
18 suggest that this has been very thoroughly
19 argued in those papers.

20 **THE COURT:** Okay. So to the extent you're
21 asking for a continuance of the hearing, I'm
22 going to deny it. Ms. Coleman, you've been in
23 front of me a number of times, and, believe me,
24 I have all the confidence in the world that you
25 represent your client to the utmost, okay. And

1 Mr. Haddad is one of the lawyers, and we've got
2 two great lawyers sitting here that can
3 certainly argue the case for him, so. Okay.

4 **MS. COLEMAN:** May I stay back here while
5 Mr. Scarola argues and then come up?

6 **THE COURT:** You can sit there and relax
7 for a minute and when he's finished -- again,
8 remember, I read all this. It's not the
9 first -- my first trip down this avenue, so go
10 ahead.

11 **MR. SCAROLA:** I will be extremely brief.

12 **THE COURT:** Okay.

13 **MR. SCAROLA:** We have summarized in our
14 reply what I suggest to your Honor are
15 overwhelmingly compelling circumstances from
16 which a jury could conclude that it was solely
17 as an effort to extort Mr. Edwards that claims
18 against him were filed. They were filed not
19 only in the total absence of probable cause,
20 they were filed in the absence of any damages.
21 They were filed knowing that it was
22 Mr. Epstein's intent to assert his fifth
23 amendment privilege which would preclude him
24 from attempting to prosecute these claims to
25 conclusion, and they were filed under

1 surrounding circumstances where he has
2 acknowledged a conscious awareness of the fact
3 that Mr. Edwards was leading the effort of
4 multiple victims of his serial molestations to
5 hold him both civilly and criminally
6 responsible for his actions.

7 Among the evidence that has been provided
8 to your Honor is not only circumstantial
9 evidence of the state of mind that would be
10 necessary to support the recovery of punitive
11 damages, but I call your Honor's attention in
12 particular to the statement of undisputed
13 facts, page 34, where Mr. Epstein's interview
14 with the New York Daily News' reporter is
15 related. In that interview, Mr. Epstein says
16 that Bradley Edwards was the one causing all of
17 Epstein's problems, all the civil suits brought
18 against him by the various victims of his
19 molestation. He was very upset, he said, that
20 Edwards had subpoenaed Ghislaine Maxwell, that
21 she was a good person that did nothing wrong.
22 And Jeffrey Epstein filed a complaint with the
23 Florida Bar against Bradley Edwards raising
24 allegations that Edwards was directly involved
25 in the Rothstein wrongdoing, the same

1 allegations, completely unsupported by any
2 evidence whatsoever, that he brought in the
3 various complaints filed against Bradley
4 Edwards as well.

5 I suggest that this is a very compelling,
6 both circumstantial and direct evidence case of
7 malice. We have more than satisfied the
8 minimal burden that exists for leave to amend
9 to assert a claim for punitive damages, and we
10 ask your Honor to grant this motion. Thank
11 you.

12 **THE COURT:** Thank you.

13 Yes, ma'am.

14 **MS. COLEMAN:** Good morning, Judge.

15 **THE COURT:** Good morning.

16 **MS. COLEMAN:** In response to the arguments
17 made by Mr. Scarola, while we suggest it has
18 been fully briefed in the memorandum of law in
19 opposition thereto filed with the Court, but
20 point the Court to the following issues with
21 respect to the arguments that were just made.

22 This circumstantial evidence where it's
23 alleged that Mr. Epstein was attempting to
24 extort Mr. Edwards, there's been no
25 conversation or proffer of any evidence

1 whatsoever of the purported extortion. It is
2 irrefutable that, No. 1, Mr. Epstein was
3 punished criminally; he pled, he went to jail,
4 he served his time. It's also irrefutable that
5 Mr. Edwards, in fact, settled all of the cases
6 for these purported victims with Mr. Epstein.
7 While the settlements were made confidential, I
8 assure you that if there was any extortion, it
9 was Mr. Edwards who refused to schedule from
10 the plaintiff here, not Mr. Epstein.

11 Furthermore, with respect to the
12 allegation that Mr. Epstein's case was filed in
13 the absence of any probable cause; if you look
14 at our response to the motion --

15 **THE COURT:** Let me ask you a question.

16 **MS. COLEMAN:** Yes, sir.

17 **THE COURT:** What really concerned me, when
18 I was reading through the materials, is that
19 your client was asked in direct examination in
20 his deposition what was his basis for his
21 allegations, and he took the Fifth Amendment.

22 **MS. COLEMAN:** Yes, your Honor, I can
23 address his taking the Fifth Amendment on many
24 of the questions --

25 **THE COURT:** Every question was asked about

1 what is a good faith basis for filing this suit
2 or what facts he had --

3 **MS. COLEMAN:** The fact --

4 **THE COURT:** -- and he asserted the Fifth
5 Amendment.

6 **MS. COLEMAN:** Let me tell you two things
7 about that. First, with respect to pleading
8 the Fifth Amendment or taking the Fifth
9 Amendment, as Mr. Edwards himself testified
10 when he was here a couple of weeks ago on the
11 hearing, he has been and is still in litigation
12 with the United States government, attempting
13 to overturn Mr. Epstein's plea agreement that
14 he reached with this circuit. Obviously --

15 **THE COURT:** I'm not suggesting that he
16 didn't have a right to the Fifth Amendment,
17 that's not my question. My question is: You
18 filed a lawsuit knowing you can't tell --
19 you're not going to tell anybody the basis of
20 it. How are they going to find out what his
21 thought process is if he refuses to answer the
22 question?

23 **MS. COLEMAN:** I would point you to the
24 fact that Mr. Edwards has likewise refused to
25 answer any and all questions related to the

1 same thing in this case.

2 **THE COURT:** Well, he didn't take the Fifth
3 Amendment --

4 **MS. COLEMAN:** No, he did not.

5 **THE COURT:** -- he took attorney-client
6 privilege.

7 **MS. COLEMAN:** He took the privilege, he's
8 asserting privilege, and then Mr. Edwards --

9 **THE COURT:** The privilege is not one
10 against self-incrimination for which there can
11 be some assumptions or what's the --

12 **MR. SCAROLA:** Adverse inferences, your
13 Honor.

14 **MS. COLEMAN:** Adverse inferences.

15 **THE COURT:** Thank you. Thank you.

16 In civil cases you can take inferences
17 from raising Fifth Amendment privilege. Look,
18 I had one the other day, Weren't you drunk the
19 night of the accident? I refuse to answer on
20 the grounds --

21 **MS. COLEMAN:** At the time that Mr. Epstein
22 filed his suit against Mr. Edwards, at the time
23 it was filed --

24 **THE COURT:** Right.

25 **MS. COLEMAN:** -- which is the time to

1 which the Court must look, there were several,
2 several facts that at the time it was filed
3 would lead anyone to believe that there was a
4 valid claim for abuse of process.

5 The indictment of Scott Rothstein -- this
6 is on page 15 of our motion. Federal arrest
7 and indictment of Mr. Rothstein. The evidence
8 provided by Mr. Rothstein, in which he admitted
9 Mr. Epstein's cases were used to further his
10 Ponzi scheme. These are all facts.

11 Number 3, the fact that Mr. Edwards was,
12 in fact, lead counsel on all of those cases and
13 was a partner of Mr. Rothstein. What's later
14 been ferreted out -- I also point out to the
15 Court that the case was dismissed without
16 prejudice at this point. But later on, yes,
17 Mr. Edwards asserted that he had nothing to do
18 with the Ponzi scheme, but the issue for the
19 Court is at the time the case was filed. At
20 the time the case was filed, Mr. Edwards was a
21 partner of Mr. Rothstein, and these cases were
22 admittedly used to further the Ponzi scheme.

23 The Florida Bar investigated almost a
24 third of the attorneys who worked for
25 Mr. Rothstein as a result of that Ponzi scheme

1 investigation. In the short six months during
2 which Mr. Edwards worked for Mr. Rothstein,
3 these cases against Mr. Epstein had gone from
4 barely litigated to full blown subpoenaed --
5 subpoenaed parties who they knew or purportedly
6 knew, as you can check in our footnote, had no
7 knowledge whatsoever of these allegations of
8 the purported sexual abuse, but rather to
9 embarrass, would be our opinion, Mr. Edwards'
10 own statements of undisputed facts in his
11 affidavit actually contradict what he is now
12 submitting as true.

13 The evidence shows that there were more
14 than 18 attorneys and staff members suddenly
15 working on Epstein's cases. The use of Ken
16 Jennings to investigate these cases. There
17 were multiple actions being taken by Edwards
18 and his partner that already would be deemed
19 outside the litigation posit, extrinsic to the
20 litigation.

21 That's important, Judge, because in order
22 to prove any damages whatsoever, Mr. Edwards
23 has to point to any action that isn't protected
24 under the litigation action privilege, actions
25 that were taken extrinsic to or outside the

1 litigation. The failure to point to something
2 outside the process warrants dismissal of the
3 case.

4 We had the proof at the time the case was
5 filed, and admittedly it was my predecessor
6 counsel, actions that are taken outside the
7 process, communications with the press, using
8 the press to go after those close to Epstein,
9 e-mails between people that were actually
10 turned over.

11 The most important thing, Judge, their
12 motion to leave to assert a claim of punitive
13 damages never references to which complaint
14 they're referring, and upon which complaint
15 they're basing their claim against Mr. Epstein.

16 Because there has been three filed, and,
17 of course, dismissed without prejudice with
18 leave to amend, and now we have dismissed
19 without prejudice, one can't even properly
20 respond, but I would submit to the Court,
21 regardless of which one, in his answers to
22 discovery, Mr. Edwards has repeatedly, when
23 asked to identify the facts that support his
24 claims, his answers are always every pleading
25 filed, every entry on the docket.

1 Mr. Scarola and Mr. Edwards have failed to
2 show one action, one move that was taken
3 outside the process, one action that isn't
4 protected by litigation privilege. Because of
5 that, they cannot prove any damages, much less
6 the standard for punitive damages. Because
7 someone filed a lawsuit and when he's deposed
8 asserts the Fifth Amendment with respect to
9 some questions doesn't change the irrefutable
10 facts that were in existence at the time the
11 complaint was filed.

12 **THE COURT:** Well, I'm not talking about
13 the Fifth Amendment in regard to any question,
14 I'm talking about the Fifth Amendment in regard
15 to the specific question as to what is your
16 good faith basis, what facts did you have that
17 you relied upon, if I recall right, from
18 looking at some of this material, he was asked
19 specific questions about that, and he refused
20 to answer.

21 **MS. COLEMAN:** At the time, maybe he was
22 unable to answer. I'm sure in this case they
23 may redepose him, and it can be addressed then.
24 But I wasn't the lawyer, I can't tell you why
25 it was asserted at that time. All I can tell

1 you is right now the burden is on Mr. Edwards
2 to prove he's entitled to any damages and he's
3 entitled to punitive damages.

4 If we're talking about asserting a
5 privilege, Mr. Edwards, starting at page 16 of
6 our response, every discovery request in our
7 third set of interrogatories to Mr. Edwards, in
8 which we're trying to assert his purported
9 damages, failure to have damages, and this
10 Court has taken issue with that before, fails
11 to allow any claim, much less a claim for
12 punitive damages. Mr. Edwards has refused to
13 turn over how much money he's made, how much
14 money he's allegedly lost. He's claiming his
15 Constitutional Right to his financial privacy
16 at every corner when asked --

17 **THE COURT:** I ruled on this?

18 **MS. COLEMAN:** No, Judge, we haven't gotten
19 that far yet.

20 **THE COURT:** Oh, okay.

21 **MS. COLEMAN:** There are so many discovery
22 issues, and that's why I submit while it's not
23 really relevant to this hearing until some of
24 these discovery orders are taken care of and
25 some of this discovery is furthered, punitive

1 damages is premature. And in our opinion,
2 whether or not we'll continue and refile our
3 counterclaim, I mean our case in chief, until
4 we get through, some of this discovery is also
5 premature.

6 I submit to this Court that because the
7 discovery that has been done to date, with
8 respect to Mr. Edwards' counterclaim, in which
9 he is now asserting right to privacy and
10 privilege, the very same about which he's
11 complaining Mr. Epstein did, he can't prove
12 damages, much less be entitled to such an
13 invasion of Mr. Epstein's privacy to start the
14 financial worth discovery without first proving
15 he's entitled to any damages at all.

16 Because it's laid out in glaring detail in
17 our motion and all the case law that has been
18 provided, we would submit their motion for
19 leave to amend to add punitive damages has to
20 be denied at this time because they failed to
21 prove their -- prove their damages.

22 **THE COURT:** Okay. Thank you. Yes, sir,
23 briefly.

24 **MR. SCAROLA:** Beginning at page 38 of our
25 statement of undisputed facts, we lay out 28

1 specific questions to which Mr. Epstein
2 asserted his Fifth Amendment privilege, all
3 which cover the heart of the allegations he
4 made against Bradley Edwards.

5 The discussion about needing to
6 demonstrate conduct outside the scope of the
7 privileges is -- excuse me, outside the scope
8 of the issues involved in the litigation is a
9 litigation privilege argument that your Honor
10 has heard repeatedly from opposing counsel. It
11 is based upon the Court's decision in Levin,
12 Middlebrooks which describes a broad litigation
13 privilege, applicable in the context of
14 legitimate claims.

15 The attempt to apply the litigation
16 privilege in the context of a malicious
17 prosecution and abuse of process claim makes no
18 sense at all. No court has ever held that the
19 litigation privilege protects against common
20 law claims for abuse of process and malicious
21 prosecution, but that's the argument that is
22 attempted to be made, it has no basis
23 whatsoever. This motion is more than
24 adequately, it is dramatically and
25 substantially supported, we ask the Court to

1 grant it. I have a blank order and envelopes.

2 **THE COURT:** Okay. I'll take a look at it
3 and get you an order out shortly.

4 **MR. SCAROLA:** Thank you very much.

5 **MR. GOLDBERGER:** Thank you very much.

6 **MS. COLEMAN:** Your Honor, we printed out
7 all the cases that were cited.

8 **THE COURT:** Okay.

9 **MS. COLEMAN:** Thank you, sir.

10 **THE COURT:** I appreciate it.

11 **MS. COLEMAN:** Have a good day.

12 (Thereupon, the proceedings concluded at
13 10:20 a.m.)

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COURT CERTIFICATE

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, CHRISTINE PHIPPS, Registered Professional 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 6th day of January, 2013.



A handwritten signature in cursive script that reads "Christine Phipps".

CHRISTINE PHIPPS, RPR, FPR, CLR
Realtime Systems Administrator

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