

IN THE CIRCUIT COURT OF THE 15th JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

CIVIL DIVISION AG
CASE NO. 502009CA040800XXXXMB
Judge David F. Crow

JEFFREY EPSTEIN,

Plaintiff/Counter-Defendant,

v.

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

Defendants/Counter-Plaintiffs.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S
MOTION FOR CLARIFICATION REGARDING DISCOVERY**

Plaintiff/Counter-Defendant JEFFREY EPSTEIN ("Epstein"), by and through undersigned counsel, hereby moves for clarification of prior court directives regarding a stay of discovery until the pleadings are at issue. The grounds for this Motion are as follows:

1. Initially on March 30, 2011, this Court entered an Order staying the issuance of subpoenas directed to the Trustee in the RRA bankruptcy. At that time, the court stated the pleadings needed to be addressed and directed Epstein to file an Amended Complaint.

2. On July 13, 2011 at the hearing on Defendant Bradley Edwards' ("Edwards") Motion to Dismiss the Amended Complaint, this Court stated that it "want[ed] to get a complaint out there that withstands the motion to dismiss before we go into all these privilege issues." (Hr'g Tr. 7/13/2011 at 155). The Court has also expressed the need to get the pleadings at issue before addressing discovery objections and other discovery issues.

3. At the hearing on September 28, 2011 on Edwards' Motion to Dismiss the Second Amended Complaint, this Court reiterated that it wanted to get the issues in the pleadings resolved before addressing discovery issues. The Court also expressed its concern over the viability of Edwards' Counterclaim and wanted its viability addressed before hearing Edwards' Motion to Add a Claim for Punitive Damages. Edwards also has initiated and wishes to initiate discovery as more fully described below.

4. Now that Edwards' Motion to Dismiss Epstein's Second Amended Complaint has been denied, Epstein wishes to proceed with discovery directed to his Second Amended Complaint, but is unsure if he can in light of the Court's stated intent to get the pleadings at issue first.

5. Epstein would like to address some limited privilege issues:

(a) Edwards has inappropriately claimed privileges relating to approximately 198 communications with a "Confidential Source," a fictitious category of privilege created by Edwards which is not supported by law. There is no privilege for a private party in civil cases for a confidential source. *See Fla. Stat. § 90.501 et seq.* There is First Amendment privilege limited to journalists to protect their confidential sources. *See Fla. Stat. § 90.5015.* Therefore, Epstein would like to set for hearing a motion to compel the identification of Edwards' "Confidential Source."

(b) The Privilege Log does not identify the recipients of an alleged privileged communication with "Confidential Source," "RRA Staff," and "RRA Personnel." Such identifications violate a court order requiring compliance with the requirements for a Privilege Log set forth in *TIG Insurance Corporation of America (TIG) v. Johnson*, 799 So.2d 339 (Fla. 4th

DCA 2001) to identify the parties to an alleged privilege communication. Consequently, Epstein would like to set a motion directed toward the sufficiency of the Privilege Log.

6. Epstein wishes to proceed with discovery of Edwards' alleged damages, but the Motion to Dismiss the Amended Counterclaim is pending, and Epstein is unclear whether those discovery requests should wait until that pleading is at issue.

7. Edwards has filed an Amended Counterclaim and a Motion to Dismiss is presently pending. Epstein respectfully submits that discovery issues which Edwards presently wishes to pursue need to wait until the Court determines if the Amended Counterclaim withstands Epstein's Motion to Dismiss.

8. Presently, Edwards seeks to re-depose Epstein. At the hearing on July 13, 2011, this matter was deferred pending getting the pleadings to issue. Given the areas of inquiry Edwards wants to address in a follow-up deposition based on the Amended Counterclaim, Epstein submits Epstein's deposition should be postponed until Edwards' Amended Counterclaim withstands a Motion to Dismiss, if it can. The trial court can and should stay discovery pending ruling on dispositive motions. *Capco Properties, LLC v. Monterey Gardens of Pinecrest Condominium*, 982 So.2d 1211, 1215 (Fla. 3 DCA 2008); *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1368 (11th Cir. 1997).

9. Edwards wants to depose individuals who Epstein believes do not have information bearing on the issues as presently framed. Those individuals are Ghislaine Maxwell, Howard Rubenstein, Ava Cordero, and Alan Dershowitz, who Edwards claims have information regarding victim issues, which allegedly took place before the present litigation. The relevancy

of victim issues and extent of discovery into victim issues need to be deferred until Edwards' Counterclaim withstands a Motion to Dismiss.

10. Other potential areas of discovery may exist. Epstein requests clarification of what can be done now and what should wait until all the pleadings are at issue.

11. Epstein represents that this Motion is made in good faith and not for the purposes of delay. Epstein also represents that he has and will attempt to make an effort to resolve this Motion without the need of a hearing.

WHEREFORE, the Plaintiff/Counter-Defendant Jeffrey Epstein requests clarification of this Court's prior directives relating to discovery before the pleadings are at issue.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail and U.S. Mail on this 4th day of November, 2011 to: Jack Scarola, Esq., Searcy Denney Scarola et al., 2139 Palm Beach Lakes Boulevard, West Palm Beach, FL 33409; Jack Alan Goldberger, Esq., Atterbury, Goldberger & Weiss, P.A., 250 Australian Avenue South, Suite 1400, West Palm Beach, FL 33401-5012; and Marc S. Nurik, Esq., Law Offices of Marc S. Nurik, One East Broward Boulevard, Suite 700, Fort Lauderdale, FL 33301.

Respectfully submitted,

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