

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

JEFFREY EPSTEIN,  
Plaintiff,

Complex Litigation, Fla. R. Civ. Pro. 1201  
Case No. 50 2009 CA 040800XXXXMBAG

vs.

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

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**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT ON COUNTERCLAIM OF  
DEFENDANT/COUNTER-PLAINTIFF BRADLEY EDWARDS AND SUPPORTING  
MEMORANDUM OF LAW**

Plaintiff/Counter-Defendant, JEFFREY EPSTEIN ("Epstein"), by and through his undersigned counsel and pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, files this Motion For Partial Summary Judgment On Counterclaim of Defendant/Counter-Plaintiff BRADLEY EDWARDS ("Edwards") as set forth below, and states:

1. On or about December 21, 2009, Edwards filed a single count Counterclaim against Epstein in which he denies that he had had engaged in any unethical or improper conduct (§ 8) and seeks damages for abuse of process based on allegations that Epstein "has *filed* the claims herein against EDWARDS . . .for the sole purpose of further attempting to intimidate EDWARDS . . . and others into abandoning or settling legitimate claims for less than ...reasonable value" (§9); Epstein's Complaint against Edwards has no factual support (§10); Epstein has "ulterior motives and purposes in exercising such illegal, improper and perverted use of process" including "put[ting] pressure on EDWARDS . . . by publishing what amounts to

nothing more than a press release issued under the cloak of protection of the litigation privilege."  
(¶11)(Emphasis added).

2. In his Counterclaim Edwards claims the following damages for purported abuse of process: injury to reputation, "interferences in his professional relationships," the "loss of the value of his time required to be diverted from his professional responsibilities" and the "cost of defending against Epstein's spurious and baseless claims." (¶12) In Answers to Interrogatories Edwards also seeks damages for mental anguish and emotional distress. (Ex. A\_\_\_)

3. It is axiomatic that under Florida law "the mere filing of a complaint and having process served is not enough to show abuse of process." [Citation omitted] The plaintiff must prove improper use of process after it issues." *S&I Invs. v. Payless Flea Mkt.*, 36 So. 3d 909, 917 (Fla. 4<sup>th</sup> DCA 2010)(quoting *Della-Donna v. Nova Univ., Inc.*, 512 So. 2d 1051, 1055-56 (Fla. 4<sup>th</sup> DCA 1987)(citing *McMurray v. U-Haul Co.*, 425 So. 2d 1208 (Fla. 4<sup>th</sup> DCA 1983)); *Valdes v. GAB Robins N. Am., Inc.*, 924 So. 2d 862, 867 (Fla. 3<sup>d</sup> DCA 2006)("Valdes' failure to allege any improper willful acts by the appellees during the course of the prior action requires dismissal of the abuse of process claim..."); *Cazares v. Church of Scientology of Cal., Inc.*, 444 So. 2d 442, 444 (Fla. 5<sup>th</sup> DCA 1983)(holding that a cause of action for abuse of process would not lie where the Church alleged no act other than the *wrongful filing* of a lawsuit); *Marty v. Gresh*, 501 So. 2d 87, 90 (Fla. 1<sup>st</sup> DCA 1987)"[A]buse of process requires an act constituting the misuse of process *after it issues*. The maliciousness or lack of foundation of the asserted cause of action itself is actually irrelevant to the tort of abuse of process.").

4. Edward's claim against Epstein for abuse of process is based **solely** on allegations that Epstein "**filed the claims herein**" to intimidate Edwards (¶9) and that the allegations in Epstein's Complaint lack factual support. (¶10). Edwards' Counterclaim does not assert any

other basis in support of his claim for abuse of process. Accordingly, summary judgment must be granted in favor of Epstein on the Counterclaim because there "mere filing of a complaint and having process served is not enough to show abuse of process." *Della-Donna*, 512 So. 2d at 1055.

5. Summary judgment for Epstein on the Counterclaim is further supported by *S & I Investments*, in which the plaintiff (Payless) alleged abuse of process based upon the filing of a complaint and subsequent amendments. 36 So. 2d at 916. The Fourth District held that the abuse of process claim was properly dismissed on summary judgment, rejecting Payless' argument that S & I did more than merely file the complaint:

"After it recognized that the lawsuit was premature and subject to dismissal, it continued in its attempt by filing two amended complaints which it knew were legally unsustainable." In pleading this claim, however, Payless alleged only that Ilene Richmond and S&I filed the case (in November 2003) and subsequently voluntarily dismissed the complaint (in July 2004). As discussed, Ilene's pre-suit sentiments are irrelevant. Therefore, all Payless has shown is that Ilene and S&I filed a lawsuit and took a voluntary dismissal eight months later. Accordingly, Payless's abuse of process claim was properly dismissed on summary judgment

*S&I Invs.*, 36 So. 3d at 918. Similarly, Edwards' counterclaim for abuse of process must be dismissed because Edwards does not allege, and thus cannot show, anything more than that Epstein filed a complaint that he contends is not "legally sustainable." *Id.*

6. Summary judgment for Epstein should be entered on the additional ground that Edwards cannot recover the damages he seeks as a result of abuse of process. As a matter of settled law, Edwards cannot recover damages from Epstein for mental anguish or emotional distress alleged caused by abuse of process. Under Florida's "impact rule", if the plaintiff has

not suffered an "impact", the complained-of mental distress must be manifested by physical injury, subject to several exceptions that are not applicable here. *See, e.g., Doyle v. Pillsbury Co.*, 476 So. 2d 1271 (Fla. 1985)(affirming summary judgment on basis of impact rule); *Gilliam v. Stewart*, 291 So. 2d 593, 595 (Fla. 1974); *Crane v. Loftin*, 70 So. 2d 574, 575 (Fla. 1954); *Vivona v. Colony Point 5 Condo. Ass'n*, 706 So. 2d 391 (Fla. 4<sup>th</sup> DCA 1998)(affirming summary judgment where plaintiff did not offer evidence of physical impact). Edwards does not, and cannot properly, plead evidence of physical impact so as to recover any damages for emotional distress.

7. In addition, although Edwards seeks to recover damages for injury to reputation (*see* ¶12), there is no question that he has not pled a claim for defamation in his Counterclaim. Injury to reputation is an element of a defamation claim. *See, e.g., Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1109 (Fla. 2008)(a defamation plaintiff must prove injury to reputation in the community). Moreover, such damages are not recoverable in light of the recent new cases that Edwards has brought and settled. In addition, there is no Florida law authorizing damages for "interference in his professional relationships" (¶12) or "loss of the value of [Edwards'] time required to be diverted from his professional relationships" (*id.*) as pled by Edwards in support of his abuse of process Counterclaim. Edwards does not allege tortious interference with contract or advantageous relationships in his Counterclaim. Finally, Edwards' claim that he is entitled to the "cost of defending against Epstein's spurious and baseless claims" (*id.*) finds no support in Florida cases, statutes or any operative contract between the parties. Damages may not be recovered for time spent defending or litigating the instant case.

WHEREFORE, based upon the foregoing arguments and authorities, Plaintiff/Counter-Defendant, Jeffrey Epstein, respectfully requests that the Court grant his motion for summary

judgment and dismiss the entire Counterclaim, or in the alternative, grant partial summary judgment on the ground that Edwards has not alleged any recoverable damages.

Respectfully submitted,

By: \_\_\_\_\_

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via e-mail and U.S. Mail this \_\_\_\_ day of May, 2011 to:

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