

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.

**PLAINTIFF/COUNTER-DEFENDANT JEFFREY EPSTEIN'S MOTION
FOR SUMMARY JUDGMENT ON DEFENDANT/COUNTER-PLAINTIFF BRADLEY
EDWARDS' COUNTERCLAIM 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 Summary Judgment on Defendant/Counter-Plaintiff Bradley Edwards' Counterclaim, and states as follows :

I. SUMMARY OF ARGUMENT

Summary judgment should be entered in favor of Epstein on Edwards' single-count Counterclaim for abuse of process because it is legally insufficient and Edwards can offer no facts in support of his allegations that would support a claim for abuse of process against Epstein. The crux of Edwards' Counterclaim is that Epstein's mere *filing* of *his* lawsuit against Edwards was improper. Edwards does not allege any misuse of process by Epstein *after* Epstein filed his lawsuit against Edwards. As a matter of settled Florida law, an abuse of process claim based *solely* on the *filing* of an allegedly unfounded complaint, which is all that Edwards has alleged, does not state a valid claim for abuse of process. "Process" must occur subsequent to

the filing of an action. Accordingly, Epstein is entitled to summary judgment on Edwards' Counterclaim for abuse of process.

Finally, and in the alternative, partial summary judgment should be entered in favor of Epstein on Edwards' claim that he is entitled to recover damages from recovering attorney's fees as a party and time diverted from his professional responsibilities.

II. STATEMENT OF THE CASE AND FACTS

A. Allegations. On or about December 21, 2009, Edwards filed a single-count Counterclaim against Epstein for abuse of process, alleging *inter alia* that Edwards did not engage in any unethical or improper conduct (§ 8); Epstein "*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 has no factual support (§10); and 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).

B. Undisputed Material Facts:

1. There is no record evidence of abuse of process by Epstein after Epstein filed his Complaint in the instant case against Edwards. The pleadings filed in this action after service of the initial complaint disclose only an effort of Epstein to obtain discovery to support his claim and respond to the motion and discovery of Edwards. The record does not reflect any improper willful act using the process to achieve a collateral purpose not otherwise within the normal scope of what these pleadings, depositions, etc. appear to be on their face.

III. ARGUMENT

A. LEGAL FRAMEWORK

Summary judgment is proper when the pleadings, depositions, answers to interrogatories, admissions, affidavits, and other materials as would be admissible in evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510(c). Where a moving party has established the non-existence of such factual issues, the court must grant summary judgment, unless the nonmoving party comes forth with evidence to reestablish such an issue. *See Connell v. Sledge*, 306 So. 2d 194, 196 (Fla. 1st DCA 1975). A party opposing summary judgment cannot merely assert that a genuine issue of material fact exists, but instead must proffer evidence that demonstrates the existence of a genuine issue of material fact. *See Slachter v. Abundio Inv. Co.*, 566 So. 2d 348, 349 (Fla. 3d DCA 1990). A complete failure of proof of an essential element necessarily renders all other facts offered by the non-moving party immaterial. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

B. SUMMARY JUDGMENT SHOULD BE ENTERED IN FAVOR OF EPSTEIN ON EDWARDS' COUNTERCLAIM FOR ABUSE OF PROCESS BECAUSE EDWARDS' CLAIM IS LEGALLY INSUFFICIENT

An abuse of process claim requires pleading and proof of the following three elements: 1) an illegal, improper or perverted use of process; 2) an ulterior motive or purpose in exercising the illegal, improper or perverted process; and 3) damage as a result of the conduct. *See, e.g., S&I Invs. v. Payless Flea Mkt.*, 36 So. 3d 909, 917 (Fla. 4th DCA. 2010); *Valdes v. GAB Robins North America, Inc.*, 924 So. 2d 862, 867 n. 2 (Fla. 3d DCA 2006); *Della-Donna v. Nova Univ., Inc.*, 512 So. 2d 1051, 1055 (Fla. 4th DCA 1987).

With regard to the first element of the tort of abuse of process, 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.*, 36 So. 3d at 917 (quoting *Della-Donna v. Nova Univ., Inc.*, 512 So. 2d 1051, 1055-56 (Fla. 4th DCA 1987)). *See also Valdes*, 924 So. 2d at 867 ("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..."); *Yoder v. Adriatico*, 459 So. 2d 449, 450 (Fla. 5th DCA 1984) ("the tort of abuse of process is concerned with the improper use of process *after it issues*") (emphasis added); *Marty v. Gresh*, 501 So. 2d 87, 90 (Fla. 1st 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."); *Cazares v. Church of Scientology of Cal., Inc.*, 444 So. 2d 442, 444 (Fla. 5th 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); *Peckins v. Kaye*, 443 So. 2d 1025, 1026 (Fla. 2d DCA 1986) (counterclaim allegedly causing undue expenditure of time and money did not constitute abuse of process); *McMurray v. U-Haul Co.*, 425 So. 2d 1208, 1209 (Fla. 4th DCA 1983) (same); *Blue v. Weinstein*, 381 So. 2d 308, 311 (Fla. 3d DCA 1980) ("[N]o abuse of the process apart from the complaint is pled and the effort to do so amounts to nothing more than a thinly disguised malicious prosecution claim.") As explained in *Della-Donna*, 512 So. 2d at 1055, even the "filing of a lawsuit with the ulterior motive of harassment does not constitute abuse of process."

Johnson Law Group v. Elimadebt USA, LLC., 2010 U.S. Dist. LEXIS 51079 (S.D. Fla. May 24, 2010), is on all fours, squarely supporting dismissal of Edwards' Counterclaim. In that case the Plaintiffs alleged that Defendants had committed abuse of process by filing a prior Florida action "to gain leverage and an improper advantage in a business dispute" and that the prior action included baseless allegations in an attempt to harass plaintiffs. *Id.* at *8. Applying Florida law, the federal court rejected the abuse of process claim absent any allegations of any post-issuance acts constituting abuse of process: "Defendants' alleged filing of a baseless suit, even coupled with alleged knowledge of the complaint's eventual publication, is not an affirmative post-issuance abuse of process." *Id.* at *12. Neither is Epstein's allegedly filing of an allegedly baseless suit against Edwards.

Based upon the foregoing authorities, Epstein, is entitled to summary judgment because Edwards' Counterclaim for abuse of process is based *solely* on allegations that Epstein filed an allegedly baseless Complaint to harass Edwards. Indeed, Edwards alleges only that Epstein "*filed the claims herein*" to intimidate Edwards (§9) and that the allegations in Epstein's Complaint lack factual support. (§10). Given the fact that Florida law unquestionably bars an abuse of process claim based solely on the *filing of an allegedly baseless complaint*, Edwards' Counterclaim fails as a matter of law and must be dismissed. *See S & I Investments*, 36 So. 2d at 918 (summary judgment granted in favor of defendant where abuse of process claim was based upon the filing of a complaint and subsequent amendments); *Della-Donna*, 512 So. 2d at 1055; *McMurray v. U-Haul Co.*, 425 So. 2d 1208 (Fla. 4th DCA 1983)(counterclaim for abuse of process was properly dismissed with prejudice although plaintiff alleged that complaint was filed "for a multitude of improper purposes").

In sum, given the fact that Edwards' abuse of process Counterclaim is based only on the initial filing of the lawsuit, it is legally insufficient, and summary judgment should be entered in favor of Epstein on Edwards' Counterclaim.

**C. IN THE ALTERNATIVE, PARTIAL SUMMARY
JUDGMENT SHOULD BE ENTERED FOR EPSTEIN ON
DAMAGES FOR HIS TIME AS AN ATTORNEY AND HIS
ATTORNEYS' FEES FOR HIS COUNSEL**

Assuming *arguendo* that Edwards' Counterclaim is not dismissed as a matter of law, partial summary judgment should be entered for Epstein on the ground that Edwards is precluded from recovering attorney's fees and "time diverted from his professional responsibilities." (Counterclaim, ¶12). "The principle is well established that entitlement to fees must be founded upon a provision in a contract, statute, rule, or special principle of law, such as that for the establishment of a fund." *Martha A. Gottfried, Inc. v. Amster*, 511 So. 2d 595, 600 (Fla. 4th DCA 1987). There is no contract, statute or principle of law that permits Edwards, himself, or his lawyer, to recover attorney's fees or damages for the time he has spent defending the instant case or prosecuting his Counterclaim. It is settled that attorney's fees and litigation costs are not recoverable in litigation with the party who allegedly committed the wrongful act. *See, e.g., City of Tallahassee v. Blankenship & Lee*, 736 So. 2d 29, 30 (Fla. 1st DCA 1999); *Martha A. Gottfried, Inc.*, 511 So. 2d at 598-600. *See also Elimadebt*, 2010 U.S. Dist. LEXIS 51079, at *23-24. Accordingly, summary judgment should be entered in favor of Epstein on Edwards' claim for attorney's fees and the related claim for his time spent on the subject litigation.

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

Respectfully submitted,

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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