

DRAFT 11/21/10

JEFFREY EPSTEIN,

Plaintiff,

v.

**SCOTT ROTHSTEIN, individually, BRADLEY
J. EDWARDS, individually, and [REDACTED],
individually,**

Defendants.

**PLAINTIFF'S MOTION TO STRIKE EXHIBITS AND
ATTACHMENTS TO DEFENDANT
EDWARDS'S MOTION FOR SUMMARY JUDGMENT**

Plaintiff Jeffrey Epstein ("Epstein") moves, pursuant to Rule 1.510 of the Florida Rules of Civil Procedure, to strike the unsworn and otherwise unauthenticated "Exhibits" and "Attachments" to the allegedly "Undisputed Statement of Facts" filed and served by defendant Bradley J. Edwards ("Edwards") and upon which Edwards relies to support his Motion for Summary Judgment. The specific grounds for this Motion are:

1. On September 22, 2010, Edwards served a Motion for Summary Judgment (the "Summary Motion") seeking to have this Court conclude that there is no genuine issue of material fact as to each count against him and to grant him judgment on the claims raised against him by Epstein in this action.

2. Edwards filed a 37-page "Statement of Undisputed Facts," consisting of 120 separate paragraphs, most of which are either not material at all or, where they are conceivably material, they

are disputed. Arguably, only paragraphs 86 through 91 bear on the subject of this lawsuit.¹

3. In support of these 120+ allegedly “undisputed” facts, Edwards served an eight inch tall stack of “47 exhibits” and 22 “attachments” numbered respectively from “A” to “UU” and “1” to “22”. Collectively, we refer to these materials as the (“Supporting Papers”).

4. Among these Supporting Papers are 22 transcripts of depositions or excerpts of depositions – the “Attachments,” most of which were taken prior to the filing of this action in 2009 and before. The other “Exhibits” are a compendium of *unsworn* letters, pleadings and other court filings, hearing transcripts, an unauthenticated copy of what purports to be a plea agreement between Scott Rothstein and the government,² unsigned drafts, unsigned answers to interrogatories from another case, New York Post and other media publications, items (such as phone messages) allegedly garnered from Plaintiff and others pursuant to search warrants in criminal investigations of Plaintiff, a purported copy of a visitor log from the Palm Beach County Sheriff’s Office, flight logs, and other

¹ Nevertheless, Edwards fills 35 pages with facts that are not material to any issue in this case for the apparent purpose of prejudicing Plaintiff in this Court with a gratuitous and graphic recount of conduct and alleged conduct not in issue in *this* case, such as Plaintiff’s alleged sexual exploits with clients of Edwards. There can be no other reason.

² See Exhibit “SS.” The statement of facts incorporated into the plea agreement refers throughout to Rothstein and “other co-conspirators” without naming those others. It intimates that others working in the Rothstein Rosenfeldt and Adler firm knew of the Ponzi scheme and conspired to advance the criminal enterprise. Plaintiff believes Edwards is such a person, notwithstanding Edwards production of an unsworn form letter from a federal victim witness specialist identifying him as a possible victim of Rothstein (exhibit “TT”), but has not yet been provided the documentary evidence he has been seeking to use against Edwards.

documents the materiality of which is not facially apparent.³

5. All of the Supporting Papers, except Exhibits “N,” fail to conform to the Florida rules of civil procedure and must be stricken.⁴ The Supporting Papers have not been certified, verified or properly authenticated.

6. The law in the Fourth District, as well as in Florida’s other courts of appeal, clearly and unconditionally provides that unauthenticated documentary evidence may *not* be relied on or considered in support of a motion for summary judgment. *See Hollywood Towers Condominium Association, Inc. v. Hampton*, 993 So. 2d 174, 175-176 (Fla. 4th DCA 2008) (unauthenticated photocopies of check, letter and bank statement attached to motion for summary judgment could not be used to support motion); *Bifulco v. State Farm Mutual Auto. Ins. Co.*, 693 So. 2d 707, 710 (Fla. 4th DCA 1997) (trial court could not consider unsworn or uncertified insurance documents attached to motion for summary judgment); *Mack v. Commercial Industrial Park, Inc.*, 541 So. 2d 800 (Fla.

³ For example, Attachment “1” purports to be a 183-page deposition of Plaintiff in a case styled ██████ *v. Jeffrey Epstein* then pending in this Court, but the copy of the transcript is not signed and certified by the court reporter or otherwise authenticated and is therefore inadmissible. Attachment “2” consists of an excerpt of 9-pages of the purported transcript of a deposition of a Jane Doe which apparently in its entirety is more than 568 pages in length. Edwards included those pages to support the statement that Jane Doe was abused at least 17 times. It actually does not support that statement, but regardless, the excerpt is not in any way authenticated. Attachments 3 through 22 suffer from the same defect. The exhibits with the exception of “N” are no better.

⁴ This exhibit is the Affidavit of Defendant Edwards which appears to have been sworn in conformance with Florida statutes, although much of what is sworn to is immaterial or disputed. Attachment 15 is not certified, appears to be a complete transcript (not an excerpt) and bear the signature of a court reporter, but it hardly material. *See* Statement of Undisputed Facts at paragraph 57. Exhibit “QQ” is a sworn affidavit; however, it consists almost entirely of hearsay and double hearsay and must be stricken.

4th DCA 1989) (contractual exhibits which were unaccompanied by an affidavit could not be considered in support of motion for summary judgment).⁵ In *Bifulco*, the court of appeal observed:

[I]t is unquestionably clear that the documents attached to Appellee's motion are not sworn to or certified in any manner whatsoever, nor are they in proper admissible form. They are not accompanied by any affidavit of a records custodian or other proper person attesting to their authenticity or correctness. . . . They were received without any foundation other than the representations of Appellee's counsel. In short, *rule 1.510(e)*, by its very language, excludes any document from the record on a motion for summary judgment that is not one of the enumerated documents or is not a certified attachment to a proper affidavit. The documents in question in the case before us, standing by themselves, are insufficient to satisfy the heavy burden Appellee must meet in order to justify the granting of summary judgment in its favor.

693 So. 2d at 710 (emphasis added).⁶

7. Here, it is unquestionably and undeniably clear that *none* of the Supporting Papers save two, are sworn or certified in any manner whatsoever.⁷ They likewise are *not* accompanied by an affidavit of a records custodian or other person attesting to their authenticity, completeness or correctness. Each of these 67 Supporting Papers is therefore "insufficient" to support Defendant

⁵ Other courts of appeal have held the same. *See, e.g., Nichols v. Preiser*, 849 So. 2d 478, 481 (Fla. 2d DCA 2003) (trial court could not consider letters that were not sworn or certified); *First Union National Bank of Florida v. Ruiz*, 785 So. 2d 589, 591 (Fla. 5th DCA 2001) (unsworn EEOC letter did not satisfy procedural strictures inherent in Rule 1.510(e)); *Brooker v. Sarasota, Inc.*, 707 So. 2d 886, 887 (Fla. 1st DCA 1998) (trial court could not consider unauthenticated document in ruling on motion for summary judgment).

⁶ Rule 1.510(e) requires that "[s]worn or certified copies of all papers . . . referred to in an affidavit shall be attached thereto or served therewith." *See also First North American National Bank v. Hummel*, 825 So. 2d 502, 504 (Fla. 2d DCA 2002) (party opposing motion for summary judgment could not rely on documents that were not authenticated or supported by an affidavit or other evidentiary proof); *Tunnel v. Hicks*, 574 So. 2d 264, 266 (Fla. 1st DCA 1991) (same).

⁷ The transcripts, no doubt, could be certified but they are not.

Edward's heavy burden of proof and this Court cannot rely on them to justify a grant of summary judgment. *Id.*

8. Moreover, the Supporting Papers constitute inadmissible hearsay and the statements within them cannot be considered for the truth. None (except Exhibit "N") has been authenticated by anyone in an attempt to lay the required foundation for their admissibility as either public records or business records. *See Bifulco*, 693 So. 2d at 710-711 (insurance documents attached to motion for summary judgment were inadmissible under business records or public records exceptions to hearsay rule where required predicate was not established); *Gray v. State*, 910 So. 2d 867, 869 (Fla. 1st DCA 2005) (document on Department of Corrections letterhead was hearsay where foundation not laid for its admission as a business record or a public record); *see also Adams v. State*, 521 So. 2d 337, 338 (Fla. 4th DCA 1988) (business records are inadmissible without a proper foundation for their admission).

9. The Supporting Papers therefore constitute unauthorized and improper unauthenticated documentary evidence which must be stricken from defendant Edwards's Statement of Undisputed Facts that allegedly support his Motion for Summary Judgment and which cannot properly be considered by this Court in support of the Summary Motion.

WHEREFORE, based on the foregoing, Plaintiff Jeffrey Epstein respectfully requests that this Court enter an Order striking Exhibits "A" through "M" and "O" through "UU," as well as Attachments numbered "1" through "22," allegedly offered in support of Defendant Bradley J. Edwards's Statement of Undisputed Facts submitted with his Motion for Summary Judgment as to all claims against him, and grant such other and further relief to Plaintiff as the Court deems

appropriate.

Respectfully submitted,

Joseph L. Ackerman, Jr.
Florida Bar # 235954
Christopher E. Knight
Florida Bar #607363

FOWLER WHITE BURNETT, P.A.
Attorneys for Plaintiff Jeffrey Epstein
Phillips Point, West Tower
777 South Flagler Dr., Suite 901
W. Palm Beach, FL 33401



CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing Plaintiff's Motion to Strike Exhibits to Defendant Edwards's Motion for Summary Judgment was served by _____ this ___ day of November, 2010 on:

Jack Scarola
Searcy Denney Scarola Barnhart & Shipley
Attorneys for Bradley J. Edwards
2139 Palm Beach Lakes Boulevard
West Palm Beach, FL 33409

Marc S. Nurik,
Law Offices of Marc S. Nurik
Attorneys for Scott Rothstein
One E. Broward Blvd., Ste 700
Fort Lauderdale, FL 33301

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