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,
and BRADLEY J. EDWARDS,
individually,

Defendants.
_____/

- - -

HEARING BEFORE THE HONORABLE
JUDGE DAVID CROW

Monday, February 4, 2013
9:01 a.m. - 9:18 a.m.

Palm Beach County Courthouse, Courtroom 9C
205 North Dixie Highway
Palm Beach County, Florida

Stenographically Reported By:
Sara Storey, FPR
Florida Professional Reporter

APPEARANCES:

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P R O C E E D I N G S

- - -

MS. COLEMAN: Excuse me one moment. I'm sorry. The first page of that notebook I need to take out. Can I just grab my -- they're my notes.

THE COURT: I can't read your notes?

MS. COLEMAN: Well, I wouldn't want to give you my notes without giving a copy to Mr. Scarola, because that would be inappropriate.

Good morning, Judge. Tonja Haddad --

THE COURT: Let me just stop you and ask you, is this something I can do on an 8:45, it seems like a lot?

MS. COLEMAN: No, Your Honor, it's not.

THE COURT: Okay.

MS. COLEMAN: It is my motion on behalf of Mr. Epstein. And since the date it was filed I have sent repeated requests to Mr. Scarola's office asking for a specially set date upon which he was available to argue our motion.

THE COURT: All right.

MS. COLEMAN: Mr. Scarola refused to provide us dates and instead unilaterally set it before this court today. What was originally set before this court today was an issue related to our

discovery which I think would be more germane to the issues since you denied our protective order last Thursday. There is no way this can be heard in five minutes without belaboring the point. And we would respectfully request that since Mr. Scarola's office is not cooperating that you would provide a specially-set date upon which we can argue our Motion to Dismiss in a corporated memorandum of law.

MR. SCAROLA: May I have my five minutes to convince you otherwise?

THE COURT: Let me just say, I generally don't give dates for counsel. I don't get involved in scheduling. What I generally do is say you schedule it within a certain period of time, if you don't I'll schedule it. But Yes, sir.

MR. SCAROLA: Thank you. May I approach the bench?

THE COURT: Yes, sir.

MR. SCAROLA: Thank you.

Your Honor, this is our fourth amended complaint. And the fourth amended complaint makes two changes from the third amended complaint which was the subject of multiple challenges all of which were denied. Those two changes appear in the

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wherefore clause as to count one, and the wherefore clause as to count two. Both of the changes are identical. The prior complaint said that we reserved leave to assert a claim for punitive damages upon satisfying the statutory prerequisites. The amendment says counter-plaintiff Edwards, having satisfied the statutory prerequisites for the assertion of a claim for punitive damages and having been granted leave of court to assert such a claim does hereby also assert a claim for punitive damages. The factual allegations of this complaint remain absolutely unchanged from the repeatedly, unsuccessfully challenged third amended complaint.

The Motion to Dismiss before Your Honor is nothing more than a motion for a reconsideration of Your Honor's having granted the leave to assert a claim for punitive damages. And the concept that it is necessary after having satisfied the statutory prerequisites to again argue all of the same legal issues that are being asserted once more that have previously been denied and to wait for a special set hearing in order to do that, I suggest to Your Honor, is simply a transparent attempt at further delaying getting this 2009 case set for

trial. That's the reason why I have been insistent upon dealing with this matter at an 8:45 hearing, because I firmly believe that when Your Honor takes a look at this complaint you will find that that is the only change and it does not warrant a special set hearing after Your Honor has already granted leave to amend to assert a claim for punitive damages.

Just so that it is clear what has happened here, I have highlighted on both the copy I provided to Your Honor and the copy for opposing counsel each of the factual allegations that were supported by record evidence that allowed Your Honor to grant leave to assert the claim for punitive damages. No new factual allegations have been added to those that formed the basis to assert the claim for punitive damages to begin with. So that's the reason why I have asked Your Honor to deal with this at an 8:45, so that we can finally get a trial date in this 2009 case.

Thank you, sir.

THE COURT: Yes, ma'am.

MS. COLEMAN: Your Honor, before I respond to that, respectfully I'm asking am I going to be compelled to argue my motion in this five minute

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hearing?

THE COURT: Well, I'll tell you what I'm going to do, I'm going to look at it, so if you want to, you know --

MS. COLEMAN: Then I will --

THE COURT: Go ahead.

MS. COLEMAN: Go ahead. I'm sorry.

THE COURT: We got more than five minutes.

MS. COLEMAN: My position is as follows, respectfully Mr. Scarola's opinion is just that. His opinion of course of his complaint is that it's fine, there is nothing wrong. Our position is in drast contravention to Mr. Scarola's opinion. The law, in our opinion, and as proved by our voluminous notebook with which you've been provided -- and for the record, we've provided over two hundred pages of documentation to Judge Crow in support of our Motion to Dismiss. The legal standard for pleading punitive damages under rule 1 -- I'm sorry. I completely lost the paper that I was looking at. But the rule to plead special damages. I believe it's 1.210 or 1.200. It's in our motion -- requires heightened pleadings. So by -- just as an example to give Judge Crow, by his own admission Mr. Scarola has virtually changed

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nothing in his complaint. That assertion by its very nature clearly goes to the fact that the complaint has not properly been amended to add a claim in punitive damages.

And I apologize to the court, the special pleading requirement statute is 1.120(G) and 768.72 of the Florida statutes, require different pleading.

THE COURT: So let me stop you and make sure I understand you. What you're saying is that even though I may have given permission based upon the proffer made at the time of the hearing to plead punitive damages you still have to plead sufficient ultimate facts to establish punitive damage liability --

MR. SCAROLA: Yes, Your Honor, and the case law clearly supports that and based upon my communications with Mr. Scarola I realized that this was going to be a problem that could not be addressed in five minutes. We were going to need to convince you otherwise, which is again why I'm requesting that you allow us more time to argue this, because it's a very important issue, obviously.

THE COURT: How much time do you need to

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argue?

MS. COLEMAN: I need at least 20 minutes to argue my point, Judge.

THE COURT: I don't give 40 minute hearings. I only have 30 minute hearings.

MS. COLEMAN: 15, I can do it in 15.

THE COURT: Go ahead.

MS. COLEMAN: You want me to argue it right now?

THE COURT: I have 15 minutes.

MS. COLEMAN: I don't have all the case law with me right now. We were set on a five minute hearing. I was coming in here to request that you give us a specially set hearing, Judge. If you're going to compel me to go forward at this exact moment --

THE COURT: Is the hearing about the stuff I've got in front of me? You know, I'm pretty familiar with the case law in which you've cited here. These are all standard cases. These are not unique. And so what I really want to know is what the factual predicate is for your motion. The case law is very clear. I understand the case law. I don't think you got any new case law in here, do you?

MS. COLEMAN: Any new case law from what, Judge? I don't know what's been submitted to you in the past.

THE COURT: In support of your motion.

MS. COLEMAN: In support of my motion, no, I filed it on the 18th.

THE COURT: No, I mean, any recent cases that have changed the law in any manner. There is nothing new in the case law. What you're really doing is the case law as it applies to the allegations of this complaint presumably is what you're saying.

MS. COLEMAN: Yes, I am, Judge.

THE COURT: Okay. So tell me what's wrong with this complaint.

MS. COLEMAN: I'm just --

Are you making us do this argument now?

THE COURT: I'm not making you do anything now. I'm sitting here, I got the thing in front me. I said maybe we can argue it now. You're telling me you're not prepared to argue the motion? Is that what you're saying?

MS. COLEMAN: I was prepared for a five minute hearing and I'm telling you, yes, I would prefer to --

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THE COURT: Is it something in addition to what's in your memorandum that you want to tell me?

MS. COLEMAN: With the case law? No, Judge, I would like to be forwarded the opportunity to properly prepare and argue my point. I've been in your courtroom many, many times as you know --

THE COURT: I'm just asking a simple question. Is there something more than what you've outlined very articulately in the memorandum of motion that you need to argue or can I read it and understand it?

MS. COLEMAN: I'm confident you can read it and understand it, Judge, but respectfully, the last couple of times we've been in here and we have not been permitted to outlay our argument, for example, the Motion for Protective Order, which we tried to get specially set for 15 minutes and Mr. Scarola would not agree, we get ruled against. I'm trying to do my job here. I'm trying to adequately present my client's position. I feel we have a very strong Motion to Dismiss. I'm asking this court to allow us the 15 minutes within which to argue it and to not permit -- I don't know -- I don't have an --

THE COURT: When will you be ready to argue?

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MS. COLEMAN: You can -- we have a UMC set for Wednesday morning. If you'd rather set this for Wednesday I'd be fine with that.

THE COURT: I have got time today, how about that? I can get my calendar. Will you be prepared to argue it today?

MS. COLEMAN: Judge, my office is in Broward and I have depositions set today. I don't know that I'll be able to do it today, but I'd be happy to do it Wednesday.

THE COURT: Let's get you scheduled here. Okay.

MS. COLEMAN: Thank you very much.

THE COURT: Do you have the ability to look and see what your schedule is like right now?

MR. SCAROLA: I have my phone here.

THE COURT: Are you prepared to do that?

MS. COLEMAN: Yes, sir, I have my calendar here on my phone.

THE COURT: Go ahead and get your calendars. Let's get your schedules here. You need 30 minutes. I'm going to go ahead and get it set.

This is one of the older cases on my -- I know it had some procedural hiccups, but I want to try and get it to the point where we can --

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Can you do it at 8:00 in the morning? You generally don't have things scheduled at 8:00 in the morning.

MS. COLEMAN: Yes, sir, we have done that before.

MR. SCAROLA: The only day that 8:00 would be a problem would be Wednesday, because I'm scheduled to be on a plane to Tampa Wednesday morning at 7:00.

THE COURT: How about Monday the 11th, 8:00?

MS. COLEMAN: I can do that.

THE COURT: All right. Somebody notice it. Okay.

MS. COLEMAN: Judge, if you do have the time now --

THE COURT: We can do it at 8:15, too.

MS. COLEMAN: That's fine. That's fine with me, Judge.

THE COURT: 8:15. That will be better. 8:15 on Monday February the 11th.

MS. COLEMAN: Thank you, Judge.

If you would like to address one small issue now that Mr. Scarola and I both agreed if we had time we would prefer that you address.

You denied our Motion for Protective Order

last Thursday.

THE COURT: Is there a motion or something?

MS. COLEMAN: It's set on your docket for Wednesday, but I believe Mr. Scarola said he was going to bring everything if time permitted.

MR. SCAROLA: I don't have that other file.

THE COURT: Basically, Judge --

MR. SCAROLA: I do have --

MS. COLEMAN: I don't know that we even need a file for it.

You denied our Motion for Protective Order last Thursday. You delineated the confidentiality order that you would like entered in this case and Mr. Scarola and I are working on different drafts of that. However, you did not provide in your order a date upon which our responses, whatever they may be, to Mr. Scarola's discovery would be due. So we had agreed 30 days from the date of your order we offered to Mr. Scarola thinking that was reasonable, but Mr. Scarola disagreed. So we would ask you to please give us a date upon which our responses to his discovery --

THE COURT: I don't remember what the financial requests were right now.

MS. COLEMAN: Voluminous, over five years of

documentation.

THE COURT: Okay.

MR. SCAROLA: Your Honor, this is the pecuniary circumstances of discovery relating to punitive damages.

THE COURT: Right.

MR. SCAROLA: It is already past due. It's more than 30 days. I had suggested at the time of the hearing that Your Honor should include a time for response, because I anticipated this problem and I requested ten days. There was no time for response included in the order and opposing counsel has said I want 30 days from the entry of the order denying my motion for protective order, which would give them a total of in excess of 70 days to respond to this discovery. I believe that that's entirely inappropriate. The filing of a Motion for Protective Order does not relieve them of the obligation to prepare and be ready to submit the discovery in a timely fashion if the motion is denied. So my request is that ten days from today, which is now one week beyond where it was before, that discovery response be submitted. That's the request I made.

There is an ancillary issue. And if I may

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approach, Your Honor?

THE COURT: Sure.

MR. SCAROLA: This is a copy of the order that Your Honor entered.

THE COURT: Okay.

MR. SCAROLA: And Your Honor outlined what you believed the appropriate terms of a confidentiality order to be. I drafted a proposed confidentiality order that exactly tracks the language in Your Honor's order and I submitted it to opposing counsel and they have not agreed to that confidentiality order, which is no surprise, because it's one more way in which they will attempt to delay the response to the discovery that we are seeking. I would ask Your Honor to simply --

I don't believe that after Your Honor's already entered the order that outlines all the confidentiality provisions that another order is necessary, but you contemplated another order, so I would ask Your Honor to enter the confidentiality order that you said would be appropriate.

MS. COLEMAN: Your Honor, I have not even read that. It was e-mailed on Friday and I e-mailed Mr. Scarola back right away -- and I can prove this

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if I have to. I haven't had an opportunity to review it yet, much less send it to my client or my co-counsels --

THE COURT: Well, what it is is a bullet point of exactly what I said.

MS. COLEMAN: I understand what it is, Your Honor, but --

THE COURT: Well, is there something you want more than in my order?

MS. COLEMAN: I haven't read it. Yes, Judge, there -- no, I would like to have it say what you say in your order, but there may be --

This is our protective order, Your Honor. This is to protect Mr. Epstein, my client. While I appreciate Mr. Scarola's constant opinions of the law and what should be submitted, it's my client. I should at least at a minimum have a right to review it and edit it if I believe it's necessary. I'm not adding -- I don't anticipate adding anything that the court hasn't delineated in its order, but I think it's incumbent upon me as counsel of record for Mr. Epstein to at a minimum be able to review a confidentiality order that's going to order by Mr. Scarola's own constant words, a billionaire, to disclose all of his financial

information absent, you know, something being in place that we need to review. And especially given the situation of what's going on in other litigations between these parties.

THE COURT: Well, I guess what I'm asking is -- I mean, I outlined everything that I thought was necessary in my order. And what I'm asking -- certainly you've read my order.

MS. COLEMAN: I've read your order, Judge. I have not read Mr. Scarola's proposed confidentiality order.

THE COURT: I'm not asking about the confidentiality order. I'm going to ask you about my order. What in addition to what I put in the order would you want?

MS. COLEMAN: Judge, I read your order Thursday afternoon. I don't remember. I wasn't prepared to discuss the confidentiality order this morning. I wasn't told it was going to be heard. I wasn't told that Mr. Scarola was going to present you with a copy of what he had drafted.

THE COURT: Okay. I'll get you an order out. Okay.

MR. SCAROLA: Thank you very much, Your Honor.

THE COURT: Have a great day.

MR. SCAROLA: Thanks.

MS. COLEMAN: An order regarding the discovery due date or --

THE COURT: Yeah. And whether or not I'm going to require a confidentiality order and, I mean -- basically -- I mean, I'm looking at my order and what I -- I couldn't tell you what I was thinking, but I spelled out everything that I thought was necessary and only if you thought something more then I was going to allow you to do something different, but -- or less.

MS. COLEMAN: Respectfully, Judge, in my granted less limited experience than Mr. Scarola in the legal arena, if an issue arises with this confidentiality order we were trying to place the burden not on you purportedly drafted the confidentiality order by nature of your order, but rather having an agreed to confidentiality order between the parties that you would merely sign rather than using your court order and asking you to rule on exactly what you just said, what you meant at the time you drafted it.

THE COURT: Okay. I'm not sure what I'm going to do, but I'll get you an order out here today. Okay.

MS. COLEMAN: Thank you, Judge.

MR. SCAROLA: And I would respond to that if I had any idea at all what she just said. So I have no response.

THE COURT: Excuse me?

MR. SCAROLA: I said I would respond to that if I had any idea at all what it is she just said, but I don't.

THE COURT: Thank you.

MR. SCAROLA: Thank you, Your Honor.

THE COURT: Have a great day.

MR. SCAROLA: And you too, sir.

(Proceedings concluded at 9:18 a.m.)

CERTIFICATE OF REPORTER

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I, Sara Storey, Florida Professional Reporter, State of Florida at Large, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript, page 1 through 20, is a true and complete record of my stenographic notes.

Dated this 4th day of February 2013 in Palm Beach County, Florida.

Sara Storey

Sara Storey,
Florida Professional Reporter

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