

IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT IN
AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO. 502009CA040800XXXMBAG

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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17 BY: JACK SCAROLA, ESQUIRE

P R O C E E D I N G S

- - -

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

6 THE COURT: I can't read your notes?

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

10 Good morning, Judge. Tonja Haddad --

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

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

15 THE COURT: Okay.

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

21 THE COURT: All right.

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

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

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

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

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

19 THE COURT: Yes, sir.

20 MR. SCAROLA: Thank you.

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

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

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

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

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

21 Thank you, sir.

22 THE COURT: Yes, ma'am.

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

1 hearing?

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

5 MS. COLEMAN: Then I will --

6 THE COURT: Go ahead.

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

8 THE COURT: We got more than five minutes.

9 MS. COLEMAN: My position is as follows,
10 respectfully Mr. Scarola's opinion is just that.
11 His opinion of course of his complaint is that it's
12 fine, there is nothing wrong. Our position is in
13 drast contravention to Mr. Scarola's opinion. The
14 law, in our opinion, and as proved by our
15 voluminous notebook with which you've been
16 provided -- and for the record, we've provided over
17 two hundred pages of documentation to Judge Crow in
18 support of our Motion to Dismiss. The legal
19 standard for pleading punitive damages under rule
20 1 -- I'm sorry. I completely lost the paper that I
21 was looking at. But the rule to plead special
22 damages. I believe it's 1.210 or 1.200. It's in
23 our motion -- requires heightened pleadings. So
24 by -- just as an example to give Judge Crow, by his
25 own admission Mr. Scarola has virtually changed

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

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

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

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

25 THE COURT: How much time do you need to

1 argue?

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

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

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

7 THE COURT: Go ahead.

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

10 THE COURT: I have 15 minutes.

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

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

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

4 THE COURT: In support of your motion.

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

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

13 MS. COLEMAN: Yes, I am, Judge.

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

16 MS. COLEMAN: I'm just --

17 Are you making us do this argument now?

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

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

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

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

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

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

25 THE COURT: When will you be ready to argue?

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

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

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

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

13 MS. COLEMAN: Thank you very much.

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

16 MR. SCAROLA: I have my phone here.

17 THE COURT: Are you prepared to do that?

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

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

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

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

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

6 MR. SCAROLA: The only day that 8:00 would be
7 a problem would be Wednesday, because I'm scheduled
8 to be on a plane to Tampa Wednesday morning at
9 7:00.

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

11 MS. COLEMAN: I can do that.

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

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

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

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

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

21 MS. COLEMAN: Thank you, Judge.

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

25 You denied our Motion for Protective Order

1 last Thursday.

2 THE COURT: Is there a motion or something?

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

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

7 THE COURT: Basically, Judge --

8 MR. SCAROLA: I do have --

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

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

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

25 MS. COLEMAN: Voluminous, over five years of

1 documentation.

2 THE COURT: Okay.

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

6 THE COURT: Right.

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

25 There is an ancillary issue. And if I may

1 approach, Your Honor?

2 THE COURT: Sure.

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

5 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 THE COURT: Have a great day.

1 MR. SCAROLA: Thanks.

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

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

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

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

1 MS. COLEMAN: Thank you, Judge.

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

5 THE COURT: Excuse me?

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

9 THE COURT: Thank you.

10 MR. SCAROLA: Thank you, Your Honor.

11 THE COURT: Have a great day.

12 MR. SCAROLA: And you too, sir.

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