

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,
BRADLEY J. EDWARDS, individually, and
L.M., individually,

Defendant,

_____ /

**COUNTER-PLAINTIFF, BRADLEY J. EDWARDS' REPLY TO JEFFREY EPSTEIN'S
MEMORANDUM IN OPPOSITION TO SECOND RENEWED MOTION FOR LEAVE
TO ASSERT A CLAIM FOR PUNITIVE DAMAGES**

The principal attack on the sufficiency of Edwards' Motion for Leave to Assert a Claim for Punitive Damages is to point out the similarity between the proffer supporting that motion and Edwards' Motion for Summary Judgment. Epstein either fails to appreciate or chooses to ignore the fact that the evidence supporting a summary judgment in favor of the defense on the claims that form the basis for a malicious prosecution action is, of necessity, the identical evidence necessary to support a claim for punitive damages on the malicious prosecution claim itself. In other words, for Edwards to establish his entitlement to summary judgment on the various claims asserted by Epstein against him, it was necessary for Edwards to establish that there were no disputed facts and that the undisputed facts established the propriety of all of Edwards' actions against Epstein. That same evidence is essential in establishing Epstein's absence of probable cause to support any of Epstein's claims against Edwards. While the

absence of probable cause is admittedly not sufficient standing alone to establish the foundation for a malicious prosecution claim, it is an essential element of such a claim and a relevant circumstance in considering the existence of malice.

As Epstein's opposition memorandum acknowledges at page 15:

Malice is not only an essential element of a malicious prosecution but it is the gist of the cause of action.

Malice, being an operation of the mind is rarely subject to direct proof. Rather it is established circumstantially, and here the circumstances established by the proffer are not only adequate to support a finding of malice, they compel such a finding:

- Epstein lacked probable cause to believe that Edwards had engaged in any wrongful conduct;
- Epstein suffered no damage except for the self-inflicted consequences of his own criminal conduct;
- Epstein faced (and faces) ongoing adverse consequences arising out of his criminal conduct, consequences which Edwards was and continues to be instrumental in enforcing;
- Success in deterring Edwards from his vigorous prosecution of claims against Epstein would serve to protect Epstein from both civil and criminal liability;
- False claims against Edwards could deter or distract Edwards from the continued prosecution of Epstein;
- The intentional filing of knowingly false claims to extort the abandonment of legitimate claims is clearly a malicious purpose;
- Epstein sued Edwards in the absence of probable cause;

- Epstein sued Edwards intending to refuse to comply with his own discovery obligations, thus giving rise to the reasonable inference that the purpose of Epstein's claims against Edwards was never to recover non-existent damages through litigation Epstein never intended to pursue to conclusion because he never intended to waive his Fifth Amendment privilege;
- The only remaining purpose for pursuing baseless claims against Edwards was to intimidate and extort him.

Epstein grossly misconstrues the scope of the litigation privilege as described in *Levin, Middlebrooks, Moves & Mitchell, P.A. v. U.S. Fire Ins. Co.*, 639 So.2d 606 (Fla. 1994). The privilege affords immunity for conduct that occurs in the course of the prosecution or defense of legitimate claims. The Supreme Court's holding in *Levin* was not intended to abolish causes of action for malicious prosecution or abuse of process, and no court has ever interpreted that holding as having such an effect.

The balance of Epstein's opposition is a recycling of all the arguments he has previously raised in multiple, unsuccessful attacks on the propriety of Edwards' claims. This Court has repeatedly rejected each of these arguments in the past and Epstein offers no justification for reconsidering those earlier rejections.

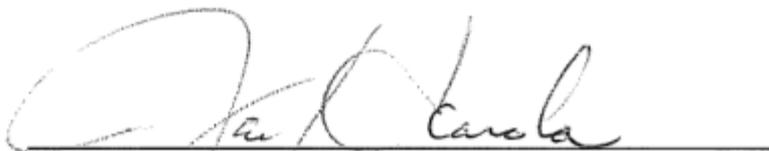
Edwards' Motion is procedurally proper and substantively far more than adequate to support leave to amend to assert a claim for punitive damages. The motion should be granted.

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Reply to Epstein's Memorandum in Opposition to Second Renewed Motion for Leave to Assert a Claim for Punitive Damages

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I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 10th day of December, 2012.



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