

jeffrey epstein v. scott rothstein - Vol. I

March 11, 2013

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1 IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
2 IN AND FOR PALM BEACH COUNTY, FLORIDA

3 CASE NO. 502009CA040800XXXXMBAG

4 JEFFREY EPSTEIN,
5 Plaintiff,

6 -vs-

7 SCOTT ROTHSTEIN, INDIVIDUALLY,
8 BRADLEY J. EDWARDS, INDIVIDUALLY,
9 AND L.M., INDIVIDUALLY,

10 Defendants.
11 _____/

12 - - -

13 HEARING BEFORE THE HONORABLE DAVID CROW

14 Monday, March 11, 2013

15 9:05 a.m. - 9:17 a.m.

16 PALM BEACH COUNTY COURTHOUSE, COURTROOM 9C
17 205 North Dixie Highway
18 West Palm Beach, Florida

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22 Stenographically Reported By:
23 Paula McGuirk, RPR, FPR
24 Registered Professional Reporter
25 Florida Professional Reporter

APPEARANCES:

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On behalf of the Plaintiff:

LAW OFFICES OF TONJA HADDAD COLEMAN, P.A.
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[REDACTED]

BY: TONJA HADDAD COLEMAN, ESQUIRE

On behalf of the Defendants:

SEARCY, DENNEY, SCAROLA, BARNHART & SHIPLEY, P.A.
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West Palm Beach, Florida 33409

[REDACTED]

BY: JACK SCAROLA, ESQUIRE

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PROCEEDINGS

- - -

1 THE CLERK: Epstein vs. Rothstein.

2
3 MR. SCAROLA: Good morning. Jack Scarola on
4 behalf of Bradley Edwards.

5 THE COURT: Give me one second, please.

6 MR. SCAROLA: Absolutely.

7 THE COURT: Okay, what do we have?

8 MR. SCAROLA: Your Honor, this is the
9 Counter-Plaintiff, Bradley Edwards, motion to strike
10 untimely objections, and if I may approach the Court,
11 I have a time line that I hope will be of help to
12 Your Honor.
13

14 THE COURT: Okay.

15 MR. SCAROLA: Your Honor, this motion relates
16 to net worth interrogatories propounded after Your
17 Honor permitted the amendment of this complaint to
18 assert a claim for punitive damages. We served
19 discovery relating to Mr. Epstein's financial
20 circumstances on December 21, '12 following that
21 order, and pursuant to the provision of Rule 1.340
22 and the 1.350 responses to both of those, discovery
23 requests were due within 30 days.

24 Within 30 days rather than filing responses,
25 what we received was a motion for protective order.

1 The motion for protective order raised a variety of
2 objections to the discovery. Included among those
3 objections was that the discovery was propounded for
4 purposes of harassment, oppression and embarrassment.
5 Your Honor considered that motion and entered an
6 order on January 29th denying the motion for
7 protective order. That particular order included no
8 time for the provision of the discovery, and we
9 brought that matter -- that is I, on behalf of
10 Mr. Edwards, brought that matter to the Court's
11 attention, and Your Honor entered an order on
12 February 4th compelling responses to the discovery
13 within 20 days.

14 Within 20 days, rather than receiving discovery
15 responses, what we received from the opposing party
16 were more objections. In fact, there is nothing but
17 objections to the discovery, and there is not --
18 apart from Mr. Epstein's name -- there is not a
19 single substantive response to any of the questions
20 that were asked with regard to his financial
21 circumstances.

22 It is our position that all of the objections
23 that were raised after the initial 30 days for filing
24 of objections or responses to the interrogatories are
25 untimely, and that those objections need not be

1 addressed substantively.

2 We are not before Your Honor this morning to
3 ask the Court to consider the substance of the
4 objections, but to strike all objections, except for
5 the Fifth Amendment privilege assertion, on the basis
6 that those objections are untimely. The significance
7 of striking all of the objections, other than the
8 Fifth Amendment privilege objection, is that other
9 objections cannot be commented upon in the presence
10 of the jury. If there are valid legal objections to
11 not providing the information, obviously we cannot
12 draw adverse inferences from those other objections,
13 nor can we comment upon those other objections.

14 However, the Defendant's failure to respond to
15 this financial discovery on the basis of the Fifth
16 Amendment privilege assertion is obviously something
17 that can be raised in the presence of the jury, and
18 we can draw adverse inferences from his refusal to
19 provide any financial information whatsoever. That's
20 the purpose of this motion.

21 THE COURT: Yes.

22 MS. COLEMAN: Good morning, Judge. Tonja
23 Haddad Coleman on behalf of Mr. Epstein. First, I'm
24 really not quite sure how to respond to this since
25 Mr. Scarola has yet, again, filed a motion that

1 contains not one rule or case on which he's relying.
2 So, I'll address each allegation in turn.

3 First, all he states is that our objections are
4 untimely. This Court ordered that we respond. Not
5 answer, but respond to the discovery requests within
6 20 days of the order. The order was entered
7 February 4th. As such, our response was due on or
8 before Monday, February 25th, since February 24th was
9 a Sunday. We timely responded to all discovery
10 requests on Friday, February 22nd, actually, making
11 them early.

12 Furthermore, with respect to the motion for
13 protective order, the law is very clear that the
14 issues that you must raise in a protective order, and
15 the only issues we raised in our motion for
16 protective order were on the grounds of annoyance,
17 embarrassment, oppression, undue burden. We've only
18 raised issues as delineated in Rule 1.380.

19 However, within our responses to the discovery
20 we did raise many objections, including privilege,
21 and I have a case right on point for the Court, and
22 which I've taken the time to actually highlight the
23 relevant portions, if I may approach. I have a
24 Fourth DCA case in which it says, "A timely objection
25 is not required to claims to be privileged when one

1 is raising a motion for protective order because, and
2 I quote, 'This follows from the fact that
3 Rule 1.280(c) refers to issuance of protective order
4 only to protect a party or person from annoyance,
5 embarrassment, oppression or undue burden or
6 expense.'" It does not refer to privilege.

7 We think the omission was intentional and,
8 therefore, the word objectionable in Rule 1.380(d),
9 therefore, should be construed as referring only to
10 items which are within the scope of discovery; that
11 is, not privileged.

12 As such, Judge, once you denied our motion for
13 protective order, we were still well within our legal
14 rights -- our client's legal rights -- to raise any
15 objections that were not raised in the motion for
16 protective order. This case supports that position.
17 We timely filed our objection.

18 THE COURT: As I understand it, he is not
19 asking me to rule on privilege objections.

20 MS. COLEMAN: Those are all the objections.
21 There are various --

22 THE COURT: You got overbroad, burdensome, not
23 calculated to lead to admissible evidence.

24 MS. COLEMAN: Judge, I don't know because he
25 didn't provide, as one does, the copies of the

1 answers to which he is objecting. He's asking you to
2 strike all of them. I don't know which ones he wants
3 stricken. We raised the privileges.

4 THE COURT: Okay. I'm just listening to what
5 he said. He said he wants me to strike everything
6 except the privilege objections.

7 MS. COLEMAN: Well, they're not here. The
8 rules -- my understanding of the rules --

9 THE COURT: Excuse me. What's not here? I'm
10 sorry.

11 MS. COLEMAN: The discovery. There's no copy
12 of the request in the objections. He wants you to
13 strike everything. What is everything?

14 THE COURT: He just gave me a copy of it here.

15 MS. COLEMAN: Well, he didn't give me a copy.

16 THE COURT: Well, it's your responses.

17 MS. COLEMAN: I know it's my responses, Judge.
18 It wasn't attached to his motion, and it wasn't
19 provided to us.

20 THE COURT: Okay.

21 MS. COLEMAN: His motion doesn't say anything.

22 THE COURT: For example, the first one says
23 please produce financial statements to any lender
24 within the past five years. You have your privilege
25 objection, and then you say vague, unartfully

1 drafted, unable to file a response. I don't know how
2 it would be work product. The accountant privilege
3 would not be applicable. So your position is that
4 you have not waived any -- certainly not waived any
5 privilege objections. I understand that. Your claim
6 is that you have not waived any objections?

7 MS. COLEMAN: Yes, Your Honor, we never raised
8 any issue of overly burdensome. We raised the three
9 grounds one can raise in a protective order. We did
10 not raise, in our objection to his discovery
11 requests, any grounds that you had already ruled upon
12 in your motion for protective order. As such,
13 they're timely objections.

14 THE COURT: I honestly don't remember what I
15 ruled or didn't rule.

16 MS. COLEMAN: I have a copy of your order right
17 here. It's attached to our response to his motion.

18 THE COURT: It says -- you've got here
19 overbroad.

20 MR. SCAROLA: Would Your Honor like a copy of
21 the order?

22 THE COURT: Yes. I don't have the motions, so
23 I don't know what you raised in the motions, but,
24 okay, yes, sir, you want to respond?

25 MR. SCAROLA: I would like to respond, Your

1 Honor. The Fourth DCA case, which opposing counsel
2 handed me when she handed it to the Court,
3 specifically addresses attorney/client privilege, and
4 says that attorney/client privilege objections are
5 not waived as a consequence of having raised a motion
6 for protective order. The motion expressly states
7 that we are not seeking this Court's ruling on the
8 assertion of Fifth Amendment privilege. We are
9 seeking to strike all other objections as untimely,
10 and it seems strange that the law would develop to a
11 point where no objection is raised substantively.

12 With regard to these requests for financial
13 information, a motion for protective order is filed.
14 It raises substantial grounds, including harassing,
15 oppressive, embarrassing, and, as counsel has said in
16 her argument, overbroad, and then serially permit
17 other objections to be raised far after the 30-day
18 deadline for response has passed.

19 We would ask the Court to grant this motion,
20 strike all objections, except those as to privilege,
21 and with regard to any privilege objection, other
22 than attorney/client privilege, we will raise that by
23 separate motion.

24 THE COURT: Okay, I'm going to have to take a
25 look at this. The responses are 17 pages long, and I

1 will have to look at it today. By the way, is your
2 father an attorney, or is that your brother that's an
3 attorney?

4 MS. COLEMAN: Me?

5 THE COURT: Yeah, Haddad.

6 MS. COLEMAN: Yes.

7 THE COURT: Are you related?

8 MS. COLEMAN: I'm related to a lot of
9 attorneys. I don't know which Haddad you're
10 referring.

11 THE COURT: No, I'm sorry, I --

12 MR. SCAROLA: Mr. Haddad has actually entered
13 an appearance in this case, Your Honor.

14 THE COURT: Is he related to you?

15 MS. COLEMAN: Yes, he is.

16 THE COURT: Oh, okay. I just wondered. It's
17 interesting. Do you have a relative that works in
18 the Court? We have a clerk, an attorney.

19 THE CLERK: Monica.

20 THE COURT: Monica Haddad. Is she related?

21 MS. COLEMAN: No.

22 THE COURT: Because that's not unusual. I
23 mean, it's kind of like a Smith, Jones kind of --

24 MS. COLEMAN: Which is why for the last decade
25 I've tried using my married name, but it doesn't seem

1 to take.

2 THE COURT: Okay. I don't mean to -- you know,
3 I was just interested because it's a --

4 MS. COLEMAN: Yes.

5 THE COURT: Okay, thank you.

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

7 THE COURT: And did I see something come back
8 from the Fourth? Y'all filed something against me,
9 right?

10 MR. SCAROLA: Yes, they filed a petition for
11 writ of certiorari challenging Your Honor's granting
12 of leave to amend to assert a claim for punitive
13 damages.

14 THE COURT: Well, I thought there was something
15 like somebody tried to recuse -- not recuse -- in
16 fact, the reason I thought it was because I saw it
17 come through, Mr. Haddad, somebody tried to get him
18 kicked off the case. Didn't the Appellate Court say
19 I actually did it right? Am I wrong?

20 MS. COLEMAN: Yes, we didn't appeal that,
21 Judge, because --

22 MR. SCAROLA: That was not appealed.

23 THE COURT: Oh, okay.

24 MR. SCAROLA: No, the issue that was appealed
25 was the propriety of Your Honor's order granting

1 leave to assert a claim for punitive damages. The
2 petition for writ of certiori was denied as to that
3 matter.

4 THE COURT: Okay.

5 MR. SCAROLA: There was a recent opinion that
6 related to an effort to recuse Attorney Keitel that
7 was just addressed by the Fourth DCA in another
8 matter, so that may have been what Your Honor was
9 seeing.

10 THE COURT: Okay, thank you, guys.

11 MR. SCAROLA: Thank you, Your Honor.

12 MS. COLEMAN: Thank you, Judge.

13 (The hearing concluded at 9:16 a.m.)

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CERTIFICATE OF REPORTER

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I, Paula McGuirk, Registered Professional Reporter, Florida Professional Reporter, certify that I was authorized to and did stenographically report the foregoing proceedings and that the transcript, pages 1 through 13, is a true and complete record of my stenographic notes.

Dated this 13th day of March, 2013.

Paula McGuirk
Registered Professional Reporter
Florida Professional Reporter

