

Matter of Edwards

2011 NY Slip Op 31081(U)

April 12, 2011

Sup Ct, NY County

Docket Number: 112345/10

Judge: Emily Jane Goodman

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

EMILY JANE GOODMAN

DECEMBER

PART 17

Index Number : 112345/2010

EDWARDS, BRADLEY JAMES

vs

DAILY NEWS, L.P.

Sequence Number : 001

COMPEL

INDEX NO. _____

MOTION DATE _____

MOTION SEQ. NO. _____

MOTION CAL. NO. _____

The following papers, numbered 1 to _____ were read on this motion to/for _____

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits ...

Answering Affidavits — Exhibits _____

Replying Affidavits _____

PAPERS NUMBERED

Cross-Motion: Yes No

Upon the foregoing papers, it is ordered that this motion

Motion is decided in accordance with accompanying memorandum decision in motion sequence 001.

FILED

APR 28 2011

NEW YORK COUNTY CLERK'S OFFICE

J.S.C.

Dated: 4/12/11

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE FOR THE FOLLOWING REASON(S):

Check one: FINAL DISPOSITION NON-FINAL DISPOSITION

Check if appropriate: DO NOT POST REFERENCE

SUPREME COURT OF THE STATE OF NEW YORK
 COUNTY OF NEW YORK I.A.S. PART 17

-----X
 In the Matter of the Application of
 BRADLEY JAMES EDWARDS SEEKING
 CPLR 3102(e) ORDER FOR DAILY NEWS, L.P.
 TO PRODUCE TAPE RECORDING

Index No. 112345/10

-----X
 EMILY JANE GOODMAN, J.S.C.:

Bradley, a Florida lawyer, moves pursuant to CPLR 3102 (e) to compel production of an audio tape of an off-the-record conversation, incorrectly described in motion papers as an “interview,” between one Jeffrey Epstein and New York Daily News, LP (Daily News)¹ reporters George Rush and Martin Dunn, for use in a Florida action.

In the underlying Florida action, Epstein (Epstein) sues lawyer Bradley James Edwards (Edwards) asserting claims based on purported involvement in a Ponzi scheme including fraud, civil racketeering and abuse of process. Epstein, who has pled guilty to solicitation of prostitutes and procuring a minor to engage in prostitution, was incarcerated and registered as a sex offender.² He sued Edwards in what Edwards calls “vendetta” lawsuits, after Edwards brought civil lawsuits against him on behalf of certain

¹Because of this Court’s negative opinion of The Daily News and vice versa, I have offered to recuse myself, even though it would have no bearing on the outcome of the case. The attorneys agreed and neither side has made an application for recusal.

²In a separate unreported case Doe v. Epstein in which a young woman sued Epstein in connection with underage sex, Judge McKenna of the New York District Court Southern District of New York, found sufficient relevance to order the tape released, but the case was settled first, mooting the action, and, the Second Circuit thereafter vacated Judge McKenna’s decision.

young women who, as minors, were allegedly sexually abused and/or exploited by Epstein. While Edwards's clients in the civil action were not named complainants in the criminal cases which led to Epstein's conviction, Epstein settled the litigation with all of them.

Epstein is a very wealthy individual, who is on personal terms and socializes with people in the public limelight, i.e., boldface names, even the publisher who is the owner of the tape. He, too, has relationships within media as evidenced by his even having the conversation with reporters, which is the subject of this proceeding. Apart from the sexual crimes, there has been other litigation naming Edwards and Epstein. Epstein invested and lost money in a scheme in which investors bought stakes in the outcome of other people's litigation. A former partner of Edwards's law firm but not Edwards was convicted of promulgating that scheme and is in prison. However, litigation on that subject need not be discussed here, as it has no relevance to the tape in question, even if it was motivation for bringing the current Florida action.

Based on conversations he and others have had, the tape is sought by Edwards with the expectation that it contains inculpatory and incriminating statements by Epstein about his sexual conduct with minor females and that this would underscore the good faith basis of the lawsuits commenced by Edwards (already settled) and, presumably, the bad faith of Epstein's present suit against Edwards. Further, the tape is sought to demonstrate Epstein's lack of remorse and dislike of Edwards. Daily News resists releasing the tape

on relevance and reporter privilege/shield grounds (and perhaps out of an interest in protecting the privacy of other persons).

In support of opposition to the motion, counsel for Daily News has provided a typewritten transcript for in camera review. After carefully examining the transcript, I have not found the type of statements that Edwards expected the tape to contain. Accordingly, it is unnecessary to analyze or reach the reporters' privilege/shield arguments.

There shall be full disclosure of "all matter material and necessary in the prosecution or defense of an action" (CPLR 3101). Non-party discovery involves a showing of more than mere relevance, as non-parties should not ordinarily be burdened with responding to subpoenas in which they have no interest (see Kooper v. Kooper, 74 AD3d 6 [2d Dept 2010] [courts should consider various factors in determining whether discovery from a non-party is warranted, which must be based on something more than a showing of mere relevance, as non-parties should not ordinarily be burdened with responding to subpoenas in which they have no interest]; Tannenbaum v. City of New York, 30 AD3d 357 [1st Dept 2006] [lower court properly denied request to depose a non-party "since plaintiff failed to show special circumstances or that the information sought was relevant and could not be obtained from other sources."]).³

³The First Department previously held that it rejected Second Department precedent requiring a showing of special circumstances (see Schroeder v. Con Ed., 249 AD2d 69, 70 [1st Dept 1998] [the standard is whether the discovery is "material and

Here, Edwards has not demonstrated the tape is “material and necessary” to the Florida action and has certainly failed to make the heightened showing required for non-party discovery. The Ponzi scheme is not discussed in the conversation, and even assuming that the tape is sought to disprove Epstein’s claim that the civil lawsuits brought by the young women were fabricated,⁴ or, that Epstein lacks remorse (and has animus towards Edwards), I find nothing on the tape that supplements or underscores Epstein’s base and widely known criminal conduct, available from other sources⁵ or that would further reinforce Edwards’s bona fides in bringing the lawsuits on behalf of the young women he represented, or that would necessarily enhance punitive damages against Epstein. In other words, no matter how criminal and unsavory a character Epstein is, the tape neither further implicates nor exonerates him. Nevertheless, the effort to obtain the tape was, of course, not frivolous and Edwards had a reasonable expectation that it would be a far less studied and, perhaps, controlled conversation than it was.

necessary” and not whether special circumstances are demonstrated])).

⁴A reading of the complaint in the Florida action does not support Edward’s contention that he must prove that the actions which he settled with Epstein were not fabricated. Although the complaint alleges that these cases were weak and had minimal value, the complaint also acknowledges that these cases were not fictitious, and were used as “bait” for the marketing of non-existent settlements. In any event, the tape would not support Edward’s effort to demonstrate the bona-fides of those lawsuits, despite Epstein’s vague statement about coming “too close to the line.”

⁵Edwards acknowledges that deposition testimony from the young women in the actions which have settled is available to rebut any claim of fabrication, as well as other testimony.

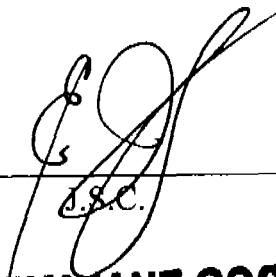
Accordingly, it is hereby

ORDERED that the motion is denied.

This constitutes the Decision and Order of the Court.

Dated: April 12, 2011

ENTER:



J.S.C.
EMILY JANE GOODMAN

FILED
APR 28 2011
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