

IN THE CIRCUIT COURT OF THE  
SEVENTEENTH JUDICIAL CIRCUIT  
IN AND FOR BROWARD COUNTY, FLORIDA

CASE NO.: CACE 15-000072

BRADLEY J. EDWARDS and  
PAUL G. CASSELL,

Plaintiffs/Counterclaim Defendants,

vs.

ALAN M. DERSHOWITZ,

Defendant/Counterclaim Plaintiff.

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**DEFENDANT ALAN M. DERSHOWITZ'S**  
**MOTION TO STAY FINANCIAL DISCOVERY**

Defendant Alan M. Dershowitz ("Dershowitz") respectfully moves this Court to issue a protective order to stay discovery of Dershowitz's personal finances purportedly relevant to the punitive damages claim asserted by Plaintiffs Bradley J. Edwards ("Edwards") and Paul G. Cassell ("Cassell") (together, "Plaintiffs"). The "net worth" and "punitive damages" discovery sought by Plaintiffs is not relevant to any liability issues in this defamation action. Moreover, such "net worth" and "punitive damages" discovery may well be mooted by dispositive motions. Even if such discovery is ultimately necessary, it can be quickly addressed after the Court rules on the sufficiency of Plaintiffs' punitive damages claim in connection with the parties' anticipated dispositive motions at the close of other fact discovery.<sup>1</sup> Requiring Dershowitz to respond to Plaintiffs' discovery now would be an enormous undertaking and would put Dershowitz's most sensitive personal financial information at risk of public disclosure, contrary

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<sup>1</sup> To date, Plaintiffs have merely alleged in their pleading a claim for punitive damages.

to the dictates of the Florida constitution. By contrast, Plaintiffs would suffer no harm if the “net worth” and “punitive damages” discovery were stayed until after the close of discovery relevant to liability and after the resolution of dispositive motions. Because Dershowitz’s constitutionally protected privacy interests vastly outweigh any possible harm to Plaintiffs, the Court should issue a protective order staying Dershowitz’s obligation to respond to the “net worth” interrogatories, the “punitive damages” document requests, and any further discovery that Plaintiffs may seek that is not relevant to liability.

### **FACTUAL BACKGROUND**

#### ***Plaintiffs’ “Net Worth” and “Punitive Damages” Discovery***

1. On November 24, 2015, Plaintiffs served more than 57 “Net Worth Interrogatories,” including numbered subparts (which number does not include all of the multiple, but not separately numbered, subparts within each of the “Net Worth Interrogatories”). Ex. A. This set of “Net Worth Interrogatories” is in addition to the 58 Interrogatories that Plaintiffs previously served on Dershowitz.

2. The “Net Worth Interrogatories” seek extraordinarily detailed personal financial information from Dershowitz dating back decades, including but not limited to the dates and costs of acquisition of all of Dershowitz’s stocks and bonds; the costs of improvements to any real property in which Dershowitz holds any interest, since the date of acquisition; and the current estimated fair market value of all of Dershowitz’s assets valued in excess of \$10,000.

3. In addition, on November 24, 2015, Plaintiffs served their sixth set of document requests in this case, which were comprised of twenty-six requests for production, not including subparts, purportedly for the purpose of “Punitive Damages.” Ex. B. Those Requests for Production are similarly onerous, purporting to seek, among other things, “[a]ll records

pertaining to the transfer of any money or property interest or financial interests made by you in the past three (3) years”; “[a]ll records pertaining to the acquisition, transfer and sale of all securities by you or on your behalf in for the past three (3) years, such records to include any and all information relative to gains or losses realized from transactions involving such securities”; and “[t]he bank ledger sheets in your possession, or accessible by you on the internet or otherwise, with respect to all bank accounts in which you have a right to withdraw funds, reflecting the highest balance in said accounts for each month during the 365 days preceding your receipt of this Request.”

#### ***Case Status***

4. At this time, Plaintiffs’ motion for partial summary judgment on liability is pending. That motion has not yet been scheduled for hearing.

5. In addition, the parties are conducting discovery relevant to liability. The depositions of Dershowitz and Cassell have begun but have not yet concluded. Edwards has not yet provided dates for his deposition to counsel for Dershowitz. Non-party ██████████ ██████████ will be deposed January 15, 2016. Dershowitz anticipates that at least 10 additional non-party depositions will be taken. Dershowitz has responded to 58 interrogatories and five separate sets of document requests. He has produced more than 6,950 pages of documents. Plaintiffs continue to propound written discovery requests on Dershowitz.

#### **ARGUMENT**

6. Pursuant to Fla. R. Civ. P. 1.280(c), the Court may make an order to protect a party from annoyance, embarrassment, oppression, or undue burden or expense that justice requires, including by ordering that discovery not be had or that discovery may be had only on specified terms and conditions. The scope and limitation of discovery is within the broad

discretion of the trial court. *SCI Funeral Servs. of Fla., Inc. v. Light*, 811 So. 2d 796, 798 (Fla. 4th DCA 2002). “In deciding whether a protective order is appropriate in a particular case, the court must balance the competing interests that would be served by granting discovery or by denying it.” *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 945 (Fla. 2002) (internal citations omitted).

7. Florida’s constitution contains an express right to privacy, which Florida courts have long recognized encompasses personal financial information. *Woodward v. Berkery*, 714 So. 2d 1027, 1035 (Fla. 4th DCA 1998). That “constitutional right of privacy undoubtedly expresses a policy that compelled disclosure through discovery be limited to that which is necessary for a court to determine contested issues ....” *Id.* at 1036. In that regard, the disclosure of personal financial information may cause irreparable harm to the disclosing party where it is not actually relevant. *See Elsner v. E-Commerce Coffee Club*, 126 So. 3d 1261, 1263 (Fla. 4th DCA 2013) (disclosure of personal financial information may cause irreparable harm to a person forced to disclose it in a case in which the information is not relevant); *Friedman v. Heart Inst. of Port St. Lucie, Inc.*, 863 So. 2d 189, 194 (Fla. 2003) (same); *Straub v. Matte*, 805 So. 2d 99, 100 (Fla. 4th DCA 2002) (same).

8. Here, Dershowitz’s personal financial information is relevant solely to Plaintiffs’ punitive damages claim. It has no relevance to any of the liability issues or other damages issues in this defamation case. Nor is it relevant to any of the other fact discovery that the parties are conducting. And, at this stage in the case, Plaintiffs have only alleged a punitive damages claim. There is no indication that the punitive damages claim will actually be submitted to the jury.

9. In addition, Plaintiffs currently have a motion for partial summary judgment pending with respect to Dershowitz’s liability. Dershowitz also currently plans to move for

summary judgment on the issue of his liability. If summary judgment were granted in Dershowitz's favor, any discovery regarding his personal financial information would be moot. Forcing Dershowitz to disclose his personal financial information at this time is premature and would cause unneeded annoyance, embarrassment, and oppression if the discovery were later not needed. The resulting harm would be irreparable. Moreover, Dershowitz's interest in protecting his personal financial information from unneeded public disclosure far outweighs Plaintiffs' interest in obtaining that information at this juncture of the case. Accordingly, it is appropriate for the Court to stay the "net worth" and "punitive damages" discovery until all other discovery is completed and the Court has had an opportunity to rule on Plaintiffs' motion and Dershowitz's anticipated motion.

10. To the extent that any discovery of personal financial information is permitted, the Court should issue a confidentiality order that precludes disclosure to the "world at large" of information protected by the constitutional right of privacy. *Woodward*, 714 So. 2d at 1038. The confidentiality order also should, among other protections, preclude Plaintiffs from even referencing any of Dershowitz's specific personal financial information in any public court filing in this action.

### **CONCLUSION**

11. As shown above, the Plaintiffs have served "net worth" and "punitive damages" discovery that is not relevant to any liability issues in dispute. In the event that dispositive motions at the close of discovery relevant to liability do not dispose of Plaintiffs' punitive damages claim, the financial discovery can be addressed in short order at that time. Plaintiffs would suffer no harm by delaying such discovery. On the other hand, requiring disclosure now could be used only to exert improper pressure on Dershowitz and would risk violating

Dershowitz's right to privacy that is protected by the Florida constitution. Therefore, the Court should issue a protective order to stay Dershowitz's obligation to respond to the "net worth" interrogatories, the "punitive damages" document requests, and any further discovery that Plaintiffs may seek that is not relevant to liability.

**CERTIFICATE OF CONFERRAL**

Pursuant to the Court's Rules and Florida Rules of Civil Procedure, the undersigned counsel certifies that he has made a good faith attempt to resolve this matter with opposing counsel prior to filing this motion, to no avail. The undersigned counsel will continue to try to resolve this motion prior to hearing.

Respectfully submitted,

Dated: December 29, 2015

s/ Thomas E. Scott

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been electronically filed through the Clerk of Broward County by using the Florida Courts eFiling Portal and thus served by electronic mail: [REDACTED], [REDACTED], [REDACTED] to: **Jack Scarola, Esq.**, Searcy Denney Scarola Barnhart & Shipley, P.A., Counsel for Plaintiff, 2139 Palm Beach Lakes Blvd., West Palm Beach, Florida 33409; [REDACTED] to: **Joni J. Jones, Esq.**, Assistant Utah Attorney General, Counsel for Plaintiff Cassell, 160 East 300 South, Salt Lake City, Utah 84114; [REDACTED] to: **Bradley J. Edwards, Esq.**, Farmer, Jaffe et al, 425 North Andrews Avenue, Suite 2, Ft. Lauderdale, FL 33301; [REDACTED], to: **Paul G. Cassell, Esq.**; [REDACTED], [REDACTED] to: **Sigrid S. McCawley, Esq.**, Boies Schiller & Flexner, LLP, 401 E. Las Olas Blvd, Suite 1200, Ft. Lauderdale, FL 33301, this 29<sup>th</sup> day of December, 2015.

By: s/Thomas E. Scott  
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