

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

Case No.: CACE 15-000072

EDWARDS, *et al.*,

Plaintiffs / Counterclaim Defendants,

vs.

DERSHOWITZ,

Defendant / Counterclaim Plaintiff.

**DEFENDANT ALAN M. DERSHOWITZ'S
OPPOSITION TO EMERGENCY MOTION TO SEAL**

Defendant Alan M. Dershowitz ("Dershowitz") respectfully files this opposition to non-party ██████████ ("████████") Emergency Motion to Seal, which seeks to hide from the public records a supporting Affidavit exhibit filed by Dershowitz as an attachment to his Motion in Limine. That Motion in Limine recounts communications between Dershowitz and counsel for non-party ██████████, David Boies, among others, and seeks a ruling on the admissibility of that evidence. Non-party ██████████ contends that the communications at issue were "settlement communications."

The relevant meetings between Dershowitz and counsel for non-party ██████████, David Boies, that are at issue and the subject of Dershowitz's Affidavit were not settlement discussions but rather were an attempt to resolve factual disputes between Dershowitz and ██████████, who are not directly involved in litigation with each other. However, even assuming that ██████████ characterization of the discussions as "settlement discussions" were correct, which it is not, there is absolutely no basis on which "settlement communications" qualify for filing under seal. The

Court rules on whether such discussions are admissible, but the evidence, admissible or not, is part of the public record.

As Plaintiffs' recently argued in persuading this Court to deny Dershowitz's motion to file under seal allegations that had been stricken by the United States District Court for the Southern District of Florida:

To be sure, Florida Rule of Judicial Administration 2.420 allows for the sealing of "confidential" materials. But the Rule begins by recounting the overarching principle that "[t]he public shall have access to all records of the judicial branch of government, except as provided below." Fla. R. Jud. Admin. 2.420(a). This rule is a codification of the Florida Supreme Court's admonition that "a strong presumption of openness exists for all court proceedings. A trial is a public event, and the filed records of court proceedings are public records available for public examination." *Barron v. Florida Freedom Newspapers, Inc.*, 531 So.2d 113, 118 (Fla. 1988) (emphasis added). In light of this presumption of openness, "[t]he burden of proof in [closure] proceedings shall always be on the party seeking closure." *Id.* To obtain a sealing order, the party seeking sealing must carry a "heavy burden." *Id.*

See Pls. Resp. to Dershowitz's Mot. To Determine Confidentiality of Court Records, filed on Nov. 23, 2015 at 2.

This Court agreed, ruling that: "Documents should not be sealed. Presumption of openness trumps any desire to seal the documents."

██████ makes no pretense of attempting to carry her "heavy burden." ██████ fails to cite a single applicable exception to the "presumption of openness" that might somehow justify her motion.¹ Indeed, ██████ repeatedly has invoked the presumption of openness by repeatedly

¹ Under Florida Rule of Judicial Administration, in addition to records made confidential by statute, law, and other limited provisions, courts may allow certain court documents to be deemed confidential and filed under seal where confidentiality is required to:

- (i) prevent a serious and imminent threat to the fair, impartial, and orderly administration of justice;
- (ii) protect trade secrets;
- (iii) protect a compelling governmental interest;
- (iv) obtain evidence to determine legal issues in a case;
- (v) avoid substantial injury to innocent third parties;
- (vi) avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the

filing affidavits that contain allegations that the federal court has stricken as “lurid” and impertinent. Her public filings in this case contain the most heinous accusations against Dershowitz. Yet, she is attempting in this motion to prevent him from publicly filing a sworn statement which has the effect of answering those charges. Regardless, [REDACTED] motion must be denied because it simply abdicates altogether her heavy burden to show why the Motion in Limine and supporting exhibits, including the Affidavit of Alan M. Dershowitz, must be filed under seal.

Instead, [REDACTED] confuses the concept of “admissibility” at trial with the concept of “discoverability.” The cases [REDACTED] relies upon – *Sea Cabin, Inc. v. Scott, Bark, Royce & Harris, P.A.*, 496 So.2d 163 (Fla. 4th DCA 1986), and *Stamm v. Stamm*, 489 So. 2d 851 (Fla. 5th DCA 1986), are both quoted in [REDACTED] motion for the proposition that settlement proposals are not admissible into evidence for the purposes of proof of liability. Putting aside the fact that there is no settlement proposal reflected in Dershowitz’s affidavit, there is also no issue before the court of admission of that affidavit into evidence for the purpose of proving liability. Instead, the issue presented in the motion is whether [REDACTED] baseless objections to the discovery before trial of those communications between Dershowitz and Boies and others as somehow “privileged” should be overruled. The cases on which [REDACTED] relies did not seal anything; they simply held that evidence in the public record could not be admitted at trial.

[REDACTED] also fails to comply with the Amended Administrative Order As To Circuit Civil And County Civil Emergency Matters because she fails to show “irreparable harm, death or result in a manifest injury if immediate relief is not afforded.” As demonstrated in Dershowitz’s

specific type of proceeding sought to be closed; [or]
(vii) comply with established public policy set forth in the Florida or United States Constitution or statutes or Florida rules or case law[.]
Fla. R. Jud. Admin. 2.420(c)(9)(A).

Motion in Limine, the disputed objections was made by [REDACTED] during Dershowitz's deposition on October 15 and 16. [REDACTED] counsel asserted that she would bring the objection to the attention of the Court, and then failed to do so for nearly two months. That is the exact opposite of any "emergency."

CONCLUSION

The Court should deny Non-Party [REDACTED] Emergency Motion to place Plaintiff Alan Dershowitz's Affidavit exhibit filed as an attachment to his Motion in Limine under seal.

Respectfully submitted,

/s/ Steven R. Safra

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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 (email) at email address: [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, as well as [REDACTED] to: **Joni J. Jones, Esq.**, Assistant Utah Attorney General, Counsel for Plaintiff Cassell, 160 East 300 South, Salt Lake City, Utah 84114, as well as [REDACTED] to: **Sigrid McCawley, Esq.**, Boies, Schiller & Flexner LLP, 401 East Las Olas Blvd., Suite 1200, Fort Lauderdale, Florida 33301, this 11th day of December, 2015.

By: s/Steven R. Safra

STEVEN R. SAFRA

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