

ON APPEAL



A16 dailybusinessreview.com
THURSDAY, APRIL 6, 2017

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It's Boies vs. Dershowitz in Fourth District Appeal

by Noreen Marcus

... An unusual offshoot of a high-profile case is pending in the Fourth District Court of Appeal.

The appeal piggies back on a two-way

defamation action settled last year by

Alan Dershowitz, the retired Harvard

law professor and lawyers for

Boies, 34, who say she was

sexually exploited by billionaire Jeffrey

Epstein and others in his circle when

she was a teenager.

The appeal concerns David Boies, the

powerful head of Boies Schiller Flexner

His law partner, Sigit

McCauley, who repre-

sents Roberts, wants

Dershowitz sanc-

tioned for contempt of

court for allegedly vio-

lating the confidential-

ity of settlement talks

between Boies and

Dershowitz. She said

in a court filing that

Dershowitz displayed

"flagrant bad-faith lit-

igation conduct" during his deposition in

the defamation case and in an interview

with the New York Times.

Dershowitz, a friend of Epstein's,

helped negotiate a controversial plea

deal for Epstein with

McCauley attended

Dershowitz's Oct. 15,

2015, deposition in

Fort Lauderdale and

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claim Boies told

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Boies. Broward Circuit Judge Thomas

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"The general rule is, if you want to be heard in a lawsuit, you have to formally intervene into that lawsuit, and if you have some problem with somebody who's in that lawsuit, you have to sue him," said Miami appellate lawyer Joel Perwin.

dition to Dershowitz, the respondents are Bradley Edwards of Fortner Jaffe Weissing Edwards Pistos & Lehman in Fort Lauderdale and Paul Cassell, a law professor and former federal judge from Utah. They are lawyers in a West Palm Beach federal court challenge to the plea bargain that put Epstein behind bars — only at night — for about a year when he might have faced decades in prison. Dozens of women have made allegations similar to those McCauley represents. Since McCauley also represents Edwards and Cassell disbarred for mak-

He explained why in a December 2015 interview with the New York Times. "This is very serious. It involves my life, my legacy, my career, my history, my reputation," Dershowitz said. The Broward Circuit Court defama-

tion case started with Edwards filing an affidavit detailing claims about Dershowitz in the plea bargain lawsuit. U.S. District Judge Kenneth Marra to strike the allegations and voting to get

helped negotiate a controversial plea deal for Epstein with federal prosecutors.



Dershowitz

McCawley attended Dershowitz's Oct. 15, 2015, deposition in Fort Lauderdale and heard Dershowitz claim Boies told Dershowitz that Boies didn't believe [REDACTED]

accusations about an Epstein underage sex ring.

"Mr. Dershowitz's description of what was said is not true," Boies said in a statement released after the deposition.

At the deposition, McCawley objected to Dershowitz recounting his talk with Boies. Broward Circuit Judge Thomas Lynch held a hearing, the defamation case was settled, Lynch dismissed McCawley's motion for sanctions, and everybody went to the Fourth District. [REDACTED] never formally intervened in the lawsuit.

The appellate court set oral argument for May 9 but recently requested briefing on the issue of how Roberts, a nonparty

[REDACTED] APPELLANT,
V. BRADLEY EDWARDS ET AL.

APPELLEES

Case No. [REDACTED]

Oral argument: May 9, 2017

Case type: Contempt of court

Court: Fourth District [REDACTED] of Appeal

Lawyer for petitioner: Signid McCawley, Boies Schiller Flexner, Fort Lauderdale

Lawyers for respondent: (for Alan Dershowitz) Bruce Rogow and Tara Campion, Bruce S. Rogow PA, Fort Lauderdale; Richard Simpson, Wiley Rein, Washington

Originating court: Broward Circuit Court

"The general rule is, if you want to be heard in a lawsuit, you have to formally intervene into that lawsuit, and if you have some problem with somebody who's in that lawsuit, you have to sue him," said Miami appellate lawyer Joel Perwin.

in the defamation case, has standing to appeal. Depending on what the court decides about standing, it could dismiss the appeal, confine the oral argument to this preliminary question, or glide past it and have both sides address the contempt-of-court claim.

NO STANDING ALLOWED?

The Daily Business Review asked Miami appellate lawyer Joel Perwin, who is not involved in the case, for his take on standing.

"The general rule is, if you want to be heard in a lawsuit, you have to formally intervene into that lawsuit, and if you have some problem with somebody who's in that lawsuit, you have to sue him," Perwin said.

He explained the underlying policy. "The structure of the lawsuit is defined by the people who are suing" and who must accept the result. There may be an exception if a court order impacts a nonparty, "but otherwise we're going to confine the process, the right to be heard and the outcome, to the parties to the lawsuit," Perwin said.

McCawley is representing [REDACTED] interests in the privacy of the settlement discussion between Dershowitz and Boies. She's also representing Boies "by extension," she suggested in court papers. McCawley did not return a call seeking comment by deadline.

A casual observer reading the Fourth District docket might be perplexed about who's fighting whom here. In ad-

dition to Dershowitz, the respondents are Bradley Edwards of Farmer, Jaffe, Weissing, Edwards, Fistos & Lohman in Fort Lauderdale and Paul Cassell, a law professor and former federal judge from Utah. They are [REDACTED] lawyers in a West Palm Beach federal court challenge to the plea bargain that put Epstein behind bars — only at night — for about a year when he might have faced decades in prison. Dozens of women have made allegations similar to [REDACTED]

Since McCawley also represents [REDACTED], it looks like one [REDACTED] lawyer is appealing the actions of two other lawyers.

But that's a misleading conclusion to draw from a legal formality, according to Perwin. He noted Edwards and Cassell sued Dershowitz on their own behalf, not for their client, and said McCawley had to list them in order to use the defamation case as a vehicle.

"There's really no significance to the fact that the plaintiffs in this lawsuit represent Roberts in some other lawsuit in my opinion," Perwin said.

DERSHOWITZ ON OFFENSE

There's no confusion about the hostility between Boies and Dershowitz, or what vital interests Dershowitz is fighting to protect.

[REDACTED] has accused Dershowitz, along with Epstein, of sexually assaulting her when she was a teenager. At every turn of the litigation involving [REDACTED] claims, Dershowitz fired back hard.

He explained why in a December 2015 interview with the New York Times. "This is very serious. It involves my life, my legacy, my career, my history, my reputation," Dershowitz said.

The Broward Circuit Court defamation case started with Edwards filing an affidavit detailing [REDACTED] claims about Dershowitz in the plea bargain lawsuit. Dershowitz responded by persuading U.S. District Judge Kenneth Marra to strike the allegations and vowing to get Edwards and Cassell disbarred for making them.

Dershowitz initiated a massive public media assault on the reputation and character of [REDACTED] and Cassell, according to the Broward lawsuit. Dershowitz filed a counterclaim.

Terms of the settlement reached in April 2016 were confidential.

Boies has won a preliminary round in the Fourth District. Dershowitz charged McCawley breached an appellate court rule by claiming without record evidence that Dershowitz "intentionally and wrongfully" filed a false affidavit in the defamation case. The affidavit reiterated Dershowitz's description of the talk he had with Boies, which is at the center of the appeal.

The court ruled against Dershowitz on Jan. 10.

What happens next is up to the Fourth District.

Noreen Marcus is a freelance writer in Miami.