2015 WL 1655607 (Fla.Cir.Ct.) (Trial Motion, Memorandum and Affidavit)
Circuit Court of Florida.
Seventeenth Judicial Circuit
Broward County

Bradley J. EDWARDS, et al.,
v.
Alan M. DERSHOWITZ.

No. 15-000072.
March 2, 2015.

Counter-Defendants' Motion to Dismiss Counterclaim

Jack Scarola, Florida Bar No.: 169440, Searcy Denney Scarola Barnhart & Shipley, P.A., 2139 Palm Beach Lakes Boulevard, West Palm Beach, Florida 33409, Phone: [redacted] Fax: [redacted], Attorney E-Mail(s): jsx [redacted] and [redacted], Primary E-Mail: [redacted], for plaintiffs/counter-defendants

Plaintiffs/Counterclaim-defendants Bradley J. Edwards and Paul G. Cassell, by and through their undersigned counsel, hereby move to dismiss the Counterclaim of defendant/counterclaim-plaintiff Alan M. Dershowitz.

Edwards and Cassell have filed a complaint against Dershowitz arising out of Dershowitz's international defamatory assault on Edwards and Cassell. In response, Dershowitz has filed a counterclaim alleging two counts of defamation by Edwards and Cassell: Count I, concerning statements in a pleading filed in federal court; and Count II, concerning Edwards and Cassell's alleged adoption of those statements in comments to various media sources. As a matter of law, the Court must dismiss Dershowitz's Counterclaim. With regard to Count I. the statements Edward and Cassell filed in federal court on behalf of their client are absolutely protected under the litigation privilege. With regard to Count II, the limited statements are not defamatory and, in any event, are protected under both the fair report privilege and the litigation privilege.

BACKGROUND

The events underlying this defamation case arise from a lawsuit filed by attorneys Edwards and Cassell in 2008 in the U.S. District for the Southern District of Florida on behalf of two clients, Jane Doe No. 1 and Jane Doe No. 2. These two women alleged that they had been sexually abused by a wealthy Palm Beach financier, Jeffrey Epstein, and that the federal government had reached a secret plea arrangement with him preventing his federal prosecution for those crimes. The two victims alleged that this arrangement violated their rights under the Crime Victims Rights Act (CVRA), 18 U.S.C. § 3771. The case has moved forward through various discovery proceedings and other events, with the victims prevailing against efforts by the federal Government and Jeffrey Epstein to end the case or prevent discovery into the surrounding circumstances. *See, e.g., Does v. United States*, 817 F.Supp.2d 1337 (S.D. Fla. 2011) (allowing discovery by the victims); *Does v. United States*, 950 F.Supp.2d 1262 (S.D. Fla. 2013) (rejecting Government's motion to dismiss); *Doe No. 1 v. United States*, 749 F.3d 999 (11th Cir. 2014) (rejecting Epstein's argument that plea negotiations are barred from disclosure to the victims).

On December 30, 2014, Edwards and Cassell filed a motion on behalf of a third client -Jane Doe No. 3 - seeking joinder in the action. *See* Jane Doe No. 3's Motion Pursuant to Rule 21 for Joinder in Action, *Does v. United States*, No.

9:08-cv-80736-KAM (DE 279). Several days later, they filed a corrected motion, fixing the signature block on the pleading (DE 280). Jane Doe No. 3 alleged in her motion that she was the victim of sexual offenses committed by Jeffrey Epstein, including the offense of sex trafficking. She alleged that Epstein had trafficked her to other wealthy and powerful persons, including one of the defense attorneys who had helped negotiate the plea arrangement: Alan Dershowitz.

In the days that followed, Dershowitz made numerous statements on television programs and in other media attacking Jane Doe No. 3 and her attorneys. Dershowitz called Jane Doe No. 3 "a serial liar" who "has lied through her teeth about many world leaders." http://www.cnn.com/2015/01/06/us/dershowitz-sex-allegation/. Of particular relevance here, Dershowitz also repeatedly called legal counsel for Jane Doe No. 3 "two sleazy, unprofessional, disbarable lawyers." *Id.* Dershowitz made statements to the effect that"[t]hey [Edwards and Cassell] are lying deliberately, and I will not stop until they're disbarred," *Boston Globe* -January 4, 2015.

On January 6, 2015, Edwards and Cassell filed this action, alleging that Dershowitz had defamed them by attacking their honesty and integrity in the course of their representation of their client. On February 10, 2015, Dershowitz filed an answer to the complaint, denying that he had defamed Edwards and Cassell. He also filed a two-count counterclaim. Count 1 was entitled False Allegations in Joiner Motion, and alleged that Edwards and Cassell had placed "irrelevant, defamatory and false allegations about Dershowitz" in the motion. ¶ 23. Count II was entitled-extra judicial statements, and alleged that Edwards and Cassell had defamed Dershowitz by making statements to the media such as "w[e] carefully investigate all of the allegations in our pleadings before presenting them." ¶ 31. Count II contended that Edwards and Cassell had "created a false impression" by making such statements. ¶ 38.

ARGUMENT

Count I of counterclaim fails to state any grounds for relief, since it rests on statements made in the course of federal judicial proceedings that are immune from defamation action. Count II of the counterclaim fails to state any grounds for relief, since it rests on statements that are reasonably related to the CVRA litigation, are not defamatory and that are, in any event, protected by the fair report privilege.

I. Legal Standards for a Motion to Dismiss.

"The primary purpose of a motion to dismiss is to request the trial court to determine whether the complaint properly states a cause of action upon which relief can be granted and, if it does not, to enter an order of dismissal." *Fox v. Professional Wrecker Operators of Florida, Inc.*, 801 So. 2d 175, 178 (Fla. 5th DCA 2001) (citing *Provence v. Palm Beach Taverns, Inc.*, 676 So. 2d 1022, 1024 (Fla. 4th DCA 1996)). Florida law is well settled that in order to withstand a motion to dismiss, the complaint must state "ultimate facts sufficient to indicate the existence of a cause of action." *Greenwald v. Triple D Properties, Inc.*, 424 So. 2d 185 (Fla. 4th DCA 1983); *see also* Fla. Rule Civ. P. 1.110(b)(2) ("pleading which sets forth a claim for relief must state a cause of action and shall contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief). It is also "a fundamental principle of pleading that the complaint, to be sufficient, must allege ultimate facts as distinguished from legal conclusions which, if proved, would establish a cause of action ...." *Maiden v. Carter*, 234 So 2d 168, 170 (Fla. 1st DCA 1970). In other words, "[t]he question for the trial court to decide is simply whether, assuming all the allegations in the complaint to be true, the plaintiff would be entitled to the relief requested." *Cintron v. Osmose Wood Preserving, Inc.*, 681 So. 2d 859, 860-61 (Fla. 5th DCA 1996).

II. Count I Must Be Dismissed Because It Rests on Statements Edwards and Cassell Made in the Course of Representing a Client During a Judicial Proceeding Which Are Absolutely Immune from Suit.

Florida's litigation privilege extends to attorneys absolute privilege from civil liability for statements made in judicial proceedings. *See Levin, Middlebrooks, Moves & Mitchell, P.A. v. U.S. Fire Ins. Co.*, 639 So.2d 606, 608 (Fla. 1994). As the Florida Supreme Court has explained, "Traditionally, defamatory statements made in the course of judicial proceedings are absolutely privileged, no matter how false or malicious the statements may be, so long as the statements are relevant to the subject of inquiry." *Id.* at 607-08. The litigation privilege "arises immediately upon the doing of any act required or permitted by law in the due course of the judicial proceedings or as necessarily preliminary thereto." *Fridovich v. Fridovich*, 598 So. 2d 65 (Fla. 1992). The common law has long recognized such a privilege for attorneys. *See Burns v. Reed*, 500 U.S. 478, 489-90 (1991) ("lawyers were absolutely immune from damages liability at common law for making false or defamatory statements in judicial proceedings (at least so long as the statements were related to the proceedings)...."); *Restatement (Second) of Torts* § 586 (1977) ("An attorney at law is absolutely privileged to publish defamatory matter concerning another in communications … during the course and as a part of, a judicial proceeding in which he participates as counsel, if it has some relation to the proceeding.").

That the litigation privilege protects Edwards and Cassell against suit here is apparent from the face of Dershowitz's Counterclaim. Count I is styled "False Allegations *in the Joinder Motion"* (emphasis added). If the litigation privilege means anything, it must mean that attorneys are free to make allegation on behalf of their clients in a legal pleading - i.e., in the federal court joinder motion. Florida law has long recognized that attorneys must have immunity for statements they make in the course of judicial proceedings in order for a "free adversarial atmosphere to flourish, which atmosphere is so essential to our system of justice." *Sussman v. Damian*, 355 So.2d 809, 811 (Fla. 3rd DCA 1977).[1] Thus, "[i]n fulfilling their obligations to their client and to the court, it is essential that lawyers, subject only to control by the trial court and the bar, should be free to act on their own best judgment in prosecuting or defending a lawsuit without fear of later having to defend a civil action for defamation for something said or written during the litigation. A contrary rule might very well deter counsel from saying or writing anything controversial for fear of antagonizing someone involved in the case and thus courting a lawsuit, a result which would seriously hamper the cause of justice." *Id.; see also* David Elder, *Defamation: A Lawyer's Guide* § 2:5 (2014) (absolute immunity for attorney statements "is justified by the public policy which necessitates free and unencumbered exchange of statements in judicial proceedings in order to assist courts in the truth-seeking process. Any other rule would unduly stifle participants and clog the courts with a multiplicity of suits emanating from prior litigation.").[2]

At various points in the counterclaim, Dershowitz advances the argument that the allegations in the joinder motion are somehow "irrelevant" to the federal proceeding. But Jane Doe No. 3 has asserted in her currently-pending federal court pleadings nine different ways in which the allegations against Dershowitz are directly relevant to the case. *See* Plaintiff's Resp. to Motion for Limited Intervention by Alan M. Dershowitz, *Jane Does v. United States*, No. 9:08-cv-80736-KAM, DE 291 at 17-26 & n.17 (Jan. 21, 2015). Indeed, in her pleading, Jane Doe No. 3 notes that Dershowitz himself has claimed in the media that he was "targeted" by Jane Doe No. 3 because "that could help [her] blow up the [plea] agreement." *Id.* at 23. The Court can take judicial notice that rescission of the plea agreement - or, as Dershowitz colorfully puts it, "blowing up" that agreement - is the goal of the federal lawsuit. His identity as an attorney who helped negotiate that agreement is thus highly relevant to the federal case - and was appropriately included in the pleadings.

Dershowitz's claims of "irrelevancy" also misstate the applicable test for what materials are protected by the litigation privilege. The proper test is "not technical legal relevancy but instead a general frame of reference and relationship to the subject matter of the action," *Flugge v. Wagner*, 532 N.W.2d 419, 422 (S.D. 1995). The appropriate inquiry is thus not whether the allegations were relevant to the case, but only whether they were "pertinent": "Only those statements that are so palpably irrelevant to the subject matter of the controversy that no reasonable man can doubt their irrelevancy and impropriety are not covered by the [litigation] privilege." *Miller v. Reinert*, 839 N.E.2d 731, 735 (Ind. Ct. App. 2005). The statements in question are clearly pertinent to the federal action.

Finally, at various points in the Counterclaim, Dershowitz alleges that Edwards and Cassell somehow defamed him by alerting the media to the case[3] or providing copies of their December 30 pleading to the media. But this sweeping argument is not the law, as otherwise every law firm website containing recently-filed pleadings would become actionable. *Cf. Cargill Inc. v. Progressive Dairy Solutions, Inc.*, No. CVF-07-0349-LJO-SMS, 2008 WL 2235354, at *6 (E.D. Cal. May 29, 2008) (no defamation action for posting filed complaint on company website). Courts have recognized that "mere delivery of

pleadings in pending litigation to members of the news media does not amount to a publication outside of the judicial proceedings, resulting in the waiver of the absolute privilege. The harm resulting to a defamed party from delivery of pleadings in a lawsuit to the news media could demonstratively be no greater than if the news media found the pleadings on their own. Likewise, we conclude that advising the media that a lawsuit has been filed, including a basic description of the allegations, has no practical effect different from providing the pleadings to the media." *Dallas Indep. Sch. Dist. v. Finlan*, 27 S.W.3d 220, 239 (Tex. App. 2000) (internal citation omitted); *accord Designing Health, Inc. v. Erasmus*, 2001 U .S. Dist. LEXIS 25952, 12-13, 2001 WL 36134085 (C.D.Cal.2001) (letter and news release to publications announcing suit for misappropriation of trade secrets and other claims were protected by the litigation privilege "because they simply informed the recipients of the pendency of the litigation and the claims asserted").

All these well-settled principles lead inexorably to the conclusion that Dershowitz has no viable cause of action for statements made in and statements directly concerning the judicial pleadings. Indeed, Dershowitz himself has admitted this very conclusion! In an op-ed in the *Wall Street Journal*, Dershowitz discussed his options for challenging the allegations against him: "Well, at least you can sue for defamation the two lawyers and the woman who made the false charges. No, you can't your lawyer tells you. They leveled the accusation in a court document, which protects them against the defamation lawsuit as a result of the so-called litigation privilege." Alan M. Dershowitz, A Nightmare of False Accusation that Could Happen to You, *Wall St. J.*, Jan. 14, 2015 (http://www.wsj.com/articles/alan-m-dershowitz-a-nightmare-of-false-accusation-that-could-happen-to-you-1421280860). The Court should simply apply the litigation privilege that Dershowitz himself has acknowledged is applicable here and dismiss Counts I and II of Dershowitz's Counterclaim based on that privilege.

III. Count II Must Be Dismissed Because It Involves Statements That Are Not Defamatory and are Protected Under the Fair Report Privilege.

Perhaps recognizing that the allegations about the judicial pleadings will not be actionable, Dershowitz moves on to lodge a second count - Count II - which involves statements made by Edwards and Cassell to the media. But here Dershowitz faces a seemingly insurmountable problem: Edwards and Cassell have refused to comment publicly about Jane Doe No. 3's allegations against Dershowitz, preferring instead to simply litigate the matter in court. As a result, Dershowitz is forced rely on the attenuated claim that in making statements that they were not going to comment publicly, Edwards and Cassell somehow "created a false impression" (¶ 38) or "implied" (39) allegations about him. This claim, too, is without merit, because the limited statements they made are not defamatory as a matter of law. And, in any event, any "impression" Edwards and Cassell created was simply a fair report of a judicial filing. The Court should accordingly also dismiss Count II.

A. Edwards and Cassell's Out of Court Statements Do Not Make Allegations Against Dershowitz and are Thus Not Defamatory as a Matter of Law.

At the heart of Count II is the following statement that Edwards and Cassell provided to various media *refusing to comment on the particulars involving Dershowitz.* Edwards and Cassell provided this statement in response to inquiries from media who had heard Dershowitz attack them and called for comment. Edwards and Cassell expressly refused comment on "specific claims" because they did not want to "litgate[] in the press":

Out of respect for the court's desire to keep this case from being litigated in the press, we are not going to respond at this time to specific claims of indignation by anyone. As you may know, we are litigating a very important case, not only for our clients but crime victims in general. We have been informed of Mr. Dershowitz's threats based on the factual allegations we have made in our recent filing. *We carefully investigate all of the allegations in our pleadings before presenting them. We have also tried to depose Mr. Dershowitz on these subjects, although he has avoided those deposition requests.* Nevertheless, we would be pleased to consider any sworn testimony and documentary evidence Mr. Dershowitz would like to provide which he contends would refute any of our allegations.

The point of the pleading was only to join two of our clients in the case that is currently being litigated, and while we expected an agreement from the Government on that point, we did not get it. That disagreement compelled us to file our motion. We intend only to litigate the relevant issues in Court and not to play into any sideshow. We feel that is in our clients' best interest and consequently that is what we are doing,

We have every intention of addressing all of the relevant issues in the course of proper legal proceedings. Toward that end we have issued an invitation (a copy of which is attached below) to Alan Dershowitz to provide sworn testimony and any evidence he may choose to make available regarding the facts in our recent pleading that relate to him. The invitation has been extended by Jack Scarola, who is familiar with the issues. We would obviously welcome the same cooperation from Prince Andrew should he choose to avail himself of the same opportunity.

Paul Cassell and Brad Edwards, co-counsel for Jane Doe #3. Counterclaim, ¶ 31 (first emphasis in bold added; emphasis in italics in original).[4]

The first element of a defamation claim is a false and defamatory statement concerning another. *Thomas v. Jacksonville Television, Inc.*, 699 So. 2d 800, 803 (Fla. 1st DCA 1997). As a matter of law, the statement Dershowitz complains about does not amount to defamation. Indeed, the opening sentence makes clear that "to keep this case from being litigated in the press, we are not going to respond at this time to specific claims of indignation from anyone." Thus, the passage is not addressing the kinds of "specific claims" that Dershowitz is concerned about.

The two specific sentences that Dershowitz highlights are not defamatory and do not concern him. First, the statement "[w]e carefully investigate all of the allegations in our pleadings before presenting them" is simply a description of Edwards and Cassell's approach to lawyering; it does not specifically apply to Dershowitz - much less defame him. Second, the statement "[w]e have also tried to depose Mr. Dershowitz on these subjects, although he has avoided those deposition requests" is a description of the course of litigation that is not defamatory.[5]

Whether the statements in questions are defamatory must also be considered by looking at the context of the statements as a whole. Immediately following the two sentences Dershowitz challenges, Edwards and Cassell specifically stated that they "would be pleased to consider any sworn testimony and documentary evidence Mr. Dershowitz would like to provide which he contends would refute any of our allegations." This sentence reinforces the fact that Edwards and Cassell were not making specific *substantive* claims in the press release about whether or not sexual abuse had or had not occurred, but rather were making *procedural* representations about how they were handling the case and what types of evidence they were prepared to examine. As lawyers with obligations to continue to monitor their legal allegations for falsity, Edwards and Cassell also made clear that they would review any counter evidence from Dershowitz. The Court can take judicial notice of the fact - and should consider - that in the two months since that invitation, Dershowitz has not provided any such evidence to Edwards and Cassell. Indeed, he has refused to even comply with mandatory discovery requests for this information. **See Plaintiffs' contemporaneously filed Motion to Compel.**

Dershowitz also relies on Edwards and Cassell's statement that "[w]e have requested an opportunity to meet with the U.S. Attorney's Office for the Southern District of Florida so that we can seek their assistance in presenting evidence (including evidence possessed by the government) that will help Jane Doe #3 respond to these unfair attacks." Counterclaim, ¶ 34. Stating that attorneys have requested to meet with prosecutors to gather evidence on behalf of their client is not defamation.

Equally meritless is Dershowitz's argument that Cassell defamed him by "suggesting specific questions [a BBC reporter should] … ask Dershowitz in interviews." Counterclaim, ¶ 30. Dershowitz fails to set out any specific question, which is itself grounds for dismissal. *See Lipsig v. Ramlawi*, 760 So. 2d 170, 184 (Fla. 3rd DCA 2000) ("[t]he general rule in Florida is that allegedly defamatory words should be set out in the complaint for the purpose of fixing the character of the alleged libelous publication as being libel as per se." (internal quotation omitted)). But more fundamentally, suggesting a question for a reporter to ask is simply not defamation. That the ultimate recipient of a question from the media may prefer "not [to]

answer the questions … is not sufficient to support his defamation claim. Indeed.... it is the paradigm of a properly functioning press." *Abbas v. Foreign Policy Grp., LLC*, 975 F. Supp. 2d 1, 16-17 (D.D.C. 2013); *see also Phantom Touring, Inc. v. Affiliated Publ'ns*, 953 F.2d 724, 730 (1st Cir. 1992) (holding that statements in a series of articles published in the *Boston Globe*, including a rhetorical question regarding whether plaintiff was "trying to score off the success of Andrew Lloyd Webber's 'Phantom"' were not defamatory because they "reasonably could be understood only as [the author's] personal conclusion about the information presented, not as a statement of fact"). As one appellate court explained, "inquiry itself, however embarrassing or unpleasant to its subject, is not accusation." *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1094 (4th Cir. 1993).

Whether statements can be reasonably interpreted as defaming a plaintiff is a question of law for the court. *Art. of Living Foundation v. Does*, 2011 WL 2441898 (N.D. Cal. 2011). As a matter of law, the narrow media statements that Dershowitz highlights simply do not defame him.

B. Any Impression Edwards and Cassell Created Was Simply a "Fair Report" of a Filed Judicial Document.

The Court must also dismiss Count II because any "impression" created by Edwards and Cassell was simply a description of the pleadings that had been filed in court. Absolute privilege attaches to a fair report of judicial proceeding. Count II must be dismissed for this reason as well.

The fair report privilege provides that a publication of defamatory matter concerning another in a report of an official proceeding is privileged if the report is accurate and complete or a fair abridgement of the occurrence reported. *See Restatement (Second) of Torts* § 611 (1977). As Florida case law recognizes, the privilege extends to the publication of even the otherwise defamatory contents of official documents, as long as the account is reasonably accurate and fair. See, *e.g., Rasmussen v. Collier Cnty. Pub. Co.*, 946 So. 2d 567, 571 (Fla. 2d DCA 2006). The privilege is most commonly exercised by newspapers and others who are in the business of reporting news to the public. It is not, however, limited to the media, but extends more broadly to any person who makes an oral, written or printed report to pass on the information that is available to the general public. *See Restatement (Second) of Torts* § 611, cmt. c (1977). The privilege also applies even in situations where the person republishing the information knows them to be false. *Restatement (Second) of Torts* § 611 cmt. a (1967).[6]

The fair report privilege applies to judicial proceedings. *See, e.g., Harper v. Walters*, 822 F. Supp. 817, 824, (D.D.C. 1993), *aff'd*, 74 F.3d 1296 (D.C. Cir.), *cert. denied*, 519 U.S. 809 (1996). Dershowitz's counterclaim alleges that that Edwards and Cassell somehow created a "false impression" by referencing those judicial pleadings. But Edwards and Cassell are certainly entitled to fairly report on those pleadings, particularly where they did nothing more than respond to inquiries from the media. All Edwards and Cassell reported was that they had properly filed pleadings in the federal case. Such a limited statement is not actionable under the fair report privilege, and thus the counterclaim must be dismissed on this ground as well.

CONCLUSION

The Court should dismiss both Counts of Dershowitz's Counterclaim for failure to state a claim on which relief can be granted.

I HEREBY CERTIFY that a true and correct copy of the foregoing was sent via E-Serve to all Counsel on the attached list, this 2ND day of March, 2015.

<<signature>>

Jack Scarola

Florida Bar No.: 169440

Attorney E-Mail(s): [redacted] and

[redacted]

Primary E-Mail: [redacted]

Searcy Denney Scarola Barnhart & Shipley, [redacted].

2139 Palm Beach Lakes Boulevard

West Palm Beach, Florida 33409

Phone: [redacted]

Fax: [redacted]

Attorneys for Plaintiffs/Counter-Defendants

COUNSEL LIST

Thomas Emerson Scott, Jr., Esquire

[redacted];

[redacted]

Cole Scott & Kissane P.A.

9150 S Dadeland Boulevard Suite 1400

Miami, FL 33156

Phone: [redacted]

Fax: [redacted]

Attorneys for Defendant/Counter-Plaintiff

Footnotes

1 While Florida courts recognize broad immunity for attorneys pursuing the legitimate interests of their clients, *see. e.g.*, *Wolfe v. Foreman*, 128 So.3d 67 (3rd DCA 2013) (dismissing malicious prosecution claim against attorneys), different considerations apply when a client deliberately presents false claims to an attorney. Such misconduct directly implicates the client in the longstanding tort of malicious prosecution. *See Restatement (Second) of Torts* § 587, cmt. (a) (noting tort of malicious prosecution for "the wrongful *initiation* of the proceedings").

[2] In his Counterclaim, Dershowitz also complains about the styling of the signature block by attorney Cassell on the December 30, 2014 pleading, arguing that he did not drop a footnote explaining that the University of Utah was not institutionally endorsing the pleading. But whether or not Cassell styled his signature block correctly did not defame Dershowitz. In any event, Cassell added that standard disclaimer to his signature block on January 2, 2015, so the omission is at most a minor inaccuracy and not actionable. *See Florida Standard Jury Instructions—Civil Cases (No. 00-1)*, 795 So.2d 51, 57 (Fla.2001) (instructing juries to "disregard any minor inaccuracies that do not affect the substance of the statement."). In addition, the missing footnote was merely a single instance of a mistake, which is not actionable. *See Craig v. Moore*, 4 Media L. Rep. (BNA) 1402, (Fla. Cir. Ct. Duval Cnty. 1978) (copy attached as Exhibit 1).

[3] Edwards and Cassell deny that they alerted the media to their filing.

[4] The accompanying invitation that was sent to Dershowitz by Scarola read as follows:
Dear Mr. Dershowitz:
Statements attributed to you in the public media express a willingness, indeed a strong desire, to submit to questioning under oath regarding your alleged knowledge of Jeffrey Epstein's extensive abuse of underage females as well as your alleged personal participation in those activities. As I am sure you will recall, our efforts to arrange such a deposition previously were unsuccessful, so we welcome your change of heart. Perhaps a convenient time would be in connection with your scheduled appearance in Miami on January 19. I assume a subpoena will not be necessary since the deposition will be taken pursuant to your request, but please let us know promptly if that assumption is inaccurate. Also, note that the deposition will be video recorded.
Kindly bring with you all documentary and electronic evidence which you believe tends to refute the factual allegations made concerning you in the recent CVRA proceeding as well as passport pages reflecting your travels during the past ten years and copies of all photographs taken while you were a traveling companion or house guest of Jeffrey Epstein's.
Thank you for your anticipated cooperation.
Sincerely, Jack Scarola

[5] The description of events is also true, as correspondence with Dershowitz amply demonstrates. Indeed, Dershowitz remarkably quotes in his complaint from correspondence by Jack Scarola attempting to take his deposition. Counterclaim, ¶ 36. Dershowitz, however, does not explain how accurately quoting from correspondence can somehow be defamatory.

[6] In light of this breadth of the privilege, the Court can dismiss the complaint as a matter of law, even though Dershowitz has alleged actual malice by Edwards and Cassell. To be clear, Edwards and Cassell deny any such malice.

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