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

CASE No. 15-000072

BRADLEY J. EDWARDS and PAUL G. CASSELL,

Plaintiffs/Counterclaim Defendants,

vs.

ALAN M. DERSHOWITZ,

Defendant/Counterclaim Plaintiff.
_____/

DEFENDANT'S MOTION TO CONTINUE HEARING AND MOTION TO STRIKE MOTION OF NON-PARTY [redacted] ROBERT'S MOTION FOR SANCTIONS

Defendant, Alan M. Dershowitz ("Dershowitz"), through his undersigned counsel, hereby moves (i) on an expedited basis to continue the hearing scheduled for this Friday, March 11, 2016 on non-party [redacted] a/k/a [redacted] Motion to Strike and for Sanctions ("Motion for Sanctions"), on the basis of unavailability of Dershowitz's counsel, and (ii) to strike the Motion for Sanctions on the basis that Ms. [redacted] lacks standing to seek any relief in this lawsuit, inasmuch as she admits in every of her filings that she is a "non-party" and has never obtained any order allowing her to intervene, which makes all of her filings in this case a legal nullity, including the Notices of Appearance of her legal counsel. Further, the matter should become moot given the fact that the parties have exchanged e-mails settling the case. In support of the relief requested by this motion, Dershowitz states:

A. THE MOTION TO CONTINUE MARCH 11, 2016 HEARING.

The Court may have observed that recently, Dershowitz retained as counsel both Bruce Rogow ("Rogow") and the undersigned, Charles Lichtman ("Lichtman"). Dershowitz has

directed that he wishes both lawyers to get up to speed and handle all matters related to the various motions and filings of record submitted by [redacted] also known as [redacted] through her counsel, Boies, Schiller & Flexner. The Court has scheduled [redacted] Motion to Strike and for Sanctions (along with its supplemental filings) for hearing this Friday, March 11, 2016.

Unfortunately, both Rogow and Lichtman have previous long scheduled unmovable client obligations on March 11, 2016. On March 10, 2016, Rogow will be representing the Appellee in oral argument before the Florida Supreme Court on *Wells Fargo vs. Pruco Life Insurance Company*, Case Number SC15-382. On March 11, Rogow has a conflicting scheduled hearing in this Court representing the plaintiff in *Anthony Armao vs. Russell Turnbull,* Case No. CACE 13-025034 (5). Lichtman is counsel for the plaintiff in *Hewlett Packard Financial Services Company vs. Brevard County Clerk of the Circuit Court*, Case No. 2014 CA 23724, pending in the Circuit Court of Brevard County, Florida, which has been scheduled for mediation on March 11, 2016, for about 90 days at the offices of Gray Robinson in Melbourne, and Lichtman's client representative is travelling from Texas to attend the mediation. Critically, while both Rogow and Lichtman have been learning the issues in this proceeding, neither has had the appropriate necessary time to prepare adequately for the evidentiary hearing that would be required on [redacted] Motion for Sanctions.

No prejudice will be suffered by [redacted] if this week's hearing is postponed. However, Dershowitz will be prejudiced if the hearing is not moved to another date because: (i) he will be deprived of the right to have his counsel of choice be prepared for and to argue the Motion for Sanctions, and (ii) as a condition precedent, the Court needs to first address the issue of standing, as discussed below. Should the Court find that [redacted] lacks standing to file any paper in this

Court, and most specifically the presently pending Motion for Sanctions, then that motion becomes moot without need for further proceedings.

B. MOTION TO STRIKE [redacted] MOTION TO STRIKE AND FOR SANCTIONS.

(i) [redacted] Lacks Standing To Participate In This Case.

As a foundational matter, [redacted] has not been and is not a party to this lawsuit. Clearly, the style of the case reflects the names solely of Bradley J. Edwards ("Edwards"), Paul G. Cassell ("Cassell") and Dershowitz, as parties. No third-party actions have named [redacted] Further, no motions for leave to intervene have been filed by any person, much less [redacted] The Complaint alleges a limited, discrete fact pattern, pled in a simple one count, 24 paragraph pleading, arising out of an alleged defamation by Dershowitz of Edwards and Cassell.

Florida Rule of Civil Procedure 1.210(a) states: *"All persons having an interest in the subject of the action and in obtaining the relief demanded may join as plaintiffs…"*. The face of the pleadings in this case make clear that [redacted] not a **nominal** party to this lawsuit, meaning her name is not on the pleadings, because she is neither a plaintiff nor a defendant. A **proper** party is one who has an interest in the subject matter of the action, but their absence will not prevent entry of a judgment determining substantial issues between the other parties. *Pepple v. Rogers*, 104 Fla. 462, 140 So. 205 (1932). A **necessary** party has an interest in the controversy, and is one whose rights will be affected by the judgment and who should be made a party so the court may determine the entire controversy. *W.F.S. Company v. The Anniston National Bank*, 140 Fla. 213, 191 So. 300 (1939); *Mayo v. National Truck Brokers, Inc.*, 220 So. 2d 11 (Fla. 1969). An **indispensable** party has an interest in the controversy of such a nature that a judgment cannot be made without affecting that interest. *Martinez v. Balbin*, 76 So. 2d 488 (Fla. 1954), citing *Shields v. Barrow*, 58 U.S. 130. In each instance of determining whether one

qualifies as being a "party," the inquiry turns on the person's impact on entering a "judgment," which can only be framed by the issues in the underlying principal pleadings that seek to establish or avoid liability. [redacted] can never qualify as a "party" in this lawsuit.

Rule 1.230 of the Florida Rules of Civil Procedure provides that "[a]nyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention, but the intervention shall be in subordination to, and in recognition of, the propriety of the main proceeding, unless otherwise ordered by the court in its discretion." Fla. R. Civ. P. 1.230.

Under Florida law, intervention may be permitted only if party seeking intervention has an interest in litigation. *See Union Cent. Life Ins. Co. v. Carlisle*, 593 So. 2d 505 (Fla. 1992). "[T]he interest which will entitle a person to intervene ... must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the judgment." *Id.* at 507 (quoting *Morgareidge v. Howey*, 78 So. 14, 15 (Fla. 1918). "In other words, the interest must be that created by a claim to the demand in suit or some part thereof, or a claim to, or lien upon, the property or some part thereof, which is the subject of litigation." *Id.* A motion to intervene must identify an interest at stake that the would-be intervenor has standing to assert. *Litvak v. Scylla Properties, LLC*, 946 So. 2d 1165, 1172 (Fla 1st DCA 2006).

Standing has been defined as "a sufficient stake in an otherwise justiciable controversy to obtain judicial resolution of that controversy." *Sierra Club v. Morton*, 405 U.S. 727, 731 (1972). "Under the general rule, one not a party to a case has no standing to request relief from the court." *Whiteside v. Sch. Bd. of Escambia Cty.*, 798 So. 2d 859, 859-60 (Fla. 1st DCA 2001); *See also Warshaw-Seattle, Inc. v. Clark,* 85 So. 2d 623, 625 (Fla.1955) (" 'Persons who are not parties of record to a suit have no standing therein which will enable them to take part in or

control the proceedings. If they have occasion to ask relief in relation to the matters involved, they must either contrive to obtain the status of parties in such suit or they must institute an independent suit.' ") (quoting 39 Am.Jur. *Parties* § 55); *Vogel v. Smith*, 371 So. 2d 719, 720 (Fla. 3d DCA 1979) (finding trial court abused discretion in granting motion filed by non-party because non-party lacked standing to make motion); *Barnhill v. Florida Microsoft Anti-Trust Litigation*, 905 So. 2d 195 (Fla. 3d DCA 2005) (Objectors who did not intervene in court's approval of settlement agreement lacked standing to appeal; had they intervened, they could have chosen to opt out.). Moreover, "[a] showing of only an indirect, inconsequential, or contingent interest is wholly inadequate" to establish standing. *Sweetwater Country Club Homeowners' Ass'n, Inc. v. Huskey Co.*, 613 So. 2d 936 (Fla. 5th DCA 1993)

Whiteside is instructive. That case involved a petition for a writ of certiorari "to review a trial court order granting a motion for sanctions filed by the Escambia County School Board (Respondent)," a non-party to the circuit court case below. *Whiteside*, 798 So. 2d at 859-60. In the circuit court case, Laura L. Whiteside (Petitioner), who was counsel for the defendant, consistently raised the argument that the Escambia County School Board was not a party. *Id.* at 859. Nonetheless, "the trial court entertained several motions filed by [the Escambia County School Board], and ultimately granted a motion for sanctions against Petitioner, bottomed upon Petitioner's alleged violation of an earlier court order." *Id.* After noting the limited exception providing for non-party standing in certain situations involving discovery from a non-party, the First District Court of Appeal of Florida held that "one not a party to a case has no standing to request relief from the court" and therefore, "the trial court departed from the essential requirements of law in acting upon Respondent's requests, without first acting to grant party status to Respondent." *Id.* at 860.

Even [redacted] filings identify her purely as a "non-party." All of her filings in this lawsuit are as completely out of place as if she walked into court in the middle of a trial as a non-party, and told the Court that she wanted to be heard, because tangentially, an isolated aspect of litigating the underlying dispute pertained to her. Respectfully, we know of no reported case where a person not formally involved in the litigation has waltzed into court as [redacted] has done here, filed Motions for Sanctions and been allowed to participate in an evidentiary hearing, as if she was a party, even though (a) the lawsuit itself, and (b) any judgment that could ever be rendered in this case, has nothing to do with her. But that is exactly what [redacted] seeks to do through her Motion for Sanctions. This is a wholly preposterous and unsupportable position.

This lawsuit was filed on January 6, 2015 and after 14 months, [redacted] has not sought to intervene, nor could she because this lawsuit does not remotely pertain to her. The alleged defamatory statements are unique to Edwards and Cassell. Her Motion for Sanctions is wholly ancillary to the instant case.

(ii) Notwithstanding, This Case Appears Settled, So The Court Will Be Divested Of Subject Matter Jurisidction To Hear the Motion For Sanctions.

In addition, the parties have exchanged e-mails making clear this matter is settled. It is expected that a fully signed Settlement Agreement will be exchanged very shortly, followed by a Joint Stipulation to Dismiss. Once the case is dismissed, the Court is divrested of subject matter jurisidiction, thereby rendering the Motion for Sanctions moot. Florida Rule of Civil Procedure 1.420(a) allows for the filing of a stipulation of dismissal signed by all parties to the action without approval of the trial court:

> **(a) Voluntary Dismissal.**
>
> (1) *By Parties.* Except in actions in which property has been seized or is in the custody of the court, an action, a claim, or any part of an action or claim may be dismissed by plaintiff without order of court (A) before trial by serving, or during trial by stating on the

> record, a notice of dismissal at any time before a hearing on motion for summary judgment, or if none is served or if the motion is denied, before retirement of the jury in a case tried before a jury or before submission of a nonjury case to the court for decision, or (B) by filing a stipulation of dismissal signed by all current parties to the action. Unless otherwise stated in the notice or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication on the merits when served by a plaintiff who has once dismissed in any court an action based on or including the same claim.

Fla. R. Civ. P. 1.420(a)(1).

"It is well accepted that the effect of a plaintiff's voluntary dismissal under rule 1.420(a)(1) is jurisdictional." *Pino v. Bank of New York*, 121 So. 3d 23, 32 (Fla. 2013). Once a case is voluntarily dismissed, a trial court is divested of jurisdiction to continue in the case. *Id.* "The voluntary dismissal serves to terminate the litigation, to instantaneously divest the court of its jurisdiction to enter or entertain further orders that would otherwise dispose of the case on the merits, and to preclude revival of the original action." *Id.* "[V]oluntary dismissals taken pursuant to rule 1.420 are acts of finality that deprive the trial court of jurisdiction over the dismissed case." *Id.* (*citing Randle–Eastern Ambulance Service, Inc. v. Vasta*, 360 So. 2d 68 (Fla. 1978)); *see also Estate of Williams v. Jursinski*, 160 So. 3d 500, 501 (Fla. 2d DCA 2015) (holding that, pursuant to *Pino*, the notice of voluntary dismissal "had the effect of immediately divesting the circuit court of jurisdiction"); *Kelly v. Colston*, 977 So. 2d 692, 694 (Fla. 1st DCA 2008) ("The effect of a voluntary dismissal prior to submission is immediate, final, and irreversible. It terminates the litigation and instantaneously divests the court of its jurisdiction to enter further orders."); *WM Specialty Mortg., LLC v. Salomon*, 889 So. 2d 922, 922 (Fla. 4th DCA 2004) ("[A]n order dismissing an action with prejudice divests the trial court of jurisdiction to preside over the parties and their dispute." (*quoting Eye & Ear Sales & Serv. Co. v. Lamela*, 636 So. 2d 791, 792 (Fla. 4th DCA 1994))).

Under these circumstances, principles of judicial economy support postponing the March 11, 2016 hearing as well as the unavailability of Rogow and Lichtman, notwithstanding the fact that [redacted] has no standing to seek any relief in this case.

Finally, in the event at some point in time the Court were to somehow determine that Roberts has standing to participate in this case, Dershowitz expressly preserves his right to file a Motion to Disqualify the Boies Schiller law firm from representing [redacted] in this matter.

WHEREFORE, Alan Dershowitz respectfully requests that this Court: (i) Continue the March 11, 2016 hearing on [redacted] Motion for Sanctions, (ii) Before rescheduling any hearing on the Motion for Sanctions, the Court first conduct a hearing on the instant Motion to Strike Motion for Sanctions, and (iii) Grant all such further relief as the Court deems just and appropriate.

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CERTIFICATE OF SERVICE

The undersigned certifies that on March 7, 2016, a true and correct copy of the foregoing was filed with the Clerk of Court via the E-Portal which will electronically serve a copy to all parties on the attached Service List.

By: *Charles H. Lichtman*
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