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IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION

CASE NUMBER:

50-2020-CC-005756-XXXX-MB

CITIBANK, N.A.

Plaintiff

v

EVAN S GUTMAN

Defendant

DEFENDANT'S MOTION TO QUASH SELF-CONTRADICTORY VOID and UNENFORCEABLE ORDER

"But my rebellion against the shame of being called a weakling had lasting effects. As already noted, it caused me to become very much a loner. Moreover, it inured me in a subtle way to all criticism. Not that I enjoyed criticism, I certainly did not, but criticism never made me turn tail and run. Rather, it impelled me forward into the thick of the fight."

Autobiography of Justice William O. Douglas, GO EAST YOUNG MAN, The Early Years, By William O. Douglas, Random House New York, Page 189 (1974) –

(See EXHIBIT 7 Attached)

"A court does not have jurisdiction to do what a city or other agency of a State lacks jurisdiction to do. . . . An ordinance unconstutional on its face or patently unconstitutional as applied – is not made sacred by an unconstitutional injunction that enforces it**. It can and should be flouted in the manner of the ordinance itself. Courts as well as citizens are not free to ignore all the procedures of the law**, to use the Court's language. **The constitutional freedom of which the Court speaks can be won only if the judges honor the Constitution."**

Walker v City of Birmingham, Dissenting Opinion of Justice Douglas, Chief Justice Warren, Justice Brennan and Justice Fortas, 388 U.S. 307 (1967)

"Whether a State, under guise of protecting its citizens from legal quacks and charlatans, can make criminals of those who, in good faith and for no personal profit, assist the indigent to assert their constitutional rights is a substantial question this Court should answer."

Hackin v Arizona, Justice Douglas Dissenting, 389 U.S. 143 (1967)

MOTION

Defendant Evan Gutman Humbly and Graciously MOVES the Court for an Order QUASHING the Court Order dated September 21, 2023 labeled as :

> "ORDER GRANTING IN PART PLAINTIFF'S MOTION TO HOLD DEFENDANT IN CONTEMPT FOR INTENTIONAL FAILURE TO RESPOND TO DISCOVERY IN AID OF EXECUTION"

(Exhibit 1 Attached)

The grounds for this Motion are the Court's Order is VOID and therefore Legally Unenforceable. The Order is VOID and Legally Unenforceable for multiple reasons including that it is Self-Contradictory on its face. It is important to note, although the Order is "Legally Unenforceable," the operative term is "Legally." More specifically, the Order is "Logistically Enforceable," by way of "Force" if the Court decides to enforce an Illegal Order, but it is not "Legally Enforceable." This distinction is predicated upon the fact the Court retains the logistical option to utilize "Force," with respect to any Illegal acts it commits due to its possession of "Raw Power." (which admittedly Defendant lacks). But, the Court can not "Legally" Enforce the Order.

The applicable procedural background is as follows. On September 19, 2022 Judge Edward Garrison rendered a Final Judgment in favor of Citibank pertaining to an alleged credit card debt of $ 11,292.15. Defendant had filed a Motion to Disqualify Judge Garrison prior to the trial, which was Denied. Subsequently, Citibank filed a Motion for Attorney fees. Defendant then filed a Second Motion to Disqualify Judge Garrison, which was also Denied. On April 3, 2023, Judge Garrison awarded Citibank $ 31,315.50 in attorney fees and costs on the $ 11,292.15 alleged credit card debt.

The Fourth District Court of Appeals affirmed the underlying Judgment in a Per Curiam decision without opinion (a separate appeal is currently pending at the 4th DCA on

the attorney fee judgment). On September 8, 2023, Defendant filed a Petition with the United States Supreme Court with respect to the underlying Judgment and the case has now been docketed (Exhibit 2). The legal ground forming the basis for the U.S. Supreme Court Petition is the extent attorneys are allowed to engage in illegal tortious conduct pursuant to litigation privilege and whether the Florida Judiciary is condoning and promoting illegal conduct in violation of the due process and equal protection clauses of the U.S. Constitution.

On or about April 20, 2023 Citibank served discovery upon Defendant to collect on the attorney fees judgment. Defendant declined to respond in any manner to the discovery requests since a separate appeal is currently pending at the 4th DCA on that judgment. On or about June 27, 2023 Citibank filed a Motion to have Defendant held in Contempt for failure to respond to their discovery requests (Exhibit 3). Citibank then unilaterally changed the scope and title of their Motion from one limited to Contempt to one titled as "Motion for Sanctions and/or Contempt", without filing any amended Motion. They accomplished this by simply including the term "Sanctions" in their Order for a Hearing. No Sanctions Motion has ever been filed. In fact, no reference to seeking Sanctions is even included in the Motion itself. Judge Edward Garrison complied with the unilateral change made by Citibank to alter the scope of the Motion from one limited to Contempt to one recharacterized as being for "Sanctions and/or Contempt" when he issued the Order scheduling a Hearing (Exhibit 4).

On September 18, 2023, Defendant filed an Opposition to the Contempt Motion (Exhibit 5). The Opposition focused primarily on the fact he could not be held in Contempt of a Nonexistent Order. This is because no Court Order was ever issued mandating compliance with Citibank's discovery requests. The Opposition also focused on the fact no

Motion to Compel was ever even filed by Citibank. In addition, it focused on the change of the scope of the Motion from being only a Contempt Motion; to one unilaterally recharacterized (without the filing of any amended motion) to being for "Sanctions and/or Contempt" even though no Sanctions Motion was ever even filed.

On September 20, 2023 a Hearing was held before Judge Edward Garrison on the retitled and recharacterized Motion. As shown by Exhibit 1, Judge Garrison at the Hearing held (without any legal basis), Citibank's recharacterized Contempt Motion should now be "**treated**" as a Motion to Compel. Thus, the Motion was recharacterized and retitled for a Second time. No Motion to Compel has ever been filed.

Based on Judge Garrison's decision to reclassify the Contempt Motion, First as one also including Sanctions; and then a Second time to it being a Motion to Compel, Citibank Counsel Kenneth Michael Curtin, Esq. wrote a self-contradictory Court Order (Exhibit 1). Mr. Curtin then issued his Court Order to Judge Garrison. Judge Garrison then obsequiously performed the perfunctory ministerial task of affixing his signature to Mr. Curtin's Court Order so it would be "official."

On September 29, 2023, Defendant filed his Brief on the Merits with the Fourth District Court of Appeal on the attorney fee judgment. The appellate brief asserts Judge Garrison is now conducting himself in a manner that exceeds the judicial disqualification issue. This is because he is now functioning primarily as an "ADVOCATE" for Citibank, rather than any type of Judge at all. Judge Garrison (hereinafter "Mr. Garrison") is substantively functioning as Co-Counsel to Mr. Curtin for Citibank. And in turn, as indicated by the Order written by Citibank Counsel; Mr. Curtin is substantively functioning as the "Judge" in this case (hereinafter "*Judge*" Curtin.)

Thus, as a matter of “Substance” (albeit not “Form”) “*Judge*” Curtin and Mr. Garrison have effectively switched roles. “*Judge”* Curtin functions as the Judge. This is evidenced by the Court Order he wrote and issued; and then had Mr. Garrison administratively sign, so it would be official. Mr.Garrison in turn, has abandoned his role as a Judge, opting instead to funtion as Citibank “Co-Counsel.” Arguably, it could be asserted with equal legitimacy, Mr. Garrison’s approach has rendered him to be nothing more than an administrative secretary for Citibank performing only ministerial tasks under “*Judge*” Curtin’s supervision and direction. Suffice it to say, the one classification Mr. Garrison falls quite miserably short of, is that of an impartial Judge.

SELF-CONTRADICTORY AND VOID NATURE OF COURT ORDER ON ITS FACE

The subject Court Order suffers from self-contradictory infirmities on its face. The facial infirmities coupled with the multiplicity of due process violations are easily apparent to anyone with legal knowledge and thus, can be delineated simplistically. The reasons are as follows. **FIRST**, the Order is labeled as an “ORDER GRANTING IN PART PLAINTIFF’S MOTION TO HOLD DEFENDANT IN CONTEMPT. . . .” However, it then states (See Exhibit 1):

> “That the Court shall treat the Motion as a Motion to Compel.”

Put simply, if the Motion is “treated” as a Motion to Compel, then the Contempt Motion is completely gone. Thus, it is impossible to grant, even in part, a Contempt Motion that no longer exists.

SECOND, the Order states that it “defers on any issue as to sanctions or contempt.” However, if the Motion is treated as a Motion to Compel, there is no existing Contempt or Sanctions motion to defer upon.

THIRD, so far as Defendant understands there is no legal basis for a Judge to reclassify or "treat" a party's Motion from one seeking only Contempt to one seeking both Sanctions and Contempt, a First time. To then reclassify the Motion a Second time by "treating" it as a Motion to Compel discovery obliterates the Contempt Motion, which is the only Motion that was ever actually filed. In order to hold Defendant in Contempt there must at least be some type of active Contempt Motion pending.

FOURTH, if the Motion is to be "treated" as a Motion to Compel, then Defendant should be entitled to a reasonable period of time to respond to the newly reclassified Motion to Compel. Defendant was not provided with even one single day to respond to the newly reformulated "Motion to Compel." Defendant only had an opportunity to respond to its original nature as a "Motion for Contempt."

FIFTH, if the Motion is to be "treated" as a Motion to Compel, it is not in compliance with Palm Beach County's existing policy delineated in Chief Judge Kelley's recent Administrative Order No. 3.202-10/2023 attached. This is because it does not contain a certificate of moving counsel (Exhibit 6). Specifically, Chief Judge Kelley's recent Order states as follows (emphasis added):

> "**No motions to compel discovery** or for protection from discovery will be heard **unless the notice of hearing bears the certificate of moving counsel** that opposing counsel has been contacted and a **good faith attempt to resolve the discovery dispute without a hearing**, but that could not be accomplished."

Notably, the manner in which this situation proceeded also would violate Rule 4, but since Defendant is a Pro Se litigant he has been excluded from the protections and contours of Rule 4. That issue itself is pending once again before the Fourth District Court of Appeals, as Defendant has raised the constitutionality of Rule 4 repeatedly in multiple litigations and it remains pending.

Based on the foregoing, since the subject Order being challenged herein is Self-Contradictory on its face and for all other reasons delineated herein, Defendant has decided that the Order is **VOID** and **Legally Unenforceable.** Accordingly, it is Defendant's determination Mr. Garrison's Order may be freely Ignored. And it will be Ignored and "flouted" by the Defendant. Nevertheless, Defendant concedes the subject Order is still **Logistically** Enforceable to the extent Mr. Garrison may decide to do so either on his own, or at the direction of "*Judge*" Curtin.

OTHER RELEVANT INFORMATION AND CONCLUSION

Over the last several years, this case has progressively escalated due to Citibank's filing of thousands of meritless complaints against impoverished citizens predicated on a meritless claim of unjust enrichment. Since the Palm Beach Judiciary declined to fulfill its judicial duty to fairly enforce the law and protect the citizenry, Defendant unilaterally decided on his own to put a stop to such nonsense. These impoverished citizens lack any means to defend themselves against the unscrupulous and unethical illegal acts of Citibank executives and their debt collector attorneys. Defendant however, is not so hindered. The debt collector attorneys file these meritless complaints on a massive scale and engage in multiple illegal acts against impoverished individuals under the belief they are securely protected and have absolute immunity by Florida's Litigation Privilege doctrine. As a result, this case is now sufficiently primed and ripe to reform the entire nation's debt collection industry; Judiciary and legal profession simultaneously. That is the issue now pending at the U.S. Supreme Court in Evan S. Gutman v Citibank, N.A. (Exhibit 2).

It is Defendant's belief that if the U.S. Supreme Court grants his Petition for a Writ of Certiorari, the Stock Market Price Per Share of Citigroup (owner of Citibank) will drop dramatically. Roughly speaking, it is Defendant's "Best Guess" the financial loss to Shareholders will be around **$ 1 Billion** or so. Could be higher or could be lower, and Defendant concedes the **$ 1 Billion** estimate is nothing more than his best "Guess." Citigroup Inc. closed at $ 40.57 per share on October 6, 2023 with a Market Cap of approximately 78 Billion. It will be quite interesting to see what the Stock goes to, if the U.S. Supreme Court grants the pending Petition for a Writ of Certiorari. Defendant also anticipates Citibank will be faced with so many lawsuits, it could be unimaginable. Presumably, they will not utilize the services of "*Judge*" Curtin's law firm to defend them.

Accordingly, since the SEC requires the public financial statements of Citibank to present fairly the financial position of Citibank, N.A., and since the Defendant desires also to protect Citibank Shareholders whose interests have been jeopardized by Citigroup Executives, as well as maintain the stability of national financial markets, Defendant has done the following. As shown by **Exhibit 8**, Defendant has sent a letter to David John Reavy; who Defendant understands is the Audit Engagement Partner at KPMG, which performs the certified audit for Citigroup. The purpose of the letter is to encourage KPMG to perform the necessary audit procedures, statistical sampling techniques and legal research to ensure the financial risk associated with the issues of this case are properly reflected in Citigroup's audited financial statements to be filed with the Securities and Exchange Commission. Additionally, to encourage Mr. Reavy to do so, Defendant is also sending letters to the Securities and Exchange Commission (SEC); as well as the Public Company Accounting Oversight Board (PCAOB) informing them of the potential impact of this case and that he has requested Mr. Reavy of KPMG to address the relevant issues

when performing the certified audit. This Motion will also be sent to a multitude of media organizations and individuals. Additionally, it will also be posted on Defendant's websites at www.heavensadmissions.com and www.gutmanvaluations.com. **FN 1**

In conclusion, for the reasons delineated herein, Defendant requests the Court Quash and / or Vacate the subject Court Order written and issued by "*Judge*" Curtin and then ministerially signed by Mr. Garrison to make it official, on the ground it is VOID and "Legally" UNENFORCEABLE. Whether this Motion is granted or not, the subject Court Order is going to be Ignored by Defendant. **FN 2**

Submitted Humbly and Graciously this 9th day of October, 2023.

Evan Gutman CPA, JD
Member State Bar of Pennsylvania
Member District of Columbia Bar
Florida Certified Public Accountant
1675 NW 4th Avenue, #511
Boca Raton, FL 33432
561-990-7440

FOOTNOTE 1 – See In Re Oliver, (U.S. Supreme Court) 333 U.S. 257, 271 (1948) stating:

> "Without publicity, all other checks are insufficient, in comparison of publicity, all other checks are of small account. **Recordation, appeal**, whatever other institutions might present themselves in the character of checks, would be found to **operate rather as cloaks than checks**, . . . as checks only in appearances."

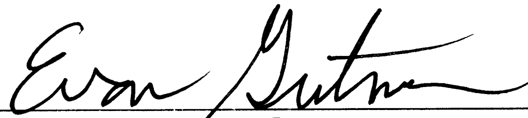
FOOTNOTE 2 – As of the date of this Motion, Defendant has never been convicted of any crime in his life. Additionally, Defendant has never been subjected to ethical discipline by any professional licensing agency; as no ethical complaint of any nature has ever been filed against Defendant in his capacity as either a CPA or Attorney.

CERTIFICATE OF SERVICE

I, Evan Gutman, hereby CERTIFY a true copy of the foregoing is being sent by e-mail thru the Florida Courts E-Portal and that a follow up copy will subsequently be sent by U.S. Mail addressed as follows to :

Adams and Reese LLP
Attn: Kenneth M. Curtin, Esq.
100 North Tampa Street, Suite 4000
Tampa, FL 33602

DATED this 9th day of October, 2023.



Evan Gutman CPA, JD
Member State Bar of Pennsylvania
Member District of Columbia Bar

1675 NW 4th Avenue, #511
Boca Raton, FL 33432
561-990-7440

EXHIBIT 1(a)

**IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

CITIBANK, N.A.,

Plaintiff,

Case No. 2020-005756-CC

v.

EVAN S. GUTMAN,

Defendant.
_______________________________/

NOT A CERTIFIED COPY

ORDER GRANTING IN PART PLAINTIFF'S MOTION TO HOLD DEFENDANT IN CONTEMPT FOR INTENTIONAL FAILURE TO RESPOND TO DISCOVERY IN AID OF EXECUTION

THIS CAUSE came before the Court on September 20, 2023 upon Plaintiff, Citibank, N.A.'S ("Citibank"), Motion to Hold Defendant, Evan S. Gutman ("Defendant"), in Contempt for his Intentional Failure to Respond to Discovery in Aid of Execution ("Motion") and this Court having reviewed and considered the Motion, heard argument of counsel or the parties, and otherwise being duly advised in the premises hereupon:

FINDS, ORDERS, AND ADJUDGES the following:

1. That the Court shall treat the Motion as a Motion to Compel and Defendant shall within twenty (20) days from the date of this Order to fully answer, under oath, all of the interrogatories in Citibank's Second Set of Interrogatories in Aid of Execution originally served on April 20, 2023 and provide to counsel for Citibank all responsive documents to Citibank's Second Request to Produce in Aid of Execution also originally served on April 20, 2023.

2. The Court defers on any issue as to sanctions or contempt against Defendant pending compliance by Defendant with this Order.

DONE AND ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida.

EXHIBIT 1(b)

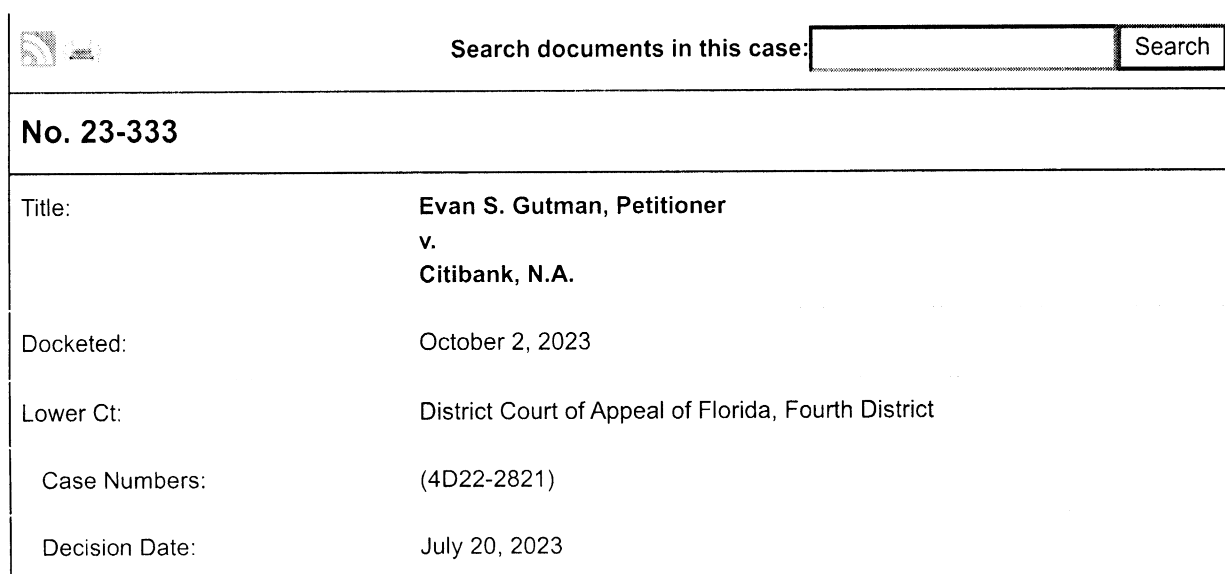
50-2020-CC-005756-XXXX-MB 09/21/2023
Edward A. Garrison County Judge

50-2020-CC-005756-XXXX-MB 09/21/2023
Edward A. Garrison
County Judge

Copies to:
Kenneth M. Curtin, Esq., Adams and Reese LLP,
Evan Gutman, 1675 NW 4th Avenue #511, Boca Raton, FL 33432

NOT A CERTIFIED COPY

EXHIBIT 2



Search documents in this case: Search

No. 23-333

Title:	**Evan S. Gutman, Petitioner** **v.** **Citibank, N.A.**
Docketed:	October 2, 2023
Lower Ct:	District Court of Appeal of Florida, Fourth District
Case Numbers:	(4D22-2821)
Decision Date:	July 20, 2023

DATE	PROCEEDINGS AND ORDERS
Sep 08 2023	Petition for a writ of certiorari filed. (Response due November 1, 2023) **Petition** **Appendix** **Certificate of Word Count** **Proof of Service**

NAME	ADDRESS	PHONE
Attorneys for Petitioner		
Evan S. Gutman Counsel of Record	1675 NW 4th Avenue #511 Boca Raton, FL 33432	561-990-7440
Party name: Evan S. Gutman		

EXHIBIT 3(a)

**IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

CITIBANK, N.A.,

Plaintiff,

Case No. 2020-005756-CC

v.

EVAN S. GUTMAN,

Defendant.

_______________________________/

PLAINTIFF'S MOTION TO HOLD DEFENDANT IN CONTEMPT FOR INTENTIONAL FAILURE TO RESPOND TO DISCOVERY IN AID OF EXECUTION

Plaintiff, Citibank, N.A. ("Citibank"), files this its Motion to Hold Defendant, Evan S. Gutman ("Defendant"), in Contempt for his Intentional Failure to Respond to Discovery in Aid of Execution ("Motion for Contempt") and states:

I. INTRODUCTION

1. This case started as a simple credit card collection matter involving a principal amount of $11,292.15. Defendant has unreasonably delayed the resolution of this matter and increased the cost of this litigation due to his litigation strategy of filing multiple frivolous motions. The necessity of filing this Motion for Contempt is due to yet another dilatory tactic by Defendant. This Motion for Contempt deals with Defendant's intentional failure to respond to Citibank's discovery in aid of execution as to a Final Judgment as to Fees and Costs ("Final Judgment for Fees"). Defendant filed multiple motions in this Court and the Fourth District Court of Appeal in an attempt to prevent collection all of which were denied. Yet, even after all these attempts to prevent collection were denied, Defendant still fails and refuses to respond to Citibank's discovery in aid of execution. As a result, Defendant should be held in contempt.

II. BACKGROUND FACTS

2. On September 15, 2022, this action was tried and on September 19, 2022 a Judgment was entered in favor of Citibank. (D.E. 86). On September 21, 2022, Citibank filed a Motion for Fees. (D.E. 90). On November 4, 2022, Defendant filed an Opposition to Citibank's Motion for Fees. (D.E. 117). On January 11, 2022, a hearing was held on Citibank's Motion for Fees and an Order was entered granting entitlement. (D.E. 128). On January 25, 2023, an evidentiary was scheduled for March 24, 2023 on the amount of fees. (D.E. 130).

3. On March 24, 2023, an evidentiary hearing was held and the Court orally found Citibank incurred $26,957.50 in fees along with additional taxable costs. The Court requested Citibank prepare the Final Judgment. On March 29, 2023, Citibank's counsel drafted a proposed Final Judgment consistent with the Court's oral ruling and emailed such to Defendant to review.

A. First Attempt to Prevent Collection Upon Final Judgment for Fees

4. Defendant on March 30, 2023 filed an Objection to Form of Proposed Judgment Regarding Execution Pending Existing Appeal ("Objection to Form"). (D.E. 152). Defendant's objection centered around a legally unsupportable position that the Final Judgment for Fees should state that such should not be collectable until the expiration of all appeals. On March 31, 2023, Citibank filed a Response to Defendant's Objection to Form. (D.E. 151). On April 3, 2023, this Court entered a Final Judgment for Fees in the amount of $31,315.50 in the form proposed by Citibank which provided that the Final Judgment for Fees was collectable. (D.E. 153).

B. Second Attempt to Prevent Collection Upon Final Judgment for Fees

5. Undeterred, on April 10, 2023, Defendant filed a Motion to Stay Enforcement and Execution of Attorney Fees Judgment and for Rehearing ("Motion to Stay Enforcement"). (D.E.

154 & 155).[1] For the most part, the Motion to Stay Enforcement once again reiterated the same rejected arguments Defendant made in his Objection to Form of the Final Judgment for Fees. On April 12, 2023, Citibank filed a Response in Opposition to Defendant's Motion to Stay Enforcement and Execution of Attorney Fees Judgment and for Rehearing. (D.E. 156). On April 13, 2023, this Court denied the Motion to Stay Enforcement and once again rejected the arguments propounded by Defendant to prevent collection. (D.E. 157).

C. Service of Discovery in Aid of Execution

6. On April 20, 2023, after the entry of the Final Judgment for Fees and the denial of the Motion to Stay Enforcement, Citibank propounded its Second Request to Produce and Second Set of Interrogatories in Aid of Execution as to the Final Judgment for Fees (collectively "Discovery in Aid of Execution"). (D.E. 158 & 159). The Discovery in Aid of Execution was originally due on May 22, 2023. True and correct copies of the Discovery in Aid of Execution are attached as **Exhibits "A" and "B."**

D. Third Attempt to Prevent Collection Upon Final Judgment for Fees

7. Undeterred, on May 17, 2023, Defendant filed a Motion for Protective Order From Financial Discovery ("Motion for Protective Order"). (D.E. 167). For the most part, the Motion for Protective Order reiterated the same rejected arguments in Defendant's Objection to Form and Motion to Stay Enforcement. On May 23, 2023, Citibank filed a Response in Opposition to Defendant's Motion for Protective Order from Financial Discovery. (D.E. 168). On May 24, 2023, this Court denied the Motion for Protective Order and, as a result, once again rejected Defendant's arguments to prevent collection. (D.E. 169).

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[1] For some unknown reason, Defendant filed the Motion to Stay Enforcement twice with the Clerk of the Court.

EXHIBIT 3(d)

E. __Fourth Attempt to Prevent Collection Upon Final Judgment for Fees__

8. Undeterred, on May 23, 2023, Defendant filed with the Fourth District Court of Appeal a Motion for Stay of Enforcement and Execution of Attorney Fees Judgment Pending Outcome of Appeal of Underlying Judgment ("Appellate Motion to Stay"). For the most part, the Appellate Motion to Stay again reiterated the same rejected arguments in Defendant's Objection to Form, Motion to Stay Enforcement, and Motion for Protective Order. On May 31, 2023, Citibank filed a Response in Opposition to the Appellate Motion to Stay. On June 12, 2023, the Fourth District Court of Appeal denied the Appellate Motion to Stay and, as a result. True and correct copies of the Appellate Motion to Stay, Citibank's Response in Opposition, and the Order Denying the Appellate Motion to Stay are attached hereto as Exhibits **__"C," "D," and "E."__**

III. __MOTION FOR CONTEMPT__

9. Citibank's Discovery in Aid of Execution was propounded on April 20, 2023 with responses due on or before May 22, 2023. As highlighted above, Defendant on no less than four additional occasions, (three in this Court and once with the Fourth District Court of Appeal) attempted to prevent collection upon the Final Judgment for Fees. Each such attempt, for the most part, reiterated the same frivolous legal arguments. Each time, Citibank had to file Memorandums of Law in Opposition and each time these attempts to prevent collection were rejected by this Court and the Fourth District Court of Appeal.

10. Although Citibank could have immediately sought to compel or hold Defendant in contempt for not responding to the Discovery in Aid of Execution by the May 22, 2023 deadline, Citibank delayed such motions so that this Court and the Fourth District Court of Appeal could rule on Defendant's various motions to prevent collection.

11. On June 13, 2023, after the Fourth District Court of Appeal denied Defendant's Appellate Motion to Stay, which was the last motion pending by Defendant to prevent collection, counsel for Citibank wrote an email to Defendant stating that Citibank will give Defendant until June 23, 2023 to response to the Discovery in Aid of Execution or Citibank will proceed with a Motion for Contempt. A true and correct copy of this June 13, 2023 email is attached hereto as **Exhibit "F."**[2]

12. Defendant has, to date, failed to respond to the June 13, 2023 email and failed to respond in any manner to the Discovery in Aid of Execution. As a result, Defendant should be held in contempt of this Court for his consistent and willful failure to respond to the Discovery in Aid of Execution.

WHEREFORE, Plaintiff, Citibank, N.A., requests that this Court grant its Motion to Hold Defendant, Evan S. Gutman, in Contempt for Intentional Failure to Respond to Discovery in Aid of Execution and any and all further relief the Court deems necessary and just.

DATED this ___ day of June, 2023.

/s/ Kenneth M. Curtin
Kenneth M. Curtin
Florida Bar No. 087319
Primary: Kenneth.Curtin@arlaw.com
Secondary: lisa.stallard@arlaw.com
ADAMS AND REESE LLP
100 North Tampa Street, Suite 4000
Tampa, Florida 33602
Tel: (813) 402-2880
Fax: (813) 402-2887
Counsel for Plaintiff

CERTIFICATE OF SERVICE

[2] Attached to the original email were copies of Discovery in Aid of Execution along with the various Orders denying Defendant's multiple attempts to prevent collection. Due to the fact that such items are also attached or referenced in this Motion for Contempt, Citibank is not attaching such copies to Exhibit "F."

EXHIBIT 3(f)

I HEREBY CERTIFY that on the ____ day of June, 2023, the foregoing has been electronically filed with the Clerk of Court through the Florida Courts' E-Filing Portal. I further certify that the foregoing document is being served on all counsel of record identified below, either via transmission of Notices of Electronic Filing generated by the E-Filing Portal or in some other authorized manner for those counsel or parties not authorized to receive electronic Notices of Electronic Filing.

Evan Gutman
1675 NW 4th Avenue #511
Boca Raton, FL 33432
Via U.S. Mail delivery
and email to
egutman@gutmanvaluations.com

/s/ Kenneth M. Curtin
Kenneth M. Curtin, Esq.
FBN: 087319

Filing # 178537096 E-Filed 07/31/2023 10:13:50 AM

EXHIBIT 4

**IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

CITIBANK, N.A.,

Plaintiff,

Case No. 2020-005756-CC

v.

EVAN S. GUTMAN,

Defendant.

______________________________/

ORDER SPECIAL SETTING HEARING

THIS CAUSE came before this Court and is hereby set for a hearing on **Motion for Sanctions and/or Contempt** on **Wednesday, September 20, 2023** at **11:45 a.m. via Zoom** before the Honorable Edward Garrison, Palm Beach County, Judge Daniel T. K. Hurley Courthouse, 205 N. Dixie Highway, West Palm Beach, FL 33401. **This matter may not be canceled without a Court Order**.

METHOD:

on static Zoom link for Division RL:
https://us02web.zoom.us/j/87963785028
or
call toll free at (888) 475 4499, Meeting ID: 879 6378 5028

The Zoom App is available for free on IOS and Android devices, or via computer www.Zoom.us/download. You do not need an account or to pay a fee to use this service.
All parties should choose video if they have the technology and telephone only if they do not have a smart phone and/or a computer with a camera and a microphone.

One or more of the parties who may be affected by the motion are self-represented.

DONE AND ORDERED in West Palm Beach, Palm Beach County, Florida.

50-2020-CC-005756-XXXX-MB 07/31/2023
Edward A. Garrison County Judge

50-2020-CC-005756-XXXX-MB 07/31/2023
Edward A. Garrison
County Judge

A CERTIFIED COPY

FP PALM BEACH COUNTY, FL JOSEPH ABRUZZO, CLERK 07/31/2023 10:13:50 AM

EXHIBIT 5(a)

**IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION**

CITIBANK, N.A.

Plaintiff

v.

EVAN S. GUTMAN,

CASE NUMBER:

50-2020-CC-005756-XXXX-MB

DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO HOLD HIM IN CONTEMPT AND DENY PLAINTIFF'S MOTION FOR SANCTIONS <u>NEVER EVEN FILED BY PLAINTIFF AS OF SEPT. 17, 2023</u>

" During trial, he was usually feisty and contentious. **He deliberately skirted the limits, provoking foes and infuriating Judges** who often threatened to, **but never did, charge him with contempt of court**. (" If you're not threatened at least once during a case, you're not doing your job," he said.) "

> Biography of **Former U.S. Supreme Court Justice Hugo Black**, By Roger K. Newman, Fordham University Press, New York (1997); Page 55 (**See Exhibit 3 attached**)

"Without publicity, all other checks are insufficient, in comparison of publicity, all other checks are of small account. **Recordation, appeal**, whatever other institutions might present themselves in the character of checks, would be found to **operate rather as cloaks than checks**, . . . as checks only in appearances."

> In Re Oliver, (U.S. Supreme Court) 333 U.S. 257, 271 (1948)

"The **litigation privilege** applies across the board to actions in Florida, both to common-law causes of action, those initiated pursuant to a statute, or of some other origin. **"Absolute immunity must be afforded to any act occurring during the course of a judicial proceeding. . . . so long as the act has some relation to the proceeding."**

> Echevarria v Cole, (Florida Supreme Court) 950 So.2d 380 (2007)

Defendant Evan Gutman, JD, CPA, Opposes Plaintiff's Motion to Hold Defendant in Contempt at Hearing set for September 20, 2023 at 11:45 a.m. based upon a **<u>NONEXISTENT COURT ORDER</u>**, which brings the law of Contempt to a previously unknown hitherto level. Suffice it to say, to be in Contempt of a Court Order that doesn't even exist is both unusual and

admitted even quite "amusing." While allowing Execution in a Final Judgment provides a multiple variety of opportunities to a Creditor, **by no means does it elevate Creditor Filed Motions and Requests to the level of Court Orders**. At a bare minimum to commit a Contempt of Court, an actual violation of a Court Order is required, which quite simply does not exist regarding Mr. Curtin's Discovery requests. Notably, he is not seeking Defendant to be held in Contempt of the Final Judgment rendered by the Court, but rather clearly indicates that he wants Defendant held in Contempt for not complying with his own PERSONAL Unilateral Filings. A court's Judgment to allow "Execution" is not a "Creditor" substitute for an unambiguosly stated Court Order demanding compliance with precisely delineated issues. Such is particularly the case, since "Execution" allows for a multitude of legal options. That just don't work. Such is particularly the case, since Mr. Curtin didn't even request that Defendant be held on Contempt of the Final Judgment. Rather, he only requested Defendant be helf in Contempt for not complying with his own Unilateral Discovery Requests, without any Court Order in existence requiring compliance with such.

Put simply, you can't be in Contempt of a Nonexistent Court Order. So far as Defendant knows, there is no legal precedent in the entire U.S. to hold a litigant in Contempt for violating a Non-Existent Court Order, absent a Summary Contempt in the Court's presence. As regards an Indirect Civil Contempt (contrasted sharply with a Direct Criminal Contempt in the actual physical presence of the Court; see Florida Court Contempt Benchguide (2018 edition) (**Exhibit 1 attached** hereto stating (Emphasis added) :

> "Evidence must be sufficient to justify a finding that the respondent has willfully violated the court order. *Bowen v Bowen*, 471 So. 2d 1274 (Fla. 1985; *Knowles v Knowles*, 522 So.2d 477 (Fla 5th DCA 1988).
>
> To constitute contempt for failure to obey a previous order, **the contemnor's behavior must clearly violate the order**. *Pearson v Pearson*, 932 So. 2d 601 (Fla. 2nd DCA 2006); *Curry v Robbins*, 744 So. 2d 527 (Fla. 3d DCA 1999); *Knorr v Knorr*, 751 So. 2d 64 (Fla. 2d DCA 1999)

EXHIBIT 5(c)

Thus, Citibank's Counsel needed to procedurally first obtain a Motion Compel Discovery seeking Defendant's compliance before seeking a Motion for Contempt. They were not allowed to "Leapgrog" that procedural requirement, so to speak. Failure of Kenneth Michael Curtin, Esq. to first do so, rendered his so-called Contempt Motion a Meritless filing; warranting Sanctions against Citibank in the full amount of the Attorney Fees being sought for the following reasons.

FIRST, the crux of Citibank's Moron Kenneth Curtin, Esq. appears to be predicated upon the declination of Defendant, Evan Gutman to respond to discovery requests promulgated by Mr. Curtin and served upon Defendant on April 20, 2023. Unfortunately, for Citibank's Attorney, Kenneth Michael Curtin, there was no Court Order in place requiring Defendant to comply with his filed Requests. Thus, it is logistically impossible for their to be a Contempt of such.

AT A BARE MINIMUM, A JUDICIAL CONTEMPT OF COURT FINDING REQUIRES ONE TO ACTUALLY VIOLATE A CLEAR, EXPRESS, UNAMBIGUOUS COURT ORDER; AND ONE CAN NOT BE IN VIOLATION OF A COURT ORDER THAT DOES NOT EXIST. That is quite firmly established amongst the laws of all States to the best of Defendant's knowledge. And it ain't Rocket Science. Apparently, Mr. Curtin's basic theory seems to be that by failing to comply within his own personal directives, Defendant committed a Contempt of Court. It's kind of like he just decided to elevate himself to being a "JUDGE." While a concededly unique theory, the place that Mr. Curtin dropped the ball is that he did not realize directives of Opposing Counsel do not in fact constitute binding Court Orders, subject to Contempt. He first procedurally needed to file a Motion to Compel Discovery. However, since he declined to do so even though that was the option any competent attorney would have elected; he is currently totally FORECLOSED from obtaining a Contempt of Court Order from this Court.

SECOND, since Citibank's Attorney Kenneth Michael Curtin, Esq.'s so-called "Contempt" Motion is **neither dated; nor accompanied with a validly dated Certificate of Service**; he is foreclosed on those grounds also. More specifically, since a finding of Contempt can carry with

EXHIBIT 5(d)

it the mposition of Civil Incareration; findings of Contempt are generally construed quite strictly. So, assuming without deciding the Law is to be actually complied with (concededly a rather uncertain premise in this case) Mr. Curtin fails miserably on that point also.

THIRD, Citibank's attorney Kenneth Michael Curtin, Esq. does not even seek an Order to Enforce Discovery, but rather an outright Contempt, for failuure to comply with his own personal directives pertaining to his own Client. That also render his Motion miserably infirm.

FOURTH, Citibank's Attorney Kenneth Michael Curtin, Esq., apparently decided at some point to Unilaterally change his Motion from one seeking Contempt for failure to comply with his personal directives (rather than a Court Order) to one also seeking Sanctions. As shown by Exhibit 2, Mr. Curtin's original motion on June 27, 2023 was squarely titled 'TO HOLD DEFENDANT IN CONTEMPT." And yet, by July 31, 2023; without any notice to Defendant; (or the Court for that matter) the title was altered to read "Sanctions and/or Contempt." By Unilaterally changing the essence of his Motion without fair notice to Defendant or the Court, Mr. Curtin engaged in additional Sanctionable conduct. Once again however, this is assuming without deciding the Law is to be complied with, which as stated has proven to be a quite uncertain premise both in this case and nationwide.

FIFTH, Citibank's Attorney Kenneth Michael Curtin Esq.' Motion contains no Affidavit, nor citation to any applicable Contempt Statute.

For the foregoing reasons, the Motion for Contempt; as well as it's subsequent revision to now being an alternative "Sanctions" Motion that does not conform with Florida Rules, Regulaitons or Statutes regarding Contempt, the original filing should be DENIED; and declared a totally Frivolous and Meritless Motion thereby subjecting Citibank Attorney Kenneth Michael Curtin to Sanctions (Imposition of Sanctions in the full amount of the Attorney Fee Award would likely be appropriate). If this Court decides to wholly reject the Defendant's arguments, Defendant simply and humbly notes the following as regards this case (and also the companion

EXHIBIT 5(e)

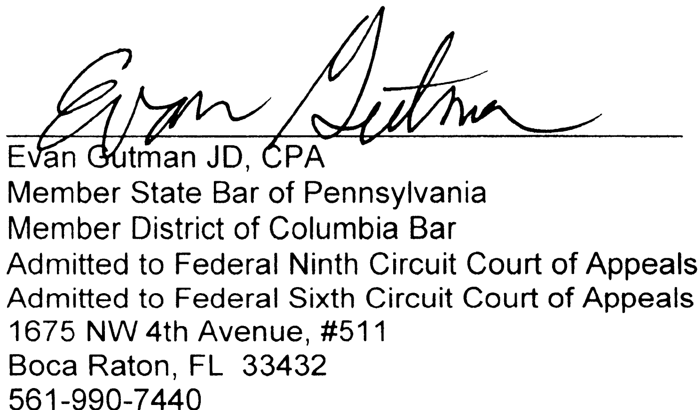
cases of Discovery Bank v Evan Gutman and Cavalry v Evan Gutman (both still pending), and with it now being noted the matter is sitting right at the **UNITED STATES SUPREME COURT;** Defendant's humbly noted position is summarized as follows:

Y'ALL ARE LEAVING A REAL WHOLE LOT OF DOCUMENTED AND EASILY PROVEN TRACKS RIGHT ON THE WRITTEN JUDICIAL AND COURT RECORD; WHICH ARE ALREADY DISSEMINATED NATIONWIDE AMONGST THE MEDIA AND ONLINE.

See In Re Oliver, 333 U.S. 257, 271 (1948). While concededly to date, neither the Media, nor the General Public has taken an interest (notwithstanding they've been information for a few years from Defendant); this Court may rest assured it's just a matter of time before they do. And rest assured, they will. Put simply, with the admittedly notable exception of the Judgments rendered against him, Defendant openly asserts and conceded that he just absolutely LOVES the Court record in this case, as well as in the Discover Bank and Cavalry cases. They're just so ABSOLUTELY PERFECT !!! And particularly since we are all now right at the UNITED STATES SUPREME COURT.

For the foregoing reasons, Defendant respectfully requests Plaintiff's Motion to have him held in Contempt and impose Sanctions against him be DENIED in full. Defendant would however, be most amenable to the imposition of Sanctions for the full amount of attorney fees and costs against Citibank, Adams and Reese LLP; and Mr. Curtin personally.

Submitted most humbly and graciously this 18 th day of September, 2023.



Evan Gutman JD, CPA
Member State Bar of Pennsylvania
Member District of Columbia Bar
Admitted to Federal Ninth Circuit Court of Appeals
Admitted to Federal Sixth Circuit Court of Appeals
1675 NW 4th Avenue, #511
Boca Raton, FL 33432
561-990-7440

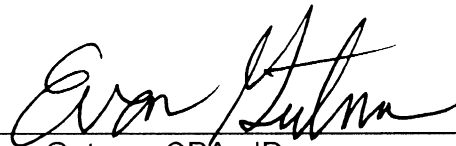
EXHIBIT 5(f)

CERTIFICATE OF SERVICE

I Evan Gutman, hereby Certify a true copy of the foregoing was sent electronically this day via the Florida Court -E-Portal and a follow up Copy will be sent subsequently via US Mail addressed as follows to :

Adams and Reese LLP
Attn: K. Michael Curtin, Esq.
100 N. Tampa Street, Suite 4000
Tampa, Florida 33602

DATED this 18 th day of September, 2023.



Evan Gutman CPA, JD
Member State Bar of Pennsylvania
Member District of Columbia Bar
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Admitted to Federal Ninth Circuit Court of Appeals
Florida Certified Public Accountant

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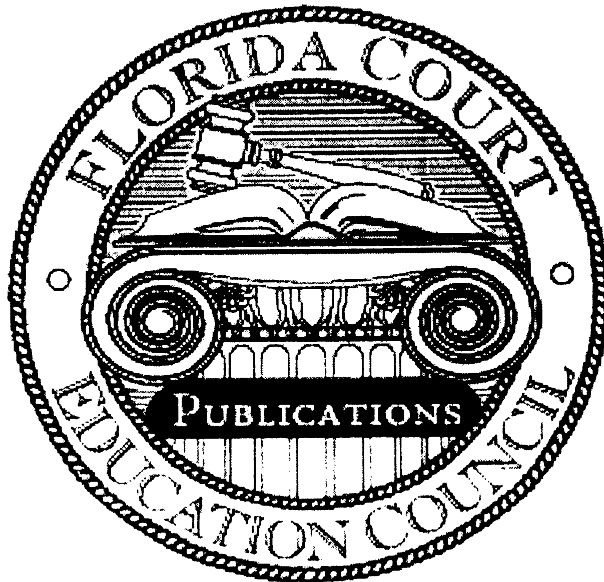
EXHIBIT 5(g)

EXHIBIT 1(a)

CONTEMPT BENCHGUIDE



2018 Edition

*[minor revisions were made to pp. 16 and 57 on 04/19/22]

EXHIBIT 5(h)

EXHIBIT 1(b)

(Fla. 4th DCA 2002). In other words, the contemnor must actually have the ability to comply with an order to be held in civil contempt. To prove contempt, the petitioner must show by a preponderance of the evidence that the respondent has willfully disobeyed an order of the court and that he or she has the present ability to comply with that order. *Aburos*; *Picurro v. Picurro*, 734 So. 2d 527 (Fla. 4th DCA 1999). The petitioner enjoys a presumption that the respondent has the ability to comply if a prior valid court order exists. *Id.* The burden shifts then to the respondent to show that he or she has lost that ability to comply. *Id.*

It is error to hold a defendant in contempt for failure to pay child support and shortly thereafter find him or her indigent for purposes of appeal. *Anderson v. Department of Revenue ex rel. Hamilton*, 11 So. 3d 424 (Fla. 4th DCA 2009).

The Department of Children and Families cannot be held in contempt for failure to comply with a court order to place a child in a therapeutic foster home where the department attempted to find a placement but none was available. *Department of Children and Families v. M.M.*, 855 So. 2d 1250 (Fla. 4th DCA 2003).

"Trial courts considering probate matters lack the power to use civil contempt to incarcerate a former personal representative for failing to return estate property, absent an express finding that the contemnor has the present ability to comply." *Jensen v. Estate of Gambidilla*, 896 So. 2d 917, 920 (Fla. 4th DCA 2005).

Evidence must be sufficient to justify a finding that the respondent has willfully violated the court order. *Bowen v. Bowen*, 471 So. 2d 1274 (Fla. 1985); *Knowles v. Knowles*, 522 So. 2d 477 (Fla. 5th DCA 1988).

To constitute contempt for failure to obey a previous order, the contemnor's behavior must clearly violate the order. *Pearson v. Pearson*, 932 So. 2d 601 (Fla. 2d DCA 2006); *Curry v. Robbins*, 744 So. 2d 527 (Fla. 3d DCA 1999); *Knorr v. Knorr*, 751 So. 2d 64 (Fla. 2d DCA 1999).

Checklist

— The purpose of the civil contempt order is to coerce compliance, not to punish noncompliance.

— The contemnor has clearly violated the prior court order.

— The court has provided adequate notice and a full and fair opportunity to be heard.

Filing # 176244985 E-Filed 06/27/2023 02:54:17 PM

IN THE COUNTY COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

CITIBANK, N.A.,

Plaintiff,

v.

Case No. 2020-005756-CC

EVAN S. GUTMAN,

Defendant.

_______________________________/

PLAINTIFF'S MOTION TO HOLD DEFENDANT IN CONTEMPT FOR INTENTIONAL FAILURE TO RESPOND TO DISCOVERY IN AID OF EXECUTION

Plaintiff, Citibank, N.A. ("Citibank"), files this its Motion to Hold Defendant, Evan S. Gutman ("Defendant"), in Contempt for his Intentional Failure to Respond to Discovery in Aid of Execution ("Motion for Contempt") and states:

I. INTRODUCTION

1. This case started as a simple credit card collection matter involving a principal amount of $11,292.15. Defendant has unreasonably delayed the resolution of this matter and increased the cost of this litigation due to his litigation strategy of filing multiple frivolous motions. The necessity of filing this Motion for Contempt is due to yet another dilatory tactic by Defendant. This Motion for Contempt deals with Defendant's intentional failure to respond to Citibank's discovery in aid of execution as to a Final Judgment as to Fees and Costs ("Final Judgment for Fees"). Defendant filed multiple motions in this Court and the Fourth District Court of Appeal in an attempt to prevent collection all of which were denied. Yet, even after all these attempts to prevent collection were denied, Defendant still fails and refuses to respond to Citibank's discovery in aid of execution. As a result, Defendant should be held in contempt.

EXHIBIT 3 **EXHIBIT 5(j)**

had a powerful mind. From the beginning their minds meshed. "We never separated with a disagreement as to what the law was," Harris remembered. "Hugo had an uncanny ability to pick out the right theory in a case. He could make a jury cry or a supreme court sit up and take notice. He was the best all-around lawyer I ever met, and an ideal partner."

In the courtroom he was nearly unbeatable. Hugo had a way with juries. Cocky, sure that he could persuade any juror, he was satisfied only if he won 90 percent of his cases. He bluffed and gambled, making jurors think that there was much information on the sometimes blank paper he waved in front of them. He used facial expressions—a smirk, grimace or raised eyebrow, a tense or eager look—or he assumed a certain posture or adopted an inflection of his marvelously adaptable voice. "Hugo's timing was exquisite," said Harris, "like that of a fine Shakespearean actor reading his lines." His "honey-smooth mildness of voice and manner . . . ," a friend wrote, "almost wholly masks the strength and firmness behind it and leads all who oppose him to underestimate him—once." By then his calculated stabs had hit the heart.

To Hugo the courtroom was virtually his. The judge presided, but Hugo staged a presentation designed to create an impression on the jury. He had only a bare platform with which to work, no backdrop or props, no effects to create illusions, no opportunity for retakes; and the search for truth curtailed his imagination. The courtroom was his theater. "That's my turf," he once said. He moved around confidently and purposely, never at random. Jurors felt that he could be believed when he suggested something. His eyes took in all and his face was passive with just the hint of a smile, as he probed for weaknesses he could exploit. But he stopped short of being harsh or caustic or too imposing. Rather, he struck a pose of confident humility. The verdict belonged to the jury alone. "Look 'em in the eye but give 'em room," he said. He tried to make jurors feel not that he was a great showman, but that he just had a great case.

It all came naturally. Many years later, Hugo took an aptitude test under another name. The result: he was best suited to be an actor. His adversaries would not have been surprised. Nor was he—he always said that if he couldn't be a lawyer, he wanted to be an actor. During trial, he was usually feisty and contentious. He deliberately skirted the limits, provoking foes and infuriating judges who often threatened to, but never did, charge him with contempt of court. ("If you're not threatened at least once during a case, you're not doing your job," he said.) He kept his outward calm. When Hugo, Jr., was in law school, his father gave this advice:

EXHIBIT 6

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

ADMINISTRATIVE ORDER NO. 3.202-**10/2023***^

IN RE: MOTIONS TO COMPEL
DISCOVERY OR FOR PROTECTION
FROM DISCOVERY
______________________________:

1. No motions to compel discovery or for protection from discovery will be heard unless the notice of hearing bears the certificate of moving counsel that opposing counsel has been contacted and a good faith attempt has been made to resolve the discovery dispute without a hearing, but that could not be accomplished.

   The conferral contemplated by this Administrative Order and Local Rule 4 must be done prior to scheduling the hearing. A good faith "attempt to resolve" the matter is defined by Local Rule 4 to contemplate actual efforts to speak with counsel in person or via electronic means, not merely the exchange of emails or texts. See, 15th Cir. Local Rule 4(3) & fn 2.

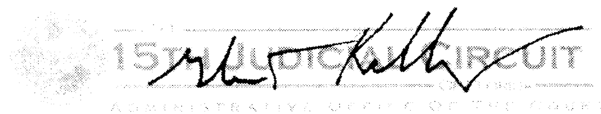
2. If ongoing good faith conferrals resolve the motion, in whole or in part, prior being heard, the parties shall immediately notify the Court and either cancel the hearing or clarify what remains to be heard sufficiently in advance to prevent the waste of judicial preparation time.

3. When a party wholly fails to respond to a written discovery request and has not sought an extension of time, an ex-parte order may be entered by the Court.

   Motions seeking ex-parte relief remain subject to the certification and conferral requirements of paragraph 1. In determining whether to proceed ex-parte, the Court may consider the actual efforts made to confer. A hearing may be required if the certification does not reflect the conferral was of the nature contemplated by this order.

   Properly filed ex-parte motions to compel discovery may be submitted with a proposed ex-parte order through the Circuit's online servicing system for the Court's consideration.

DONE and ORDERED at West Palm Beach, Florida, this 4th day of October 2023.



____
Glenn Kelley, Chief Judge

*supersedes admin. order 3.202-9/08
^ Due to substantial revisions, the changes are not in bold

EXHIBIT 7

Yet I had residual doubts. At my first opportunity I hurried West, went up the Tieton to Conrad Meadows, up the Conrad Creek Trail to Meade Glacier, and camped in the high meadow by the side of Warm Lake, where I had panicked as a boy. The next morning I stripped, dived into the lake, and swam across to the other shore and back—just as Doug Corpron and my other boyhood friends used to do. I shouted with joy, and Gilbert Peak returned the echo. I had conquered my fear of water.

The experience had a deep meaning for me, as only those who have known such feelings and conquered them can appreciate. In death there is peace. There is terror only in the fear of death, as Roosevelt knew when he said, "All we have to fear is fear itself." Because I had experienced both the sensation of dying and the terror that fear of it can produce, the will to live somehow grew in intensity.

At last I felt released. By immersing myself in water and coming to know that medium of life as well as the medium of air, I conquered that fear.

Fear of lightning was another force in my life, originating in religious dogma. I overcame that by reasoned exposure to the danger and by talks with Draper. The arrival of a sure-cure against the fear of lightning was marked by an airplane incident. I was flying over Colorado in a heavy electric storm. Lightning hit the wing just outside my window and for a few seconds rolled in fiery waves along its surface before disappearing in the void. I experienced wonder and amazement but not fear.

Fear of inadequacy because of my weak legs as a result of my bout with polio was another overwhelming force. In retrospect I realize I probably overcompensated for that fear in many ways. But when I could hike and climb with the best of them, that fear dissolved just as a white cloud on a summer day slowly disappears when it encounters a cold air stream high in the sky.

But my rebellion against the shame of being called a weakling had lasting effects. As already noted, it caused me to become very much a loner. Moreover, it inured me in a subtle way to all criticism. Not that I enjoyed criticism, I certainly did not, but criticism never made me turn tail and run. Rather, it impelled me forward into the thick of the fight.

My fears included the fear of wild animals, or at least some of them. As a boy I never encountered a cougar face to face, though in later years I saw cougars in the wild many times. I learned then what I did not know when I was young, that a cougar, unlike a tiger, goes away from man and seldom attacks unless wounded or cornered.

My first experience with this animal was when I, as a boy, took a back-

EXHIBIT 8(a)

Evan S. Gutman CPA, JD
1675 NW 4th Avenue, Apt. 511
Boca Raton, FL 33432
561-990-7440

October 9, 2023

KPMG LLP
Attn: David John Reavy
345 Park Avenue
New York, NY 10154

Re: Evan S. Gutman, Petitioner v Citibank, N.A.
U.S. Supreme Court Case #23-333

Dear Mr. Reavy,

It is my understanding from the Public Company Accounting Oversight Board (PCAOB) you are the Audit Engagement Partner for the Citigroup Certified Audit. As you know, as the Citigroup auditors it is your responsibility to ensure the Certified Financial Statements "present fairly the financial position" of Citigroup. On October 2, 2023, the U.S. Supreme Court docketed and assigned a case number to the above referenced matter, which is #23-333.

Accordingly, I am writing to you regarding the manner in which this case may significantly impact upon the financial statements that you anticipate to Certify. In this manner, you will be able to take appropriate steps to ensure your audit procedures are sufficiently comprehensive to address financial risks to the Shareholders of Citigroup.

In this letter, I will explain the financial risks and also make recommendations regarding how you may want to address them. This litigation began in July, 2020 when Citibank, N.A. instituted a lawsuit against me for the sum of $ 11,292.15 related to an alleged credit card debt. Since then, the litigation has become extremely contentious and acrimonious on both sides.

To date, Citibank has prevailed at both the trial court level and Florida's Fourth District Court of Appeals. If the U.S. Supreme Court denies my Petition, the financial risks may be minimal. **However, if my Petition is granted by the U.S. Supreme Court the financial risks to Citibank, and Specifically Identifed Citibank Executives and Shareholders are massive.** The reasons are as follows. The U.S. Supreme Court case focuses on the legitimacy of the legal doctrine of Litigation Privilege in Florida. My position is Citibank has been filing an enormous number of meritless complaints against impoverished citizens who have no way to legally defend themselves. Additionally, my position is their debt collector attorneys are engaging in extensive illegal acts.

EXHIBIT 8(b)

Currently, under Florida law the State Supreme Court has held any type of Illegal Tortious Conduct committed within the context of a judicial proceeding enjoys absolute immunity pursuant to Litigation Privilege. That is the exact issue I am challenging. **IF** the U.S. Supreme Court rules in my favor, it means illegal tortious conduct within the context of a judicial proceeding will no longer enjoy such broad based immunity. That in turn, will likely mean Citibank, N.A. and their debt collector attorneys can be sued for commission of all their illegal acts.

Under Florida law, an Unjust Enrichment legal claim is only meritworthy if no written contract exists between the parties. However, Citibank has actual knowledge written contracts exist with respect to every single credit card they issue. Thus, when they pursue an Unjust Enrichment claim, such is meritless. But, due to Litigation Privilege, the State Supreme Court has held they can't be sued for such. Thus, if Florida law pertaining to Litigation Privilege is held invalid by the U.S. Supreme Court, that would likely mean a massive number of lawsuits will be instituted against Citibank.

To protect the Citigroup Shareholders, your audit procedures need to address the degree of financial risk attributable to the potential lawsuits that may be filed against Citibank, **IF** the U.S. Supreme Court rules in my favor. Here are recommendations you may want to consider in formulating your audit programs.

1. Determine the number of Unjust Enrichment claims Citibank files in each State.
2. Engage Legal Counsel in each and every U.S. State to address whether an Unjust Enrichment legal claim is invalidated by the existence of a written contract. Put simply, the law of other States regarding Unjust Enrichment may be different than Florida.
3. Determine the extent of Illegal Tortious Conduct committed by debt collector attorneys in each State, who represent Citibank based upon reliance of Immunity under Litigation Privilege.
4. Determine the degree of participation by Citibank Executives with respect to Illegal Acts committed by debt collector attorneys they engage; and identify the Specific Citibank Executives who are responsible for those Illegal acts.
5. Determine the nature of the law in each State pertaining to Sanctions a Court may impose upon a Plaintiff that willingly files Meritless Complaints.
6. Determine the nature of the law in each State pertaining to Punitive Damages that may be imposed for the filing of Meritless Complaints.

My understanding is roughly speaking, there are about 6,000 Petitions for a Writ of Certiorari filed with the U.S. Supreme Court each year. However, most are filed by indigent litigants, many of whom are in prison. Historically, those have a quite low success rate. I also understand roughly speaking, of the 6,000 Petitions, about

1,500 - 2,000 are Paid Petitions such as mine. Of those, there is roughly speaking a success rate of about 6 %. However, the issue I am presenting is a "Hot Button" issue in the legal profession, so I believe the probability of my Petition being granted is substantially higher. But, we shall see. I will tell you, these days I'm quite optimistic.

As indicated, if my Petition is denied, the issue <u>might</u> not have any impact upon the audit procedures you need to perform. But, if my Petition is granted, I think it is fair to say that Citibank is going to have a significant financial problem with this issue. And it's going to be on a nationwide basis, not just Florida.

For your convenience, enclosed is a copy of the U.S. Supreme Court Petition I filed, along with a recent trial court filing (which notably includes this letter as an Exhibit). The Petition is also available on the U.S. Supreme Court website; as well as my own two websites at www.heavensadmissions.com and www.gutmanvaluations.com. I assume you will be able to obtain all the filed legal documents regarding the litigation from Citibank Counsel, and that you will be speaking with them, as well as numerous Citibank Executives regarding this matter.

A copy of this letter is included as an Exhibit in my recent trial court filing (copy enclosed). This letter is also going to be posted on my websites; and I am also providing a copy to the SEC and PCAOB. I assume this will provide adequate encouragement to ensure your audit procedures are sufficiently comprehensive to capture financial risks to the Shareholders, so the Certified Financial Statements "present fairly the financial position" of Citigroup.

As of October 6, 2023, I understand Citigroup Stock is selling at **$ 40.57** per Share, with a Market Cap of just over **$ 78 Billion**. It will be quite interesting to see what happens to the Stock Price, <u>**IF**</u> my Petition is granted.

Very truly yours,

Evan S. Gutman CPA, JD

Member State Bar of Pennsylvania
Member District of Columbia Bar
Admitted to U.S. Tax Court Bar
Admitted to Federal Sixth Circuit Court of Appeals
Admitted to Federal Ninth Circuit Court of Appeals
Florida Certified Public Accountant

cc: Kenneth M. Curtin, Esq., Adams and Reese LLP
Donald Mihokovich, Esq, Adams and Reese LLP
Securities and Exchange Commission
Public Company Accounting Oversight Board (PCAOB)