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

CASE NUMBER:

CITIBANK, N.A.

50-2020-CC-005756-XXXX-MB

Plaintiff

v

EVAN S GUTMAN

Defendant

DEFENDANT'S OPPOSITION TO CITIBANK MOTION FOR ORDER ON ENTITLEMENT TO APPELLATE ATTORNEY'S FEES

"Martin Luther King was arrested . . . . Instead of the routine processing, he was . . . taken . . . . to the state prison, 230 miles aways, to serve four months at hard labor for violating probation on a year-old technical traffic violation. Black leaders feared that he would be killed in prison. . . .
. . .
. . . He called the clerk of the state Senate, who was the closest friend of Judge Oscar Mitchell - the judge who had canceled King's probation and ordered him to prison. . . . Robert Kennedy put a call through to Mitchell, expressing his interest, as a lawyer and as a citizen, in seeing that King be allowed to post bail for the offense. Mitchell replied that he agreed. . . .

. . . . Ironically, after the election, **Robert Kennedy's telephone call was severely criticized . . . . for "improper," ex parte interference with the judicial process**. . . .
. . .
. . . . one of Robert Kennedy's aides tried to advance Wofford's cause **by putting Wofford and White** (who by then was deputy attorney general), **together for a drink**. Let Wofford tell his rueful tale:

> ". . . . I told how I had spent the entire session on the propriety of Bob Kennedy's call to the Georgia judge . . . . The class was divided on the question of whether he should be disbarred for such behind-the scenes intervention in a matter before the court. **White asked me what I thought**. . . . I said I agreed with the majority of the students: reprimand, yes; disbarment, no. **White was not amused. He commented sourly, "You might be interested to know that I recommended to Bob that he call that judge."**
>
> **"** *THE MAN WHO ONCE WAS WHIZZER WHITE* ", Biography of Former U.S. Supreme Court Justice Byron R. White, By Dennis J. Hutchinson, Professor University of Chicago, (Court Clerk for Justice Byron R. White and Justice William O. Douglas), Free Press Divison of Simon & Schuster, Inc. Pgs. 256 - 258, (1998)

SEE EXHIBIT 1 Attached

"Without publicity, all other checks are insufficient, in comparison of publicity, all other checks are of small account. **Recordation, appeal**, ... 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)

OPPOSITION

Defendant Evan S. Gutman hereby Humbly and Graciously Opposes Plaintiff Citibank's Motion for an Order on Entitlement to Appellate Attorney's Fees on the following grounds :

1. This case is currently pending at the United States Supreme Court, which has distributed Defendant's Petition for a Writ of Certiorari; for consideration at the U.S. Supreme Court Conference of November 3, 2023 (See Exhibit 2 attached). The issue presented to the U.S. Supreme Court is whether the Florida Supreme Court is constitutionally allowed to provide absolute immunity "across the board" for all illegal tortious acts committed within the context of a judicial proceeding. If the U.S. Supreme Court grants the Petition there is a substantial likelihood the decision pertaining to the underlying judgment rendered by the Fourth District Court of Appeals will be reversed. Accordingly, as a matter of "Substance" (if not also "Form,") this Court would be encroaching upon the legitimate Jurisdiction of the U.S. Supreme Court to resolve the pending dispute. **FN 1**

   Additionally, if the U.S. Supreme Court grants the Petition, Defendant's Counterclaim, that was unconstitutionally dismissed on the ground of Litigation Privilege (which provides debt collector attorneys in Florida with judicial condonement of immunity for their illegal tortious acts), will be Resurrected. Accordingly, at a minimum this Court should defer Ruling upon Plaintiff's Motion for Entitlement until such time as the U.S. Supreme Court renders a decision on the pending Petition. Under Florida law, Plaintiff Citibank is only entitled to Appellate Attorney Fees if they prevail on their appeal, and that issue is not yet determined since the matter is now pending at the U.S. Supreme Court.

2. Defendant concurrent with filing this Opposition has filed a Request for a Ruling on Plaintiff Citibank's Motion for an Extension of Time to Respond to Discovery filed by Citibank Counsel Michael Thiel Debski, Esq. on July 23, 2021. **It has now been almost two and a half years since that Motion was filed; and this Court has not yet ruled upon it.** In the event that Motion is Denied, all matters presented in the Requests for Admissions filed by Defendant on July 1, 2021 are admitted. That would legally establish fault and liability upon Citibank on all issues, including but not limited to the filing of thousands of Meritless Claims based upon a legally defective Count of Unjust Enrichment. Such is relevant to the issue of Entitlement to Appellate Attorney Fees because it directly relates to Fl. Stat. 768.79 factors delineated in Paragraph 8(b) of the statute, which the Court of Appeals directed this Court to address on the issue of Entitlement. (See Exhibit 5 Appellate Order). In contrast, if the Court grants Plaintiff Citibank's Motion for an Extension, **it means this Court considers almost two and a half years for this Court to render a ruling on a Motion to be a reasonable amount of time**. See Florida Supreme Court Judicial Rule of Administration 2.215(f) stating (emphasis added) (Exhibit 3) :

> **" (f) Duty to Rule within a Reasonable Time**. Every judge has a duty to rule upon and announce an order or judgment on every matter submitted to that judge **within a reasonable time**."

With the foregoing in mind, Defendant now Humbly, Graciously and somewhat "Cheerfully" welcomes Judge Garrison into the "World" of a Pro Se Litigant, whereby no matter what move Judge Edward Garrison makes, he has a quite problematic issue.

FOOTNOTE 1 - See Hobbie v Unemployment Appeals Commission of Florida, 480 U.S. 136, Footnote 4 on Jurisdiction issue. (1987).

Concurrently, Plaintiff Citibank can find no shelter or solace in the recent Per Curiam Affirmance regarding the underlying judgment. (See State v Swartz, 734 So.2d 448, (Fla. 4th DCA) (1999) and plethora of Florida Appellate Opinions holding a Summary Per Curiam Affirmance has no precedential value). Bottom line is at a bare minimum, Defendant is entitled to a Ruling one way or the other, on the Plaintiff's Motion for an Extension, now outstanding and unruled upon for almost two and a half years.

A copy of this Opposition will be published on Defendant's Websites at www.gutmanvaluations.com and www.heavensadmissions.com as soon possible; and also distributed to the Media, prominent attorneys and other individuals of Defendant's selection.

For the foregoing reasons, Defendant requests this Court Deny Plaintiff's Motion; or at a minimum at least Defer Ruling upon such, until the U.S. Supreme Court renders its decision on the pending Petition for a Writ of Certiorari to Florida's Fourth District Court of Appeals.

Submitted Humbly and Graciously this 28th 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

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 28th 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)

didate's hesitancy, as White's directive two months after the national convention to state and county chairmen of Citizens committees demonstrates:

> As you know, it is important that our nominees have maximum support from all groups in our national community. We hope that you are keeping this in mind in organizing and operating the Citizens organization in your state or county. In addition, we wish to advise you of certain special operations carried on by the Democratic National Committee. In the principal campaign, Congressman Dawson, Vice-chairman of the Democratic national committee, is working with regular Democratic Negro leaders. Mrs. Marjorie Lawson is working with those who wish to participate in an independent campaign like the rest of the Citizens activities.

He closed, after detailing Lawson's authority to deal with state and local chairmen, with something less than a clarion call to action: "We will appreciate your giving this your full cooperation, and making real use of everyone [whom Lawson] can bring into our campaign."

A month after the memorandum, everyone fell off the tightrope. Martin Luther King was arrested with others who sat in at a segregated lunch counter in a prominent downtown Atlanta department store. Instead of the routine processing, he was released, then taken from jail to jail in leg irons, and finally to the state prison, 230 miles away, to serve four months at hard labor for violating probation on a year-old technical traffic violation. Black leaders feared that he would be killed in the prison, and both city and state officials knew that any move to help King would be political suicide. Harris Wofford, acting on his own, began working with the mayor of Atlanta to negotiate King's release, but the deal almost blew up in everyone's face when the mayor, who was not unsympathetic to King, threatened to claim that Senator Kennedy had prompted him to action.

Wofford recovered his balance, went to Shriver, and urged him to convince the candidate to telephone Mrs. King, as a gesture, token to be sure, of sympathy and support. Shriver did an end run around Kennedy's road handlers, and the candidate placed the call. Robert Kennedy "scorched" Wofford and Shriver, calling them "bomb-throwers" who had cost his brother the election. The candidate, whose reflex was always to calm his trigger-happy brother, managed to explain the upside, moral and political, to the call. Early the next morning, the candidate placed another call, this time designed to free King and not simply to soothe his family. He awakened Gov. Ernest Vandiver at 6:30 A.M. and asked what could be done to get King out of prison and what everyone knew was a high-risk position and a political powder keg.

EXHIBIT 1(b)

Vandiver consulted with his advisers, including his forty-two-year-old chief of staff, Griffin B. Bell, and telephoned his brother-in-law, Robert Russell, a nephew of Sen. Richard Russell and a Democratic national committeeman from Georgia. He called the clerk of the state Senate, who was the closest friend of Judge Oscar Mitchell—the judge who had canceled King's probation and ordered him to prison. Once the bail order was arranged, Vandiver tried to get back to the candidate but was unable to find him, so instead he telephoned Robert Kennedy, whom he tracked down in New York City. From a pay phone on Long Island, Robert Kennedy put a call through to Mitchell, expressing his interest, as a lawyer and as a citizen, in seeing that King be allowed to post bail for the offense. Mitchell replied that he agreed. In fact, Mitchell had already decided to grant bail, but he did not reveal his decision to Kennedy, because the telephone call would serve as useful political cover for Vandiver and his allies when King was freed: it would appear that Kennedy, not Vandiver and others behind the scenes, had sprung King.

King's release, accompanied by the candidate's compassionate telephone call to Mrs. King, was one of the two or three most "celebrated incidents" of the campaign and a pivotal moment for the Democratic ticket, which appeared to be losing votes rapidly among black voters to Nixon and Henry Cabot Lodge. Ironically, after the election, Robert Kennedy's telephone call was severely criticized in the left-wing press, especially the *Nation*, which raked Kennedy over the call for "improper," ex parte interference with the judicial process. The criticism contains a double dose of irreality. King was certainly in serious, perhaps life-threatening, danger, and any injury, let alone his death, would cause a full-scale riot, so his release on bond—not unusual for either the sit-in or the traffic violation—was hardly a distortion of the system. Second, trial judges, especially in the South at the time, were accustomed to conversations about their rulings on public issues (Mitchell did not admonish Robert Kennedy for contacting him without notifying opposing counsel, but, in the best Southern custom, thanked him for his interest). Robert Kennedy's telephone call went without notice to county officials for only a few hours, until the story broke nationwide. Nonetheless, journals such as the *Nation* and law professors of all stripes put Robert Kennedy under a microscope. One of the part-time academics who upbraided Kennedy was Harris Wofford, who used the incident in his legal ethics class at Notre Dame after the election.

The curricular choice turned out to be a disaster for Wofford in ways he never foresaw. During the transition period, when Wofford was jockeying against long odds to become assistant attorney general for the Civil Rights Division, one of Robert Kennedy's aides tried to advance Wofford's cause by

EXHIBIT 1(c)

putting Wofford and White (who by then was deputy attorney general), together for a drink. Let Wofford tell his rueful tale:

> The encounter was disastrous. Just back from teaching a weekly Notre Dame law course on professional responsibility, I told how I had spent the entire session on the propriety of Bob Kennedy's call to the Georgia judge requesting Martin Luther King's release from jail. The class was divided on the question of whether he should be disbarred for such behind-the-scenes intervention in a matter before the court. White asked me what I thought. Still in a bantering mood and citing the Canons of Professional Ethics of the American Bar Association, I said I agreed with the majority of the students: reprimand, yes; disbarment, no. White was not amused. He commented sourly, "You might be interested to know that I recommended to Bob that he call that judge."

Wofford was a lawyer who simply did not understand his tribunal, to the extent that he thought of the social encounter that way. An academic postmortem based on arid assumptions that bore little relation to the actual stakes of King's imprisonment would be the last perspective that would have moved Byron White. Whatever suspicion White had of Wofford as a "bomb-thrower," to use Robert Kennedy's term, or a "zealot"—White's preferred epithet for those who prized reflexive convictions over unsentimental pragmatism—the encounter confirmed his worst views. White prized his own pragmatism as much as Wofford prized his own rectitude, but White did not mistake one for the other; that, as much as any other difference, defined the gulf between the two men. The tactical disagreement over the telephone call was subordinate to the strategic question of the government's role in advancing civil rights. Robert Kennedy and Byron White shared a common conclusion on the issue, at least at the beginning of the administration: the political volatility of the issue meant that legislation, especially from a Congress controlled by Southern Democrats at the high-water mark of the seniority system, was a nonstarter, and that executive action and litigation, carefully developed, were the only practical routes with any possibility of success.

King was released from Reidsville state prison three weeks before the election. Despite the long-term importance of the incident, White had what appeared to be graver worries at the time. The Republican ticket was picking up steam, and the Kennedy campaign worried over Nixon's track record and capacity for a bare-knuckled closing push. On October 18, White issued an urgent memorandum to all Citizens for Kennedy and Johnson chairmen directing them to issue statements, prepared in Washington three times a

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**
Sep 19 2023	Waiver of right of respondent CitiBank, N.A. to respond filed. **Main Document**
Oct 18 2023	DISTRIBUTED for Conference of 11/3/2023.

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		
Attorneys for Respondent		

EXHIBIT 3

copies shall be readily available for inspection as a public record, and copies shall be provided to any requesting party for the cost of duplication. The chief judge shall, on an annual basis, direct a review of all local administrative orders to ensure that the set of copies maintained by the clerk remains current and does not conflict with supreme court or local rules.

(4) All local court rules entered pursuant to this section shall be numbered sequentially for each respective judicial circuit.

(f) Duty to Rule within a Reasonable Time. Every judge has a duty to rule upon and announce an order or judgment on every matter submitted to that judge within a reasonable time. Each judge shall maintain a log of cases under advisement and inform the chief judge of the circuit at the end of each calendar month of each case that has been held under advisement for more than 60 days.

(g) Duty to Expedite Priority Cases. Every judge has a duty to expedite priority cases to the extent reasonably possible. Priority cases are those cases that have been assigned a priority status or assigned an expedited disposition schedule by statute, rule of procedure, case law, or otherwise. Particular attention shall be given to all juvenile dependency and termination of parental rights cases, cases involving families and children in need of services, challenges involving elections and proposed constitutional amendments, and capital postconviction cases. As part of an effort to make capital postconviction cases a priority, the chief judge shall have the discretion to create a postconviction division to handle capital postconviction, as well as non-capital postconviction cases, and may assign one or more judges to that division.

(h) Neglect of Duty. The failure of any judge, clerk, prosecutor, public defender, attorney, court reporter, or other officer of the court to comply with an order or directive of the chief judge shall be considered neglect of duty and shall be reported by the chief judge to the chief justice of the supreme court. The chief justice may report the neglect of duty by a judge to the Judicial Qualifications Commission, and neglect of duty by other officials to the governor of Florida or other appropriate person or body.

(i) Status Conference after Compilation of Record in Death Case. In any proceeding in which a defendant has been sentenced to death, the circuit judge assigned to the case shall take such action as may be necessary to ensure that a complete record on appeal has been properly prepared. To that end, the judge shall convene a status conference with all counsel of record as soon as possible after the record has been prepared pursuant to rule of appellate procedure 9.200(d) but before the record has been transmitted. The purpose of the status conference shall be to ensure that the record is complete.

Former Rule 2.050 amended June 14, 1979, effective July 1, 1979 (372 So.2d 449); July 17, 1980, effective Jan. 1, 1981 (389 So.2d 202); Dec. 4, 1980, effective Jan. 1, 1981 (391 So.2d 214); Jan. 5, 1987, effective Feb. 1, 1987 (500 So.2d 524); May 21, 1987, effective July 1, 1987 (507 So.2d 1390); Sept. 29, 1988, effective Jan. 1, 1989 (536 So.2d 195); Oct. 8, 1992, effective Jan. 1, 1993 (609 So.2d 465); April 11, 1996 (672 So.2d 523); Oct. 24, 1996, effective Jan. 1, 1997 (682 So.2d 89); Feb. 7, 1997 (688 So.2d 320); Nov. 20, 1997 (701 So.2d 864); July 12, 2001, effective Oct. 1, 2001 (797 So.2d 1213); Aug. 29, 2002, effective Oct. 1, 2002 (826 So.2d 233); July 10, 2003 (851 So.2d 698); Nov. 3, 2005, effective Jan. 1, 2006 (915 So.2d 157); Mar. 2, 2006 (923 So.2d 1160). Renumbered from Rule 2.050 Sept. 21, 2006 (939 So.2d 966). Amended Mar. 27, 2008, effective April 1, 2008 (978 So.2d 805); July 10, 2008, effective Jan. 1, 2009 (986 So.2d 560); Sept. 25, 2008, effective Oct. 1, 2008 (992 So.2d 237); amended effective Feb. 24, 2011 (75 So.3d 1241); Feb. 9, 2012 (121 So.3d 1); amended July 3, 2014, effective Jan. 1, 2015 (148 So.3d 1171); amended effective Oct. 28, 2021 (2021 WL 5050374).

Committee Notes

2008 Amendment. The provisions in subdivision (g) of this rule should be read in conjunction with the provisions of rule 2.545(c) governing priority cases.

Court Commentary

1996 Court Commentary. Rule 2.050(h) should be read in conjunction with Florida Rule of Appellate Procedure 9.140(b)(4)(A).

1997 Court Commentary. [Rule 2.050(b)(10)]. The refresher course may be a six-hour block during any Florida Court Education Council approved course offering sponsored by any approved Florida judicial education provider, including the Florida College of Advanced Judicial Studies or the Florida Conference of Circuit Judges. The block must contain instruction on the following topics: penalty phase, jury selection, and rule 3.850 proceedings.

Failure to complete the refresher course during the three-year judicial education reporting period will necessitate completion of the original "Handling Capital Cases" course.

2002 Court Commentary. Recognizing the inherent differences in trial and appellate court dockets, the last sentence of subdivision (g) is intended to conform to the extent practicable with appellate rule 9.146(g), which requires appellate courts to give priority to appeals in juvenile dependency and termination of parental rights cases, and in cases involving families and children in need of services.

Criminal Court Steering Committee Note

2014 Amendment. Capital postconviction cases were added to the list of priority cases.

Rule 2.220. Conferences of Judges

(a) Conference of County Court Judges.

(1) *Organization.* There shall be a "Conference of C Court Judges of Florida," consisting of the active and s county court judges of the State of Florida.

(2) *Purpose.* The purpose of the conference shall be:

(A) the betterment of the judicial system of the state;

(B) the improvement of procedure and practice i several courts;

(C) to conduct conferences and institutes for conti judicial education and to provide forums in which the c court judges of Florida may meet and discuss n problems and solutions; and

(D) to provide input to the Unified Committee on J Compensation on judicial compensation and benefit and to assist the judicial branch in soliciting suppor resources on these issues.

(3) *Officers.* Management of the conference shall be in the officers of the conference, an executive committee board of directors.

(A) The officers of the conference shall be:

(i) the president, president-elect, immediate past dent, secretary, and treasurer, who shall be elec large; and

EXHIBIT 4(a)

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

CASE NUMBER: 50-2020-CC-005756-XXXX-MB DIV:

CITIBANK, N.A.,

Plaintiff,

vs.

EVAN S GUTMAN,

Defendant.

_____/

PLAINTIFF'S MOTION FOR EXTENSION OF TIME TO RESPOND TO DISCOVERY

COMES NOW Plaintiff, CITIBANK, N.A., by and through its undersigned attorneys, pursuant to applicable Florida Rules of Civil Procedure, hereby respectively moves this Court to grant this Motion for Extension of Time to Respond to Defendant's Request for Admissions to Plaintiff Citibank, N.A., Notice of Propounding Interrogatories to Plaintiff Citibank, N.A., and Defendant's Request for Production to Plaintiff Citibank, N.A., dated July 01, 2021 (hereinafter "Discovery Requests"). In support thereof, Plaintiff shows that:

1. On or about July 1, 2021, Defendant served Defendant's Discovery Requests to the Plaintiff.

2. Plaintiff is in the process of researching and reviewing its records in order to respond to Defendant's Discovery Requests.

3. Plaintiff desires a reasonable extension of time to complete its research and review.

4. The instant Motion is not for purposes of delay.

WHEREFORE, Plaintiff respectfully requests that this Court enter an Order providing a reasonable extension of time to respond to Defendant's Discovery Requests.

EXHIBIT 4(b)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished on July 23, 2021, to: EVAN S GUTMAN, Defendant, EGUTMAN@GUTMANVALUATIONS.COM by Email.

DEBSKI & ASSOCIATES, P.A.

BY: _____

Michael Thiel Debski
Attorney for Plaintiff
P.O. Box 47718
Jacksonville, FL 32247
Phone: (904) 425-0901 / (800) 733-0717
RULE 2.516 DESIGNATED EMAIL:
rd@ecert.comcastbiz.net
Florida Bar #084840

K1903856

This communication is from a debt collector

EXHIBIT 5

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

July 20, 2023

CASE NO.: 4D22-2821
L.T. No.: 502020CC005756

EVAN S. GUTMAN v. CITIBANK, N.A.

Appellant / Petitioner(s) Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that appellee's May 9, 2023 motion for award of attorney's fees on appeal is granted conditioned on the trial court determining that appellee is entitled to fees under section 768.79, Florida Statutes (2021), and if so, setting the amount of the attorney's fees to be awarded for this appellate case. If a motion for rehearing is filed in this court, then services rendered in connection with the motion, including, but not limited to, preparation of a responsive pleading, shall be taken into account in computing the amount of the fee.

Served:

cc: Donald Allen Mihokovich
Evan S. Gutman
Jack S. Kallus
Clerk - Palm Beach
Kenneth M. Curtin

ms

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal