Filing # 181981184 E-Filed 09/18/2023 12:21:28 AM

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

CITIBANK, N.A.	CASE NUMBER:
Plaintiff	50-2020-CC-005756-XXXX-MB
v.	
EVAN S. GUTMAN,	**DEFENDANT'S OPPOSITION TO PLAINTIFF'S MOTION TO HOLD HIM IN CONTEMPT AND DENY PLAINTIFF'S MOTION FOR SANCTIONS NEVER EVEN FILED BY PLAINTIFF AS OF SEPT. 17, 2023**

" 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 **NONEXISTENT COURT ORDER**, 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 unambiguously 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)

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

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

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.

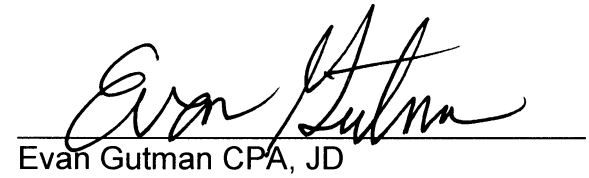
Evan Gutman JD, CPA
Member State Bar of Pennsylvania
Member District of Columbia Bar
Admitted to Federal Ninth Circuit Court of Appeals
Admitted to Federal Sixth Circuit Court of Appeals
1675 NW 4th Avenue, #511
Boca Raton, FL 33432
561-990-7440

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
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Florida Certified Public Accountant

1675 NW 4th Avenue, #511
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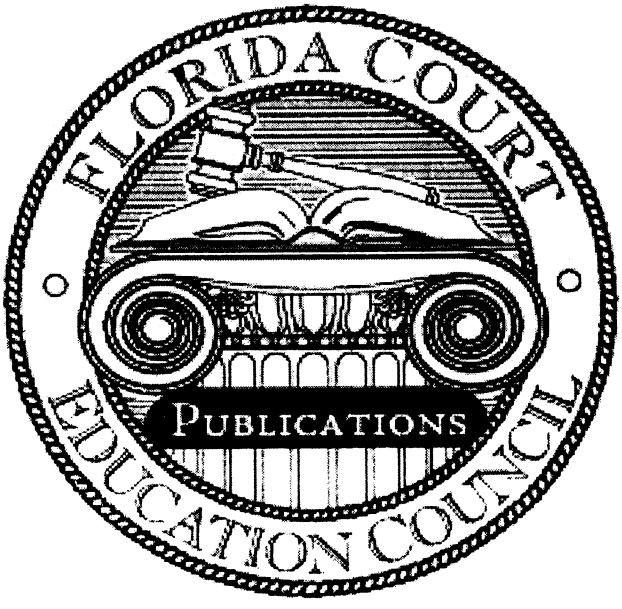
EXHIBIT 1(a)

CONTEMPT BENCHGUIDE



2018 Edition

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

(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.

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EXHIBIT 2

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

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: