

**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 MOTION FOR  
RECONSIDERATION OF COURT ORDER DENYING  
LEAVE TO AMEND COUNTERCLAIM TO ALLOW  
CLAIM FOR PUNITIVE DAMAGES**

Defendant, Pro Se

**MOTION**

Comes now, Defendant Evan Gutman, JD, CPA, seeking to assist Impoverished Citizens in being absolved of their alleged debts to Citibank, N.A. (and citizens not quite so impoverished), now hereby Most Respectfully MOVES this Court, by way of Honorable Judge April Bristow for Reconsideration of the Erroneous Order of former Judge Sandra Bosso-Pardo (now Retired) denying Defendant's Motion for Leave to Amend his Counterclaim to include a claim for Punitive Damages. The grounds are as follows:

1. Judge Sandra Bosso-Pardo's Order Denying Leave to Amend applied the **Wrong Legal Standard** in considering and ruling upon Defendant's Motion. Specifically, the Court based its written Order on an assertion Defendant failed to proffer "clear and convincing evidence" pursuant to F.S. 768.72. However, the proper legal standard for pleading purposes in considering a Motion to Amend to include punitive damages is set forth in FRCP 1.190, as well as Fl. Stat. 768.72, and only requires a "**reasonable showing**" of evidence in the record or to be proffered by the claimant. The "clear and convincing" standard is applied at the Trial level, not the Pleading level. That's what trials are for.
2. Substantial procedural and ethical improprieties occurred and were improperly condoned by former County Judge Sandra Bosso-Pardo (now Retired) during the Hearing on Defendant's Motion, thereby raising a legitimate issue pertaining to her impartiality and/or marked lack of technical legal knowledge applicable to the case.
3. Subsequent to the Hearing in question, Plaintiff by failing to provide substantive responses to Requests for Admissions **ADMITTED** to committing ALL illegal acts set forth in Defendant's Counterclaim, thereby warranting punitive damages.

## ARGUMENT

A trial court has inherent discretionary power to Reconsider any order entered prior to the rendition of final judgment in the cause. (See Panama City General Partnership v Godfrey Panama City Investment, LLC, 109 So.3d 291, First DCA (2013) citing City of Hollywood v Cordasco, 575 So.2d 301, 302 (Fla. 4th DCA 1991); and Monte Campbell Crane Co. Inc. 510 So.2d 1104 (Fla. 4th DCA 1987). ) Additionally, denial of a motion for reconsideration is reviewable for abuse of discretion. (See Panama City General Partnership v Godfrey Panama City Investment, LLC 109 So.3d 291, First DCA (2013). Defendant now addresses each of the grounds set forth warranting reconsideration and granting of leave to amend his counterclaim.

**1. The Court's Order denying leave to amend applied the Wrong Legal Standard in considering and ruling upon Defendant's Motion.**

As shown by Exhibit 1, the Court's Order denying leave to amend to include a claim for punitive damages, states as follows, in part (emphasis added):

"The Court finds that the Defendant has failed to proffer **clear and convincing evidence** pursuant to F.S. 768.72."

The foregoing statement in the Court's Order was simply the wrong legal standard to apply. As shown by Exhibit 2, for pleading purposes, the standard to apply in considering a motion for leave to amend to include a claim for punitive damages is set forth in FRCP 1.190(f), which states as follows in part (emphasis added):

**"(f) Claims for Punitive Damages.** A motion for leave to amend a pleading to assert a claim for punitive damages **shall make a reasonable showing**, by evidence in the record **or evidence to be proffered by the claimant**, that provides a reasonable basis for recovery of such damages. . . . "

See also, the pleading requirement in Subsection (1) of Fl. Stat. 768.72 of a "reasonable showing"; compared to the ultimate liability standard at trial set forth in Subsection (2) of "clear and convincing evidence." (Exhibit 4). Suffice it to say, Counsel Michael Debski's false

**assertion** that the ultimate liability standard set forth in Subsection (2) of Fl. Stat. 768.72 to be satisfied at trial; also functions as a "pleading requirement" was nefariously designed to obtain a "tricky win" at the procedurally deficient and atrocious "so-called" hearing on Defendant's Motion to Amend. **FN 1** Put simply, assuming without deciding the law is to be complied with,

Defendant's claim is permitted for pleading purposes, The ultimate liability issue is determined at trial. That's what trials are for. This point is delineated further in WG Evergreen Woods SH, LLC v Julie A. Fares, 207 So.3d 993 (2016), where the Court states, in part, (emphasis added):

"Although we find that a hearing is required by rule 1.190(f), neither party has requested that we outline the specific nature of the mandatory hearing. We previously noted that **"an evidentiary hearing where witnesses testify and evidence is offered and scrutinized under the pertinent evidentiary rules, as in a trial, is neither contemplated nor mandated** by [section 768.72] in order to determine whether a reasonable basis has been established to plead punitive damages." . . . . The Fourth District Court of Appeal reached a similar conclusion in *Tilton*, where the trial court held a hearing, but not an evidentiary hearing, regarding plaintiff's motion to amend to assert punitive damages. *Tilton*, 198 So. 3d at 910.

Thus, while Fl. Stat. 768.72 (2) does indicate liability at trial is ultimately based upon clear and convincing evidence, for purposes of asserting the claim prior to trial, **the pleading is only required to present a "reasonable showing"** to allow the claim to move forward. In this instance, the Proffer of Proof submitted to the Court with the proposed Motion and Counterclaim presented the following evidence, which easily satisfied the "reasonable showing" standard, and probably also the "clear and convincing evidence" standard in the following ways. **FIRST**, the Proffer presented evidence showing Citibank, N.A. asserted a nonexistent legal right to damages based on Quantum Meruit even though they had "**Actual Knowledge**" such a legal right did not exist. **SECOND**, the Proffer presented evidence showing Citibank, N.A.

**FN 1** - To date, in addition to matters set forth herein, Mr. Debski's "**bevy of amateurish legal tricks**" have also included intentionally declining to click the E-Portal box with Defendant's name for the purpose of depriving Defendant of Timely Service for one of his filings; and unilaterally setting a hearing date without attempting to obtain Defendant's consent. Although he was effectively "called out" by Defendant regarding such unethical tactics, presumably his "Tricks" have been quite successful in unethically obtaining judgments against impoverished citizens lacking legal knowledge. But, of course, these things ultimately have a way of working out for the benefit of all, in the general public's interest.

asserted a nonexistent legal right to damages based on a claim of "Account Stated," and evidence showing they had "**Actual Knowledge**" the claim did not exist. **THIRD**, the Proffer presented evidence that Citibank, N.A. has been filing massive numbers of legally defective complaints throughout the State of Florida against impoverished litigants lacking legal knowledge. Specifically, the Proffer included a spreadsheet that listed 68 legally defective complaints filed by the Plaintiff in the Palm Beach County Courts during the time frame of August, 2019 thru December, 2019. That constitutes just one County of Florida, by one law firm, and for only a five month period of time. The detrimental impact upon the Court system caused by Plaintiff's intentional misconduct in filing massive numbers of complaints that they "**KNOW**" are legally baseless is as follows. Judges must spend time addressing legally defective quantum meruit claims on a massive scale, which unavoidably causes delays in adjudicating more important legal matters such as cases involving domestic relations, child custody, criminal misconduct and similar matters. The evidence attached to the Proffer, Motion and proposed Counterclaim submitted, easily satisfied the "reasonable showing" standard required to proceed.

- 2. Substantial procedural and ethical improprieties occurred and were improperly condoned by former County Judge Sandra Bosso-Pardo (now retired) during the Hearing on Defendant's Motion, thereby raising a legitimate issue pertaining to her impartiality and/or marked lack of technical legal knowledge applicable to the case.**

A hearing is required to amend a claim to include a claim for punitive damages.

However, an evidentiary hearing subject to the rules of evidence is not required. Tilton v Wrobel, 198 So.3d 909 (2016). Certiorari Review is available to determine whether a trial court has complied with the procedural requirements of section 768.72. Tilton v Wrobel, supra. at 910. Additionally, denial of a motion for reconsideration is reviewable for abuse of discretion. (See Panama City General Partnership v Godfrey Panama City Investment, LLC 109 So.3d 291,

First DCA (2013). Substantial procedural irregularities occurred during the so-called "Hearing" on Defendant's Motion for Leave to Amend the Counterclaim.

In this instance, substantial procedural improprieties, irregularities and deficiencies occurred with the condonation of Judge Sandra Bosso-Pardo (now Retired) during the hearing held for Defendant's Motion to Amend on May 18, 2021. The procedural irregularities undermined the overall fairness and legitimacy of the hearing itself. The following occurred.

Citibank was represented by Florida Attorney Michael Thiel Debski, Esq. The Hearing was scheduled to start at 3:15. After the Judge, Defendant and Mr. Debski were all signed in on Zoom; Mr. Debski announced he was waiting for a Court Reporter, who he hired. Based upon such, and notwithstanding the scheduled time of the hearing, Judge Bosso-Pardo required everyone to wait for about 10 minutes just for Plaintiff's hired proprietary Court reporter. After about 10 minutes, with the Court Reporter still not present, the Judge indicated we would proceed. The Judge then asked Defendant to present his Motion. Roughly speaking, Defendant spoke for about 10 minutes or so, in a well-articulated and poised manner, with some short exchanges between Defendant and the Judge.

Almost immediately after Defendant concluded, it was announced Mr. Debski's hired Court Reporter had just shown up. **However, Defendant had already fully completed his presentation.** Incredulously, Judge Bosso-Pardo indicated the Court Reporter could still proceed and then she had the audacity to request Defendant to briefly summarize his case again. Defendant indicated the concept of "briefly summarizing" that which he had prepared and fully presented was unacceptable. The Judge then indicated Defendant could do it all again. Defendant was exceptionally flustered and totally shocked Judge Bosso-Pardo's "DO OVER" concept of the law and due process requirements of hearings. Nevertheless, Defendant did his best to give his entire presentation all over again. Defendant indicated numerous times during the "**Do Over**" that he was speaking because the Court Reporter hired by Mr. Debski had

not been present. Overall, the second presentation, (the only one the Court Reporter would have), was not nearly as poised as the first presentation made by Defendant.

The concept of the Judge requiring a "DO OVER" because the Court Reporter hired by Plaintiff's Counsel was late, was an atrocious assault by the Judge upon notions of Due Process, Fairness and Impartiality. It appears to have exemplified a marked favoritism without any basis to the benefit of Plaintiff, Citibank, N.A. It is also quite possible Mr. Debski orchestrated the entire timing of the Reporter's arrival for the intentional purpose of sabotaging Defendant's presentation. Whether he did so or not, and whether the Judge cooperated regarding such; it is incontestable the concept of requiring a Defendant to do a "DO OVER" violated rudimentary notions of fair play. The precise timing of the court reporter showing up almost exactly after Defendant completed his presentation was either remarkably "Serendipitous" or Abject Trickery. The Judge should have immediately bounced the court reporter out of the hearing. Defendant suffered Prejudice as a result of these invidious events. Judge Bosso-Pardo's decision to require a "DO-OVER," exemplifies a pervasive breakdown in judicial application of Procedural Due Process by the County Court. **FN 2**

**FN 2** - Known in legal terminology as the "Invidious Application of the Procedure / Substance Dichotomy, the matter is best explained as follows. It has been an unfortunate predicate throughout history when rules are broken, they tend to be broken in favor of the Strong, rather than the Weak. The entire concept of enacting rules in any society, sports game, or market is to equalize the playing field. By having rules, everyone is supposed to know the manner in which an event or controversy will be played or handled. By having rules within the context of litigation, the goal is to equalize the rich with the poor, the strong with the weak, those who know powerful people with those who don't know powerful people. The intended concept of having rules is no one gains an unfair advantage by doing things in an "informal" manner. The dichotomy between liberal and strict interpretation of rules to fit self-interested goals has its roots in the related dichotomies of procedure versus substance, and rules versus standards. What if the rule is always applied to the weak, but decision-makers consistently determine "reasonable cause" exists when those who are strong do not comply with the rule? When this occurs, the rule designed to implement "Justice" instead became the exact tool to cause "Injustice." Intended to equalize the playing field, the rule itself became the precise implement to "**RIG**" the playing field.

Approximately one month after the so-called "hearing," Judge Sandra Bosso-Pardo submitted her resignation after approximately 17 years on the bench, effective September 30, 2021. Based upon the procedural irregularities that occurred, the Order Denying Defendant's Motion to Amend the Counterclaim to include a claim for punitive damages must be Vacated, **assuming without deciding the law is to be complied with and afforded its due respect.**

**3. As a matter of law, subsequent to the Hearing, Plaintiff admitted to commission of the illegal acts set forth in Defendant's Counterclaim, thereby warranting imposition of punitive damages.**

On July 1, 2021, Defendant served upon Plaintiff, Requests for Admissions. Plaintiff as of the date of this filing has not substantively responded to any of the requests, Plaintiff did file a Motion for Extension of Time to Respond on July 23, 2021, in which it requested a "reasonable extension of time" to complete its research and review. A reasonable time period has already lapsed and Plaintiff still did not respond to the requests. The Motion to Extend expressly stated it was "not for purposes of delay." So far as Defendant understands, there is no provision to stay the time period for responding to Discovery, by merely filing a Motion for Extension of that time period (unless of course the Motion is actually granted). Additionally, since approximately SIX MONTHS have lapsed since Plaintiff filed that motion, it appears the Motion for Extension was filed **precisely for the purpose of delay.** For the reasons set forth above, the matters should be deemed as ADMITTED in accordance with the law and pursuant to applicable Florida Court Rules. The Requests for Admissions are attached hereto as Exhibit 3. The matters that should be deemed as ADMITTED, which warrant imposition of punitive damages are as follows:

1. Plaintiff, Citibank, N.A. ADMITTED they had knowledge a written contract existed between Plaintiff and Defendant at the time they filed their Complaint.
2. Plaintiff, Citibank, N.A. ADMITTED they had knowledge the State of Florida precludes implying a contract when a written contract exists.
3. Plaintiff, Citibank, N.A. ADMITTED they were aware of the case AgriTrade v Quercia, 253 So.3d 28, 34-35 (2017) at the time they filed their Complaint.
4. Plaintiff, Citibank, N.A. ADMITTED they regularly file numerous Complaints against alleged debtors in Palm Beach County Courts seeking damages based upon Unjust Enrichment.
5. Plaintiff, Citibank, N.A. ADMITTED they regularly file numerous Complaints against alleged debtors in Palm Beach County Courts, which they are aware are legally meritless if properly challenged.
6. Plaintiff, Citibank, N.A. ADMITTED they do not attach all Contracts to complaints, when they file complaints in Courts in the State of Florida, to institute suit against an individual.
7. Plaintiff, Citibank, N.A. ADMITTED the suit they instituted against Defendant is predicated upon two separate credit card numbers and not one.
8. Plaintiff, Citibank, N.A. ADMITTED that at the time they filed their Motion to Compel Arbitration they were aware of the existence of the Florida Supreme Court case, Seifert v U.S. Home Corporation, 750 So.2d 633, 642-643 (1999).
9. Plaintiff, Citibank, N.A. ADMITTED they received a letter from Defendant dated August 28, 2019 disputing the debt they allege is owed.
10. Plaintiff, Citibank, N.A. ADMITTED they received a letter from Defendant dated May 25, 2020 disputing the debt they allege is owed.
11. Plaintiff, Citibank, N.A. ADMITTED they sent a letter to Defendant dated May 21, 2020 acknowledging receipt of Defendant's letter of August 28, 2019.
12. Plaintiff, Citibank, N.A. ADMITTED they sent a letter to Defendant dated June 11, 2020 acknowledging receipt of correspondence from Defendant on June 1, 2020.
13. Plaintiff, Citibank, N.A. ADMITTED the correspondence they received from Defendant on June 1, 2020 was Defendant's letter dated May 25, 2020.
14. Plaintiff, Citibank, N.A. ADMITTED they intentionally suggested and/or instructed their hired court reporter to appear late at a Zoom Hearing before the Court on May 18, 2021.

15. Plaintiff, Citibank, N A ADMITTED the purpose of their intentional suggestion and/or instruction to their hired court reporter to appear late a Zoom Hearing before the Court on May 18, 2021 was to ensure their orally stated position would be on the record, while Defendant would be Prejudiced by having his initial oral presentation to the Court excluded from the record
16. Plaintiff, Citibank, N.A. ADMITTED they had some type of discussion with their hired court reporter regarding the point in time he would appear at a Zoom Hearing before the Court on May 18, 2021
17. Plaintiff, Citibank, N A. ADMITTED the discussion they had with their hired court reporter regarding the point in time he was to appear at a Zoom Hearing before the Court on May 18, 2021 extended beyond asserting he should appear at the time the Hearing was scheduled to begin.
18. Plaintiff, Citibank, N A ADMITTED that to the best of their knowledge Defendant's initial oral presentation to the Court at a Zoom Hearing on May 18, 2021, would not be included in any transcript that would be issued by their hired court reporter for that date, since the court reporter was not present when Defendant made his initial oral presentation.

Lastly, pursuant to FRCP 1.130(b) Defendant hereby incorporates by reference all other matters previously delineated in his Motion for Leave to Amend the Counterclaim filed on February 21, 2021. For the foregoing reasons, Defendant requests this Court reconsider the erroneous Order issued by Judge Sandra Bosso-Pardo and grant Defendant Leave to file the Amended Counterclaim including a Claim for Punitive Damages and transfer Jurisdiction to the Circuit Court due to the damages threshold of the County Court.

Submitted most humbly and graciously to this Honorable Court, on this 27th day of December, 2021.



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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 and via US Mail on this 27th day of December, 2021 addressed as follows to :

Debski & Associates, P A.  
Attn: Michael Thiel Debski, Esquire  
PO Box 47718  
Jacksonville, FL 32247

An additional "courtesy copy" has also been sent addressed as follows to

Adams and Reese LLP  
Attn: Louis M. Ursini, III Esq  
101 East Kennedy Blvd., Suite 4000  
Tampa, FL 33602

DATED this 27th day of December, 2021



---

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

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

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.

ORDER DENYING DEFENDANT'S MOTION FOR LEAVE TO AMEND  
COUNTERCLAIM TO ALLOW CLAIM FOR PUNITIVE DAMAGES AND TRANSFER JURISDICTION

THIS CAUSE having come before the Court upon Defendant's Motion for Leave to Amend Counterclaim to Allow Claim for Punitive Damages and Transfer Jurisdiction, and the Court, having considered the motion, it is hereby;

ORDERED AND ADJUDGED:

1. The Court finds that the Defendant has failed to proffer clear and convincing evidence pursuant to F.S. 768.72.

2. Defendant's Motion for Leave to Amend Counterclaim to Allow Claim for Punitive Damages and Transfer Jurisdiction is therefore denied.

DONE AND ORDERED at West Palm Beach, Palm Beach County, Florida this \_\_\_\_\_ day of

\_\_\_\_\_, 2021.

50-2020-CC-005756-XXXX-MB 05/20/2021  
*Sandra Bosso-Pardo*  
Sandra Bosso-Pardo County Judge

50-2020-CC-005756-XXXX-MB 05/20/2021  
Sandra Bosso-Pardo  
County Judge

Copies to:

Michael Thiel Debski  
Attorney for Plaintiff  
Debski & Associates, P.A.  
P.O. Box 47718

Case No. 50-2020-CC-005756-XXXX-MB

**EXHIBIT 1(b)**

Jacksonville, FL 32247

EVAN S GUTMAN

Defendant

1675 NW 4TH AVE APT 511

BOCA RATON FL 33432-3505

K1903856

## Rule 1.180

## RULES OF CIVIL PROCEDURE

securing "the just, speedy and inexpensive determination of every action."

The language of the rule is not mandatory, and a party may refrain from impleading a third party defendant and assert his claim in an independent action if he so prefers. The rule furnishes the right to a defendant to implead a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him, but tactical considerations may warrant the utilization of an independent action depending upon the circumstances.

The third party defendant must utilize the rules in the same manner as any other defendant, if he is to protect his interests. He may also implead any person not a party to the action, in the same manner as he was impleaded into the action.

In addition, the provisions of the remainder of the rules which relate to third party practice should be consulted, to-wit: Rules 1.100, 1.210, 1.170, 1.420, 1.270, 1.110 and 1.510. Form 1.948 sets forth the essentials for a third party complaint, and Form 1.904 sets forth the necessary ingredients of a third party summons.

**Rule 1.190. Amended and Supplemental Pleadings**

(a) **Amendments.** A party may amend a pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed on the trial calendar, may so amend it at any time within 20 days after it is served. Otherwise a party may amend a pleading only by leave of court or by written consent of the adverse party. If a party files a motion to amend a pleading, the party shall attach the proposed amended pleading to the motion. Leave of court shall be given freely when justice so requires. A party shall plead in response to an amended pleading within 10 days after service of the amended pleading unless the court otherwise orders.

(b) **Amendments to Conform with the Evidence.** When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure so to amend shall not affect the result of the trial of these issues. If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the court may allow the pleadings to be amended to conform with the evidence and shall do so freely when the merits of the cause are more effectually presented thereby and the objecting party fails to satisfy the court that the admission of such evidence will prejudice the objecting party in maintaining an action or defense upon the merits.

(c) **Relation Back of Amendments.** When the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment shall relate back to the date of the original pleading.

(d) **Supplemental Pleadings.** Upon motion of a party the court may permit that party, upon reasonable notice and upon

such terms as are just, to serve a supplemental pleading setting forth transactions or occurrences or events which have happened since the date of the pleading sought to be supplemented. If the court deems it advisable that the adverse party plead thereto, it shall so order, specifying the time therefor.

(e) **Amendments Generally.** At any time in furtherance of justice, upon such terms as may be just, the court may permit any process, proceeding, pleading, or record to be amended or material supplemental matter to be set forth in an amended or supplemental pleading. At every stage of the action the court must disregard any error or defect in the proceedings which does not affect the substantial rights of the parties.

(f) **Claims for Punitive Damages.** A motion for leave to amend a pleading to assert a claim for punitive damages shall make a reasonable showing, by evidence in the record or evidence to be proffered by the claimant, that provides a reasonable basis for recovery of such damages. The motion to amend can be filed separately and before the supporting evidence or proffer, but each shall be served on all parties at least 20 days before the hearing.

Amended Oct. 9, 1980, effective Jan. 1, 1981 (391 So.2d 165); Oct. 6, 1988, effective Jan. 1, 1989 (536 So.2d 974); July 16, 1992, effective Jan. 1, 1993 (604 So.2d 1110); Oct. 23, 2003, effective Jan. 1, 2004 (858 So.2d 1013).

## Committee Notes

1980 Amendment. The last clause of subdivision (a) is deleted to restore the decision in *Scarfone v. Denby*, 156 So. 2d 694 (Fla. 2d DCA 1963). The adoption of rule 1.500 requiring notice of an application for default after filing or serving of any paper eliminates the need for the clause. This will permit reinstatement of the procedure in federal practice and earlier Florida practice requiring a response to each amended pleading, thus simplifying the court file under the doctrine of *Dee v. Southern Brewing Co.*, 146 Fla. 588, 1 So. 2d 562 (1941).

2003 Amendment. Subdivision (a) is amended in accordance with *Totura & Co., Inc. v. Williams*, 754 So. 2d 671 (Fla. 2000). See the amendment to rule 1.070(j). Subdivision (f) is added to state the requirements for a party moving for leave of court to amend a pleading to assert a claim for punitive damages. See *Beverly Health & Rehabilitation Services, Inc. v. Meeks*, 778 So. 2d 322 (Fla. 2d DCA 2000).

## Authors' Comment—1967

Rule 1.190 is the same as former Rule 1.15, 1954 Rules of Civil Procedure, as per amendment effective January 1, 1966. It is patterned closely after Federal Rule 15, and as such, 1A Barron and Holtzoff, Federal Practice and Procedure, Rules Edition (West 1960) should be carefully studied for a constructive analysis of the similar federal counterpart. The contents of Federal Rule 15(b) authorizing the court to grant a continuance to enable the objecting party to meet evidence which relates to amended pleadings at trial, have been omitted.

The rule now requires a response to an amended pleading to be within 20 days after service of the amended pleading, rather than within the former 10

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

Defendant

CASE NUMBER:

50-2020-CC-005756-XXXX-MB

**DEFENDANT'S REQUEST FOR ADMISSIONS TO PLAINTIFF CITIBANK, N.A.**

Defendant, Evan Gutman, hereby serves upon the Plaintiff, his Request for Admissions and states the Plaintiff shall file a written Answer and Objection addressed to the matter contained herein or said matter will be deemed admitted pursuant to Rule 1.370 of the Florida Rules of Civil Procedure. The Answer to Request for Admissions shall specifically admit or deny the matter requested, or state in detail the reason why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested Admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. Further, an answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states they have made reasonable inquiry and that the information known or readily obtainable is insufficient to enable an admission or denial.

1. Admit you had knowledge that a written contract existed between Plaintiff and Defendant at the time you filed your Complaint.
2. Admit you had knowledge the State of Florida precludes implying a contract when a written contract exists.
3. Admit you were aware of the case AgriTrade v Quercia, 253 So.3d 28, 34-35 (2017) at the time you filed your Complaint.

## EXHIBIT 3(b)

4. Admit you regularly file numerous Complaints against alleged debtors in Palm Beach County Courts seeking damages based upon Unjust Enrichment.
5. Admit you regularly file numerous Complaints against alleged debtors in Palm Beach County Courts, which you are aware are legally meritless if properly challenged.
6. Admit you do not attach all Contracts to complaints, when you file complaints in Courts in the State of Florida, to institute suit against an individual.
7. Admit the suit you instituted against Defendant is predicated upon two separate credit card numbers and not one.
8. Admit the suit you instituted against Defendant is predicated upon two separate credit card accounts and not one.
9. Admit that at the time you filed your Motion to Compel Arbitration you were aware of the existence of the Florida Supreme Court case, Seifert v U.S. Home Corporation, 750 So.2d 633, 642-643 (1999).
10. Admit you received a letter from Defendant dated August 28, 2019 disputing the debt you allege is owed.
11. Admit you received a letter from Defendant dated May 25, 2020 disputing the debt you allege is owed.
12. Admit you sent a letter to Defendant dated May 21, 2020 acknowledging receipt of Defendant's letter of August 28, 2019.
13. Admit you sent a letter to Defendant dated June 11, 2020 acknowledging receipt of correspondence from Defendant on June 1, 2020.
14. Admit the correspondence you received from Defendant on June 1, 2020 was Defendant's letter dated May 25, 2020.
15. Admit you intentionally suggested and/or instructed your hired court reporter to appear late at a Zoom Hearing before the Court on May 18, 2021.
16. Admit the purpose of your intentional suggestion and/or instruction to your hired court reporter to appear late a Zoom Hearing before the Court on May 18, 2021 was to ensure your orally stated position would be on the record, while Defendant would be Prejudiced from having his initial oral presentation to the Court on the record.

17. Admit you had some type of discussion with your hired court reporter regarding the point in time he would appear at a Zoom Hearing before the Court on May 18, 2021.
18. Admit the discussion you had with your hired court reporter regarding the point in time he was to appear at a Zoom Hearing before the Court on May 18, 2021 extended beyond asserting he should appear at the time the Hearing was scheduled to begin.
19. Admit that to the best of your knowledge Defendant's initial oral presentation to the Court at a Zoom Hearing on May 18, 2021, would not be included in any transcript that would be issued by your hired court reporter for that date, since the court reporter was not present when Defendant made his initial oral presentation.

**CERTIFICATE OF SERVICE**

I Evan Gutman, hereby Certify that a true copy of the foregoing was sent via electronic mail and U.S. Mail on this 1st day of July, 2021 addressed as follows to :

Debski & Associates, P.A.  
Attn: Michael Thiel Debski, Esquire  
PO Box 47718  
Jacksonville, FL 32247

DATED this 1st day of July, 2021.



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

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

Select Year: 2020 ▼ 

## The 2020 Florida Statutes

[Title XLV](#)  
TORTS

[Chapter 768](#)  
NEGLIGENCE

[View Entire Chapter](#)

### 768.72 Pleading in civil actions; claim for punitive damages.—

(1) In any civil action, no claim for punitive damages shall be permitted unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages. The claimant may move to amend her or his complaint to assert a claim for punitive damages as allowed by the rules of civil procedure. The rules of civil procedure shall be liberally construed so as to allow the claimant discovery of evidence which appears reasonably calculated to lead to admissible evidence on the issue of punitive damages. No discovery of financial worth shall proceed until after the pleading concerning punitive damages is permitted.

(2) A defendant may be held liable for punitive damages only if the trier of fact, based on clear and convincing evidence, finds that the defendant was personally guilty of intentional misconduct or gross negligence. As used in this section, the term:

(a) "Intentional misconduct" means that the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.

(b) "Gross negligence" means that the defendant's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the life, safety, or rights of persons exposed to such conduct.

(3) In the case of an employer, principal, corporation, or other legal entity, punitive damages may be imposed for the conduct of an employee or agent only if the conduct of the employee or agent meets the criteria specified in subsection (2) and:

(a) The employer, principal, corporation, or other legal entity actively and knowingly participated in such conduct;

(b) The officers, directors, or managers of the employer, principal, corporation, or other legal entity knowingly condoned, ratified, or consented to such conduct; or

(c) The employer, principal, corporation, or other legal entity engaged in conduct that constituted gross negligence and that contributed to the loss, damages, or injury suffered by the claimant.