

Case No. (Not Yet Assigned)
In the Supreme Court of the United States
October Term, 2022

EVAN GUTMAN, JD, CPA
Petitioner

v

FLORIDA SUPREME COURT
FLORIDA SUPREME COURT JUSTICES
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
FLORIDA SUPREME COURT LOCAL RULES ADVISORY COMMITTEE
FLORIDA STATE BAR
Defendants

On Petition for a Writ of Certiorari
to the Supreme Court of the State of Florida

PETITION FOR A WRIT OF CERTIORARI

Evan Gutman
Petitioner, Pro Se
Member District of Columbia Bar
Member State Bar of Pennsylvania
1675 NW 4th Avenue, #511
Boca Raton, FL 33432
561-990-7440

QUESTIONS PRESENTED

1. May Justices of a State Supreme Court voluntarily surrender their Judicial decision-making authority regarding dispositive jurisdictional legal issues, to their Court Clerk who was neither elected nor appointed as a Judge, in violation of the 14th Amendment Due Process and Equal Protection Clauses ?

2. Are Florida State Supreme Court Justices and other Florida Judges divested of their own absolute judicial immunity if they opt to "SHARE" Absolute Immunity with Non-Judicial Officials who are members of the Florida Judicial Qualifications Committee and/or Non-Judicial Florida State Bar members within the context of a so-called "Litigation Privilege Doctrine" ?

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Constitutional Provisions:

Fourteenth Amendment to the U.S. Constitution
 First Amendment to the U.S. Constitution

JURISDICTION

On January 18, 2022, Petitioner submitted a Motion for Declaratory Judgment to the Florida Supreme Court for filing pursuant to its' Original Jurisdiction. The Motion challenged numerous judicial rules and policies in Florida. The State Supreme Court then delegated its authority to decide the legal issue of jurisdiction to its Court Clerk. The Clerk then made a judicial decision that Petitioner's Motion was not within the Florida Supreme Court's limited jurisdiction and therefore refused to file Petitioner's motion or assign a case number (App-2). The jurisdiction of this Court is invoked under 28 USC 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the U.S. Constitution provides:

"No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ."

The First Amendment to the U.S. Constitution provides in relevant part:

"Congress shall make no law . . . prohibiting . . . the right of the people . . . to petition the Government for a redress of grievances."

STATEMENT OF THE CASE

A. GENERAL SUMMARY

The fundamental questions in this case are FIRST, whether a State Supreme Court may **voluntarily surrender its decision-making authority to decide jurisdictional legal issues to a Clerk**; and SECOND, if they may not constitutionally do so, but intentionally do it anyway, do those State Supreme Court Justices lose entitlement to their own absolute judicial immunity.

On January 18, 2022, Petitioner submitted to the Florida Supreme Court a Motion for Declaratory Judgment pursuant to its Original Jurisdiction (App-1) and (App-3). That Motion was submitted in reference to an underlying Credit Card Complaint regarding an alleged debt in the case of Discover Bank v Evan S. Gutman, Palm Beach County Circuit Court Case #50-2019-CA-013570-XXXX-MB. At the time

Petitioner submitted the State Supreme Court Motion, the Discover Bank case was presided over by Circuit Judge G. Joseph Curly, Jr. Subsequently, Judge Curley who did not even admit Petitioner to a key ZOOM hearing on arbitration, granted Petitioner's quite widely publicly disseminated Motion for Disqualification and recused himself.

Circuit Judge Samantha Schosberg Feuer was then assigned to the case. On March 4, 2022, Judge Feuer substantively decided a Circuit Court Order is not **VOID** even if it is labeled as coming from the County Court; **and the case was never even in the jurisdiction of the County Court.** Apparently, it is her position that it is irrelevant for a Court Order to correctly identify the Court from which it emanates. As indicated, the Discover Bank case has **never been in the jurisdiction of the County Court** from inception, and that issue was a key focal point in the Motion to Disqualify Judge Curley. Yet, Judge Feuer then did the exact same thing that Judge Curley did. Apparently Judge Feuer (similar to Judge Curley), just doesn't seem to feel the issue matters at all. (See App-4, App-5, App-6 and App-7). She then granted Summary Judgment in a County Court Order, even though she has never been elected or appointed to be a County Court Judge and the case is not even in the County Court, but rather the Circuit Court. (App-7) Petitioner anticipates Judge Feuer's ruling that a Court Order is binding from a Court from which it did not emanate, will be appealed. With the foregoing in mind, a copy of Petitioner's State Supreme Court Motion filed January 18, 2022 and supporting portions of the filing are included herein (App-3).

The Florida Supreme Court took the following action. **Rather than deciding whether the Motion was within its limited jurisdiction, the State Supreme Court Justices instead delegated their judicial decision-making authority to the Clerk of the Court.** On January 24, 2022 the Clerk then made a judicial decision that the filed Motion "does not fall under this Court's limited jurisdiction" (App-2). Notably, the Clerk did not base his decision upon aspects of procedural filing requirements, but rather incredibly rendered an actual judicial decision on the legal issue of jurisdiction. The Clerk rendering that judicial decision was neither elected, nor appointed as a Judge and therefore lacked legal authority to render that decision.

Petitioner herein, contends at a bare minimum he was entitled to have a case number assigned to his Motion; and a legal ruling and determination made on all issues, including but not limited to jurisdictional issues of law, by duly appointed or elected Florida State Supreme Court Justice(s).

B. ARGUMENT

1. **May Justices of a State Supreme Court voluntarily surrender their Judicial decision-making authority regarding dispositive jurisdictional legal issues, to their Court Clerk who was neither elected nor appointed as a Judge, in violation of the 14th Amendment Due Process and Equal Protection Clauses ?**

The heart, soul, essence and foundation of due process is that a litigant is entitled to a fair and impartial adjudication. At a bare minimum, a litigant is constitutionally entitled to a fair trial in a fair tribunal. In Re Murchison, 349 U.S. 133, 136 (1955); Tumey v Ohio, 273 U.S. 510, 532 (1927). Every judicial procedure that encroaches upon that Federal 14th amendment right are unconstitutional. The matter was best summed up in Murchison, supra, as follows (emphasis added):

"A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always **endeavored to prevent even the probability of unfairness**. To this end no man can be a judge in his own case and no man is permitted to try cases where he has an interest in the outcome. That interest cannot be defined with precision. Circumstances and relationships must be considered. This Court has said, however, that "**every procedure which would offer a possible temptation** to the average man as a judge . . . not to hold the balance nice, clear and true between the State and the accused, **denies the latter due process of law**." Tumey v Ohio, 273 U.S. 510, 532."

One would be hard-pressed to find any rational individual, much less a duly elected or appointed Judge who would contend with a straight-face that jurisdictional issues of law, can fairly be decided by individuals neither elected, nor appointed as Judges to render judicial decisions.

2. Are Florida State Supreme Court Justices and other Florida Judges divested of their own absolute judicial immunity if they opt to "SHARE" Absolute Immunity with Non-Judicial Officials who are members of the Florida Judicial Qualifications Committee and/or Non-Judicial Florida State Bar members within the context of a so-called "Litigation Privilege Doctrine" ?

It can fairly be said judicial arrogance is an interesting personal character trait. Clearly, the Florida Supreme Court worked from the mistaken premise they could evade deciding legitimately presented legal issues by simply declining to file Petitioner's Motion. That decision now has the potential (albeit not certainty) of divesting Florida Judges of their own Absolute Immunity. Put simply, the **judicial decision of the** State Supreme Court **Clerk** may be now recognized as a final decision from the highest Court in Florida, thereby warranting the grant of the Writ of Certiorari. On the other hand, it must fairly be conceded this Court may decide the Clerk's judicial decision does not meet that criteria. In either case one point is certain.

That certain point is that the relevant legal issue is no longer in the hands of Florida Supreme Court Justices at all. Put simply, the matter (at least currently) is simply no longer within their control. They decided to let their Clerk render their judicial decision, and Petitioner asserts such is now the State Supreme Court's final decision. The open issue is how the U.S. Supreme Court will view the matter.

The key lesson here is that the U.S. Supreme Court now has the jurisdictional prerogatives the Florida Supreme Court voluntarily relinquished. This Court can in fact, now hold the State Supreme Court **Clerk's** judicial decision is the Final Decision of the Florida State Supreme Court, thereby allowing Review at the U.S. Supreme Court of the relevant legal issues. Similarly, this Court is now also vested with authority to legitimately hold, the Justices of the Florida Supreme Court relinquished their own absolute judicial immunity by "SHARING" it. The reason is as follows.

Vested with the power of judicial decision-making, the Justices of the Florida Supreme Court opted to share their judicial decision-making power with their Clerk. **Since judicial decision-making by definition and virtually unbroken legal**

precedent, carries with it absolute judicial immunity, the Justices inescapably also "SHARED" their absolute judicial immunity, to a person who was neither elected nor appointed to be a Judge. Thus, the Clerk had the same absolute judicial immunity the Justices themselves enjoy.

An alternative argument that can also be made supporting the premise the Justices are no longer entitled to absolute judicial immunity is as follows. Put simply, by voluntarily surrendering their judicial decision-making power to their Clerk, the Justices substantively abandoned their position. Having abandoned their position as Justices, they similarly lost their absolute judicial immunity.

Petitioner now addresses in greater detail the problematic issues with the Florida Supreme Court's decision to "SHARE" its absolute judicial immunity with Non-Judicial individuals. In Echevarria, McCalla, Raymer v Bradley Cole, 950 So.2d 380, 384-385 (2007) the Florida Supreme Court incredulously and in fact illegally, held as follows (emphasis added) :

"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."

....

. . . we hold that the litigation privilege applies in all causes of action, whether for common-law torts or statutory violations."

The reason the foregoing holding is constitutionally illegal is because the holding is an express abandonment of the State Supreme Court's sworn duty and obligation to uphold the law. More specifically, the Court clearly stated they will countenance, support and provide a so-called "privilege" for Non-Judicial individuals to commit any type of illegal act to the extent such is a tort during the course of a judicial proceeding and related to the proceeding. So far as Petitioner knows, there is no legitimate precedent in any State for Courts to expressly assert and in fact publish to the entire general public in an opinion that they will overtly decline to apply the law to illegal conduct that occurs within the context of a litigation. Defendant knows of no

other State that has adopted such a morally outrageous position. Litigation privilege has historically applied to defamation actions, and that's it. Not all torts and acts.

Somewhat similarly in the case of Laura M. Watson v Florida Judicial Qualifications Commission, No. 17-13940 (11th Cir. Federal Court of Appeals, August 15, 2018) the Eleventh Circuit in extending absolute immunity to members of the Florida Judicial Qualifications Commission, as well as Non-Judicial members of the Florida State Bar, described Absolute Immunity as follows (emphasis added):

"Absolute immunity can cover even wrongful or **malicious** acts. . . ."

As shown by App-8 herein, Black's Law Dictionary defines the term "Malicious" as follows (emphasis added):

"Malicious. Characterized by, or involving, malice, having, or done with **wicked, evil** or mischievous intentions or motives. . . ."

Thus, what the JQC and Florida Bar were seeking in the Watson case (and the Federal Eleventh Circuit did provide) was immunity for both to commit "Wicked" and "Evil" acts; in the same manner Judges may commit "Wicked" and "Evil" acts. This is notwithstanding some of these individuals were never elected or appointed as Judges.

But, here's the problem. Providing anyone with an exemption from principles of law and decency is a "**Dicey**" public relations endeavor at best. More specifically, the concept works well when buried in an Appellate opinion, State Bar legal brief, or JQC legal brief. That's because few members of the citizenry know about the principles espoused in appellate opinions by Judges. But, the concept kind of tends to fall completely apart when publicized and the citizenry begins to understand what Judges are really doing. If and when the average citizen actually starts to truly understand that Judges are allowing themselves to commit intentional "Wicked" and "Evil," acts, they probably won't be too pleased. In all fairness, it would unavoidably diminish faith and confidence in the Judiciary. Absolute judicial immunity, which in Petitioner's view does have "some" merit when provided to elected or appointed

Judges, is nevertheless primarily a judicially created doctrine for its own benefit, and thus stands largely on somewhat shaky ground.

Taking the issue a step further, it is one thing for Judges to grant themselves Absolute Judicial Immunity, (which as stated does in fact have some legitimate justification) because otherwise many unethical attorneys and litigants would unfairly preclude the Judges from fulfilling their judicial duty to render fair and impartial litigations. On the other hand, the dilemma becomes immensely more complex when those same Judges start extending immunity to commit illegal acts to their friends and professional peers, in the form of a judicially created doctrine called "Litigation Privilege." By "Sharing" and "Extending" their Absolute Immunity with selected individuals, it may very well be the Judiciary strategically jeopardizes the legitimacy upon which they themselves are entitled to such immunity.

It is said Judicial Power is at a ZENITH when judging others, but at a NADIR when Judging itself. Whether titled as "Absolute Judicial Immunity" or its variant title of "Litigation Privilege" as provided to debt collector attorneys, the immunity and/or privilege was intended to function as a "SHIELD" against unwarranted and unjustified reprisal. It was never intended to function as the "SWORD" by which debt collector attorneys have turned it into a blank check to file frivolous lawsuits on a massive scale against impoverished individuals lacking legal knowledge, and then engaging in illegal conduct secure in the knowledge they could essentially assert, **"litigation privilege allows us to do whatever we want because we have immunity from the law"** (unlike the average citizen and entire general public).

REASON FOR GRANTING THE WRIT

Pursuant to Rule 10(c) of this court, a state court of last resort has decided important questions of federal law that have not been, but should be settled by this court. The Florida Supreme Court decided the Justices of that Court may delegate their judicial decision-making authority on jurisdictional issues of law to their Court Clerk. The effect of that decision, as well as the Court's opinion in Echevarria, supra,

was that their own absolute judicial immunity is being "SHARED" with Non-Judicial individuals neither elected, nor appointed as Judges, pursuant to doctrines including but not limited to that known as "Litigation Privilege." Effectively, this creates two classes of Non-Judicial citizens as follows. The first class consists of citizens who are not Judges at all and who are bound by the law. The second class consists of citizens who are also not Judges at all, but who are exempt from obeying the law. The impact is that the Florida Supreme Court has expressly abandoned in no uncertain terms, its duty and obligation to uphold and interpret the law and is on record as "SHARING" absolute immunity to commit blatantly illegal acts with Non-Judges, so long as those illegal acts are committed in the course of a proceeding and related to such.

For the foregoing reason, Petitioner requests the Writ of Certiorari be granted. A copy of this Petition will be made publicly available on Petitioner's website at www.gutmanvaluations.com as soon possible.

Submitted this 11th day of April, 2022.



Evan Gutman JD, CPA
Petitioner Pro Se
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

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served this 11th day of April, 2022 via U.S. Mail to the following:

Florida Supreme Court
Attn: Clerk's Office
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Chief Justice Charles T. Canady
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice Jorge Labarga
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice Carlos G. Muniz
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice Jamie R. Grosshans
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice Justice Ricky Polston
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice Justice Alan Lawson
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court
Attn: Justice John D. Couriel
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Judicial Qualifications Commission
PO Box 14106
Tallahassee, Florida 32317

Florida Supreme Court Local Rules Advisory Committee
500 South Duval Street
Tallahassee, Florida 32399-1925

Florida Supreme Court Local Rules Advisory Committee
Attn: Judge Ross Bilbrey
2000 Drayton Drive
Tallahassee, Florida 32399-0950

The Florida State Bar
651 East Jefferson Street
Tallahassee, Florida 32399-2300

Date this 11th day of April, 2022.

By: 
Evan Gutman JD, CPA
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
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Evan Gutman CPA, JD

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January 18, 2022

Florida Supreme Court
Attn: Court Clerk
500 South Duval Street
Tallahassee, FL 32399-1925

RE: **EVAN GUTMAN JD, CPA**

v

**FLORIDA SUPREME COURT, FLORIDA SUPREME COURT JUSTICES, FLORIDA
JUDICIAL QUALIFICATIONS COMMISSION, FLORIDA SUPREME COURT LOCAL RULES
ADVISORY COMMITTEE, FLORIDA STATE BAR**

To Whom It May Concern:

Enclosed please find my Check in the amount of \$ 500 for filing the above referenced **Motion for Declaratory Judgment** with the Florida Supreme Court, pursuant to its **ORIGINAL JURISDICTION**. I am enclosing herein, 12 copies of the Motion. Additionally, I have separately sent each Florida Supreme Court Justice, who is a Defendant in this case, an individual copy via First Class U.S. Mail.

So far as I know, there is no published Fee Schedule for filing a Motion naming the Florida Supreme Court as a Defendant, in a case they as Defendants will Rule upon themselves. Accordingly, I estimated the Fee at \$ 500. If it should be more, please let me know. Or if less, please Refund the difference.

Also enclosed is a letter I have sent regarding this "Unique" filing to each Florida Supreme Court Justice, along with virtually every Circuit Court Judge in Florida, selected County Court Judges, Florida Senators and Representatives in the State Legislature, selected Attorneys and Friends.

I think it's going to be an exceptionally interesting case. **I respectfully request you provide me with the Case Number when it is assigned.** Thank you most graciously and kindly for your assistance, to further the general public interest's in fair and impartial litigations.

Most Humbly and Respectfully Yours Always,

Evan Gutman JD, CPA

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

cc: Florida Supreme Court
Florida Supreme Court Justices
Florida Judicial Qualifications Commission
Florida State Bar
Florida Supreme Court Local Rules Advisory Committee
All U.S. Supreme Court Justices



Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO
CLERK
MARK CLAYTON
CHIEF DEPUTY CLERK
JULIA BREEDING
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125
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January 24, 2022

Evan S. Gutman
Evan Gutman CPA, JD
1675 NW 4th Avenue, #511
Boca Raton, FL 33432

Re: Your filings received January 21, 2022

Dear Mr. Gutman:

In response to your "Motion for Declaratory Judgment" received on January 21, 2022, regretfully, your motion does not fall under this Court's limited jurisdiction. I urge you to review the various types of writ petitions which would invoke this Court's limited jurisdiction and refile your amended documents if you believe my letter is in error. Additionally, if you are suggesting changes to the Florida Rules of General Practice and Judicial Administration you may suggest your changes in a letter directly to that Committee. Because we will not be setting up a new case based on your three filings, enclosed is your \$500 check. For future reference, the filing fee for a writ petition in our Court is \$300.00. I regret I am unable to be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to be "JAT", written over a horizontal line.

John A. Tomasino

JAT/jv
Enclosure

**IN THE SUPREME COURT OF FLORIDA
CASE NO. (NOT YET ASSIGNED)**

**Motion for Declaratory Judgment -
ORIGINAL JURISDICTION**

EVAN GUTMAN, JD, CPA
Plaintiff, Pro Se

V

FLORIDA SUPREME COURT
FLORIDA SUPREME COURT JUSTICES
FLORIDA JUDICIAL QUALIFICATIONS COMMISSION
FLORIDA SUPREME COURT LOCAL RULES ADVISORY COMMITTEE
FLORIDA STATE BAR
Defendants

Motion for Declaratory Judgment and Brief on the Merits

NO ORAL ARGUMENT REQUESTED

Filed By: Evan Gutman JD, CPA
Member State Bar of Pennsylvania
Member District of Columbia Bar
1675 NW 4th Avenue, #511
Boca Raton, FL 33431
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MOTION FOR DECLARATORY JUDGMENT

Plaintiff, Evan Gutman JD, CPA a Pennsylvania and District of Columbia Attorney, acting Pro Se, Moves the Justices of the Florida Supreme Court, who are Defendants in this case, for a Declaratory Judgment holding as follows :

1. Florida Rule of Judicial Administration 2.215 unconstitutionally violates the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution, on the grounds it substantively deprives litigants in all cases in Florida, both Civil and Criminal, of the right to a fair and impartial adjudication by a **Fully Independent Thinking** Trial Court Judge, not subjected to Undue Influence. The Rule unconstitutionally vests virtually **Unbridled** and Dictatorial Power within one Chief Judge of each County, who then has virtually total power and control over all other Judges in that County, including but not limited to deciding which cases they adjudicate, and declaring them in "neglect of duty" if they fail to comply with any of the Chief Judge's directives. The Rule creates two Classes of Trial Court Judges with one Class having virtually total control over the Subservient Class, even though both are duly Elected or Appointed, and the Subservient Class constitutes the majority of Judges.

2. Palm Beach County Court Rule 4 unconstitutionally violates the Due Process and Equal Protection Clauses of the 14th Amendment to the U.S. Constitution, on the ground it deprives Pro Se Litigants of a fair and impartial adjudication by totally excluding them from its contours, provisions, protections and penalties. The Rule is specifically designed to provide an inferior quality of justice to Pro Se Litigants, by treating them as an inferior class compared to litigants represented by attorneys, thereby exemplifying the existence of a marked judicial animus against Pro Se litigants in order to unconstitutionally favor the interests of well-connected Attorneys.

3. The extension of Absolute Immunity **for commission of Malicious Acts to Members of the Judicial Qualifications Commission (JQC) acting in a Non-Judicial capacity** and to certain members of the Florida State Bar who are not even Judges at all, in the case of **Laura M. Watson v Florida Judicial Qualifications Commission**, No. 17-13940 (11th Cir. Fed. Ct. of Appeals, August 15, 2018) unconstitutionally infringes upon the Due Process rights of a Pro Se

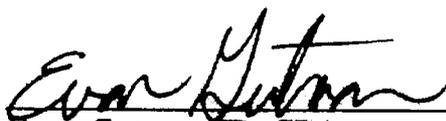
litigant to receive a fair and impartial adjudication in every single Florida case, both Civil and Criminal, involving a Pro Se Litigant. This occurs because it diminishes the ability of elected Trial Court Judges to think Independently and fairly decide issues, because they are unduly influenced, subjugated and neutralized in favor of potentially and/or possibly "Malicious" goals and interests of the JQC and certain members of the Florida Bar. The impact is that elected and appointed Trial Court Judges no longer have full control over judicial decision-making process in their cases, due to fear of maintaining their own professional position on the bench.

4. The lack of Uniformity in court rules between judges, critical to equal application of the laws, evidenced by varying Divisional Rules established on a haphazard arbitrary basis by individual Judges violates a litigant's right to due process and equal protection in violation of the 14th Amendment to the U.S. Constitution. Similarly, the lack of clearly defined Time limits for critical litigation events violates a litigant's due process and equal protection clause rights. Divisional Rules allowing each individual Judge to unilaterally decide upon the time frames when Oppositions to Motions must be filed; the Font size of filings within their individual Court, and the Number of Pages allowed in a Memorandum of Law result in unequal justice for litigants, the quality of which depends upon the predilections of the Judge assigned. Similarly, rules requiring a hearing be scheduled just to obtain a ruling on a motion; along with distinctions between how Pro Se litigants and licensed attorneys are required to schedule hearings, violate the Due Process and Equal Protection Clauses.

In support of this Motion Plaintiff relies on the accompanying Brief on the Merits.

Dated this 18th day of January, 2022

Filed By:


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Answer of Evan Gutman CPA, JD in the case of <u>Discover Bank Vs. Evan S. Gutman</u> , Palm Beach County Case #50-2019-CA-013570-XXXX-MB	7
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JURISDICTION

Original Jurisdiction of the Florida Supreme Court is established pursuant to FLA. CONST., art V, § 2, which states as follows in part (emphasis added) :

"SECTION 2. Administration; practice and procedure. -

(a) The supreme court shall adopt rules for the practice and procedure in all courts including . . . the administrative supervision of all courts,"

Jurisdiction is additionally established pursuant to Florida Rules of Judicial Administration, which state in part as follows (emphasis added):

"Rule 2.110 Scope and Purpose

. . . These rules shall supercede all conflicting rules and statutes.

. . .

Rule 2.140 Amending Rules of Court

. . .

(d) Emergency Amendments by Court. The supreme court, with or without notice, may change court rules at any time if an emergency exists that does not permit reference to the appropriate committee of The Florida Bar for recommendations. . . .

. . .

(g) Amendments to the Rules of Judicial Administration.

(1) Amendments Without Referral to Rules Committee.

Changes to the Rules of Judicial Administration contained in Part II, State Court Administration, of these rules, and rules 2.310 and 2.320, contained in Part III, Judicial Officers, generally will be considered and adopted by the supreme court without reference to or proposal from the Rules of Judicial Administration Committee. **The supreme court may amend rules under this subdivision at any time, with or without notice. . . .**

. . .

Rule 2.205 The Supreme Court

(a) Internal Government

(1) Exercise of Powers and Jurisdiction.

The supreme court shall exercise its powers, **including establishing policy for the judicial branch** and jurisdiction en banc.

Plaintiff additionally relies on this Court's **inherent and historical power** to control the Courts exclusively on behalf of the public's interest. In this regard, it would be strange policy to assert the State Supreme Court does not have Original Jurisdiction over its' own rules or the Judicial Qualifications Commission (JQC), or the Florida State Bar (noting particularly it is undisputed the Florida State Bar is an "arm" of the State Supreme Court). See Rules Regulating the Florida Bar, Introduction stating (emphasis added):

"The Supreme Court of Florida by these rules establishes the authority and responsibilities of The Florida Bar, **an official arm of the court.**"

GENERAL FACTS AND STANDING

Plaintiff, Pro Se, is a Member in Good Standing of the State Bar of the Commonwealth of Pennsylvania and the District of Columbia Bar. Plaintiff is additionally a Florida Certified Public Accountant (CPA), New Jersey CPA, Arizona CPA, admitted to the U.S. Tax Court Bar, admitted to the Bar of the Federal Sixth Circuit Court of Appeals and the Federal Ninth Circuit Court of Appeals. Plaintiff has been a Licensed Pennsylvania Attorney since 1995, a District of Columbia Attorney since 1997, and an Arizona CPA since 1985 (now also a Florida and New Jersey CPA). Plaintiff has never been ethically disciplined in his capacity as either an Attorney or CPA, as no ethical complaint of any nature has ever been filed against Plaintiff by anyone, in either his capacity as an Attorney or CPA. Plaintiff also has never been Convicted of any Crime in his entire life.

On October 30, 2019 Plaintiff was served with a Complaint filed by Discover Bank in the Palm Beach County Circuit Court for an alleged credit card debt and Plaintiff herein, is the Defendant in that case. Two days later, on November 1, 2019 Plaintiff herein, filed his Answer in that case, Pro Se.^{FN 1} A copy of the Discover Bank Complaint and the Answer filed, is included herein as Exhibit 6 and Exhibit 7. Plaintiff has filed a Motion to Disqualify every Single Palm Beach County Judge and also requested the proceedings be Stayed pending this Court's decision on the matters stated herein, pursuant to its Original

Jurisdiction (Exhibit 9), which as of this date is pending. Plaintiff contends he can not receive a Fair and Impartial adjudication by ANY Judge of the Palm Beach County Court, or in the entire State of Florida for that matter, for the reasons stated herein, and that the Palm Beach County Circuit Court lacks Jurisdiction to rule upon certain matters stated herein.

FOOTNOTE 1 - Discover Bank's Complaint against Plaintiff herein, was filed in Palm Beach County Circuit Court by **Zoran D. Jovanovich, Esq.** of the law firm of **Zwicker & Associates, P.C.** Defendant's Answer in that case noted amongst other matters that the law firm of Zwicker & Associates, P.C. in their legal representation of Discover Bank violated Florida State Bar Rule of Professional Conduct 4-1.3, which requires a Florida Attorney to "**act with reasonable due diligence.**" More specifically, the Zwicker law firm sent a letter to Defendant dated July 16, 2019, which was not signed by any specific individual of the law firm (See Exhibit 5 herein). In that letter, the Zwicker law firm **represented on law firm letterhead** that **they were Attorneys** and **retained as a law firm** and were assisting their client to collect a debt **as a debt collector law firm**. However, the Zwicker law firm then remarkably stated in the same letter (emphasis added):

"As of this time, no attorney with this firm has personally reviewed the particular circumstances of your account."

One would be hard-pressed to find a more blatant failure to exercise "reasonable due diligence" than a law firm sending a legal letter seeking payment of money on behalf of the client who retained them as lawyers, **and then at the same time openly admitting in writing that not a single attorney in the firm even looked at the matter at all,** before the legal letter was sent. (See Exhibit 5 herein).

IN THE CIRCUIT COURT
IN AND FOR PALM BEACH
COUNTY, FLORIDA
CASE NO.
DIVISION:

DISCOVER BANK,
Plaintiff,

Vs.

EVAN S GUTMAN
Defendant(s)

COMPLAINT

The Plaintiff, DISCOVER BANK, (hereinafter "Plaintiff") sues the Defendant(s), EVAN S GUTMAN (hereinafter "Defendant(s)") and says:

- 1. Plaintiff is a FDIC-insured Delaware State Bank.
- 2. That this is an action for damages that does exceed \$15,000.00, exclusive of interest and court costs.

BREACH OF CONTRACT

3. This action is based on a Credit Account Agreement entered into by the Defendant(s) with the Plaintiff.

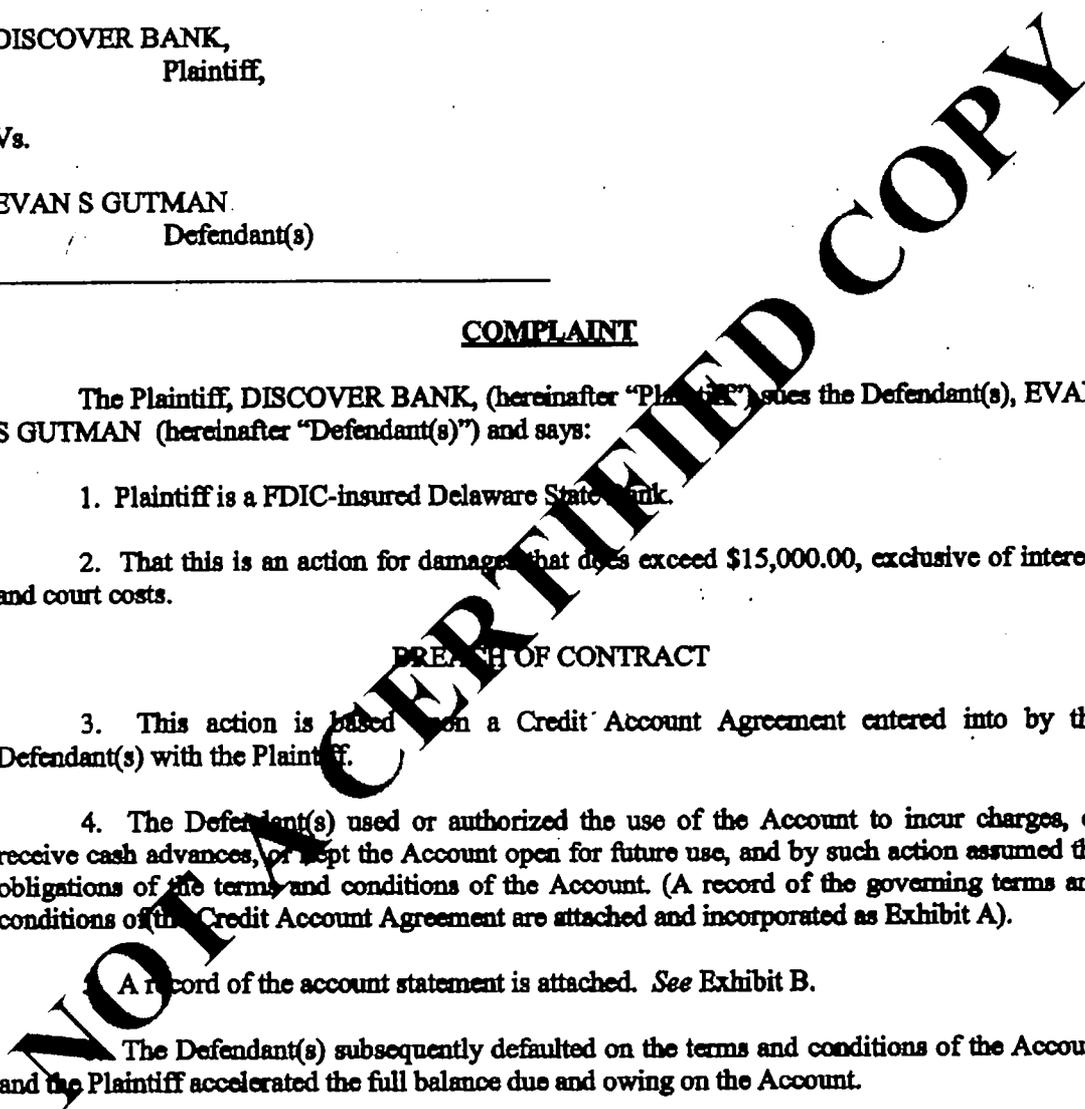
4. The Defendant(s) used or authorized the use of the Account to incur charges, or receive cash advances, or kept the Account open for future use, and by such action assumed the obligations of the terms and conditions of the Account. (A record of the governing terms and conditions of the Credit Account Agreement are attached and incorporated as Exhibit A).

A record of the account statement is attached. See Exhibit B.

The Defendant(s) subsequently defaulted on the terms and conditions of the Account and the Plaintiff accelerated the full balance due and owing on the Account.

7. The Defendant(s) owes the Plaintiff \$16,618.87.

8. Plaintiff has performed all conditions precedent to bringing this action, or the same have been waived by the Defendant(s).



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

DISCOVER BANK,

Plaintiff,

vs.

CASE NO.: 50-2019-CA-013570-XXX-MB

EVAN S. GUTMAN,

Defendant,

ORDER GRANTING DISCOVER BANK'S
MOTION TO COMPEL ARBITRATION OF COUNTERCLAIM

This Court heard Discover Bank's Motion to Compel Arbitration of Counterclaim on July 16, 2021. The hearing began at 11:15 a.m. and continued until 11:21 a.m., during which time Mr. Evan S. Gutman did not appear.

The Court has reviewed Discover Bank's Motion to Compel Arbitration of Counterclaim, Gutman's responses in opposition, and Discover Bank's reply. IT IS HEREBY ORDERED AND ADJUDGED that Discover Bank's Motion to Compel Arbitration of Counterclaim is GRANTED. Gutman's Counterclaim is dismissed pending arbitration.

So ordered this 22nd day of July, 2021.

CIRCUIT COURT JUDGE

G. JOSEPH CURLEY, JR.

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

CASE NO.: 50-2019-CA-013570-XXX-MB

DISCOVER BANK,

Plaintiff,

vs.

EVAN S. GUTMAN,

Defendant,

DISCOVER BANK'S RENEWED MOTION FOR SUMMARY JUDGMENT

Discover Bank moves this Court for final summary judgment in its favor pursuant to Rule 1.510 of the Florida Rules of Civil Procedure. In support of its motion, Discover states as follows:

I. BACKGROUND

1. Plaintiff filed its single count Complaint for Breach of Contract against Gutman on or about October 21, 2019, seeking to recover debt arising from Gutman's credit account with Discover. (*See generally* Compl.).
2. Gutman answered the complaint in November of 2019.
3. The parties litigated the merits of Discover's claim through 2019 and into 2020.

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

CIVIL DIVISION

CASE NO.: 50-2019-CA-013570-XXX-

DISCOVER BANK,

Plaintiff,

vs.

EVAN S. GUTMAN,

Defendant,

ORDER GRANTING FINAL SUMMARY JUDGMENT
IN FAVOR OF DISCOVER BANK

Plaintiff Discover Bank (“Discover”) moved for final summary judgment on its claims pursuant to Rule 1.510 of the Florida Rules of Civil Procedure against Defendant Evan Gutman (“Gutman”) and the Court has reviewed the motion, court file and the case law and the Court is fully advised and hereby makes the following findings of fact and conclusions of law.

I. INTRODUCTION

Discover established that Gutman entered a written agreement with Discover to open an account with Discover; that he breached the agreement by failing to pay the amount owed on the account and that Discover suffered damages in the amount of \$16,618.87 as a result of his breach. Gutman did not dispute these facts, but raised a host of affirmative defenses.

II. UNDISPUTED FACTS

Gutman became a Discover customer in January 2010, when he applied for a Discover credit card.¹ Upon being approved for a credit account (the “Account”), Gutman’s credit card

¹ See Declaration of John Wantuch, filed November 12, 2020, ¶ 6.

MALICE IN LAW

Malice in law. The intentional doing of a wrongful act without just cause or excuse. *Lyons v. St. Joseph Belt Ry. Co.*, 232 Mo.App. 575, 84 S.W.2d 933, 944. Implied, inferred, or legal malice. As distinguished from malice in fact, it is presumed from tortious acts, deliberately done without just cause, excuse, or justification, which are reasonably calculated to injure another or others. *See also* Legal malice. *Compare* Malice in fact.

Malice prepense. Malice aforethought; deliberate, pre-determined malice.

Malicious /malishus/. Characterized by, or involving, malice; having, or done with, wicked, evil or mischievous intentions or motives; wrongful and done intentionally without just cause or excuse or as a result of ill will. *See also* Malice; Willful.

Malicious abandonment. In criminal law, the desertion of a wife or husband without just cause.

Malicious abuse of legal process. Willfully misapplying court process to obtain object not intended by law. The willful misuse or misapplication of process to accomplish a purpose not warranted or commanded by the writ. The malicious perversion of a regularly issued process, whereby a result not lawfully or properly obtained on a writ is secured; not including cases where the process was procured maliciously but not abused or misused after its issuance. The employment of process where probable cause exists but where the intent is to secure objects other than those intended by law. *Hughes v. Swinehart*, D.C.Pa., 376 F.Supp. 650, 652. The tort of "malicious abuse of process" requires a perversion of court process to accomplish some end which the process was not designed to accomplish, and does not arise from a regular use of process, even with ulterior motives. *Capital Elec. Co. v. Cristaldi*, D.C.Md., 157 F.Supp. 646, 648. *See also* Abuse (Process); Malicious prosecution. *Compare* Malicious use of process.

Malicious accusation. Procuring accusation or prosecution of another from improper motive and without probable cause. *See* Malicious prosecution.

Malicious act. A wrongful act intentionally done without legal justification or excuse; an unlawful act done willfully or purposely to injure another.

Malicious arrest. *See* Malicious prosecution.

Malicious assault with deadly weapon. Form of aggravated assault in which the victim is threatened with death or serious bodily injury from the defendant's use of a deadly weapon. The element of malice can be inferred from the nature of the assault and the selection of the weapon.

Malicious injury. An injury committed against a person at the prompting of malice or hatred towards him, or done spitefully or wantonly. The willful doing of an act with knowledge it is liable to injure another and regardless of consequences. Injury involving element of fraud, violence, wantonness and willfulness, or criminality. An injury that is intentional, wrongful and without just cause or excuse, even in the absence of hatred, spite or ill will. *Panchula v. Kays*, 59 Ohio App. 556, 18

N.E.2d 1003, 1005, 13 O.O. 301. Punitive damages may be awarded to plaintiff for such injury.

Malicious killing. Any intentional killing without legal justification or excuse and not within the realm of voluntary manslaughter. *State v. Cope*, 78 Ohio App. 439, 67 N.E.2d 912, 920, 34 O.O. 171.

Maliciously. Imports a wish to vex, annoy, or injure another, or an intent to do a wrongful act, and consist in direct intention to injure, or in recklessness regard of another's rights. *See also* Malice; Malicious mischief.

Malicious mischief. Willful destruction of personal property of another, from actual ill will or resentment towards its owner or possessor. Though only a trespass at the common law, it is now a crime in most states.

Malicious motive. Any motive for instituting a prosecution, other than a desire to bring an offender to justice. *Louder v. Jacobs*, 119 Colo. 511, 205 P.2d 236, 238. *See also* Malicious prosecution.

Malicious prosecution. One begun in malice without probable cause to believe the charges can be sustained. An action for damages brought by person, against whom a civil suit or criminal prosecution has been instituted maliciously and without probable cause, after termination of prosecution of such suit in favor of the person claiming damages. *Beurline v. Smith*, Tex.Civ.App. 426 S.W.2d 295, 298.

One who takes an active part in the initiation, institution or procurement of civil proceedings against another is subject to liability to the other for wrongful proceedings if: (a) he acts without probable cause, primarily for a purpose other than that of securing proper adjudication of the claim in which the proceedings are based, and (b) except when they are suspended, the proceedings have terminated in favor of the person against whom they are brought. *Restatement. Second. Torts, § 674.*

Elements of a cause of action for malicious prosecution are: (1) commencement of prosecution of proceedings against present plaintiff; (2) its legal causation to present defendant; (3) its termination in favor of present plaintiff; (4) absence of probable cause for the proceedings; (5) presence of malice therein; and (6) damage to plaintiff by reason thereof. *Palermo v. St. Louis, Mo.App.*, 525 S.W.2d 758, 764.

In addition to the tort remedy for malicious prosecution, the majority of states also permit statutory actions for malicious institution of civil actions.

See also Advice of counsel; False arrest; Wrongful proceeding.

Malicious trespass. The act of one who maliciously and mischievously injures or causes to be injured any property of another or any public property.

Malicious use of process. Utilization of process to intimidate, oppress or punish a person against whom no suit is sued out. *Austin Liquor Mart, Inc. v. Department of Revenue*, 18 Ill.App.3d 894, 310 N.E.2d 719, 726. *See also* Malicious prosecution where plaintiff proceeds maliciously and without probable cause to execute object which law intends prosecution to prevent.