IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

EVAN S. GUTMAN,

Appellant,

vs.

DISCOVER BANK,

Appellee.

CASE NO.: 4D22-1089
LT NO.: 50-2019-CA-013570-XXXX-XB

ANSWER BRIEF OF APPELLEE, DISCOVER BANK

On Appeal from the Fifteenth Judicial Circuit Court
in and for Palm Beach County, Florida

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STATEMENT OF CASE AND FACTS

In filing his Notice of Appeal to initiate the instant proceedings, Appellant, Evan S. Gutman ("Gutman"), claimed to seek review of an Order Granting Final Summary Judgment in Favor of Discover Bank ("Summary Judgment") in a breach of contract action filed by Appellee, Discover Bank ("Discover") against Gutman in 2019. However, Gutman's Initial Brief is replete with broad-sweeping arguments regarding the doctrines of judicial immunity and the litigation privilege, the constitutionality of local court rules and the Florida Rules of Judicial Administration, and the "monopoly" over the practice of law created by the Florida Bar's restriction against the unauthorized practice of law.

To be clear, Discover originated this action to enforce a credit account agreement, under which Gutman owed $16,618.87. The trial court found that there was no genuine issue of material fact regarding Gutman's acceptance of the terms of his Cardmember Agreement, Gutman's default, Discover's entitlement to recover the credit card debt owed by Gutman, or the amount of the debt. The trial court also found that Gutman's affirmative defenses failed as a matter of law. This Court should affirm.

I. Case Initiation

Discover filed its Complaint against Gutman on October 21, 2019, asserting one count for breach of contract relating to a Cardmember Agreement under which Gutman owed $16,618.87. (R. 11-22.)

Gutman filed an Answer and Affirmative Defenses on November 4, 2019, in which he asserted seven affirmative defenses. (R. 26-34.) Specifically, Gutman alleged the following affirmative defenses: (I) the Cardmember Agreement is an unenforceable contract of adhesion containing provisions that are void under public policy; (II) Discover engaged in unfair and deceptive acts and practices, including issuing a contract of adhesion; (III) Discover's counsel violated Florida Bar Rule of Professional Conduct 4-1.3 by not personally reviewing the particular circumstances of Gutman's account prior to sending a debt validation letter; (IV) Discover's counsel engaged in unfair and deceptive acts and practices by violating Rule 4-1.3; (V) estoppel; (VI) failure to state a cause of action; and (VII) unclean hands. (*Id.* at 27.)

II. Gutman's Counterclaim and Discover's Motion to Compel Arbitration

Gutman moved for leave to file a Counterclaim in this action on February 24, 2020. (R. 63-116.) Gutman sought to allege claims against Discover based on Discover allegedly performing an "illegal" pull of Gutman's credit report and on the alleged nature of the Cardmember Agreement as a "contract of adhesion" with provisions that were "void" as violative of public policy. (*Id.* at 86-95.)

On September 25, 2020, the trial court granted Gutman leave to assert his Counterclaim. (R. 1427.)

On October 15, 2020, Discover moved for an extension of time to respond to the Counterclaim (R. 1434), which the lower court granted on October 26, 2020. (R. 1438.) The order granting the extension provided Discover with 20 days after October 22, 2020 to respond to the Counterclaim. (*Id.*) Twenty days after October 22, 2020 fell on November 11, 2020—a federal holiday (Veteran's Day). Therefore, under Rule 2.514, Florida Rules of Judicial Administration, Discover had until November 12, 2020 to respond to the Counterclaim.

On November 12, 2020, Discover filed a Motion to Compel

Arbitration of Counterclaim ("Motion to Compel Arbitration"). (R. 1440-97.) In the Motion to Compel Arbitration, Discover argued that the Cardmember Agreement governing Gutman's account included a provision mandating the arbitration of Gutman's claims against Discover. (*Id.* at 1442-54.) Discover also argued that the arbitrability of Gutman's claims were for the arbitrator to determine. (*Id.* at 1454-57.) Additionally, Discover contended that it did not waive the right to compel arbitration of Gutman's Counterclaim by filing suit to collect the balance owed on Gutman's account because the arbitration provision in the Cardmember Agreement expressly authorized Discover to file such a lawsuit. (*Id.* at 1457-60.)

Gutman responded in opposition to the Motion to Compel Arbitration on November 27, 2020. (R. 1498-1544.) Gutman argued that: (1) the Motion to Compel Arbitration was not "legally filed" because new counsel for Discover was not properly substituted in; (2) the Motion to Compel Arbitration was untimely (despite Discover securing an extension of time); (3) the exhibits on which Discover relied were inadmissible because they were not submitted as part of a motion for summary judgment that Discover previously filed; (4) the arbitration provision is unenforceable; (5) Discover waived its

right to arbitration; and (6) the issues on which Discover sought arbitration were not within the scope of the arbitration provision. (*See id.* at 1498-1519.)

On June 21, 2021, Gutman filed a Supplemental Response to Plaintiff's Motion to Compel Arbitration of Counterclaim ("Supplemental Response"). (R. 1590-1618.) Gutman argued therein that inclusion of AAA rules in a contract "unconstitutionally infringes upon the debtor's right to have a fair and impartial adjudication free from a decisionmaker who does not have a 'financial interest' in the outcome of the matter." (*Id.* at 1590 (emphasis omitted).) Gutman also contended that the inclusion of AAA rules in an arbitration provision was unconstitutional because they provide an arbitrator with immunity for "Illegal and/or Intentional Malicious Acts." (*Id.*) Gutman also took issue with the font size used in the arbitration provision and with the scope of the arbitration provision vis-à-vis the Counterclaim. (*Id.*)

Discover filed a Reply in Support of Motion to Compel Arbitration of Counterclaim ("Reply") on July 8, 2021. (R. 1619-27.) In the Reply, Discover argued that its Motion to Compel Arbitration was timely under Rule 2.514. (*Id.* at 1620.) Discover also observed

that federal law precludes as a matter of law Gutman's suspicion of the financial motivations of an arbitrator. (*See id.* at 1621-22.) Furthermore, Discover contended that the arbitrator, not the trial court, was tasked with determining the scope of the arbitration provision. (*Id.* at 1622-24.) Finally, Discover relied on case law demonstrating that courts routinely permit parties to participate in litigation as allowed by the terms of an arbitration agreement so long as they promptly move to compel arbitration of claims asserted against them. (*Id.* at 1524-25.)

On July 22, 2021, the lower court granted Discover's Motion to Compel Arbitration and dismissed Gutman's Counterclaim pending arbitration ("Order Compelling Arbitration"). (R. 1628.)

III. Discover's Motion for Summary Judgment

On August 17, 2021, Discover filed a Renewed Motion for Summary Judgment ("Motion for Summary Judgment"). (R. 1630-38.) Discover noted that the lower court denied a previous motion for summary judgment without prejudice to allow Discover to provide Gutman with unredacted copies of the account statement and correspondence on which Discover relied in seeking summary judgment. (*See* R. 154-55, 162-460, 617-22, 1352, 1631.) Discover

provided the unredacted account statement and correspondence to Gutman on September 14 and 16, 2020. (R. 1353-57.) Therefore, Discover renewed its earlier summary judgment motion, relying upon an earlier-filed Affidavit of Indebtedness and accompanying exhibits (R. 162-460), the Declaration of Janusz Wantuch and supporting exhibits submitted with the Motion to Compel Arbitration (R. 1464-97), and the unredacted account statement and letters. (R. 1631.)

IV. Gutman's Motion to Disqualify

On January 20, 2022, Gutman filed a motion to disqualify the Honorable G. Joseph Curley "and **ALL** other Palm Beach County Judges" ("Motion to Disqualify") because Gutman claimed to feel that he could not receive a fair and impartial adjudication from any Palm Beach County judge. (R. 1646-1756.) Gutman's Motion to Disqualify also sought to stay the arbitration of his dismissed Counterclaim and the proceedings below. (*Id.* at 1647.) The arguments asserted by Gutman in the Motion to Disqualify are similar to those raised by Gutman in his Initial Brief in this appeal. (*See id.* at 1648-49.)

Judge Curley granted the Motion to Disqualify on January 27,

2022 insofar as Gutman requested recusal of Judge Curley. (R. 1805-1806.) In entering his order, Judge Curley noted that he was not permitted to deny Gutman's allegations as untrue or unfounded "[e]ven when the allegations are untrue, outrageous, or scandalous." (*Id.* at 1805.) The case was subsequently reassigned to the Honorable Samantha Schosberg-Feuer. (R. 1810.)

V. Gutman's Responses to Discover's Motion for Summary Judgment

On January 20, 2022, Gutman filed a response in opposition to Discover's Motion for Summary Judgment ("Response"). (R. 1786-99.) In the Response, Gutman first argued that Discover sought summary judgment from the county court, not the circuit court, even though Discover filed the Motion for Summary Judgment in the pending circuit court case below. (*See id.* at 1786-87.) In support, Gutman pointed to a scrivener's error in the caption of the Motion for Summary Judgment. (*Id.* at 1798.) Gutman also argued that his Counterclaim remained pending despite the lower court's order granting a referral to arbitration and dismissing the Counterclaim. (*See id.*) Finally, Gutman contended that the hearing set on the Motion for Summary Judgment was scheduled by Discover

unilaterally. (*See id.* at 1786, 1788-89.) The exhibits to Gutman's response show that Discover requested a hearing date on February 4, 2022 at 2:45 p.m., the trial court entered an order scheduling the hearing accordingly, and Discover sought to confirm with Gutman his availability on that date and at that time. (*Id.* at 1792-95.)

After reassignment of the case to Judge Schosberg-Feuer, the lower court rescheduled the summary judgment hearing to March 4, 2022. (R. 1811-13.)

On February 22, 2022, Gutman filed a Supplemental Opposition to Plaintiff's Renewed Motion for Summary Judgment. (R. 1817-61.) In addition to again arguing that the Cardmember Agreement is a contract of adhesion that contains unenforceable provisions and that Discover failed to attach all necessary exhibits to its Complaint, Gutman also argued that Palm Beach County Court Rule 4 and the trial court's scheduling system are unconstitutional. (*Id.* at 1817.) Specifically, Gutman claimed that Rule 4 and the scheduling system violate his due process and equal protection rights and that Rule 4[1] "promotes Incivility,

[1] Local Rule 4 of the Fifteenth Judicial Circuit in and for Palm Beach County, Florida is titled, "In Re: Uniform Motion Calendar

Unprofessional Conduct and . . . disrespect for the Judiciary." (*Id.* (emphasis omitted).) Additionally, Gutman contended, generally speaking, that judicial immunity and the litigation privilege infringe on his due process and equal protection rights. (*Id.*)

VI. Discover's Reply in Support of Motion for Summary Judgment

Discover filed a Reply in Support of Motion for Summary Judgment on March 1, 2022. (R. 1862-71.) Discover argued therein that it established the existence of a written agreement between Discover and Gutman; a breach of that agreement; and the amount of damages owed to Discover. (*Id.* at 1862.) As Discover noted, Gutman failed to raise a single factual dispute on these points, and his affirmative defenses lacked factual support. (*Id.* at 1865-66.) Discover asserted grounds for the court to determine that Gutman's affirmative defenses failed as a matter of law. (*Id.* at 1864-69.)

VII. Entry of Summary Judgment; Notice of Appeal

On April 1, 2022, the lower court entered an Order Granting Final Summary Judgment in Favor of Discover Bank (previously

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and Specially Set Hearings," and provides, *inter alia*, that prior to noticing a motion for hearing, the attorney noticing the motion for hearing must attempt to resolve the matter and certify the good faith attempt to resolve. (R. 1856.)

defined herein as the "Summary Judgment"). (R. 1891-97.) In the Summary Judgment, the court observed that Gutman did not dispute the material facts asserted by Discover, but "raised a host of affirmative defenses." (*Id.* at 1891.) The court then found that Gutman's first affirmative defense, that the Cardmember Agreement is an unenforceable contract of adhesion, failed as a matter of law because "[u]nder Florida law, an adhesion contract is valid and fully enforceable." (*Id.* at 1894.)[2] The court also observed that Gutman could not accept the benefits of the Cardmember Agreement and then seek to avoid its obligations. (*Id.* at 1895.)

Just as Gutman's first affirmative defense failed, so too did his second affirmative defense of unfair and deceptive acts and practices, given that it was also based on the alleged adhesion nature of the Cardmember Agreement. (*Id.*)

The trial court rejected Gutman's third and fourth affirmative defenses, in which Gutman claimed that Discover's counsel violated rules of professional conduct, in that they "have no bearing on the

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[2] The lower court also cited Delaware law to support this finding, demonstrating that regardless of whether Florida law or Delaware law applied, the conclusion remained that the Cardmember Agreement was enforceable. (*See id.*)

merits of Discover's claim for breach of contract." (*Id.*)

Additionally, the trial court found that Gutman's affirmative defenses of estoppel and unclean hands were factually unsupported and failed to raise any disputed material fact. (*Id.*)

The lower court disposed of Gutman's final affirmative defense by noting that Discover provided Gutman with unredacted copies of the account documents identified in his defense, thus eliminating any dispute that the defense may have otherwise raised. (*Id.* at 1896.)

Gutman filed his Notice of Appeal of the Summary Judgment on April 20, 2022. (R. 1909-17.)

SUMMARY OF THE ARGUMENT

Gutman presents his arguments in a shotgun fashion, taking broad aim at theoretical targets ranging from the viability of the doctrines of judicial immunity and litigation privilege to the constitutionality of a local "good faith conference" rule and Florida's bar against the unlicensed practice of law. However, these topics lack any bearing on whether the trial court correctly found that there was no genuinely disputed material fact as to Discover's claim against Gutman or whether Discover was entitled to judgment as a matter of law. Gutman notably fails to address any purported dispute of material fact, nor does he argue that his affirmative defenses precluded entry of the Summary Judgment. The Court should therefore affirm the Summary Judgment in favor of Discover.

STANDARD OF REVIEW

Orders granting summary final judgment are reviewed de novo. *Volusia Cnty. v. Aberdeen at Ormond Beach, L.P.*, 760 So. 2d 126, 130 (Fla. 2000).

ARGUMENT

Rather than addressing the grounds on which the trial court entered the Summary Judgment, it appears that Gutman seeks to utilize this appeal as a vehicle to assail Florida's judicial system as a whole. The Court should reject Gutman's arguments outright and affirm the Summary Judgment.

I. Gutman Does Not Contend that Any Disputed Material Facts Exist or that his Affirmative Defenses Prevent Judgment for Discover as a Matter of Law.

In his Initial Brief, Gutman noticeably fails to identify any disputed material fact in this case or argue that his affirmative defenses precluded entry of the Summary Judgment as a matter of law. Presumably, then, Gutman stipulates that there are no genuine disputes of material fact and that Discover is entitled to judgment as a matter of law. At the least, Gutman has waived the ability to assert otherwise in this appeal. *See Hagood v. Wells Fargo N.A.*, 112 So. 3d 770, 772 (Fla. 5th DCA 2013) ("[A]n issue not raised in an initial brief is deemed abandoned and may not be raised for the first time in a reply brief.") (quoting *J.A.B. Enterps. v. Gibbons*, 596 So. 2d 1247, 1250 (Fla. 4th DCA 1992)); *see also Parker-Cyrus v. Justice Admin. Comm'n*, 160 So. 3d 926, 928 (Fla. 1st DCA 2015) ("An

argument may not be raised for the first time in a reply."). The Court should therefore affirm the Summary Judgment.

II. Gutman Waived Certain Arguments in his Initial Brief by Not Raising them Below in Opposition to the Motion for Summary Judgment.

Gutman did not raise certain arguments contained in his Initial Brief in response to Discover's Motion for Summary Judgment. (*See* R. 461-75, 677-700, 1786-99.) Specifically, Gutman did not contend in opposition to the Motion for Summary Judgment that Rule 2.215, Florida Rules of Judicial Administration, is unconstitutional, nor did he assert any issue regarding Florida's restriction on the unlicensed practice of law. Instead, Gutman only presented these arguments when he filed his Motion to Disqualify, in which he sought—and obtained—the disqualification of Judge Curley. (R. 1648-49.)

Gutman waived these arguments by failing to bring them specifically in opposition to the Motion for Summary Judgment. He therefore cannot assert them on appeal as grounds for reversal of the Summary Judgment. *See Steinhorst v. State*, 412 So. 2d 332, 338 (Fla. 1982) ("[I]n order for an argument to be cognizable on appeal, it must be the specific contention asserted as legal ground

for the objection, exception, or motion below.").

For an issue to be preserved for appeal, "the party must make a timely, contemporaneous objection at the time of the alleged error." *Aills v. Boemi*, 29 So. 3d 1105, 1108 (Fla. 2010). In other words, it is not sufficient for an appellant to raise an argument at some point in the trial court proceedings that is unrelated to the order or judgment on appeal. For Gutman to argue that entry of the Summary Judgment was improper due to the points contained in the Initial Brief, Gutman was required to assert those grounds in opposition to Discover's Motion for Summary Judgment or in a motion for rehearing of the Summary Judgment. He failed to do so.

Gutman did not provide a transcript of the hearing on the Motion for Summary Judgment. (*See generally* R.) Therefore, the record does not reflect whether Gutman raised his arguments concerning Rule 2.215 or the unlicensed practice of law at the summary judgment hearing. Because Gutman did not provide a written response to the Motion for Summary Judgment containing these arguments or a transcript showing that Gutman presented these arguments to the trial court at the hearing on the Motion for Summary Judgment, Gutman did not preserve these points for

appeal. *See Cornerstone 417, LLC v. Cornerstone Condo. Ass'n*, 300 So. 3d 1262, 1264 n.1 (Fla. 5th DCA 2020) (citing *Black Point Assets, Inc. v. Fed. Nat'l Mortg. Ass'n ("Fannie Mae")*, 220 So. 3d 566, 568-69 (Fla. 5th DCA 2017)).

Consequently, the Court should reject Gutman's arguments regarding Rule 2.215 and the unlicensed practice of law and affirm entry of the Summary Judgment.

III. Gutman's Arguments are Meritless.

On the merits of Gutman's appeal, the Court should find that entry of the Summary Judgment was proper. Gutman seeks to inject extraneous issues into this matter regarding the constitutionality of widely accepted legal doctrines, basic local and administrative rules, and the manner in which the Florida Bar restricts the unauthorized practice of law. This appeal is not the proper place for Gutman to air his grievances on these irrelevant topics.

Under Rule 1.510, Florida Rules of Civil Procedure, the trial court's task was simple enough—because there was "no genuine dispute as to any material fact" and Discover was "entitled to judgment as a matter of law," entry of the Summary Judgment was

appropriate. Gutman's arguments in the Initial Brief do not address the trial court's determinations.

Discover does not wish to breathe life into Gutman's fatally flawed arguments by entertaining them on the merits, but to the extent that the Court wishes to address them substantively, Discover posits the arguments below.

A. The Doctrines of Judicial Immunity and Litigation Privilege are Universally Accepted.

The doctrines of judicial immunity and litigation privilege are well-established under Florida law and have been extensively reviewed and applied.

First, it is "well settled" that judicial and quasi-judicial officers are immune "from suit, not just assessment of damages" for actions taken within their judicial discretion. *Fuller v. Truncale*, 50 So. 3d 25, 28 (Fla. 1st DCA 2010) (internal quotations omitted). Such immunity "is essential to the preservation of an independent judiciary." *Berry v. State*, 400 So. 2d 80, 82-83 (Fla. 4th DCA 1981), *rev. denied*, 411 So. 2d 380 (Fla. 1981). As observed by this Court:

> [T]he absolute immunity that judges enjoy exists for the benefit of the judicial system and of the public, not for that of the judge. Only a hero could exercise unfettered judgment while facing, day after day and case after case,

> the prospect of personal ruin implicit in permitting every losing party to sue him for damages. There have never been enough heroes to go around, and a sound policy must deal with the prospect that some who occupy the bench may not be of that ilk. . . .
>
> All authorities recognize that when a judge acts in a "clear absence of all jurisdiction" he is not protected. But any broader or less explicit inroad upon the robe's immunity in an attempt to reach its wearer would invite recurring attempts at enlargement, ruinous in terms of judicial time and funds expended to defend—even successfully—against them. Thus, the rule of judicial immunity from damages, with its single, bright-line exception, is as broad as, but no broader than, is necessary.

Johnson v. Harris, 645 So. 2d 96, 97-98 (Fla. 5th DCA 1994) (quoting *Sparks v. Duval Cnty. Ranch Co.*, 604 F.2d 976, 979-80 (5th Cir. 1979), *aff'd sub nom. Dennis v. Sparks*, 449 U.S. 24 (1980)). Here, Gutman does not, and cannot, contend that the trial court acted without jurisdiction. *See id.* at 98. Gutman also has not attempted to assert any claims against the trial judge. Therefore, Gutman's arguments attacking the doctrine of judicial immunity are inapposite at best and frivolous at worst.

Gutman's points concerning the litigation privilege fare no better. Gutman asserted a Counterclaim against Discover based on an alleged "illegal" credit pull that occurred during the course of the litigation, and the trial court ruled that he is free to pursue such a

claim in the context of arbitration. Discover has not claimed that the litigation privilege, which provides "legal immunity for actions that occur in judicial proceedings," *Echevarria, McCalla, Raymer, Barrett & Frappier v. Cole*, 950 So. 2d 380, 383 (Fla. 2007), prevents Gutman from bringing his claims against Discover. Instead, Discover only sought to enforce the right to arbitrate Gutman's claims, which the trial court granted. Any issue that Gutman may have with the litigation privilege has no bearing whatsoever on these proceedings.

B. The Constitutionality of Palm Beach County Local Rule 4 has No Relevance to the Summary Judgment on Appeal.

Gutman next takes issue with the constitutionality of Palm Beach County Local Rule 4, which, like a multitude of local rules in this state (not to mention federal local rules), requires attorneys to conduct a good faith conference before noticing a motion for hearing. Gutman complains that this rule "deprives Pro Se Litigants of a fair and impartial adjudication by excluding them from its provisions" (Initial Br. at 29) based on the rule's statement that it does not apply to pro se litigants. (R. 1856.) However, Gutman does not argue that he was not afforded a good faith conference on

Discover's Motion for Summary Judgment (nor does the record reflect this), and he does not claim that entry of the Summary Judgment could have been avoided had Discover conducted such a good faith conference. Gutman therefore fails to contend that he was prejudiced in the event that a good faith conference did not occur due to his pro se status. *Cf. Greenberg v. Simms Merchant Police Serv.*, 410 So. 2d 566, 566-67 (Fla. 1st DCA 1982) (finding appellant "failed to demonstrate any prejudice resulting from" alleged due process issue). Thus, whether Local Rule 4 is constitutional is irrelevant to this appeal.

Gutman also asserts that Local Rule 4 "infringes upon the due process rights of litigants represented by Counsel by requiring their Attorney to communicate and cooperate opposing [sic] Counsel even if not in the best interests of their clients." (Initial Br. at 29.) Gutman, who is not represented by counsel, does not have standing to assert such an argument. *See Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 941 (Fla. 2002) ("Under traditional *jus tertii* jurisprudence, 'In the ordinary course, a litigant must assert his or her own legal rights and interests, and cannot rest a claim to relief on the legal rights or interests of third parties.'") (quoting *Powers v.*

Ohio, 499 U.S. 400, 410 (1991)).

C. The Constitutionality of Rule 2.215, Florida Rules of Judicial Administration, is Irrelevant.

Gutman next attacks the constitutionality of Rule 2.215, Florida Rules of Judicial Administration, which governs trial court administration and provides the chief judge of a trial court the ability to assign judges to divisions. Gutman does not point to any particular infirmity regarding the entry of the Summary Judgment that relates to Rule 2.215, rendering his constitutional argument extraneous to the case at bar.

Furthermore, Florida law recognizes that chief judges have substantial discretion to manage their circuit. The role of chief judges can be traced to Article V, section 2(a) of the Florida Constitution, which gives the Florida Supreme Court authority to adopt rules for the administrative supervision of all courts, and to Article V, section 2(b), which gives the chief justice of the Florida Supreme Court "the power to . . . delegate a chief judge of a judicial circuit the power to assign judges for duty in that circuit." In turn, Rule 2.050(b)(4), Florida Rules of Judicial Administration, delegates the chief justice's assignment power to the chief judges of judicial

circuits. When a chief judge exercises this assignment power, "the judge is acting under the Chief Justice's constitutional power." *Wild v. Dozier*, 672 So. 2d 16, 18 (Fla. 1996).

The ability of chief judges to manage their respective circuits and assign judges to divisions or dockets is wholly constitutional. Gutman's argument is inapposite to this case and lacks merit.

D. Florida's Limits on the Unauthorized Practice of Law have been Repeatedly Upheld.

As with his other arguments, Gutman fails to tie the fourth issue identified in the Initial Brief—namely, whether the Florida Bar creates a "monopoly" with its restrictions on the unauthorized practice of law—to any issue in this case.

Not only is this point immaterial to these proceedings, but Florida courts have repeatedly upheld the Florida Bar's rule against the unlicensed practice of law and the corresponding statute, § 454.23, Florida Statutes. *See State v. Foster*, 674 So. 2d 747, 753 (Fla. 1st DCA 1996) (finding that § 454.23, Fla. Stat., is not unconstitutionally vague); *Fla. Bar v. Moses*, 380 So. 2d 412, 417 (Fla. 1980) (in the absence of legislative authorization for lay representation, conduct which constitutes the practice of law is

subject to the Florida Supreme Court's[3] "constitutional responsibility to protect the public from the unauthorized practice of law"); *Fla. Bar v. Moreno-Santana*, 322 So. 2d 13, 14 (Fla. 1975) (observing the constitutional jurisdiction to prohibit the unauthorized practice of law). The Court should therefore reject Gutman's arguments concerning Florida's limits on the unauthorized practice of law and affirm entry of the Summary Judgment.

CONCLUSION

Gutman's arguments lack any relevance to the matter before the Court—namely, whether Discover was entitled to entry of the Summary Judgment because it demonstrated a lack of disputed material facts and that Gutman's affirmative defenses failed as a matter of law. Gutman did not argue the constitutionality of Rule 2.215 or Florida's restriction on the unlicensed practice of law in opposition to the Motion for Summary Judgment and therefore failed to assert them contemporaneously in opposition to the relief requested by Discover. Gutman thus waived those arguments for

[3] Fla. Bar R. 16.2.2 recognizes the Florida Bar as "an official arm of [the Florida Supreme] Court."

review in these proceedings.

Furthermore, on the merits, long-standing Florida law demonstrates that Gutman's arguments are baseless. Gutman also fails to tie his arguments to the instant proceedings or the issues considered by the trial court. Given that Gutman did not identify any genuine dispute of material fact or a viable legal argument in his Initial Brief, Gutman has waived the ability to assert any such argument in his Reply Brief. For all these reasons, the Court should affirm the entry of the Summary Judgment.

Respectfully submitted this 19th day of October, 2022.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Brief meets the length and typeface requirements of the Florida Rules of Appellate Procedure. This Brief consists of 4,607 words and is prepared in Bookman Old Style 14-point font.

/s/ Gennifer L. Bridges
Gennifer L. Bridges (FBN 0072333)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 19, 2022, a true and correct copy of the foregoing was filed via the eDCA E-Filing Portal and served via U.S. Mail on Evan S. Gutman, 1975 N. W. 4th Avenue, Apt. 511, Boca Raton, Florida 33432.

/s/ Gennifer L. Bridges
Gennifer L. Bridges (FBN 0072333)