

IN THE FOURTH DISTRICT COURT OF APPEAL
STATE OF FLORIDA

EVAN S. GUTMAN,

CASE NO.: 4D22-2201

LT NO.: 50-2021-CA-000114-XXXX-XB

Petitioner,

vs.

CAVALRY SPV I, LLC as
Assignee of CITIBANK, N.A.,

Respondent.

**RESPONDENT, CAVALRY SPV I, LLC, AS ASSIGNEE OF
CITIBANK, N.A.'S RESPONSE TO ORDER TO SHOW CAUSE
WHY PETITION FOR WRIT OF CERTIORARI
SHOULD NOT BE GRANTED¹**

Gennifer L. Bridges, Esq. (FL Bar #0072333)

Email: gbridges@burr.com; nwmosley@burr.com

R. Frank Springfield, Esq. (FL Bar #0010871)

Email: fspringfield@burr.com; sthompson@burr.com

BURR & FORMAN LLP

200 S. Orange Avenue, Suite 800

Orlando, Florida 32801

Telephone: (407) 540-6600

Facsimile: (407) 540-6601

Counsel for Respondent,

Cavalry SPV I, LLC as Assignee of Citibank, N.A.

¹ Cavalry hereby responds to the Court's December 6, 2022 Order requiring Cavalry to show cause why Petitioner Evan S. Gutman's petition for writ of certiorari should not be granted. Contemporaneously herewith, and in an abundance of caution, Cavalry will submit an Answer Brief addressing the issues raised in Gutman's Initial Brief/Petition.

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BACKGROUND

Petitioner, Evan S. Gutman (“Gutman”) seeks a writ of certiorari in response to a summary judgment (“Judgment”) entered against him in favor of Respondent, Cavalry SPV I, LLC,² as Assignee of Citibank, N.A. (“Cavalry”) on an account stated claim. The Judgment included execution language rendering it immediately enforceable by Cavalry against Gutman. (Appx. 258-59.)³ However, Gutman’s Amended Counterclaim against Cavalry was pending when the Judgment was entered. (Appx. 150-201.) Currently, the Amended Counterclaim remains pending below, the parties have not moved for summary judgment on the Amended Counterclaim, and trial is not scheduled.

ARGUMENT

As indicated by the Court in its December 6, 2022 order, multiple cases hold that the inclusion of execution language in what would otherwise be a non-appealable, non-final order warrants

² Gutman incorrectly identifies Cavalry SPV I, LLC as “Calvary SPV 1, LLC.”

³ In light of the Court’s determination that the record on appeal is considered an Appendix, Cavalry’s citations are to “Appx.” rather than “R.”

certiorari relief. *See Mohler v. Elliott*, 332 So. 3d 1120, 1122 (Fla. 2d DCA 2022); *Siebler v. Gil*, 193 So. 3d 27, 30 (Fla. 3d DCA 2016); *E. Ave., LLC v. Insignia Bank*, 136 So. 3d 659, 664-65 (Fla. 2d DCA 2014). Cavalry does not dispute that Gutman's Amended Counterclaim remained pending when the lower court entered the Judgment and that the Judgment therefore did not resolve all issues before the trial court. Cavalry also does not dispute that the Judgment would ordinarily be considered a non-final partial summary judgment but for the inclusion of the execution language in the Judgment. Accordingly, Cavalry stipulates that certiorari relief is warranted insofar as the Judgment included language permitting immediate execution.

However, it is not necessary for the Court to quash the Judgment in its entirety. As demonstrated by the arguments asserted by Cavalry in its Answer Brief, the trial court was correct to find that Cavalry was entitled to summary judgment on its account stated claim against Gutman. Only the execution language included in the Judgment implicates the two-prong test for a grant of certiorari. The remainder of the Judgment was proper. Therefore, the Court should only quash the portion of the Judgment that permits immediate

execution by Cavalry and remand for further proceedings to adjudicate Gutman's Amended Counterclaim so that a final judgment may be entered. *See Kratos Holdings, LLC v. Direct Invests. Int'l, LLC*, 323 So. 3d 334, 336 (Fla. 3d DCA 2021) (granting petition for writ of certiorari but quashing only the portion of a partial summary judgment authorizing immediate execution); *Am. Franchise Group LLC v. Gastone*, 319 So. 3d 147, 150 (Fla. 3d DCA 2021) (same); *People's Trust Ins. Co. v. Gonzalez*, 318 So. 3d 583 (Mem) (Fla. 3d DCA Feb. 3, 2021) (same); *Williamson v. Banta*, 22 So. 3d 152 (Mem) (Fla. 1st DCA Nov. 30, 2009) (granting petition for writ of certiorari in part and quashing portion of partial summary judgment which allows execution to issue).

CONCLUSION

Although Cavalry concedes that the Judgment should not have included language allowing immediate issuance of execution, the lower court was correct to award summary judgment against Gutman on Cavalry's Complaint. Therefore, the Court should only grant Gutman's petition for writ of certiorari in part, quash the execution language in the Judgment, allow the remainder of the Judgment to remain in place, and remand for further proceedings on Gutman's

Amended Counterclaim and entry of a final judgment.

Respectfully submitted this 13th day of December, 2022.

/s/ Gennifer L. Bridges

Gennifer L. Bridges

FL Bar #0072333

Email: gbridges@burr.com

Secondary: nwmosley@burr.com

R. Frank Springfield

FL Bar #0010871

Email: fspringfield@burr.com

Secondary: sthompson@burr.com

BURR & FORMAN LLP

200 S. Orange Avenue, Suite 800

Orlando, Florida 32801

Telephone: (407) 540-6600

Facsimile: (407) 540-6601

Counsel for Appellee/Respondent,

*Cavalry SPV I, LLC as Assignee of
Citibank, N.A.*

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Response meets the length and typeface requirements of the Florida Rules of Appellate Procedure.

This Response consists of 625 words and is prepared in Bookman Old Style 14-point font.

/s/ Gennifer L. Bridges

Gennifer L. Bridges

Florida Bar No. 0072333

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 13, 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, 1675 N. W. 4th Avenue, Apt. 511, Boca Raton, Florida 33432.

/s/ Gennifer L. Bridges

Gennifer L. Bridges

Florida Bar No. 0072333