Filing # 171312975 E-Filed 04/19/2023 10:33:01 AM

IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FOURTH DISTRICT

EVAN S. GUTMAN,

Appellant,

v.

Case No. 4DCA#22-2821
L.T. Case No. 2020-CC-005756

CITIBANK, N.A.,

Appellee.
________________________________/

AMENDED ANSWER BRIEF

Donald A. Mihokovich
Florida Bar No. 858447
ADAMS AND REESE LLP
100 North Tampa Street, Suite 4000
Tampa, Florida 33602
813-402-2880
813-402-2887 (fax)
Attorneys for Appellee

TABLE OF CONTENTS

PAGE

TABLE OF CONTENTS i

TABLE OF AUTHORITIES ii

STATEMENT OF THE FACTS AND CASE 1

ARGUMENT 6

1. The Trial Court Did Not Err in Denying Gutman's Second Motion for Judicial Disqualification 6

2. Gutman Failed to File a Timely Objection to the July 19, 2022 and August 22, 2022 Orders Scheduling This Matter for Trial 7

3. It Was Not Reversible Error to Dismiss Gutman's Counterclaim 11

4. Palm Beach County Local Rule 4 and Online Scheduling System for Hearings do not Provide a Basis for Reversal in This Case 14

CERTIFICATE OF SERVICE 18

CERTIFICATE OF COMPLIANCE 18

TABLE OF AUTHORITIES

Cases

Aills v. Boemi, 29 So.3d 1105 (Fla. 2010) 8

Alterra Healthcare Corp. v. Etate of Shelley,
827 So.2d 936 (Fla. 2002) 16

Applegate v. Barnett Bank, 377 So. 2d 1150 (Fla. 1979) 14

Coolen v. State, 696 So. 2d 738 (Fla. 1997) 14

Correa v. U.S. Bank National Ass'n, 118 So.3d 952
(Fla. 2d DCA 2013) 9

Delgado v. Miller, Case No. 3D22-1826
(Fla. 3d DCA, Feb. 22, 2023) 6

Echevarria, McCalla, Raymer v. Cole, 950 So.2d 380
(Fla. 2017) 12, 13

Garner v. Langford, 55 So.3d 711 (Fla. 1st DCA 2011) 8

Gawker Media, LLC v. Bollea, 170 So.3d 125
(Fla. 2d DCA 2015) 8, 9, 11

Goldschmidt v. Holman, 571 So.2d 422 (Fla. 1990).....................................8

Greenberg v. Simms Mercant Police Serv.,
410 So. 2d 566 (Fla. 1st DCA 1982) 15

Gutman v. Cavalry SPV I, LLC, Case No. 4D22-2201 14

Gutman v. Discover Bank, Case No. 4D22-1089 14

HSBC Bank USA, N.A. v. Serban, 148 So.3d 1287
(Fla. 1st DCA 2014) 10

J.A.B. Enterprises v. Gibbons, 596 So.2d 1247
(Fla. 4th DCA 1992) 14, 17

Labor Ready Southeast, Inc. v. Australian Warehouses Condominium Ass'n, 962 So.2d 1053 (Fla. 4th DCA 2007) 11

LatAm Invs., LLC v. Holland & Knight, LLP, 88 So.3d 240 (Fla. 3d DCA 2011) 12

Parrish v. Dougherty, 505 So.2d 646 (Fla. 1st DCA 1987) 9

Pleus v. Crist, 14 So.3d 941 (Fla. 2009) 10

Raulerson v. Font, Case No. 3D17-2370 (Fla. 3d DCA 2018) 12

Waddington v. Baptist Med. Ctr., 78 So.3d 114 (Fla. 1st DCA 2012) 15

Windsor v. Longest, 347 So. 3d 379 (Fla. 5th DCA 2021) 15

Woodson v. State, 100 So. 3d 222 (Fla. 3d DCA 2012) 16

Statutes

Fla. Stat. § 38.10 7

Rules

Florida Rule of Judicial Administration 2.330 .... 6, 7

Local Rule 4 .... 15, 16

STATEMENT OF THE FACTS AND CASE

On July 8, 2020, Citibank, N.A. ("Citibank") filed a complaint against Evan S. Gutman ("Gutman") in the County Court of Palm Beach County, alleging that Gutman owed Citibank $11,292.15 on a credit card account. (R. 12-15). Citibank alleged a cause of action for account stated in Count I, and an alternative cause of action for unjust enrichment in Count II.

Although he is appearing pro se, Gutman is a member of the Pennsylvania Bar, District of Columbia Bar, U.S. Tax Court Bar, and admitted to the Federal Sixth and Ninth Circuit Court of Appeals. (R. 1002).

On October 6, 2020, Gutman filed an answer and defenses (R. 49-81), and in a separate document, filed a counterclaim, admitting that an express written contract existed between the parties, but alleging that Citibank pleading in the alternative for unjust enrichment, and suing him for account stated when he did not agree to the amount owed, was "illegal conduct" in violation of various Florida statutes and common law. (R. 16-48). Citibank moved to dismiss the counterclaim. (R. 181-191).

On February 21, 2021, Gutman moved for leave to amend his counterclaim to seek punitive damages. (R. 84-128). The trial court denied the motion for leave to amend to assert punitive damages. (R. 177-178).

On June 11, 2021, the trial court granted Citibank's motion for a 20-day extension of time to respond to Gutman's answer, defenses, and counterclaim. (R. 179-180).

On June 30, 2021, Citibank filed its motion to dismiss Gutman's counterclaim (R. 181-191), and also moved to strike affirmative defenses. (R. 192-195).

On January 28, 2022, the trial court granted Citibank's motion to dismiss the counterclaim without prejudice, granting Gutman 14 days to amend. (R. 301). Instead of amending the counterclaim, Gutman filed two motions for reconsideration when successor judges were assigned to the case. (R. 250-276, R. 292-308).

On March 17, 2022, Judge Bistrow denied the first motion for reconsideration, and noted that the deadline for Gutman to file an amended counterclaim had passed prior to the date Gutman filed the subject motion for reconsideration. "This Order does not in any way extend the time since passed deadline." (R. 307).

On July 4, 2022, Gutman filed a motion to disqualify Judge James Sherman (R. 403-491), on the grounds that before becoming a judge, he worked on appeals of civil jury verdicts, which Gutman determined to be "negating the Sacred Will of a Jury Verdict by substituting it with a self-

interested Judicial decision." (R. 405). On July 8, 2022, Judge Sherman granted the motion to disqualify. (R. 492-493).

On July 12, 2022, the case was reassigned to Judge Edward Garrison, the fourth judge assigned to the case. (R. 496).

On July 15, 2022, an order was entered scheduling Citibank's motion to strike for August 31, 2022. (R. 1572).

On July 19, 2022, Judge Garrison denied Gutman' second motion for reconsideration of the ruling dismissing his counterclaim. (R. 497-498). That same date, July 19, 2022, Judge Garrison entered an order canceling the August 31 hearing on Citibank's motion to strike, and setting a non-jury trial date for September 8, 2022. (R. 499-500).

Rather than making a timely objection to the trial court's order setting the matter for trial, Gutman filed his exhibit list on August 2, 2022 (R. 516-542), and lengthy requests for judicial notice on August 15, 2022 (R. 545-723, 750-967).

On August 22, 2022, the trial court reset the trial for September 15, 2022. (R. 993-995).

On September 14, 2022 at approximately 4:00 p.m., <u>the day before trial</u>, Gutman moved to disqualify Judge Garrison "and all other Palm Beach County Judges". (R. 999-1137). Also on September 14, 2022, <u>the day before</u>

trial, Gutman moved to postpone the trial date on the argument that the matter was not at issue (R. 1138-1144), and shared his grievances about Judge Garrison with approximately 850 people, including about 50 “main stream media” reporters nationwide, all Circuit Court Judges in Palm Beach and Broward County, all members of the Florida State Senate and State House, all U.S. Senators, all Federal Court of Appeal Justices in all Federal Circuits, all U.S. Supreme Court Justices, Governor DeSantis, President Biden, and several others. (R. 1155-1156).

The case proceeded to trial on September 15, 2022. The trial court reviewed and orally denied Gutman’s motion to disqualify. (Appellant’s App-1 at p. 11). The trial court also reviewed and orally denied Gutman’s “late-filed motion to postpone the trial date.” (App-1 at p. 7). Citibank also orally dropped its motion to strike Gutman’s affirmative defenses. (App-1 at p. 7).

Citibank presented the testimony of Judy Delage, an employee and Assistant Vice President of Citibank, who provided uncontroverted testimony and entered into evidence various exhibits, including, but not limited to, monthly account statements sent to Gutman, detailing the amounts owed. These exhibits and testimony showed that between April 2010 and November 2018, Gutman consistently made payments and made charges on the account, but stopped paying after his last payment in October 2018.

But, there were several monthly statements thereafter, through June of 2019, none of which were disputed by Gutman until the matter was eventually sent to collection counsel. (App-1 at pp. 8-15).

Gutman failed to appear at trial and failed to present any evidence contradicting Citibank's testimony and documentary evidence. (R. 1161).

On September 19, 2022, the trial court entered written orders denying Gutman's motion to postpone trial (R. 1163), and Gutman's motion to disqualify. (R. 1164).

Based on the testimony and evidence presented, a Final Judgment in the amount of $12,813.42 was awarded to Citibank on September 19, 2022, and the trial court reserved jurisdiction to award taxable costs and attorneys' fees upon proper motion. (R. 1161-1162).

On October 17, 2022, Gutman filed his notice of appeal. (R. 1188-1191).

On November 25, 2022, Gutman filed his Subject Matter Jurisdiction Brief with this Court, pointing out that this Court has jurisdiction because on October 27, 2022, Citibank filed a motion for an order dismissing Count II of the Complaint (App-7), and that motion was granted by the trial court on November 1, 2022 (App-8).

On December 16, 2022, this Court entered its order that this appeal shall proceed from the September 20, 2022 final judgment, in light of the trial court's November 1, 2022 order dismissing Count II of the complaint.

ARGUMENT

1. The Trial Court Did Not Err in Denying Gutman's Second Motion for Judicial Disqualification.

An order denying the disqualification of a successor judge is reviewed for an abuse of discretion. *Delgado v. Miller,* Case No. 3D22-1826 (Fla. 3d DCA, Feb. 22, 2023).

Under Florida Rule of Judicial Administration 2.330(c) a motion to disqualify must be in writing; must allege specific facts and reasons upon which the movant relies as grounds for the disqualification; be sworn to by the party signing the motion under oath or by separate affidavit; and include the dates of all previously granted motions to disqualify and the dates of the orders granting those motions. The motion must be filed within a reasonable time not to exceed 20 days after discovery of the facts constituting the grounds for the motion and shall be promptly presented to the court for an immediate ruling. Rule 2.330(g).

If another judge has been previously disqualified on motion for alleged prejudice or partiality under subdivision (e), a successor judge cannot be disqualified based on a successive motion by the same party unless the

successor judge rules that he or she is in fact not fair or impartial in the case. Such a successor judge may rule on the truth of the facts alleged in support of the motion. Rule 2.330(i); also see Fla. Stat. § 38.10.

Gutman's motion to disqualify was a successive motion, as he had previously moved to disqualify another trial court judge in this case, and that motion was granted. Thus, Judge Garrison was free to rule on the truth of the facts alleged. Moreover, Judge Garrison was free to deny the successive motion as untimely, as it raised issues dating back to Judge Garrison's earlier retirement in 2010, his August 3, 2022 order granting Gutman an extension of time to respond to discovery, as well as his July 19, 2022 and August 22, 2022 orders scheduling this matter for trial. (R. 999-1018). Each of these were more than 20 days before Gutman's untimely motion to disqualify, filed at 4:00 p.m. the day before trial. Accordingly, not only was there no showing or finding that Judge Garrison was in fact not fair or impartial in the case, but the motion to disqualify was not timely. Thus, it was not an abuse of discretion for Judge Garrison to deny Gutman's "Motion to Disqualify Judge Edward Garrison and All Other Palm Beach County Judges."

2. Gutman Failed to File a Timely Objection to the July 19, 2022 and August 22, 2022 Orders Scheduling This Matter for Trial.

In a plenary appeal the lower court's rulings are reviewed for reversible legal error. See e.g. *Garner v. Langford*, 55 So. 3d 711, 714 (Fla. 1st DCA

2011) (decision to grant or deny motion to continue is matter resting within the sound discretion of the court). Generally speaking, a judgment may be reversed only for an error that has been preserved by timely objection in the lower court, and that has prejudiced the complaining party in a way that likely affected the result. *Gawker Media, LLC v. Bollea*, 170 So. 3d 125, 130 (Fla. 2d DCA 2015); *Goldschmidt v. Holman*, 571 So. 2d 422 (Fla. 1990); *Aills v. Boemi*, 29 So. 3d 1105 (Fla. 2010) (holding that except in cases of fundamental error, an appellate court cannot consider any ground for objection not presented to trial court on a timely basis).

A trial court's obligation to abide by rule 1.440 may be enforced by a timely writ of mandamus compelling a court to remove a case from the trial docket. *Gawker*, 170 So. 3d at 130. But, we are not here before this Court on mandamus. Nor did Gutman file a timely objection to the July 19 and August 22 orders scheduling this matter for trial. Instead, Gutman filed his exhibit list on August 2, and voluminous requests for judicial notice on August 15. It was not until September 14, 2022, <u>the day before trial</u>, that Gutman moved to postpone the trial date on the belated argument that the matter was not at issue, and also moved for disqualification of Judge Garrison and every other Palm Beach County Judge.

Notwithstanding the compulsory nature of rule 1.440, appellate courts have held that a party waived its objection to an order setting trial contrary to the rule. For example, in *Parrish v. Dougherty*, 505 So. 2d 646 (Fla. 1st DCA 1987), the appellant's attorney appeared at the trial and participated without objecting to the manner in which it had been set. In *Correa v. U.S. Bank National Ass'n*, 118 So. 3d 952 (Fla. 2d DCA 2013), the appellant participated in the trial, and made no timely objection to any deviation from rule 1.440. In both instances, the appellants were deemed to have waived their assertion of error based on the rule. Although Gutman strategically chose to not appear for trial, these cases have bearing here, because Gutman did not file a timely objection to the July 19 and August 22 orders, but rather, actively participated in the preparation for trial by filing his exhibit list and lengthy requests for judicial notice, but waited until September 14, <u>the day before trial</u>, to raise his belated argument that the matter was not at issue. Gutman's failure to make a timely objection waives the issue on appeal, as in *Parrish* and *Correa*.

The issues may have been different if this case was being decided on mandamus. "Mandamus is a different animal altogether." *Gawker*, 170 So. 3d at 131. Its purpose is not to review a lower court ruling for prejudicial error; rather, it is meant to enforce the respondent's unqualified obligation to

perform a clear legal duty. *Id.* If the petitioner is entitled to demand performance of the duty, he or she need not preserve the issue beyond making the demand. Further, on mandamus, it is unnecessary for the petitioner to suffer prejudice as a result of the respondent's alleged dereliction. All that must be shown is that (1) the respondent is duty-bound to act under the law, and (2) the respondent has failed or refused to do so. *Id.*, citing *Pleus v. Crist*, 14 So. 3d 941 (Fla. 2009). A third and final element is that the petitioner must have no adequate legal remedy for the respondent's failure to carry out its duty. *Id.*

Because we are not before this court on mandamus, but rather, are here as a result of an appeal from the Final Judgment, the mandamus requirements do not apply. Instead, on plenary appeal, the Final Judgment should be affirmed because Gutman failed to make a timely objection, and instead, actively participated in pre-trial activities after the matter was set for trial, and engaged in gamesmanship by waiting until the day before the trial to file his motions objecting to the trial date and moving to disqualify the trial judge (and "all" other Palm Beach County Judges), and has not shown prejudice in a way that likely affected the result, as he made a conscious choice to not appear. See *HSBC Bank USA, N.A. v. Serban*, 148 So. 3d 1287 (Fla. 1st DCA 2014) (holding that a violation of Rule 1.440 caused no harm),

and *Labor Ready Southeast, Inc. v. Australian Warehouses Condominium Ass'n*, 962 So. 2d 1053 (Fla. 4th DCA 2007) (holding that under the circumstances of the case—including that a written motion to continue was not made until "[o]ne day prior to the final hearing"—the appellant was not prejudiced by technical violation of Rule 1.440). In those cases, the appellate courts, applying decisional rules governing appeals (as opposed to mandamus), declined to enforce the trial court's duty to strictly comply with Rule 1.440.

Moreover, because appellate rules of decision are generally inapplicable to mandamus proceedings (*Gawker* at 132) and vice versa, the mandamus cases cited by Gutman in his brief are inapplicable to this appeal.

3. It Was Not Reversible Error to Dismiss Gutman's Counterclaim.

Gutman's counterclaim was based entirely on Citibank instituting suit against Gutman for claims of account stated and unjust enrichment. (R. 16-22). The Florida Supreme Court, addressing whether the litigation privilege applies to causes of action based upon state statutes, such as Florida's Consumer Collection Practices Act (FCCPA), has stated, "[t]he litigation privilege applies across the board to actions in Florida, both to common-law causes of action, those initiated pursuant to a statute, or some other origin. 'Absolute immunity must be afforded to any act occurring during the course

of a judicial proceeding … so long as the act has some relation to the proceeding." *Echevarria, McCalla, Raymer v. Cole*, 950 So. 2d 380, 384 (Fla. 2017).

Some acts that have been found to not have relation to the proceedings, and thus to which the litigation privilege does not apply are stalking or cyberstalking opposing counsel, or battery committed by one attorney against another in the course of a legal proceeding, or assault by threatening the safety of opposing counsel. <u>See</u> *Raulerson v. Font*, 277 So. 3d 1057, 1063-64 (Fla. 3d DCA 2018). Gutman alleged none of these things, nor does the record reflect that anything remotely like this has occurred in this case.

While the litigation privilege is an affirmative defense, "it can be adjudicated on a motion to dismiss if the applicability of the privilege can be clearly discerned from the face of the complaint." *LatAm Invs., LLC v. Holland & Knight, LLP*, 88 So. 3d 240, 245 (Fla. 3d DCA 2011) (citations omitted).

Gutman attempted (but failed) to allege five causes of action against Citibank:

i. Violation of Florida Consumer Collection Practices Act, Fla. Stat. § 559.72.

ii. Unfair and Deceptive Acts and Practices, Fla. Stat. § 501.204.

iii. Breach of Contract, Good Faith and Fair Dealing;

iv. Negligence; and

v. Gross Negligence.

Each of these five counts was based on Citibank instituting suit against Gutman for claims of account stated and unjust enrichment. Accordingly, they were properly dismissed based upon litigation privilege. *Echevarria,* 950 So. 2d at 384.

When the trial court dismissed Gutman's counterclaim, the dismissal was without prejudice, and the grounds for the dismissal were not limited to litigation privilege. The trial court gave Gutman 14 days to file an amended counterclaim, but he failed to do so. (R. 305). Rather, Gutman moved for reconsideration, which was mostly denied (R. 307). More specifically, the motion for reconsideration was granted to the extent the trial court had earlier granted Citibank's motion to dismiss Count III based in part on a failure to attach the referenced contract—but the Card Member Agreement was actually attached. The motion was denied in all other respects, none of which were addressed by Gutman in his initial brief:

> As the Court's basis for granting Plaintiff's Motion on Count III was not solely based on the failure to attach a contract, this ruling does not alter the Court's ultimate conclusion or entitle [Gutman] to any additional relief. The Court also notes that the deadline for [Gutman] to file an amended Counterclaim expired <u>prior</u> to the date [Gutman] filed the subject Motion for Reconsideration. This

> Order does not in any way extend the time since passed deadline.

(R. 307).

Because the motion to dismiss was granted on various grounds, including but not limited to litigation privilege, and Gutman has not only failed to address those additional grounds in his initial brief, but also failed to file an amended counterclaim, the order of the trial court dismissing Gutman's counterclaim should be affirmed. See *Applegate v. Barnett Bank*, 377 So. 2d 1150 (Fla. 1979) (Even if based on erroneous reasoning, a decision of a trial court will generally be affirmed if an alternative theory supports it); *Coolen v. State*, 696 So. 2d 738, 748, n. 2 (Fla. 1997) (If an appellant failed to challenge any aspect of an order on appeal, he has conceded that issue for purposes of the appeal); *J.A.B. Enterprises v. Gibbons*, 596 So. 2d 1247, 1250 (Fla. 4th DCA 1992) (An issue not raised in an initial brief is deemed abandoned).

4. Palm Beach County Local Rule 4 and Online Scheduling System for Hearings do not Provide a Basis for Reversal in This Case.

As he has in at least two other appeals to this Court,[1] Gutman next takes issue with the constitutionality of Palm Beach County Court's Local

---

[1] *Gutman v. Discover Bank*, Case No. 4D22-1089, and *Gutman v. Cavalry SPV I, LLC*, Case No. 4D22-2201. This Court issued its decision in *Gutman v. Discover Bank* on March 23, 2023 (affirmed, per curiam).

Rule 4 and its online scheduling system for hearings. Like a multitude of local rules in this state, as well as federal local rules), Local Rule 4 requires attorneys to conduct good faith conferences before noticing a motion for hearing. Gutman complains that this rule contains an exception for pro se litigants. However, Gutman does not argue that he was not afforded a good faith conference on any issue that is the subject of his appeal. Thus, Gutman cannot contend that he was prejudiced by Local Rule 4 due to his pro se status. *Cf. Greenberg v. Simms Mercant Police Serv.*, 410 So. 2d 566, 566-567 (Fla. 1st DCA 1982) (finding appellant "failed to demonstrate any prejudice resulting from" alleged due process issue). Thus, whether Local Rule 4 or the online scheduling system is constitutional is irrelevant to this appeal. See *Waddington v. Baptist Med. Ctr.*, 78 So. 3d 114, 117 (Fla. 1st DCA 2012) (finding appeal frivolous where arguments presented were "wholly irrelevant to the summary judgment entered in Appellees' favor").

Even if Gutman's constitutional arguments regarding Local Rule 4 had any bearing on the instant proceedings, his points fail. Florida courts have long balanced the right of pro se parties to participate in the judicial process with courts' ability to manage cases and preserve the functioning and integrity of the judicial system. See, e.g., *Windsor v. Longest*, 347 So. 3d 379, 380 (Fla. 5th DCA 2021)(upholding order bring petitioner from filing

further pro se pleadings; trial court "properly balanced" petitioner's right of access to the courts against the need to prevent repetitive and abusive filings); *Woodson v. State*, 100 So. 3d 222, 223 (Fla. 3d DCA 2012) ("While we acknowledge that pro se parties must be afforded a genuine and adequate opportunity to exercise their constitutional right of access to the courts, that right is not unfettered."). If they are afforded a meaningful ability to access the courts, pro se parties are not constitutionally guaranteed that every procedural or ministerial rule will apply equally to them as to licensed counsel.

Finally, after appearing to argue that Local Rule 4 is unconstitutional, because he, as a pro se party, should be included in the good faith conference requirement, Gutman then asserts multiple arguments that requiring counsel to conduct good faith conferences damages represented litigants. Gutman, who is not represented by counsel, does not have standing to assert such arguments. See *Alterra Healthcare Corp. v. Estate of Shelley*, 827 So. 2d 936, 941 (Fla. 2002).

Gutman has also not alleged that the online scheduling system caused him any prejudice in this case. Rather, he makes general complaints that the system of scheduling hearings varies from judge to judge. Again, Gutman does not have standing, as he has alleged no particular prejudice or inability

to have any his motions at issue scheduled for hearing. An issue not raised in an initial brief is deemed abandoned and may not be raised for the first time in a reply brief. See *J.A.B. Enterprises*, 596 So. 2d at 1250 (appellants cannot argue on appeal that they did not receive a copy of a court filing or order when they did not raise the issue in their initial brief, but attempt to raise it in their reply brief).

For these reasons, the Court should find that the constitutionality of Local Rule 4 and the online scheduling system for hearings has no bearing on the entry of the Final Judgment at issue, reject this argument, and affirm.

/s/ Donald A. Mihokovich
Donald A. Mihokovich
Florida Bar No. 858447
Primary: *don.mihokovich@arlaw.com*
Secondary: *madeline.algarin@arlaw.com*
ADAMS AND REESE LLP
100 North Tampa Street, Suite 4000
Tampa, FL 33602
Telephone: 813-402-2880
Facsimile: 813-402-2887
Counsel for Appellee/Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 19, 2023, the foregoing has been electronically filed with the Clerk of Court through the Florida Courts' E-Filing Portal. I further certify that the foregoing document is being served on all counsel of record identified below, either via transmission of Notices of Electronic Filing generated by the E-Filing Portal or in some other authorized manner for those counsel or parties not authorized to receive electronic Notices of Electronic Filing.

Evan Gutman
1675 NW 4th Avenue #511
Boca Raton, FL 33432
Via U.S. Mail delivery
and email to
egutman@gutmanvaluations.com

/s/ Donald A. Mihokovich
Donald A. Mihokovich

CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this Amended Answer Brief complies with the font requirements (14-point Arial) of Fla. R. App. P. 9.045(b), and includes a word count of 3,720 (excluding words in a caption, cover page, table of contents, table of citations, certificate of compliance, certificate of service, or signature block).

/s/ Donald A. Mihokovich
Donald A. Mihokovich