

IN THE DISTRICT COURT OF APPEAL OF FLORIDA  
FOURTH DISTRICT

**CASE NO. 4DCA#22-2201**

Lower Tribunal Case No. 50-2021-CA-000114-XXXX-MB

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**EVAN S. GUTMAN**

Appellant,

vs.

**CALVARY SPV 1, LLC as assignee of  
CITIBANK, N.A.**

Appellee,

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On Appeal from Final Judgment  
of the County Court for the Fifteenth Judicial Circuit  
of Florida In and For Palm Beach County

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**SUBJECT MATTER JURISDICTION BRIEF**

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EVAN S. GUTMAN, CPA, JD  
Appellant Pro Se  
Member State Bar of Pennsylvania  
Member District of Columbia Bar  
Admitted to U.S. Tax Court Bar  
Florida Certified Public Accountant  
1675 NW 4th Avenue, Apt. 511  
Boca Raton, FL 33432  
561-990-7440

Pursuant to the Order of the Fourth District Court of Appeal for Florida dated August 16, 2022 and its subsequent Order granting an extension of time, Appellant hereby respectfully submits this Subject Matter Jurisdiction Statement; and also accompanying APPENDIX in support thereof. The Court's Order mandates that Appellant address how the August 5, 2022 Order of the trial court, rendered by Judge Frank Castor is an appealable final order, in light of the fact a counterclaim remains pending in the trial court.

This Jurisdictional Brief is supported by an Appendix submitted separately electronically in a bookmarked PDF file with Pages consecutively numbered in the lower left hand corner of the Appendix. References in this Jurisdictional Brief to the Appendix are designated by "A" followed by the applicable page number of the Appendix. References to Paragraph numbers in the Counterclaim contained within the Appendix are designated by "C" followed by the applicable paragraph number. Thus, for example A21:C38 would refer to Appendix Page 21, Counterclaim Paragraph number 38.

Appellant respectfully submits the Order granting Summary Judgment on their claim to Plaintiff is a "FINAL" appealable Order for the following reasons.

1. As shown by (App. A7), and also attached hereto, unlike most Summary Judgment Orders, the subject Order on Appeal contains the following unusual provision (emphasis added):

"The Defendant(s) shall **complete under oath the Fact Information Sheet** . . . and return it to the Plaintiff's attorney. . . **unless the Judgement is satisfied.** . . . The Fact Information Sheet need not be recorded in the Public Records."

Thus, Judge Castor transformed what otherwise might be "arguably" construed as a "Non-Final" Interlocutory Order (which itself would likely be appealable) into an immediately executable and enforceable Final Order.

Put simply, if the Counterclaim were to be inextricably linked to the Plaintiff's Claim, the "FINAL" Summary Judgment Order should not have contained a provision for a "FACT INFORMATION SHEET" designed to immediately enforce the monetary judgment. See Touchton v Woodside Credit, LLC, 316 So. 3d 392 (2021) stating: (emphasis added):

"The traditional test for finality is whether the decree disposes of the cause on its merits leaving no questions open for judicial determination **except for execution and enforcement of the decree if necessary.** . . . **"While an order must contain unequivocal language of finality, an order or judgment of a court does not need to contain any particular or "magic" words to make it final.** . . . For example, it is unnecessary for the order to "include traditional words of finality like "go hence without day" . . . "

Touchton v Woodside Credit, LLC, 316 So.3d 392 (2021) Citing Hoffman v Hall, 817 So.2d 1057, 1058 (Fla. 1st DCA 2002) and Holland v Holland, 140 So.3d 1155, 1156 (Fla. 1st DCA 2014) and Timmons v Lake City Golf, LLC, 293 So.3d 596, 599 (Fla.

1st DCA 2020) and Cardillo v Qualsure Ins. Corp. 974 So.2d 1174, 1176 (Fla. 4th DCA 2008)

Once Judge Castor adopted the nontraditional route for granting a Summary Judgment Order by additionally assisting Plaintiff's Counsel in collecting on the Judgment, by making it immediately executable notwithstanding the existence of the Counterclaim, it became "FINAL" in nature. To hold otherwise, would relegate the Counterclaim to a virtual Nullity, because Plaintiff could then execute on their Claim and use that execution and enforceability in a multitude of ways to dispose of the Counterclaim itself. Put simply, if the Counterclaim is genuinely linked to the Complaint, fairness mandates the Summary Judgment should not have become immediately enforceable until the Counterclaim was adjudicated.

2. The Order signed by Judge Castor is labeled as "FINAL" (App. A6) and as shown by App. A11 in the Appendix the trial court specifically classified such as "FINAL" on the docket entry list and also indicated it was "DISPOSED BY JUDGE" (App. A11). Although Touchton, supra, indicates no "magic" words make the judgment "FINAL," the utilization of the terms "FINAL" in both the Order itself and also on the docket entry should be

accorded at least some degree of consideration in the matter. After all, they are in fact literal representations of the Court itself.

3. The Court's Order of August 16, 2022 cites Mantabs, LLC v Happy Fiddler Ass'n, 279 So. 3d 661 (Fla. 2d DCA 2019) for the premise that an appeal should be dismissed as premature if an interrelated counterclaim remains pending in the trial court. The opinion in Mantabs, supra states as follows in part (emphasis added):

"The appeal is premature because interrelated counterclaims remain pending in the trial court. . . . ("Because the amended complaint reflects that the three counts are based on the **same facts and** are intertwined, we conclude that allowing an appeal of the declaratory count at this stage would foster impermissible piecemeal review.").

Thus, Mantabs, contains two predicates. The first is that the Counterclaim is based on the "**same facts**" and the second that the counterclaim is "**intertwined**." Appellant contends that while the facts are "similar" they are certainly not the "same." More specifically, as shown in the Appendix accompanying this Brief, the Amended Counterclaim contains substantial additional facts unrelated to the Complaint.

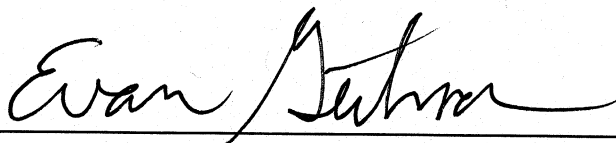
More specifically, the Amended Counterclaim introduces extensive facts for the very first time in this litigation that Plaintiff's Counsel and

Plaintiff have been engaged in a Conspiracy to Violate the Florida Consumer Collection Practices Act, and Conspiracy to Engage in Unfair and Deceptive Acts and Practices. Additionally, extensive facts are presented for the first time in the Amended Counterclaim regarding communications by Agents of the Plaintiff never mentioned before in the litigation consisting of "Radius Global Solution, LLC" (App. A15:C9 and A15:C11); "Cawley and Bergman" (App. A15:C10 and A16:C13); "Frontline" (App. A16:C12) ; "Financial Recovery Services, Inc."(App. A16:C14 and A16:C15). Additionally, the Amended Counterclaim includes extensive facts and documents presented for the first time ever in this litigation sent by each of the aforementioned entities (App. A38 thru A44). Additionally, the Amended Counterclaim includes facts and exhibits pertaining to the reporting of the alleged debts on Appellant's Experian credit report (App. A17:C17 and A46 and A47). Additionally, the Amended Counterclaim includes facts related to the "Agency" relationship between Plaintiff and Plaintiff's Counsel (App. A14:C2 and A18:C28 and A19:C30 and A19-A21; C32-C39)). Lastly, the Amended Counterclaim includes facts related to the "personal stake" the law firm of Hayt, Hayt & Landau, P.L. have in this litigation, which is separate and distinct from Cavalry, asserting the "intra-corporate exception to the Civil Conspiracy" doctrine

does not apply to the illegal actions of the law firm and its principals. See Mancinelli v Davis, 217 So.3d 1034 (2017). (App. A21:C38).

Thus, while some of the facts are "similar," the facts taken as a whole are certainly not the same. These points coupled with the Court immediately assisting with enforcement of the Summary Judgment; along with the express labeling of such as "FINAL" both by the Judge and on the trial court docket entry list, indicates the Subject Order should be classified as an appealable "FINAL" Order,

Submitted humbly and graciously this 12th day of September, 2022.

A handwritten signature in cursive script, reading "Evan Gutman", is written above a horizontal line.

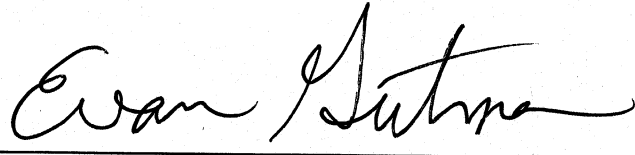
Evan Gutman, CPA, JD  
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Boca Raton, FL 33432  
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing is being furnished to opposing counsel by E-Mail and a follow up copy will be sent via US Mail, to Jason Scott Dragutsky, Esquire, of the law firm of Hayt Hayt & Landau, P.L. addressed as follows:

Hayt, Hayt, & Landau  
Attn: Jason Dragutsky, Esq.  
7765 SW 87th Avenue, Suite 101  
Miami, Florida 33173

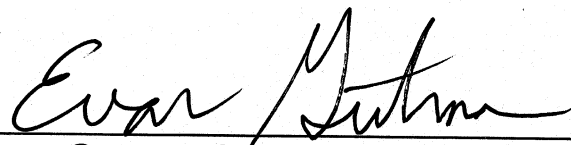
Dated this 12th day of September, 2022.



Evan Gutman CPA, JD

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that to the best of my knowledge and belief, the foregoing comports with the Font and Spacing requirements of Fla. R. App. P. 9.210 and 9.045(b).



Evan Gutman CPA, JD



IN THE COUNTY COURT IN AND FOR  
PALM BEACH COUNTY, FLORIDA  
CASE NO: 502021CC000114XXXXMB

CAVALRY SPV I, LLC, AS ASSIGNEE OF  
CITIBANK, N.A.

Plaintiff      PROPOSED FINAL SUMMARY JUDGMENT

vs.

EVAN S GUTMAN

Defendant(s)

\_\_\_\_\_/

THIS CAUSE having come to be heard before this Honorable Court on 08/05/2022 upon Plaintiff's Motion for Summary Judgment and the Court having heard argument of counsel and being otherwise fully advised in the premises, finds as follows:

That there are no genuine issues as to any material facts and Plaintiff is entitled to a judgment as a matter of law. Plaintiff filed an affidavit in support of its motion which establishes the balance due on the account. Plaintiff has set forth a prima facie case for account stated and nothing in the record raises a genuine issue of fact under the applicable Rules.

Defendant raised two issues at the hearing. First, he claims to have had no prior business relationship with Plaintiff Cavalry. A prior business relationship is an element of account stated. See Farley v Chase Bank, 37 So2d 936 (Fla 4<sup>th</sup> DCA 2010). The business relationship required, however, was with the original creditor (Citibank) and need not be with its assignee.

The second issue were alleged objections to the charge off statement. The subject credit card account ending in 0080 was charged off in May 2019. All but one of the alleged objections were written well into 2020 thus not sent within a reasonable time as required by Farley. They were also not sent to Citibank and most were for a different credit card account. The only letter written in 2019 was to an attorney representing Plaintiff but for a different credit card account ending in 6457. That letter cannot be considered as an objection to the statement on this account as there is no evidence that the receiving attorney was Cavalry's attorney/agent for the account ending in 0080. Since there was no timely objection to this account, all of the elements for a prima facie case for account stated under Farley have been met.

IT IS THEREUPON ORDERED AND ADJUDGED THAT:

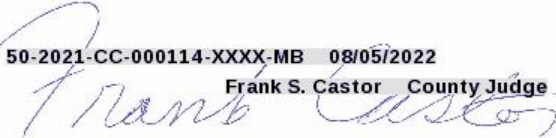
Plaintiff whose address is 1 AMERICAN LANE, SUITE 220 GREENWICH, CT 06830 shall recover from Defendant(s) EVAN S GUTMAN the principal sum of \$13,084.23 court costs in the amount of \$369.50, and pre-judgment interest in the amount of \$0.00, that shall bear interest at the rate of 4.34% per annum, for all of the above let execution issue. The interest rate will adjust in accordance with section 55.03, Florida Statutes. Plaintiff shall be entitled to post-judgment costs incurred in the execution of the judgment pursuant to Florida Statute.

IT IS FURTHER ORDERED AND ADJUDGED THAT:

The Defendant(s) shall complete under oath the Fact Information Sheet including all required attachments, and return it to the Plaintiff's attorney, within 45 days from the date of this Judgment, unless the Judgment is satisfied or a post judgment discovery is stayed.

Jurisdiction of this case is retained to enter further orders that are proper to compel the Defendant(s) to complete the Fact Information Sheet and return it to the Plaintiff's attorney. The Fact Information Sheet need not be recorded in the Public Records.

DONE AND ORDERED in Palm Beach County, Florida on this the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

50-2021-CC-000114-XXXX-MB 08/05/2022  
Frank S. Castor County Judge  
  
50-2021-CC-000114-XXXX-MB 08/05/2022  
Frank S. Castor  
County Judge

Copies furnished to:  
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BOCA RATON, FL 33432-3505  
Our File # 1007051  
Last 4 Digits of Account # 0080