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IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT IN AND FOR BREVARD COUNTY, FLORIDA

IN RE: ESTATE OF SEYMOUR BAUM **PROBATE DIVISION**

Deceased.

ANNEEN NINA GLORIA BAUM, **Chief Judge John M. Harris**

Petitioner/Plaintiff,

v. **Case #: 05-2012-CP-048323**
Case #: 05-2013-CP-028863

DAVID A. BAUM, et al.,

Respondents/Defendants.

PETITIONER/PLAINTIFF ANNEEN NINA GLORIA BAUM'S MOTION FOR REHEARING OF THE COURT'S NOVEMBER 3, 2014 ORDER DENYING HER RULE 1.540(b)(3) AMENDED MOTION FOR RELIEF FROM COURT ORDERS AND, IN CONJUNCTION THEREWITH, DISCLOSURE OF FACTS BEARING UPON THE COURT'S FAIRNESS AND IMPARTIALITY

I, Anneen Nina Gloria Baum, being duly sworn, deposes and says:

1. I am the Petitioner/Plaintiff herein, unrepresented by counsel, and submit this motion for rehearing of the Court's November 3, 2014 Order denying my Rule 1.540(b)(3) Amended Motion for Relief from Court Orders (Exhibit A) and, in conjunction therewith, disclosure of facts bearing upon the Court's fairness and impartiality, pursuant to Canon 3E of the Florida Code of Judicial Conduct, whose Commentary states:

> "A judge should disclose on the record information that the judge believes the parties or their lawyers might consider relevant to the question of disqualification, even if the judge believes there is no real basis for disqualification."

2. Once again, I am assisted by the same independent reviewer of the record whose "Procedural History" gave rise to my August 13, 2014 Amended Motion for Relief from Court

Orders [hereinafter "Amended Vacatur Motion"], filed by my then counsel, Hoffman & Hoffman, P.A.

3. The Court's November 3, 2014 Order makes no mention of the "Procedural History", which I furnished to the Court by my October 14, 2014 affidavit clarifying, supplementing, and further supporting my Amended Vacatur Motion, with the express statement (at ¶13) that the "Procedural History" was "dispositive of my entitlement to vacatur, *as a matter of law*", as were my two e-mail chains of correspondence with my former attorneys, which I also furnished. The Court has plainly "overlooked" these in its Order, stating that it "finds as follows":

> "A. Petitioner has been wholly unable to establish any legal or factual basis that would justify granting the relief she has requested in her Amended Motion;
>
> B. Specifically, the Court finds no misrepresentation or misconduct on the part of Mr. David Baum or his attorney(s) regarding effectuating or avoiding service of process; entry of prior orders on the representation that all counsel had agreed that the order accurately reflected the scope and intent of the Court's prior ruling; or any other matter that could even arguably establish a fraud upon the Court that lead to entry of the challenged orders." (Exhibit A).

4. Similarly, the Court has plainly "overlooked" the October 14, 2014 affidavit itself, with its express statement (at ¶28) that the cited law, caselaw, and transcript excerpts appended to my Amended Vacatur Motion sufficed for its summary granting of vacatur, without an evidentiary hearing – and especially in the absence of rebuttal by Mr. Hennessey to the "Procedural History", e-mail chains, and the further showing made by the affidavit.

5. I swore to the truth of this October 14, 2014 affidavit at the October 21, 2014 evidentiary hearing. My response to the questioning of my hearing counsel, Tino Gonzalez, Esq., to which Mr. Karr, counsel for Mr. Hennessy objected and the Court rule, was as follows:

[October 21, 2014 transcript, pp. 197-8 (Exhibit B)]

> Mr. Gonzalez: "You prepared an affidavit clarifying and supplementing your position regarding the motion… did you not?"

Nina Baum: "Yes, I did."

Mr. Gonzalez: "And that's a matter – you put that in the court record, correct?"

Nina Baum: "Oh, yes.

...

Mr. Gonzalez: "Is that affidavit true and you executed that and that was notarized, was it not?"

Nina Baum: "It was notarized. It's a hundred percent true..."

...

Mr. Gonzalez: "And, ma'am, to your personal knowledge are the assertions in that affidavit true and correct, to the best of your knowledge?"

Mr. Karr: "Objection, Your Honor –"

Nina Baum: "I swear to the accuracy –"

Mr. Karr: "Pardon me, Ms. Baum."

Court: "Go ahead, Mr. Karr."

Mr. Karr: "He's trying to verify hearsay statements in a document."

Court: "Sustained. The affidavit's been filed. If you want me to take judicial notice of it, I will."

Mr. Gonzalez: "You will take judicial notice of it?"

Court: "If it's in the file, I'll take judicial notice of the contents of the entire file that it's been filed in.''

Mr. Gonzalez: "Thank you, sir."

Mr. Karr: "I just would note for protective purposes, that we'd object to all of the hearsay that is spread throughout that document. That is not evidence. We object to it."

Court: "I understand."

6. Not only has Mr. Hennessey NOT rebutted this "hundred percent true" October 14, 2014 affidavit, he has not even responded to it, even to the limited extent of identifying the so-called "hearsay" to which Mr. Karr objected.

7. Additionally, the Court has apparently "overlooked" my October 30, 2014 affidavit in reply to Mr. Hennessey's Response to my Amended Vacatur Motion. This I filed in the wee morning hours of November 3, 2014 so that the Court might review it in advance of that day's continued evidentiary hearing. It, too, detailed my entitlement to vacatur, *as a matter of law*, without necessity of an evidentiary hearing, because ¶¶1-5, 7, 9-12, 14, 16-17, 25-28 of my Amended Vacatur Motion were all "documentarily-established, unrefuted and irrefutable" as to "Mr. Hennessey's fraudulent misrepresentations of fact and law on which this Court relied in signing its Orders" (at ¶3).

8. It was my intention to similarly attest, from the witness stand, that my October 30, 2014 affidavit was also "a hundred percent true". However because the Court refused to allow me to testify in rebuttal – or to put on <u>any</u> rebuttal case at the November 3, 2014 continued evidentiary hearing at which I was personally present – I was precluded from doing so. This, notwithstanding the Court's October 31, 2014 "Order Denying Motion for Continuance" had stated, as follows, with respect to the November 3, 2014 hearing:

> "<u>Should her counsel desire to call Nina Baum in rebuttal to the Personal Representative's case</u>, the Court would allow such testimony to be presented over the telephone…" (Exhibit C, underlining added).

9. To this October 30, 2014 affidavit, Mr. Hennessey has also not responded, leaving its showing of my entitlement to vacatur, *as a matter or law*, completely undenied and undisputed.

10. This motion for rehearing, affording the Court a last chance to discharge its duty to render fair and impartial justice, is being filed simultaneously with a motion to disqualify the Court for demonstrated actual bias. As all the facts, law, and legal argument set forth by my disqualification motion as to the indefensibility of the Court's Order are germane to this rehearing motion, a copy of the disqualification motion is annexed hereto (Exhibit D) and incorporated by reference, in the interest of judicial economy.

11. Such disqualification motion is additionally germane to the further relief I herein seek in tandem with rehearing: the Court's disclosure of facts bearing upon its fairness and impartiality, consistent with the Commentary to Canon 3E of the Florida Code of Judicial Conduct, hereinabove quoted (at ¶1, *supra*).

12. In addition to the Court's disclosure of personal, professional, and political relationships with Mr. Hennessey and other adverse counsel and their clients, I specifically request that the Court disclose the basis for its handwritten additions to Mr. Hennessey's proposed orders dropping parties, which the Court signed on April 2, 2014 – and, in particular, its handwritten addition that the Court had "previously noted" my "dilatory and stall tactics" (Exhibit E-2). As stated by my "Procedural History" (at p. 22):

> "As for the Court having 'previously noted' [my] 'dilatory and stall tactics'. This was false. Apart from the absence of any specificity as to when the Court had 'previously noted this, the record is devoid of such 'not[ing]' by the Court. It is NOT contained in the transcripts of the case management conferences and hearings (Exhibits G, I, J, L) or in any of the Court's prior orders (Exhibits A-1, A-2, B-1, B-2).
>
> As the true facts would have been revealed upon the Court's 'painstaking[] review[]' of the record, Mr. Hennessey may have been the source of these hand-written additions, furnished to the Court, *ex parte*."

13. Moreover, because an order which is conclusory and devoid of findings of fact and conclusions of law is presumptively suspect, the Court, upon rehearing, and unless it vacates the November 3, 2014 Order, must substantiate it with findings of fact and conclusions of law as to <u>each</u> of the paragraphs of my Amended Vacatur Motion. This is the Court's duty to do, to facilitate appellate review. As stated by the Fifth District Court of Appeal in *Kirk v. Edinger*, 380 So. 2d 1336 (5th DCA 1980):

> "We would be remiss if we did not point out that our review of this record was made more difficult by the fact that the final judgment herein contains no findings of fact by the trial judge....we must point out, as was done by our sister court in *Turner v. Lorber*, 360 So.2d 101, [(3rd DCA 1978)], that a trial judge should state his findings

in a manner which reveals his consideration of each issue necessary to a resolution of the cause. This facilitates appellate review, and avoids our having to guess at the trial judge's findings..."

14. To no avail my October 30, 2014 affidavit in reply to Mr. Hennessey's October 15, 2014 Response to my Amended Vacatur Motion, filed on November 3, 2014 before the 10 a.m. continued evidentiary hearing, highlighted the significance of the Fifth District Court of Appeal's decision in *Ford Motor Co. v. Stimpson*, 115 So. 3d 401 (5th DCA 2013) – a case, like this one, involving a Rule 1.540(b)(3) motion. I stated:

> "27. As reflected by the Fifth District Court of Appeal's decision in *Ford Motor Co. v. Stimpson*, this Court's determinations will have to be supported by the record. Thus, notwithstanding the trial court's findings in that case that fraud on the court had been committed on each of four grounds, the Fifth District Court of Appeal carefully reviewed and determined, four times: 'the record does not support this ruling' (at 406); 'This finding is also not supported by the record' (at 407); 'Again, this finding is not supported by the evidence.' (at 407); 'the record does not contain evidence supporting this finding either.' (at 408).
>
> That my 32-page 'Procedural History' accurately reflects the record – and overwhelmingly establishes [Mr.] Hennessey's fraud, misrepresentation, and misconduct, entitling me to relief, *as a matter of law* – is manifested by his failure to contest it in any respect." (underlining and italics in original).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document is being served on November 13, 2014, *via* an automatic email generated by the Florida Courts E-Filing Portal to:

Chief Judge John M. Harris, Circuit Court of the Eighteenth Judicial Circuit in and for Brevard County, Florida, Harry T. & Harriette V. Moore Justice Center, 2825 Judge Fran Jamieson Way, Viera, FL 32940-8006; c/o Judicial Assistant Jennifer Pastor: jennifer.pastor@flcourts18.org

David A. Baum, c/o William T. Hennessey, Esq., Gunster, Yoakley & Stewart, P.A., 777 South Flagler Drive, Suite 500 East, West Palm Beach, FL 33401
whennessey@gunster.com; dcarr@gunster.com; eservice@gunster.com

The Women's Zionist Organization of America, Inc., aka Hadassah, c/o William E. Boyes, Esq.,
3300 PGA Boulevard, Suite 600, Palm Beach Gardens, FL 33410
bboyes@boyesandfarina.com; asabocik@boyesandfarina.com;
czill@boyesandfarina.com

Chabad Trustees under the Chabad Trust, c/o David H. Jacoby, Esq.
2111 Dairy Road, Melbourne, FL 32904
d.jacoby@davidhjacobypa.com; j.sanchez@davidhjacobypa.com;
j.cason@davidhjacobypa.com

Friends of Israel Defense Forces, Inc., c/o Jonathan Bernstein,
1430 Broadway, Suite 1301, New York, NY 10018
jonathan.bernstein@fidf.org

Tino Gonzalez, Esq., 1600 Sarno Road, Suite 1, Melbourne, FL 32935
tino@tinolegal.com

s/ Anneen Nina Gloria Baum

ANNEEN NINA GLORIA BAUM

Mailing Address:
229 East 85th Street, Unit/Box #1361
New York, New York 10028

E-Mail Address: anbb@me.com
Telephone: 917-971-8763