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IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE /GUARDIANSHIP DIVISION "IY"

CASE NO. 502012CP004391XXXXSB

IN RE: THE ESTATE OF
SIMON BERNSTEIN,
Deceased.

**ORDER DENYING EMERGENCY PETITION TO: FREEZE ESTATE ASSETS,
APPOINT NEW PERSONAL REPRESENTATIVES, INVESTIGATE FORGED
AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS COURT AND
OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT
BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE**

UPON CONSIDERATION of the Emergency Petition to: Freeze Estate Assets, Appoint New Personal Representatives, Investigate Forged and Fraudulent Documents Submitted to the Court and other Interested Parties, Rescind Signature of Eliot Bernstein in Estate of Shirley Bernstein and More, it is hereby

ORDERED AND ADJUDGED that the Emergency Petition is hereby **Denied** as an emergency. This matter may be set in the ordinary course.

DONE AND ORDERED in chambers, at Delray Beach, Palm Beach County Florida this 8th day of May, 2013.



MARTIN H. COLIN
Circuit Court Judge

13 MAY - 8 PM 3:21
SHIRLEY BERNSTEIN ESTATE
PALM BEACH COUNTY
SOUTH BEACH, FLORIDA
FILED

Copies furnished:
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Robert L. Spallina, Esquire
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IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

CASE NO: 50 2012 CA 013933 MB AA

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and
ROBERT SPALLINA, as co-personal
representatives of the ESTATE OF SIMON L.
BERNSTEIN and as co-trustees of the SHIRLEY
BERNSTEIN TRUST AGREEMENT dated
May 20, 2008; LIC HOLDINGS, INC.;
ARBITRAGE INTERNATIONAL MANAGEMENT, LLC,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, LLC; BERNSTEIN FAMILY
REALTY, LLC,

Defendants.

**DEFENDANT'S, SHIRLEY BERNSTEIN TRUST,
MOTION TO DISMISS**

Defendant, Shirley Bernstein Trust Agreement dated May 20, 2008 ("Bernstein Trust"), by and through its Successor Trustee, Ted S. Bernstein ("Bernstein Trustee"), moves to dismiss the Amended Complaint served on April 22, 2013, upon Donald L. Tescher, as alleged Successor Trustee, and states:

1. The Amended Complaint should be dismissed for insufficient service of process. The Complaint was never served upon the Bernstein Trustee, and therefore, service is improper and should be quashed.
2. The Bernstein Trust adopts and incorporates herein the grounds for dismissal asserted by Bernstein Family Realty, LLC, in its motion served on May 10, 2013, as if fully set forth herein.

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

3. The Amended Complaint also does not assert any legally cognizable claim against the Bernstein Trust. First, the Amended Complaint fails to set forth sufficient allegations to support a claim for equitable lien or constructive trust over the Bernstein Trust or any property held or owned by such trust.

4. Second, the claims by Plaintiff belong, in whole or in part, to one or both of the legal entities known as LIC Holdings, Inc., a Florida corporation ("LIC") and/or Arbitrage International Management, LLC, a Florida limited liability company ("Arbitrage") (collectively the "Companies"). Plaintiff asserts that co-defendants, Ted S. Bernstein and Simon Bernstein, breached a fiduciary duty owed to the Companies and seeks an award of monies which necessarily would flow back to the Companies, not directly to Plaintiff. Thus, in Counts III and VIII, Plaintiff asserts derivative claims on behalf of the Companies. In this regard, Bernstein Trust adopts and incorporates herein the grounds for dismissal asserted by Ted S. Bernstein in his April 23, 2013, as if fully set forth herein.

5. Specifically, Plaintiff in this case has direct and derivative claims filed in the same lawsuit, there is a misjoinder issue which mandates the dismissal of the Complaint. Plaintiff cannot sue in different capacities in the same lawsuit. *Department of Ins. v. Coopers & Lybrand*, 570 So. 2d 369, 370 (Fla. 3d DCA 1990); *Karnegis v. Lazzo*, 243 So. 2d 642 (Fla. 3d DCA 1971); Fla. R. Civ. P. 1.110(g) ("A pleader may set up in the same action as many claims or causes of action ... *in the same right* as he has ...") (emphasis added).

6. Plaintiff lacks standing to bring any derivative claims on behalf of Arbitrage because he was never a shareholder of Arbitrage, and makes no such allegation in his Complaint.

7. Plaintiff lacks standing to bring any derivative claims on behalf of LIC or Arbitrage because, as alleged in paragraph 31, Plaintiff ceded his 10% interest in LIC. *See* § 607.07401, Fla.

Stat.; *Timko v. Triarsi*, 898 So. 2d 89, 91 (Fla. 5th DCA 2005) (holding that once the complaining shareholders' shares were repurchased, the complaining former shareholder could not continue to prosecute a derivative claim).

8. Plaintiff failed to allege that Plaintiff made a demand on the Corporation to bring these claims before filing their Counterclaim. Allegations of a demand is a statutory pre-requisite for maintaining a derivative action. § 607.07401(2). The Complaint also is not verified as required by that statute.

WHEREFORE, Defendant, Bernstein Trust by and through Bernstein Trustee, respectfully requests that this Court dismiss the Amended Complaint; award Defendant its costs and attorneys' fees pursuant to any applicable contract or statute; and grant such other relief as is just.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Service List set forth below by: E-mail Electronic Transmission; Facsimile; U.S. Mail; Overnight Delivery; Hand-delivery, this 13th day of May, 2013.

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Counsel for Shirley Bernstein Trust

By: /s/ Alan B. Rose
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Counsel for Donald R. Tescher and Robert L.
Spallina, as Co-Personal Representatives

*** FILED: PALM BEACH COUNTY, FL SHARON BOCK, CLERK. ***

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

CIVIL DIVISION

Plaintiff,

CASE NO: 502012CA013933 MB AA

DIVISION: KELLEY

vs.

**TED S. BERNSTEIN; DONALD TESCHER
and ROBERT SPALLINA, as Co-Personal
Representatives of the ESTATE OF SIMON
L. BERNSTEIN and as Co-Trustees of the
SHIRLEY BERNSTEIN TRUST AGREEMENT
dated May 20, 2008; LIC HOLDINGS, INC.;
ARBITRAGE INTERNATIONAL
MANAGEMENT, LLC, f/k/a ARBITRAGE
INTERNATIONAL HOLDINGS, LLC;
BERNSTEIN FAMILY REALTY, LLC,**

Defendants.

**BERNSTEIN FAMILY REALTY, LLC'S MOTION FOR
A MORE DEFINITE STATEMENT**

COMES NOW, Defendant, Bernstein Family Realty, LLC, by and through it's undersigned counsel and hereby files this it's Motion for a More Definite Statement pursuant to Florida Rule of Civil Procedure 1.140(e) and in support thereof states, as follows:

1. The Plaintiff filed an 85 paragraph, 9 Count, Amended Complaint dated February 12, 2013.
2. Defendant, Bernstein Family Realty, LLC was served with the Amended Complaint on April 22, 2013.
3. There are only four (4) paragraphs in the Amended Complaint which refer to

Bernstein Family Realty, LLC. They are paragraphs 7, 28, 55 and 76.

4. Paragraph 7 is an introductory paragraph that reads, as follows: "Defendant, Bernstein Family Realty, LLC is a Florida limited liability company doing business in Palm Beach County".

5. Paragraph 28 is part of the "Background" section of the Amended Complaint.

6. Paragraph 28 reads, as follows:

"Stansbury believes that some or all of the funds to which he was entitled and/or assets attributable to such funds were placed into certain entities, including but not limited to Bernstein Family Realty, LLC and Shirley's Trust. For example, based on information and belief some or all of the funds to which Stansbury was entitled were invested in certain parcels of real property, which parcels were conveyed to the trustee of Shirley's Trust on or about May 20, 2008, including but not limited to a 4,220 square foot oceanfront condominium unit in a complex known as "The Aragon" in Boca Raton, located at 2492 S. Ocean Blvd., Boca Raton, Florida and a mansion in St. Andrew's Country Club located at 7020 Lions Head Lane, Boca Raton, Florida". (emphasis added).

7. As can be seen, the Plaintiffs allegations in paragraph 28 are based on what he "believed" and "information and belief". With no definitive factual allegations of any kind linking the funds in question with any transaction involving Bernstein Family Realty, LLC. The lack of such factual allegations renders paragraph 76 so vague and ambiguous that Bernstein Family Realty, LLC cannot reasonably form a response thereto.

8. Paragraph 55 is part of Count III of the Amended Complaint against the "Bernsteins" for Breach of Fiduciary Duty.

9. Paragraph 55 reads, as follows:

"The Bernstein Defendants breached their fiduciary duty to Stansbury by repeated conduct of self-dealing and violations of corporate protocol, including: (a) directing LIC Holdings and Arbitrage to make payments to third parties not employed by the corporations and who had performed no services on behalf of the corporations for the personal benefit of the Bernsteins; (b) directing the corporations to pay for personal expenses of the wives and other friends of the Bernstein Defendants through corporate credit cards and other forms of payment, notwithstanding that they provided no services for the corporations; (c) transferring monies from LIC Holdings and Arbitrage to third party entities including the Bernstein Defendants, the Bernstein Family Realty, LLC and the Shirley Bernstein Trust Agreement for the benefit of the Bernsteins, personally; (d) paying themselves exorbitant compensation to the exclusion of Stansbury; (e) treating LIC Holdings and Arbitrage without as alter egos of themselves and otherwise handling the affairs of LIC Holdings and Arbitrage without regard to corporate protocol; (f) failing to convene annual meetings of the stockholders of LIC Holdings and Arbitrage, in violation of Florida law; (g) committing corporate waste by unnecessarily expending corporate assets on unrelated corporate activities; (h) failing to account for the revenue and expenses of LIC Holdings and Arbitrage to Stansbury, who was entitled to compensation as an employee and as a minority shareholder; (i) directed LIC Holdings and Arbitrage to take actions to reduce the profit of LIC Holdings and Arbitrage so as to prevent Stansbury from earning his just compensation, in violation of prior agreement of the parties".

10. While paragraph 55 mentions Bernstein Family Realty, LLC, the allegations therein are expressly directed toward the "Bernstein" Defendants, which are defined in paragraph 15 of the Complaint as only being Simon Bernstein and Ted Bernstein. Additionally, the "Wherefore" clause of Count III does not mention Bernstein Family Realty, LLC.

11. As such, the Amended Complaint is inherently vague and ambiguous as to whether the Plaintiff is making any allegations or a claim for relief against Bernstein Family Realty, LLC in Count III.

12. Paragraph 76 is part of Count VII of the Amended Complaint for an Equitable Lien.

13. Paragraph 76 reads, as follows:

"Further, upon information and belief, as a result of the funds being wrongfully diverted from LIC Holdings and/or Arbitrage, which otherwise rightfully belonged to and should have been paid to Stansbury, the property legal described as "Lot 68, Block G Boca Madeira, Unit 2 according to the plat thereof recorded in Plat Book 32, Pages 59 and 60 of the public records of Palm Beach County, Florida with a property address of 2753 NW 34 Street, Boca Raton, Florida", was encumbered with a mortgage representing wrongfully diverted funds which were loaned in the form of a second mortgage to Defendant, Bernstein Family Realty, LLC, a Florida limited liability company". (emphasis added).

14. As can be seen, the allegations in paragraph 76 are based upon the Plaintiffs "information and belief" relating to funds allegedly lent by Simon Bernstein and/or Ted Bernstein in the form of a certain second mortgage to Bernstein Family Realty, LLC.

15. However, paragraph 76 fails to include any factual allegations relating to the wrongful acquisition and transfer of the alleged funds or the funding of the second mortgage and the ultimate delivery of those funds to the Mortgagor (i.e. Bernstein Family Realty, LLC) by Simon Bernstein and/or Ted Bernstein.

16. The lack of such factual allegations renders paragraph 76 so vague and ambiguous that Bernstein Family Realty, LLC cannot reasonably form a response thereto.

17. With respect to the Plaintiffs allegations that are based on what he "believes or "information and belief", such allegations are inherently vague and ambiguous as they fail to comply with the pleadings requirements of the Florida Rule of Civil Procedure 1.140(b) to

sufficiently apprise Bernstein Family Realty, LLC of what it is being called upon to answer. See: Kislak v. Kreedan, 95 So.2d 512 (Fla. 1957).

18. Such "information and belief" are not sufficient to support the Plaintiff's vague and ambiguous allegations. See: Lotenfoe v. Palik, 747 So.2d 422 (Fla. 2nd DCA 1999).

19. Based on all of the foregoing, Bernstein Family Realty, LLC needs a more definite statement as to paragraphs 28, 55 and 76 of the Amended Complaint in order to be able to frame a responsive pleading.

WHEREFORE, Bernstein Family Realty, LLC, hereby requests that this Honorable Court enter an Order consistent with the relief requested herein and award them attorney's fees and costs and any other relief this Honorable Court deems just, equitable and proper.

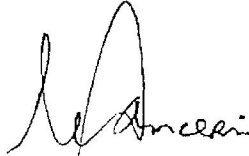
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mrmlaw1@gmail.com

By: 

Mark R. Manceri, Esq.
Florida Bar No. 444560

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-mail to the designated address(es) to all parties on the following Service List, this 10th day of May, 2013.



Mark R. Manceri, Esq.

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IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FL

IN RE: ESTATE OF PROBATE DIVISION

SHIRLEY BERNSTEIN,

FILE NO. 502011CP000653XXXXSB

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PALM BEACH COUNTY

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**RENEWED EMERGENCY
PETITION**

ELIOT IVAN BERNSTEIN, PRO SE
PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,
ASSOCIATES AND OF COUNSEL), ROBERT L.
SPALLINA (BOTH PERSONALLY &
PROFESSIONALLY), DONALD R. TESCHER (BOTH
PERSONALLY & PROFESSIONALLY), THEODORE
STUART BERNSTEIN, AS PERSONAL
REPRESENTATIVES ET AL., TRUSTEES,
SUCCESSOR TRUSTEES AND ESTATE COUNSEL
AND JOHN AND JANE DOES,

RESPONDENTS.

**RENEWED EMERGENCY PETITION TO: FREEZE ESTATE
ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES,
INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS
SUBMITTED TO THIS COURT AND OTHER INTERESTED
PARTIES, RESCIND SIGNATURE OF ELIOT BERNSTEIN IN
ESTATE OF SHIRLEY BERNSTEIN AND MORE - PROOF OF
SERVICE TO ALL INTERESTED PARTIES SERVED IN
ACCORDANCE WITH THIS COURT ORDER**

