

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)
)
Plaintiff,)

**Case No. 13 cv 3643
Honorable Amy J. St. Eve
Magistrate Mary M. Rowland**

v.)
)
HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)
HERITAGE UNION LIFE INSURANCE)
COMPANY)

**Ted Bernstein, Individually;
Pamela B. Simon, Jill Iantoni, Lisa
Friedstein, David Simon, Adam Simon,
The Simon Law Firm, and STP
Enterprises, Inc.
ANSWER AND AFFIRMATIVE
DEFENSES TO ELIOT IVAN
BERNSTEIN’S CROSS-CLAIMS,
COUNTERCLAIMS AND/OR THIRD
PARTY CLAIMS**

Counter-Plaintiff)

v.)
)
SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)

_____)

ELIOT IVAN BERNSTEIN,)
)
 Cross-Plaintiff)
)
 v.)
)
 TED BERNSTEIN, individually and)
 as alleged Trustee of the Simon Bernstein)
 Irrevocable Insurance Trust Dtd, 6/21/95)
)
 Cross-Defendant)
 and,)
)
 PAMELA B. SIMON, DAVID B.SIMON,)
 both Professionally and Personally)
 ADAM SIMON, both Professionally and)
 Personally, THE SIMON LAW FIRM,)
 TESCHER & SPALLINA, P.A.,)
 DONALD TESCHER, both Professionally)
 and Personally, ROBERT SPALLINA,)
 both Professionally and Personally,)
 LISA FRIEDSTEIN, JILL IANTONI)
 S.B. LEXINGTON, INC. EMPLOYEE)
 DEATH BENEFIT TRUST, S.T.P.)
 ENTERPRISES, INC. S.B. LEXINGTON,)
 INC., NATIONAL SERVICE)
 ASSOCIATION (OF FLORIDA),)
 NATIONAL SERVICE ASSOCIATION)
 (OF ILLINOIS) AND JOHN AND JANE)
 DOES)
)
 Third-Party Defendants.)
 _____)

ANSWER AND AFFIRMATIVE DEFENSES OF THIRD-PARTY AND CROSS-DEFENDANTS, TED BERNSTEIN, PAMELA B. SIMON, JILL IANTONI, LISA FRIEDSTEIN, DAVID SIMON, ADAM SIMON, THE SIMON LAW FIRM, AND STP ENTERPRISES, INC. TO COUNTER-CLAIMS, CROSS-CLAIMS AND/OR THIRD-PARTY CLAIMS ASSERTED BY ELIOT IVAN BERNSTEIN

NOW COMES, TED BERNSTEIN, PAMELA B. SIMON, JILL IANTONI, LISA FRIEDSTEIN, DAVID SIMON, ADAM SIMON, THE SIMON LAW FIRM AND STP ENTERPRISES, INC. (hereinafter the “Answering Defendants”), by and through each of their respective attorneys, Adam M. Simon, and state as their Answer and Affirmative Defenses in response to ELIOT IVAN BERNSTEIN’S cross-claims, counterclaims and/or third-party claims, as follows:

Introduction

Eliot Ivan Bernstein has filed claims, counterclaims and/or third party claims against the Answering Defendants, all of whom are represented by attorney, Adam Simon (defined above as the “Answering Defendants”). Eliot Ivan Bernstein has filed claims against certain other parties, including but not limited to S.B. Lexington Employee Death Benefit Plan, S.B. Lexington, Inc., National Service Association and others whom are not represented by Adam Simon nor are they party to these Answers and Affirmative Defenses.

Eliot Ivan Bernstein has also named attorney, Adam Simon as a counter-defendant, cross defendant and/or third-party defendant. For this reason, Adam Simon is also acting and appearing on his own behalf as his own attorney and is one of the Answering Defendants.

For purposes of this Answer, Eliot Ivan Bernstein’s cross-claims, counterclaims and/or third-party claims shall be referred generally as the “EB Claims”.

ANSWER

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in the EB Claims, and each cause of action therein, except as specified below:

Jurisdictional and Venue Allegations

2. Personal jurisdiction is proper over Ted S. Bernstein because he, allegedly claims to be Trustee of the Bernstein Trust, caused this underlying suit to be filed in this venue.

Answer: Ted Bernstein admits only that (i) the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 is the sole surviving beneficiary of the Policy Proceeds; (ii) that no executed original or executed copy of the Simon Bernstein Irrevocable Insurance Trust Agreement Dated 6/21/95 has been located to date, and (iii) Ted Bernstein, solely in his capacity as Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, has asserted claims to Policy proceeds (on behalf of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95) as beneficiary of the Policy .

3. Personal jurisdiction is proper over Pamela B. Simon, David. B. Simon, Adam Simon, Lisa S. Friedstein and Jill M. Iantoni to this case under 735 ILCS 5/2-209(a)(1 3), as each are believed to have a beneficial interest in the Bernstein Trust, which is alleged in the underlying complaint to exist underneath laws of and to be administered within this State. Tescher & Spallina, P.A., Donald Tescher and Robert Spallina, as each are Personal Representatives, Trustees and estate counsel of the estate of SIMON.

Answer: Answering Defendants do not dispute the existence of personal jurisdiction over each of the Answering Defendants in the United States District Court, Northern District of Illinois.

4. Personal jurisdiction is proper over The Simon Law Firm, , S.T.P. Enterprises, S.B. Lexington, Inc. Employee Death Benefit Trust, SB Lexington, Inc., National Service Association, Inc. , of Florida, National Service Association, Inc. Illinois, and John and Jane Doe's to this case under 735 ILCS 5/2-209(a)(1 3), as each are believed to have business in this State.

Answer: Answering Defendants do not dispute the existence of personal jurisdiction over each of the Answering Defendants in the United States District Court, Northern District of Illinois.

6. Pamela Beth Simon is a resident of Illinois and citizen of Illinois. She is daughter to SIMON and SHIRLEY and married to D. SIMON and sister-in-law to A. SIMON.

Answer: Admit.

10. Jill Marla Iantoni is a resident and citizen of Illinois. She is daughter to SIMON and SHIRLEY.

Answer: Admit.

11. Lisa Sue Friedstein is a resident and citizen of Illinois. She is daughter to SIMON and SHIRLEY.

Answer: Admit.

12. S.T.P. Enterprises Inc. is believed to be an Illinois insurance agency believed to be owned by P. SIMON as President and D. SIMON as VP.

Answer: Admit.

83. That TED, P. SIMON, D. SIMON and A. SIMON are all career life insurance professionals with extensive trust knowledge and legal knowledge.

Answer: Ted Bernstein admits he is a career life insurance professional. Adam Simon and David Simon admit that they are career insurance professionals, and both are licensed attorneys in the State of Illinois.

106. That TED claims to this Court that the lost "Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95" aka "Bernstein Trust" was the "sole" beneficiary of the Policy(ies) at the time of SIMON' s death to this Court.

Answer: Ted Bernstein admits only that (i) the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 is the sole surviving beneficiary of the Policy Proceeds; (ii) that no executed original or executed copy of the Simon Bernstein Irrevocable Insurance Trust Agreement Dtd 6/21/95 has

been located to date, and (iii) Ted Bernstein, solely in his capacity as Trustee of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, has asserted claims to Policy proceeds (on behalf of the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95) as beneficiary of the Policy .

109. That Jackson claims in Paragraph 19 that neither TED, nor anyone else, could locate the "Bernstein Trust" that TED claims is the beneficiary of the Policy(ies).

Answer: Ted Bernstein admits only that (i) the Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95 is the sole surviving beneficiary of the Policy Proceeds; (ii) that no executed original or executed copy of the Simon Bernstein Irrevocable Insurance Trust Agreement Dated 6/21/95 has been located to date, and (iii) Ted Bernstein, solely in his capacity as Trustee of the Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95, has asserted claims to Policy proceeds (on behalf of the Simon Bernstein Irrevocable Insurance Trust Dated 6/21/95) as beneficiary of the Policy .

COUNT I

(FRAUD)

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count I (unless such allegation was specifically addressed above).

COUNT II

**(BREACH OF FIDUCIARY DUTIES AS TRUSTEE, LEGAL COUNSEL AND
PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON)**

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count II (unless such allegation was specifically addressed above).

COUNT III

(LEGAL MALPRACTICE)

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count III (unless such allegation was specifically addressed above).

COUNT IV

(ABUSE OF LEGAL PROCESS)

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count IV(unless such allegation was specifically addressed above).

COUNT V

(CIVIL CONSPIRACY)

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count V (unless such allegation was specifically addressed above).

COUNT VI

(CONVERSION OF PROPERTY)

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count VI (unless such allegation was specifically addressed above).

COUNT VII
(NEGLIGENCE)

Pursuant to FRCP Rule 8(b)(3), all Answering Defendants, generally deny all of the allegations contained in EB Claims -- Count VII (unless such allegation was specifically addressed above).

AFFIRMATIVE DEFENSES

1. EB Claims fail to state a claim upon which relief may be granted.
2. To the extent Eliot Ivan Bernstein has failed to bring this Action within the time required under the applicable statute of limitations, EB's claims for relief are barred.
3. EB Claims are barred, in whole or in part, by Eliot Ivan Bernstein's own conduct, and inactions that constitute a release or disclaimer of the purported causes of action and any relief sought in EB's claims.
4. EB Claims fail because any alleged action or failure to act on the part of any of the Answering Defendants was not the proximate cause of any injuries or damages that Eliot Ivan Bernstein claims to have suffered.
5. To the extent that Eliot Ivan Bernstein has suffered any damages, such damages were caused by and are the responsibility of persons, parties or entities other than the Answering Defendants and over whom the Answering Defendants exercised no control.
6. EB Claims are barred in whole in part because Eliot Ivan Bernstein failed, refused or neglected his duty to mitigate or avoid any injuries or damages that he claims to have suffered.
7. EB Claims are barred, in whole or in part, by the doctrine of laches due to Eliot Ivan Bernstein's acts or omissions.

8. EB Claims are barred, in whole or in part by the doctrine of estoppel due to Eliot Ivan Bernstein's acts or omissions.
9. EB Claims are barred, in whole or in part, by the doctrines of collateral estoppel and/or res judicata to the extent (i) court orders in other litigation between one or more of the Answering Defendants and Eliot Ivan Bernstein negate some or all of EB Claims; (ii) EB Claims relate to the estates of Simon and/or Shirley Bernstein which have been or are being probated in courts located in Palm Beach County, Florida.
10. EB Claims are barred, in whole or in part, by the doctrine of waiver due to Eliot Ivan Bernstein's acts or omissions.
11. EB Claims are barred, in whole or in part, by release due to Eliot Ivan Bernstein's acts or omissions.
12. EB Claims are barred, in whole or in part, by the doctrine of contributory negligence due to Eliot Ivan Bernstein's acts or omissions.
13. EB Claims are barred, in whole or in part, by the doctrine of unclean hands due to Eliot Ivan Bernstein's acts or omissions.
14. EB Claims are barred, in whole or in part, by illegality due to Eliot Ivan Bernstein's acts or omissions.
15. EB Claims are barred, in whole or in part, because Eliot Ivan Bernstein lacks standing to bring one, more or all of EB claims.
16. EB Claims, and each of them, fail to state facts sufficient to state a claim that would support an award of actual, compensatory, punitive, exemplary or any other damages against any of the Answering Defendants.

17. EB Claims, and each of them fail, under the doctrines of set-off, and accord and satisfaction. On or about August 15, 2007 Eliot Ivan Bernstein and his wife, Candace, signed off on a letter agreement regarding advances he would receive from his parents for payment of Eliot Bernstein's living expenses and health insurance. Ted Bernstein, Pamela B. Bernstein, Jill Iantoni, Lisa Friedstein and David Simon reasonably believe that the total amount Eliot Ivan Bernstein received from Simon and/or Shirley Bernstein, pursuant to this advance agreement totaled hundreds of thousands of dollars or more. The Letter Agreement expressly stated that any sums received by Eliot Ivan Bernstein during Shirley and Simon's lifetimes would off-set any amounts "dollar-for-dollar" left for Eliot Ivan Bernstein by Shirley and Simon's after their deaths. The letter agreement which Eliot Ivan Bernstein and Candace Bernstein signed off-on regarding the advance payments they received provided in pertinent part as follows:

3. The health insurance premiums and the monthly payments will reduce dollar-for-dollar the amount that you will ultimately inherit when your parents die.

18. EB Claims, and each cause of action, fail to state a valid claim for attorney's fees or costs.

REQUEST FOR RELIEF

WHEREFORE, the Answering Defendants, respectfully request that this Honorable court enter judgment against Eliot Ivan Bernstein, dismissing the EB Claims, and each of them in their entirety, and for an award of costs and disbursements incurred in the defense of the EB Claims.

Dated: November 4, 2013

/s Adam M. Simon

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Attorney for Answering Defendants

*Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee, and
individually, Pamela B. Simon, David Simon,
Adam Simon, The Simon Law Firm and STP
Enterprises, Inc.*