

IN THE CIRCUIT COURT OF THE FIFTEENTH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY , FLORIDA

CASE NO.: 502012CP004391XXXXSB

IN RE:

ESTATE OF SIMON L. BERNSTEIN,
Deceased.

ELIOT IVAN BERNSTEIN, PRO SE

Petitioner(s),

vs.

TESCHER & SPALLINA, P.A., (and all
parties associated and of counsel);
ROBERT L. SPALLINA (both personally
and professionally); DONALD R. TESCHER
(both personally and professionally);
THEODORE STUART BERNSTEIN (as alleged
personal representative, trustee, successor
trustee) (both personally and professionally);
et al.,

Respondent(s).

EXCERPT OF PROCEEDINGS BEFORE
HONORABLE MARTIN COLIN

DATE: June 12, 2014

TIME: 9:50 a.m. - 10:35 a.m.

1 APPEARING ON BEHALF OF WILLIAM E. STANSBURY:

2 PETER M. FEAMAN, P.A.
3 3615 W. BOYNTON BEACH BOULEVARD
4 BOYNTON BEACH, FL 33436
5 By: PETER M. FEAMAN, ESQ.

6 APPEARING ON BEHALF OF TED BERNSTEIN:

7 PAGE, MRACHEK, FITZGERALD ROSE
8 KONOPKA & DOW, P.A.
9 505 SOUTH FLAGLER DRIVE, SUITE 600
10 WEST PALM BEACH, FL 33401
11 By: ALAN B. ROSE, ESQ.

12 MATWICZYK & BROWN
13 625 N. FLALGER DRIVE, SUITE 401
14 WEST PALM BEACH, FL 33401
15 By: BENJAMIN P. BROWN, ESQ. (CURATOR)

16 JOHN P. MORRISSEY, ESQ.
17 330 CLEMATIS STREET, SUITE 213
18 WEST PALM BEACH, FL 33401

19 ELIOT I. BERNSTEIN, Pro se

20 BE IT REMEMBERED, that the following
21 proceedings were taken in the above-styled cause before
22 the Honorable MARTIN COLIN, at the Palm Beach County
23 Courthouse, 200 West Atlantic Avenue, Room 8, in the City
24 of Delray Beach, County of Palm Beach, State of Florida,
25 on June 12, 2014, to wit:

1 P-R-O-C-E-E-D-I-N-G-S

2 * * * * *

3 THE COURT: Okay. All right. What's next?

4 Now, we're going to the other estate.

5 MR. BROWN: Simon. I have a second petition
6 for payment of curator's fees, and this would be
7 for April.

8 I don't know if there is any objection.

9 THE COURT: Any objection?

10 MR. BROWN: The order is substantially
11 similar to the first one, just changes the
12 numbers.

13 THE COURT: Okay.

14 MR. ROSE: May I be heard on his petition?

15 THE COURT: Yeah.

16 MR. ROSE: We have no objection to his fees,
17 but I do think it's important to point out to the
18 court -- and it's going to be related to the next
19 motion that we have. Ms. Eliot Bernstein sent the
20 e-mails to Ben Brown and when we end up with, you
21 know, a petition for instructions, we had two of
22 them on May 23rd, and you instructed everyone that
23 he should not be Elliot's lawyer. And Eliot
24 responded he doesn't have to just, you know, jump
25 through hoops. Ben is concerned that he, you

1 know, fulfill his duties and not run afoul of
2 Eliot, but we've got two or three more petitions.
3 And the fees, I think, so far, approaching \$50,000
4 for the curator.

5 THE COURT: Well, the way it works is pretty
6 simple. I mean, you know, if Mr. Brown is getting
7 bombarded by a party, and, you know, I mean, he's
8 concerned that it may not be necessary and
9 reasonable, then he, you know, he deals with that
10 and causes himself not to have wasted time, but he
11 knows how to handle that.

12 MR. ROSE: We have no objection to Mr. Brown.
13 It's not his -- the issue is not really with him,
14 but I think the curator needs some protection from
15 constantly being bombarded --

16 THE COURT: He can protect himself.

17 MR. ELLIOT BERNSTEIN: Are you his attorney
18 too?

19 THE COURT: Eliot, no, no. Don't do that.

20 MR. BROWN: Actually, Judge, this kind of
21 dovetails into what happened on February 23rd. I
22 did have the two motions for instruction, one of
23 them was when Eliot asked me --

24 MR. FEAMAN: May 23rd.

25 MR. BROWN: May 23rd. Asked me to look into

1 44 different subcategories of documents and kind
2 of take the lead on objecting to the Tescher
3 Spallina accounting. The other one is with regard
4 to the will, the 2012 will. And I have the pages
5 of the transcript of what Your Honor said. And,
6 essentially, I said it's not the curator's role to
7 take the lead on objecting to the accounting.
8 It's not the curator's role to --

9 THE COURT: Hold on one second.

10 MR. BROWN: It's not the curator's role to
11 challenge or even investigate the circumstances of
12 the 2012 will. Your Honor --

13 THE COURT: You know, but here's the thing,
14 if I said that and you then are being asked to do
15 something that you don't think is within the scope
16 of the curatorship, then you make a decision based
17 upon that.

18 MR. BROWN: Well, Your Honor, sometimes it's
19 not necessarily all that clear.

20 THE COURT: That's why you use discretion and
21 you decide what to get involved with and whatnot,
22 and, then depending on that, I may hear from
23 someone else who likes that idea or not.

24 MR. BROWN: What Your Honor said -- actually
25 what Your Honor said on the 23rd was that you

1 said, stop, you don't have to go further. That's
2 the position. That's law. You don't do that. If
3 there is an accounting, there is a rule on
4 objections. The parties object, they don't use
5 you. You don't work for them, which is true, I'm
6 no one's here attorney.

7 THE COURT: Right.

8 MR. BROWN: You work for the court, that's
9 what you said. You said, you are not an advocate.
10 You only investigate things that the parties may
11 be interested in. They can do that -- do what
12 they think they need to do based on the rules of
13 procedure and the statutes.

14 THE COURT: All right. So if someone asked
15 to do something you think is outside the scope of
16 what I ordered, what I mentioned in the hearings,
17 then don't do it.

18 MR. BROWN: Your Honor, you also didn't enter
19 an order on those motions on May 23rd.

20 THE COURT: Well, someone has to submit them
21 to me.

22 MR. BROWN: I did, Your Honor. I
23 submitted -- I submitted them to all the parties.
24 Mr. Rose had some changes.

25 THE COURT: Okay.

1 MR. BROWN: I then -- you then went on
2 vacation and then, unfortunately, got ill. I sent
3 you a letter that said here are the competing
4 orders, and here's what you said.

5 THE COURT: I didn't see the competing
6 orders.

7 MR. BROWN: That's the order. Now, Mr. Eliot
8 Bernstein, he had an objection because he said
9 that all of the minor beneficiaries didn't
10 necessarily receive notice of the May 23rd
11 hearing. But, in fact, based on the e-mail
12 report, I believe that everyone has received -- I
13 mean, here's how long the e-mail service list is.
14 Everybody received notice of everything.

15 THE COURT: What's the -- what's the dispute
16 now with the form of these orders?

17 MR. BROWN: Well, the dispute was -- Mr. Rose
18 had some changes to what I submitted.

19 THE COURT: So you folks did -- did you agree
20 upon the final form?

21 MR. BROWN: He's got handwritten -- we didn't
22 agree on a final form because I think, and I don't
23 want to put words in Elliot's mouth, Elliot said I
24 don't agree to either orders because there are
25 minor beneficiaries of the trust, the pour-over

1 trust, who weren't here on the 23rd, or didn't get
2 notice. And this is the notice -- service list.
3 I mean, this is everybody.

4 THE COURT: Let's put the notice aside. Is
5 there any other -- have you guys agreed upon the
6 form of the order now, or you didn't notice this?

7 MR. ROSE: I think that my comments are
8 minor. I think Mr. Brown approved them. So I
9 have no objection to the order.

10 THE COURT: In this packet, give me a clean
11 order, Mr. Brown.

12 MR. BROWN: All right. I didn't have a
13 problem with -- it's not necessarily a clean
14 order, Your Honor, itself an order.

15 THE COURT: One that I can sign, I mean.
16 This has Mr. Rose's changes that he has written
17 in.

18 MR. ELLIOT BERNSTEIN: Can I -- do we all
19 have copies of Roses' things?

20 THE COURT: Let me see what --

21 MR. BROWN: Mr. Rose e-mailed them to
22 everybody. But they are attached to that May 30th
23 letter.

24 THE COURT: I'll give you a copy of it. Any
25 reason not to sign this based upon that hearing

1 that I had.

2 MR. ELLIOT BERNSTEIN: Are you saying he's
3 not authorized, as the estate, if he finds missing
4 items, or whatever, to challenge the accounting as
5 the --

6 THE COURT: He's not -- he's not filing
7 objections to the accounting, the parties are.
8 You're not, correct?

9 MR. ELLIOT BERNSTEIN: But he's the estate,
10 isn't he? Isn't he a party known as the estate?

11 THE COURT: Yeah, but he's a curator, that's
12 different.

13 MR. BROWN: I'm essentially a caretaker
14 until --

15 MR. ELLIOT BERNSTEIN: Well, wouldn't the
16 PR --

17 THE COURT: Let me ask you this --

18 MR. ELLIOT BERNSTEIN: If you got -- if
19 you're the PR and you got an accounting that's
20 fraudulent in front of you, don't you have a duty
21 to challenge that and --

22 THE COURT: Maybe so, but that's up to
23 everybody --

24 MR. ELLIOT BERNSTEIN: But you're saying he's
25 not authorized.

1 THE COURT: He's not.

2 MR. ELLIOT BERNSTEIN: You're precluding him.

3 THE COURT: He is not.

4 MR. ELLIOT BERNSTEIN: Well, he's the PR
5 tech --

6 MR. BROWN: No, I'm not the personal
7 representative, and I have declined to serve.

8 THE COURT: He's the curator, it's a
9 different role.

10 MR. BROWN: In fact, Your Honor, I was
11 supposed to be the curator for just a couple of
12 months.

13 THE COURT: Right.

14 MR. BROWN: We don't even have a hearing set.

15 THE COURT: Yeah, the parties have to do the
16 objections to the accounting.

17 MR. ELLIOT BERNSTEIN: Okay.

18 MR. BROWN: Your Honor, it's not anything
19 that's teed up today, is that we don't have a
20 hearing set --

21 THE COURT: What do you mean, a hearing on --

22 MR. BROWN: -- to get a personal
23 representative.

24 THE COURT: You know, I can't deal with
25 getting hearing dates. Is there a problem with

1 getting hearing dates?

2 MR. BROWN: There's not a problem with
3 getting hearing dates. It's a problem with
4 getting anybody to move to appoint -- thank you --
5 to appoint a personal representative. And --

6 THE COURT: Well, I thought the hearing was
7 on the objections on the accounting.

8 MR. BROWN: This is the other one, Your
9 Honor.

10 THE COURT: Oh.

11 MR. BROWN: There is a motion objecting to
12 the accountings, but there is no hearing set to
13 appoint a personal representative. And I'm -- you
14 know, frankly, I'm the curator. I'm --

15 THE COURT: Well, at some point if no one
16 wants to be PR, you know, I'll discharge you and
17 the estate will be closed. Just close the estate.

18 MR. BROWN: I think that's the case right
19 now, nobody wants to be a PR.

20 MR. ELLIOT BERNSTEIN: Well, that's not true.

21 THE COURT: Well, someone has to file a
22 petition, though.

23 MR. ELLIOT BERNSTEIN: Well, I'm -- I got a
24 ton of petitions in that I'm trying to get
25 hearings. Like I said, they are blocking and

1 trying to get this case closed.

2 I mean, he just said are you having
3 problems scheduling hearings. I want hearings
4 since, you know, May.

5 THE COURT: Hold on. Let me take a look at
6 this one.

7 Okay. All right. So I'm going to order
8 everyone cooperate in coordinating hearings.
9 That's a silly thing to have difficulty with.

10 MR. ELLIOT BERNSTEIN: Am I forced to take a
11 deposition before I schedule a hearing with you on
12 an unrelated --

13 THE COURT: You can schedule a hearing. Then
14 you get a hearing date from me.

15 MR. ELLIOT BERNSTEIN: He won't schedule a
16 hearing until I take a deposition.

17 THE COURT: Okay. Here's the way it works.
18 Scheduling is one thing.

19 MR. ELLIOT BERNSTEIN: Right.

20 THE COURT: Discovery is another thing.

21 MR. ELLIOT BERNSTEIN: That's right.

22 THE COURT: You try to do your discovery
23 based upon hearing dates coming up. So if you get
24 a hearing date within 30 days, then that tells you
25 you have to have discovery sooner. If you have a

1 hearing in six months, unlikely in my division,
2 then, you know, you could spread out your
3 discovery requests, but they're separate and
4 apart.

5 MR. ELLIOT BERNSTEIN: No, but I'm trying to
6 schedule a hearing and he's refusing unless I
7 take --

8 THE COURT: You get a hearing. And then
9 depending upon what the nature is that's going to
10 be heard, if discovery is necessary, you do
11 discovery. They're two independent items.

12 MR. ELLIOT BERNSTEIN: But your secretary or
13 your clerk has told us that we have to coordinate
14 our hearings with these guys, doesn't seem they
15 have to do that with us, since none of this is
16 scheduled with our knowledge. But nonetheless, if
17 I want to schedule a hearing, I got to get
18 approval from nine guys, three of them won't
19 respond at all. Alan Rose says you better take a
20 deposition or I'm not scheduling hearings. And,
21 you know, they are trying to delay it so they can
22 get in all these hearings while a bunch of
23 criminals sit around --

24 THE COURT: All right. I'll have my
25 assistant come out and see you folks when you're

1 done here, before you all leave, and she'll
2 coordinate hearings with you.

3 MR. ELLIOT BERNSTEIN: Well, I can't do that.
4 I got to --

5 THE COURT: Why?

6 MR. ELLIOT BERNSTEIN: -- go back and check
7 my schedules. Can I call in?

8 THE COURT: You want quick service and I'm
9 going to give you --

10 MR. ELLIOT BERNSTEIN: I appreciate that. I
11 greatly appreciate that.

12 THE COURT: So there's a rule there that says
13 if you ask for something and I give it to you,
14 like that --

15 MR. ELLIOT BERNSTEIN: I didn't bring a cell
16 phone, I don't have my schedule, I got doctors --
17 that's the biggest concern -- and if I'm free on
18 those days they want to schedule them, great. I
19 already gave them a date, you know, July 14th.

20 THE COURT: Try to work it out, we'll get
21 there.

22 MR. ELLIOT BERNSTEIN: Your secretary has
23 been holding it.

24 MR. BROWN: Judge, the problem with
25 appointing a personal representative is not that

1 nobody is -- there is no hearing date -- because
2 nobody has actually filed a motion to appoint a
3 personal representative.

4 THE COURT: But Eliot says he has.

5 MR. ROSE: There's two motions pending.
6 There's a petition by Ted to be the personal
7 representative. I think Eliot may have filed a
8 petition to be the personal representative. We
9 need to set those for a contested hearing.

10 THE COURT: So, Mr. Brown, there are two.

11 MR. ELLIOT BERNSTEIN: He denied Ted's
12 motion.

13 MR. ROSE: I'll set them.

14 MR. ELLIOT BERNSTEIN: Ted already filed a
15 motion to be PR and you denied it.

16 THE COURT: Go ahead.

17 MR. ROSE: We had a motion pending, Your
18 Honor, and you appointed a curator.

19 THE COURT: Right.

20 MR. ROSE: In the meantime, to avoid what's
21 going to be a very expensive and costly battle,
22 I've been having discussions with Mr. Brown as
23 curator, a number of discussions of a way to try
24 to streamline -- Mr. Brown can confirm that's the
25 goal.

1 THE COURT: Sure.

2 MR. ROSE: Just had those discussions. I've
3 tried to have discussions with some of the other
4 beneficiaries to see if we can at least get a
5 consensus. I thought that was a worthwhile
6 exercise before we have what's going to be a half
7 day or day contested trial on who should be the
8 PR. One of the motions dovetails into that -- I
9 have two motions pending today. One is a motion
10 to compel Eliot to appear for deposition and
11 comply with the privilege rule. We had a hearing
12 you may recall on May 23rd with inadvertent
13 privilege. I have that motion. I also have a
14 motion that relates to Mr. Brown, if you want to
15 do that motion first, in case Mr. Brown wanted to
16 leave. We filed a petition -- a motion for --

17 MR. ELLIOT BERNSTEIN: I'd like to do the
18 privilege because if we get through this, we'll
19 find out that he might not even be here in a
20 minute.

21 MR. BROWN: I'd actually prefer to do --

22 MR. ROSE: Do whatever Mr. Brown likes.

23 MR. BROWN: I don't know that I like it, but
24 I don't have any opposition to it.

25 MR. ROSE: It's the one about the mortgage.

1 MR. BROWN: Okay.

2 THE COURT: Let me see.

3 MR. ROSE: This is a motion -- this is kind
4 of in line with Your Honor's instructions. Ted
5 Bernstein, as successor trustee of the Simon
6 Bernstein trust, has asked the curator to take
7 action with regard to an asset of the estate.
8 Mr. Brown has indicated, consistent with your
9 ruling, that's not his job. So we have filed a
10 motion seeking instructions. And we are before
11 you addressing one -- there is only a real handful
12 of assets in the estate. One of the assets in the
13 estate of Simon Bernstein is a second mortgage
14 that the estate holds on a piece of property. The
15 property is owned by an entity called Bernstein
16 Family Realty, LLC. That's an entity that was
17 created by Simon while he was alive. And while he
18 was alive, Simon was the manager of that entity.
19 This Bernstein Family Realty, which owns this
20 house, there is also a first mortgage on the house
21 held by the seller back when the house was sold in
22 2008. So there is a first mortgage of \$110,000.

23 THE COURT: Purchase money mortgage?

24 MR. ROSE: Purchase money mortgage. That
25 mortgage matured, technically, a few years ago and

1 they did an amendment, and they extended the term
2 for three years. The lease matures on June 19th,
3 which is in about seven days. Next week. The
4 first mortgage, not the lease, the first mortgage
5 matures. They are owed \$110,000, plus interest.
6 The mortgage is held by a gentleman named Walter
7 Somm. There is unpaid taxes for 2013. We're told
8 that the house is not insured. Okay. That's the
9 starting point. What the estate has, which
10 Mr. Brown is in possession of, is the estate has a
11 second mortgage on that property. There's a
12 second mortgage holder on property when there is a
13 first, unpaid taxes, no insurance, you would want
14 to take action to try to protect whatever equity
15 is in the property. The current occupant of the
16 house -- and just so I can assure you -- we're
17 going to hear it in a minute -- this is no way to
18 try to harm Eliot. This is trying to protect the
19 assets that are in the estate, and try to protect
20 the value of it. But the tenant of the property
21 is Eliot Bernstein and his family. They live in
22 there rent free. They don't pay taxes. I don't
23 have all the information other than that.

24 And just if you indulge me for a little
25 background. I think Simon bought the house for

1 Eliot. He put the ownership, though, in an
2 entity called Bernstein Family Realty. It's
3 encumbered by two mortgages. And the mortgages
4 exceed the value of the property. I don't know
5 what it's exactly worth. I attached a Zillow,
6 which is not an appraisal.

7 THE COURT: What's the issue, though?

8 MR. ROSE: The issue is, someone's got to
9 administer the second mortgage. It's in default
10 and no one has been administering it. And --

11 THE COURT: You say administering it, seek
12 collection of its payment.

13 MR. ROSE: Potentially. Or do something to
14 protect the asset. And in addition, we've asked
15 permission to have the estate potentially pay the
16 first -- buy the first mortgage. Because if we
17 don't take care of the first mortgage on June 19,
18 what's going to happen is that Mr. Somm is going
19 to hire legal counsel.

20 THE COURT: When you say Simon held a note
21 and mortgage, second mortgage?

22 MR. ROSE: Right.

23 THE COURT: Who was -- who's the mortgagor?

24 MR. ROSE: Bernstein Family Realty.

25 THE COURT: I thought they owned the

1 property.

2 MR. ROSE: They own the property. They are
3 the title owner. They are the mortgage -- they
4 are the mortgagee of the property.

5 THE COURT: Okay. But who's the mortgagor?

6 MR. ROSE: Of the second mortgage, Simon
7 Bernstein, while he was alive. So now it's the
8 estate of Simon Bernstein.

9 THE COURT: So he owed the money. He's the
10 debtor on the debtor/creditor part of the
11 mortgage, Simon was the debtor?

12 MR. ROSE: No, Simon was the creditor.

13 THE COURT: Who's the debtor?

14 MR. ROSE: Bernstein Family Realty, an entity
15 that owns the house.

16 THE COURT: Okay. I'm not -- I thought --
17 they own the house and Bernstein Family Realty
18 borrowed \$360,000, or whatever, the amount of the
19 second mortgage is?

20 MR. ROSE: Correct. Bernstein Family Realty
21 potentially owns \$110,000, plus interest, to
22 Walter Somm. He's the first mortgage holder. And
23 Bernstein Family Realty also owes 365,000, plus
24 interest, to the estate of Simon Bernstein.

25 THE COURT: Which -- that transaction, how

1 did that second mortgage come about?

2 MR. ROSE: Simon put -- I think Simon put up
3 all the money for the house and the renovations.
4 And so in order to --

5 THE COURT: So he had the owner give him a
6 second mortgage back.

7 MR. ROSE: Correct. He was the manager of
8 the ownership entity. Simon structured this
9 through Bernstein Family Realty. Bernstein Family
10 Realty, after Simon passed away, the new manager
11 of Bernstein Family Realty is Oppenheimer. And I
12 believe the equity -- the owners of the equity of
13 Bernstein Family Realty are three trusts created
14 for Elliot's three children. No one is disputing
15 that. But the house is clearly upside down,
16 unless it's worth more than \$500,000, which it
17 doesn't appear to be worth more than \$500,000. If
18 it is, that's great because that's better for the
19 estate. The concern here for Ted as the fiduciary
20 for the trust is that we have an asset. It's the
21 mortgage. It's not fully secured. It's probably
22 mostly secured, if you know what I mean, partially
23 secured. There is equity in the property over and
24 above the first mortgage and the taxes, but
25 there's not enough to pay it off in full. And so

1 the concern is that Walter Somm, a third party,
2 innocent guy, will have to file a lawsuit to
3 foreclose his mortgage. Eliot is potentially
4 going to be a party to that lawsuit because he's a
5 tenant. Mr. Somm will probably spend a hundred or
6 \$200,000 in legal fees fighting with Eliot
7 Bernstein. And then at the end of the day, poof,
8 there is nothing left. And the estate's \$365,000
9 mortgage is worth nothing.

10 We've raised the issue with Mr. Brown. We
11 have worked very closely with him.

12 THE COURT: I understand.

13 What do you say Eliot?

14 MR. ELLIOT BERNSTEIN: Well, to deconstruct
15 all those lies -- you really want me to start --
16 my father bought a house for my children. It
17 wasn't an asset of the estate till suddenly the
18 guys who altered the estate documents put it on an
19 amended inventory, right after the long arm of the
20 law knocked on their door and said come to the
21 sheriff's office. This is part of an extortion.
22 I put it in motion to you. I asked for emergency
23 hearings. And what they have done is beyond
24 criminal. First of all, my -- the company, BFR,
25 is owned by my three kids entirely. The house --

1 trust owned the house. Okay. My brother and
2 Oppenheimer conspired -- and I got a whole bunch
3 of stuff showing what's happened here -- to take
4 over the management position of BFR. When my
5 father died there was supposed to be vote by the
6 members, my three minor children, which could be,
7 or my wife, as guardians, to elect a new member.
8 Instead, Spallina anointed Janet Craig of
9 Oppenheimer to self-anoint herself as manager of
10 BFR. Then after they misuse all these funds,
11 telling us, oh, we're going to use the kids'
12 education funds to pay your house expenses, when
13 there is all these other entities that have been
14 paying for the house for years, my brother --
15 Janet Craig of Oppenheimer says, oh, I'm turning
16 over the management to Ted. She hands him all my
17 personal files, my kids, all our statements,
18 bills, everything, which I don't even get the
19 bills. They've been going through BFR --

20 THE COURT: Okay. I got your position. Let
21 me ask you this. What's the relief that you're
22 asking for, though?

23 Hold on.

24 I don't know what the relief is, that's
25 what I'm trying to figure out.

1 MR. ROSE: The relief is for first -- at the
2 request of the curator, the curator would like to
3 transfer the asset to the trustee of Simon's
4 revocable trust.

5 THE COURT: The property that is owned by
6 Bernstein Family Realty, LLC?

7 MR. ROSE: No, technically, the asset is just
8 the mortgage.

9 THE COURT: Is the mortgage.

10 MR. ROSE: Yeah, you know, the tangible --

11 THE COURT: That's owned by the estate right
12 now.

13 MR. ROSE: It's owned by the estate and under
14 the control of Mr. Brown.

15 THE COURT: And you --

16 MR. ROSE: They would remain liable for --
17 the trustees of the revocable trust is liable for
18 the debts of a creditor. So, you know,
19 Mr. Stansbury's counsel is here and he would be
20 someone that might object to it. We're not asking
21 to transfer it, other than to have someone other
22 than Mr. Brown, who's not prepared to administer
23 the asset, to administer the asset. In fact, in
24 discussions I've had with Mr. Brown, I mean,
25 his -- one of Mr. Brown's discussions with me was

1 he could transfer all the assets in the estate to
2 the revocable trust. If the trustee of the
3 revocable trust could administer the assets, he
4 would still be liable to Mr. Stansbury for any
5 claims. And, you know, you could have Mr. Brown
6 as a curator take a very nominal role so we don't
7 have to incur as much money. Alternatively, we
8 could have the PR hearing which --

9 THE COURT: That's what we need to do. We
10 need to have the PR hearing.

11 MR. ELLIOT BERNSTEIN: We need to have an
12 evidentiary hearing on this, don't we, Your Honor?

13 MR. ROSE: But in the short --

14 THE COURT: Go ahead.

15 MR. ROSE: In the short term, if you look at
16 the exhibit we attached.

17 THE COURT: Yeah, go ahead.

18 MR. ROSE: The second mortgage. It's the
19 Exhibit A. I don't have tabs, I apologize, but if
20 you flip through --

21 THE COURT: I see it.

22 MR. ROSE: So there is a promissory note.
23 It's signed by Simon Bernstein. I mean, I don't
24 think there is any question that that's Simon's
25 signature. And he did it in July of 2008. And if

1 you go to the next page, which is the actual
2 second mortgage, it's recorded in the public
3 records of this county, on September the 4th,
4 2008.

5 MR. ELLIOT BERNSTEIN: Missing the promissory
6 note, which was supposed to be attached, but it's
7 not.

8 MR. ROSE: I didn't think -- I would request
9 that Mr. Bernstein not comment when I'm speaking.

10 THE COURT: Yeah, true.

11 MR. ROSE: So we have a mortgage, the second
12 mortgage. It's signed by Simon Bernstein. He set
13 up the structure with Bernstein Family Realty. I
14 don't care about the structure. We don't control
15 Bernstein Family Realty. We have nothing to do
16 with it. Our concern is very simply: If you ask
17 Eliot Bernstein what are you going to do when
18 Walter Somm files a foreclosure action, he's going
19 to tell you, I'm going to make Walter Somm spend
20 every penny he's got to try to foreclose the
21 mortgage on Bernstein Family Realty. And we're
22 going to be back here in two years, or whatever,
23 saying the mortgage is worthless because it's all
24 been burned away in fees. But at the same time, I
25 don't think it's appropriate for Mr. Brown or the

1 estate to buy the mortgage if -- until we take the
2 deposition of Mr. Bernstein and find out if he has
3 any issues with regard to the mortgage or the
4 structure. I mean, other, you know, everything,
5 you know, is a conspiracy.

6 THE COURT: I got it. All right.

7 MR. ELLIOT BERNSTEIN: Okay. I got more.

8 MR. FEAMAN: May it please the court.

9 THE COURT: Yeah.

10 MR. FEAMAN: Peter Feaman on behalf of
11 Mr. Stansbury, about the largest and only creditor
12 of the estate, sizeable amount, in a litigation
13 that's pending before Judge Blanc.
14 Mr. Stansbury's interest obviously is to preserve
15 or protect the assets of the estate in the event
16 that he's successful in his litigation. We've
17 been in touch with Mr. Somm. Mr. Stansbury
18 actually knows Mr. Somm, the first mortgage
19 holder. And it's a possibility that we can get
20 him to forebear for a little while until we get
21 this straightened out.

22 THE COURT: Why don't you try to do that.
23 Because I'd really like to get passed the PR stage
24 because that would clear the way to have things
25 done in the ordinary course here.

1 MR. FEAMAN: Right. So we think we can do
2 that.

3 THE COURT: Okay.

4 MR. FEAMAN: And he told me he won't do
5 anything precipitous. He knows -- he knew
6 Mr. Bernstein, he knows Mr. Stansbury, and --

7 THE COURT: All right.

8 MR. ELLIOT BERNSTEIN: Your Honor, one
9 last --

10 THE COURT: Okay. Hold on. No. No, I'm
11 deferring on the motion for instruction in this
12 matter.

13 MR. BROWN: Judge, on the PR thing just --
14 I'm going to go ahead and seek dates in early
15 August.

16 THE COURT: All right.

17 MR. BROWN: Because we have notices of
18 unavailability for July.

19 THE COURT: Okay.

20 MR. BROWN: And frankly, between now and
21 early August, I can minimize my fees by just
22 hanging on to what the estate's got.

23 THE COURT: If you guys will coordinate those
24 hearings.

25 MR. ELLIOT BERNSTEIN: I've never not

1 coordinated a hearing.

2 THE COURT: Okay. All right. What's next,
3 the last one.

4 MR. ROSE: Last one. Two motions to compel.

5 MR. BROWN: Actually, may I be excused?

6 THE COURT: Sure.

7 MR. ROSE: On the motion we just heard, Your
8 Honor, I'll send in an order that says the motion
9 is deferred. Mr. Stansbury will work with
10 Mr. Somm and report to the parties.

11 THE COURT: Exactly.

12 * * * *

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14 (Thereupon, the proceedings were
15 concluded at 10:35 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, DAVID L. MARSAA, Professional Reporter,
State of Florida at large, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a
true and complete record of my stenographic notes.

Dated this 15th day of June, 2014.

DAVID L. MARSAA, COURT REPORTER

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