

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

PROBATE DIVISION

CASE NO. 502012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN

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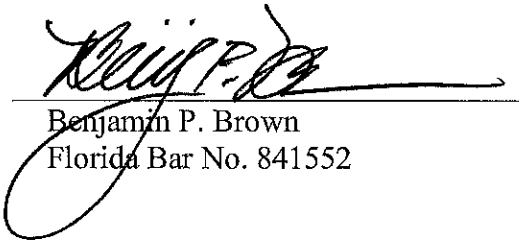
**NOTICE OF FILING**

Curator, Benjamin P. Brown, hereby gives notice of filing the excerpt of the transcript of the hearing on June 12, 2014, attached hereto as Exhibit A.<sup>1</sup>

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served by e-mail upon the parties on the attached service list this 18 day of June, 2014.

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By: \_\_\_\_\_

  
Benjamin P. Brown  
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<sup>1</sup> The Curator has requested that the court reporter transcribe the remainder of the proceedings from June 12, 2014. The Curator had previously asked the court reporter on June 12<sup>th</sup> to transcribe only the portions regarding this Estate while the Curator was present.

**EMAIL SERVICE LIST**

Estate of Simon L. Bernstein

Palm Beach County Case No. 502012CP004391XXXXSB

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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).

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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

21

22 BE IT REMEMBERED, that the following

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

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THE COURT: Okay. All right. What's next?  
Now, we're going to the other estate.

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

I don't know if there is any objection.

THE COURT: Any objection?

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

THE COURT: Okay.

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

THE COURT: Yeah.

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