

SHIRLEY AND SIMON TRUST FILING

EMERGENCY MOTION FOR INTERIM DISTRIBUTIONS DUE TO A CONTINUED PATTERN AND PRACTICE OF FRAUD AND EXTORTION BY FIDUCIARY THEODORE BERNSTEIN AND OFFICER OF THIS COURT ALAN B. ROSE, ESQ.

1. That Emergency Interim Distributions must be made by August 8, 2014 in order to keep Petitioner's three children in the school they have attended for almost their whole lives. This matter needs emergency actions due to an impending deadline and damage to three minor children. Petitioner has no other remedy at law. Three minor children, including one child in his graduation year risk being removed from school, achieved placements lost, loss of college guidance process for college placement and removal in their final graduating year for non-payment of tuition.
2. That St Andrews school has been more than cooperative since payments have ceased to them on [REDACTED] due to the delays in the inheritances of Eliot and his family, caused INTENTIONALLY by a series of frauds and more committed by the former fiduciaries and counsel in the Estates and Trusts, Spallina and Tescher and their former client and current fiduciary Theodore.
3. That Theodore refuses to make payments in the best interests of the Trust beneficiaries violating standard rules and conduct according to established Rules regarding Trustee's being held to a higher level of ethics and law and acting requiring them to only act in the best interest of the beneficiaries.
4. Petitioner brings forward this action as Trustee of Eliot Bernstein Family Trust and Trustee of his three minor children's trusts either or both of which are the ultimate beneficiaries of the Shirley Trust and Simon Trust.
5. That several frauds have taken place by Officers of this Court and Fiduciaries, In and Upon this Court, the Beneficiaries, Creditors and Interested Parties. Most of the guilty have resigned and have been removed from these estate and trust proceedings and remain under ongoing investigations with the Palm Beach County Sheriff Office and others. Two of the alleged participants in these fraudulent activities, Theodore and Alan, remain acting in these matters with legal capacities are both centrally involved and benefited directly from in the prior fraudulent activities and they continue to advance fraudulent activity, while harming true and proper beneficiaries.
6. That there is a long list of Petitions lined up to remove Theodore in all fiduciary capacities and a hearing scheduled for August 19 to hear these matters for a number of valid legal reasons that instantly prohibit their continued alleged fiduciary and legal capacities forward in Simon and Shirley's estates and trusts.
7. An Emergency Order or Hearing is necessary at this time due to impending due date for tuition approaching prior to those hearings for Trustee removal and sanctioning on August 19, 2014 due to the continued breaches of fiduciary duties and more by Theodore.
8. That Petitioner requested Interim Distributions/Welfare Payment pursuant to the trusts language under the Trust agreements of Shirley and Simon, requesting that the alleged Trustee Theodore abide by the Trusts and make necessary welfare distributions as provided for under the trust terms for educational funds of Eliot's three minor children to keep them in the school their grandparents Simon and Shirley had enrolled them in and paid for them to go to while living and provided for

continuation of education expenses through their estate plans and eventual inheritances. Exhibit 1 – Letter to Theodore.

9. Theodore's counsel, Alan Rose, refused a simple yes or no answer and chose instead to force a meeting to discuss this request and stated that it had to be held under the terms of Rule 90.408, which states, "Compromise and offers to compromise.—Evidence of an offer to compromise a claim which was disputed as to validity or amount, as well as any relevant conduct or statements made in negotiations concerning a compromise, is inadmissible to prove liability or absence of liability for the claim or its value."
10. That as Eliot was not planning on settling anything or negotiating with "terrorists," especially those that are using his three minor children's educations as leverage, and merely was attending to get the simple answer to if Theodore as Trustee would make the required educational payments for Eliot's three minor children or Eliot would have to appeal this matter of breach of fiduciary duties to this Court and seek relief, Eliot agreed to this meeting under 90.408.
11. That at that meeting with Alan, Eliot and Marc R. Garber, Esq. (a friend of Eliot's not representing him in these matters), Alan proposed that Eliot could take distributions but only if Eliot were to open trust accounts for his children and bank accounts under those trusts to have the monies deposited in.
12. That Alan then stated that he believed Post Mortem trusts had been created by the prior PR's and Trustees of Simon's and Shirley's Estate and Trusts, Spallina and Tescher, who were also simultaneously representing Theodore and who have now been removed from the proceedings and have admitted to Palm Beach County Sheriff Investigators to fraudulently altering Trust documents POST MORTEM in Shirley's Trust, in order to change the Beneficiary Class, Post Mortem.
13. That further evidence now proven also has this scheme being aided by Kimberly Moran who was arrested acting as Tescher and Spallina's Legal Assistant/Notary Public when found to have fraudulently NOTARIZED documents and admitted to FORGING six documents for six separate people, including Simon, POST MORTEM. Moran has since been arrested and charged for her actions while employed and under the direction of her employer Tescher and Spallina.
14. That this Court should recall stating it had enough evidence to read Miranda's to Theodore, Spallina and Tescher upon learning that Shirley's Estate was closed by using a dead Personal Representative / Executor, Simon, through a further fraud on this Court and the Beneficiaries in efforts to change the Beneficiaries of Shirley's Estate.
15. That Alan then claimed that all Eliot had to do was open a bank account under each trust for each child and the money could transfer distributing monies to improper beneficiaries in improper amounts with all sorts of conditions, including signing a refund and release document.
16. That Alan explained to Eliot and Marc that the beneficiaries of Shirley's Trusts at this time are unknown and that three possibilities exist (i) Eliot and his sisters Lisa and Jill and their lineal descendants, as Shirley had left it, (ii) Eliot and his sisters Lisa and Jill's lineal descendants ONLY, as Theodore and Pamela were disinherited and considered PREDECEASED for all terms thereunder and depending on if an alleged Power of Appointment allegedly exercised by Simon holds up as it is claimed fraudulent as well and (iii) the ten grandchildren, which is a hopeless argument that relies on the alleged Power of Appointment giving Simon the right to change the Class of Beneficiaries in Shirley's trust, by adding new beneficiaries Post Mortem of Shirley and where even if the Power of

Appointment was upheld it would only apply to the Class of Beneficiaries specifically designated by Shirley, namely, Eliot, Lisa and Jill and their lineal descendants.

17. That the dispute caused now is wholly due proven and admitted already, fraudulent activity, including but not limited to forged documents, tampering and fabrication of documents and more that have taken place. However in each scenario Petitioner, as Trustee of the Eliot Bernstein Family Trust or the Trusts created for his children, which he has never seen, ARE the ultimate Beneficiaries whereas Theodore and Pamela and their children are not.
18. That Tescher and Spallina made these changes illegally to benefit their client Theodore and business associate Pamela, both who are wholly disinherited from the Estates and Trusts of Simon and Shirley under all scenarios and they have been upset about this exclusion since being informed of their and their lineal descendants exclusion entirely by both Simon and Shirley.
19. That Tescher and Spallina made this disclosure while Simon was alive and allegedly this disclosure was made without Simon's knowledge, which led to a massive warfare between Simon, Theodore and Simon's daughter Pamela until the very day Simon died suddenly and unexpectedly.
20. That Eliot explained to Alan, as he did to this Court in a September 13, 2013 hearing that he could not open up trust bank accounts into his children's name or his own until the Court determines the true and proper beneficiaries and that any distributions should be made to ANY party only as Interim Distributions and then deducted from Eliot and/or his children's inheritances or any other parties final amount once these matters are legally resolved.
21. That interim welfare distributions have been made in this fashion in for approximately a month to Eliot and his family by Theodore from Shirley's trust and was to be deducted from the final distributions when they are determined by this Court but for some reason now they cannot be made in this fashion, they can only be made to knowingly improper beneficiaries in improper distribution amounts under a series of proven fraudulent documents and acts that allow for such distributions?
22. That Theodore and Pamela continue to act on known tampered and fabricated trust documents and have submitted them to banks, trust companies and accounting firms to induce them to facilitate the improper and illegal conversions of the monies.
23. That in fact, Spallina admitted to Palm Beach County Sheriff that he altered trust documents of Shirley's and forwarded them to Eliot's former Counsel, Christine Yates of Tripp Scott law firm, in efforts to bamboozle her into believing that the ten grandchildren were beneficiaries of the Shirley Trust.
24. That Theodore, while acting as ALLEGED Trustee for the Shirley Trust and simultaneously acting as Trustee on behalf of his children's possible interest in Shirley's Trust, made improper distributions from Shirley's Trust for he and Pamela's children and others, knowing at that time that the beneficiaries were improper and that the documents that allowed for these transfers were fraudulent and forged in their names and their deceased father's name, yet continued to accept and convert the monies. Eliot did not and will not until the true and proper beneficiaries are determined as he will not participate in knowingly fraudulent activities.
25. That once Eliot explained to Alan that he would not participate in further fraudulent distributions and would only take the money as Interim Distributions / Welfare Payments and deducted from the TBD beneficiaries which in any scenario is Eliot and his children, Alan suddenly did an "about face"

and stated that if Eliot was unwilling to do the distributions this way, that his client would then argue to the Court that there was not enough monies to make distributions for Eliot's children schooling and they would argue that Eliot needed a guardian for his children and his children would be removed from their school they have attended throughout their childhoods in a few days. That these THREATS to Eliot also failed to make Eliot partake in knowingly fraudulent activity.

26. That Theodore has refused to submit accountings in his alleged roles as Trustee for the Simon Trust and Shirley Trust or for the Estate of Shirley as PR, for two years and continues to spend trust money as if it were his own and in secreted transactions, in violation of Probate Rules and Statutes and law.
27. That Eliot asked then asked Alan how under one scenario where Eliot takes the monies through fraud there could be enough monies to distribute to cover the education costs requested and under the other scenario where Eliot does not take the monies improperly until the proper beneficiaries are determined there was somehow not enough money.
28. That Eliot further explained to Alan that this was identical to the Extortionary tactics used by Theodore's previous counsel, business partners and close friends, prior to admitting their fraudulent scheme and who are now under multiple ongoing investigations both in state and federal actions, Spallina and Tescher, who previously acted in efforts to force Eliot to take improper and illegal distributions to knowingly improper Beneficiaries (knowing of their fraudulent acts) and thus give an implied consent to their fraudulent beneficiary scheme by partaking in the knowingly fraudulent activity and release any claims against the parties involved in the fraud.
29. That Alan appears to have picked up where Spallina and Tescher left off in this extortion attempt of Eliot and Eliot claims that this is the reason Alan tried to make the recent meeting private and confidential and not useable for any purposes under a law he actually makes up in part.
30. That Alan asked Eliot to have this meeting and make it confidential by rewriting Section 90.408 to read as he wanted so that he could try and further Extort Eliot and then have the meeting secreted. Alan stated and misrepresented the law as follows, "The call will be subject to rule 90.408 making it a confidential settlement discussion which cannot be used for any purpose at any time, nor admitted in evidence at any hearing." However, Rule 90.408 makes no reference to the fact that the meeting cannot be used "for any purpose at any time, nor admitted in evidence at any hearing" this language was made up and grossly misrepresented by Alan to Petitioner, a Pro Se litigant, to trick Petitioner to the meeting and threaten and extort him further and then pray that Petitioner would keep the meeting confidential in fear of violating 90.408 (Alan's version) and would be unable to use it to show others his extortion scheme veiled in a misstated statute, in hopes that in Petitioner's layman understanding of law believe he was bound to secreting the meeting from anyone.
31. That the continued play or pay extortionary threat to Eliot to participate in the fraudulent distribution scheme is evidence of further criminal activity by Alan and Theodore and gross violations of fiduciary duties, attorney conduct codes and law and as such would not be subject to any protection as confidential, as one cannot ask someone to a meeting under Rule 90.408 and state it is confidential and can never be used and then tell them if they don't settle they will blow their brains out and then attempt to claim that this could not be used in court under 90.408 or given to authorities as further evidence, etc.
32. That Alan has nothing to lose by continuing this Pattern and Practice of Abusive Legal work full of legal debauchery, extortion, made up laws and more, since he is principal player in advancing the

prior schemes to take the illegal distributions based on fraudulent documents, even after becoming aware they were fraudulent, as both he and Theodore are Respondents in these matters and Defendants in a newly filed Counter Complaint in a related case before this Court and could face serious prison time and loss of his possessions when found guilty of the crimes already alleged against them, including but far from limited to extortion, fraud and more.

33. That Eliot questions how long will the Court allow this legal process abuse to continue, where now Eliot's three children who have been damaged for two long years investigating and exposing these schemes and artifices to defraud that have interfered with their inheritance and are now proven and admitted to criminal acts that have caused such delays.
34. That where the last time Eliot refused to play by taking improper distributions being demanded in order to get funds for his family for life sustaining items these items were cut off by the fiduciaries Tescher, Spallina and Theodore, which has led to catastrophic damages to their lives as pled repeatedly to this Court in yet unheard Petitions and Motions filed by Eliot since May 2013.
35. That Petitioner and his family have been harassed and retaliated upon with their play or pay schemes in the past by various tactics to force them to take the monies improperly, including but not limited to; Electricity cut off without notice, Homeowners insurance cut off without notice, Health Insurance cut off without notice, monthly income wholly cut off without notice, Jobs were interfered with without notice, School and School related activities cut off without notice and basic living expenses that Simon and Shirley had paid for many years prior to their death for Eliot and his children due to special circumstances were cut off through an elaborate fraud that took over a company and trusts that had been paying for these items and that were intended to continue to pay for them many years into the future through their inheritances. These entities were designed to specifically protect Eliot and his family from these type of calamities but were instead sabotaged by the fiduciaries, Tescher, Spallina and Theodore, once they knew that arrests of their friends was happening and they too were under investigations in state and federal actions.
36. That repeated demands for Eliot to KNOWINGLY take ILLEGAL IMPROPER DISTRIBUTIONS to UNKNOWN BENEFICIARIES or else watch his family suffer has been filed with this Court and the proper authorities as EXTORTION that has already caused irreparable damages to Eliot, his lovely wife Candice and direct harm to their three minor children and now their educations are being used as ransom.
37. That both Theodore and Alan now have irrefutable Adverse Interests and Conflicts of Interests, including but not limited to, the Fact that they are UNDER INVESTIGATION for many felony offenses both state and federally, the fact that they participated directly in the fraudulent activities that have benefited them both directly, the Fact that they are Defendants and Respondents in these and related litigations, that Theodore is the primary accused defendant in the Creditor action of Stansbury, all making Theodore and Alan UNFIT to act one second further as Fiduciaries or Counsel in these matters.
38. That due to these insurmountable reasons they are unfit Eliot has asked for their voluntary disqualification to save this Court, Eliot, the Creditors and everyone involved from further fraud, waste and abuse of process occurring In and Upon this Court, the Beneficiaries, Creditors and Interested Parties.

39. That there is a hearing is scheduled for August 19, 2014 to hear these motions to remove Theodore in all fiduciary capacities relating to both the Estates and Trusts, yet this does not give Petitioner enough time to address the school tuition issue as tuition payments need to be received by August 8, 2014 to guarantee placements in the school.
40. That it should be noted that Theodore has made ILLEGAL distributions knowingly to his own children and those of Pamela, Jill and Lisa and did this without holding any meetings under 90.408 and whereby no questions at all were asked when transferring those funds as to what they would be used for and this questioning of what Eliot is using them for (education) is further to attempt to harass Eliot. That threatening a guardian over Eliot's children for not taking the improper distributions or for Eliot's using funds for his children's education is also harassment.
41. That it should be noted that despite Alan's claim in his letters that there is not enough money if Eliot refuses to take the distributions illegally, there has been no accountings to the Beneficiaries of Shirley's Trust, Shirley's Estate and Simon's Trust to show how much money there is and Eliot has already reported to the proper authorities and this Court that the amounts they have claimed are far below what is now known and that they have further stolen and failed to report for tens of millions of dollars of assets already all under ongoing investigations, where again, Alan and Theodore are primary suspects.
42. That finally, Alan, in his attached herein letters sent to others the details of the alleged confidential meeting under 90.408 in violation of even his own made up language under that rule and attempted to recruit Pamela, Lisa and Jill to join in his motion to this Court, the problem with that is that Pamela, Lisa and Jill all took knowingly improper distributions and may all have to return those monies and face criminal charges and so what worth is there strength in numbers strategy worth, in determining if this Court should grant the interim distributions for education and other emergency needs.

Wherefore,

Order Ted to submit payment to the school and deduct such amounts from final distributions.

43. This Court should STRIKE the pleadings of Theodore and replace him instantly with a non conflicted, non adverse fiduciary on its own Motion.
44. That this Court should Order the newly determined successor make immediate emergency distributions to Eliot and his family for school and other emergency needs and deduct such amount from the final distributions made once the Court has determined who the Beneficiaries will be based on review and forensic investigations of the dispositive documents which have already been proven fraught with fraud, forgery and more.
45. Enter an order for sanctions and attorney fees as these matters only harm the beneficiaries and offer no benefit to the trust or estates and have all been caused by further breaches of fiduciary duties and more.