

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

CASE NO. 502012CP004391XXXXSB
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

_____ /

**TRUSTEE'S MOTION TO DISMISS PETITION TO REMOVE
TED S. BERNSTEIN AS SUCCESSOR TRUSTEE OF THE
SIMON BERNSTEIN REVOCABLE TRUST**

Trustee, Ted S. Bernstein (the "Trustee") moves to dismiss the Petition to Remove Ted S. Bernstein, as Successor Trustee of the Simon L. Bernstein Amended and Restated Trust (the "Petition"), and states:

1. William Stansbury ("Stansbury"), a potential creditor of the Estate, filed the Petition seeking to remove the Trustee of the Simon L. Bernstein Trust (the "Trust"). Stansbury has filed a motion requesting a hearing on this matter. The hearing on the Petition will require discovery and a lengthy evidentiary hearing. All of that can and should be avoided because Stansbury's Petition should be immediately dismissed. First, there is no action filed in accordance with § 736.0201(1). Therefore, this is no jurisdiction to hear this matter.

2. Secondly, Stansbury is not a beneficiary of the Trust, and obviously is not the personal representative of the Estate. Therefore, he lacks standing to seek to remove the Trustee. In fact, Stansbury has no relationship at all to the Trust. Stansbury solely claims to be a creditor of the Estate. Pursuant to Florida law, while Stansbury may have a claim against the Estate, he has no claim against, or interest in, the Trust. As such, he has no standing to bring the instant Petition, and the Petition should be dismissed.

MEMORANDUM OF LAW

Pursuant to statute, only a "settlor, a cotrustee, or a beneficiary may request the court to remove a trustee." Fla. Stat. § 736.0706(1). Stansbury is neither of these, which ends the analysis.

Stansbury asserts that, "as a claimant and creditor of the Estate, which claim exceeds the value of the assets of the Simon Bernstein Estate, [Stansbury] has a beneficial interest in the Trust because, to the extent that the assets of Simon's Estate are insufficient to pay his claim, he has a contingent interest in the Revocable Trust." Petition at p. 2. This assertion is based upon a faulty application of the law, and does not alter the inescapable fact that he is neither the settlor, a co-Trustee nor a beneficiary.

By definition, a creditor is not a beneficiary. Pursuant to Fla. Stat. § 736.0103, a beneficiary is defined as "a person who has a present or future beneficial interest in a trust, vested or contingent, or who holds a power of appointment over trust property in a capacity other than that of trustee." Fla. Stat. § 736.0103(4). "The word 'creditor' is generally defined as a person to whom a debt is owing by another person, who is a debtor. Thus a creditor is one who holds a claim." *Summit Pool Supplies, Inc. v. Price*, 461 So. 2d 272, 273 (Fla. 5th DCA 1985).¹

Stansbury admits that he is a creditor of the Estate. Any claim he may have lies against the Estate. He has no claim – present or future, vested or contingent – against the Trust because, pursuant to Florida law, only the personal representative of the estate may demand funds from a revocable trust to pay the obligations of the estate. Fla. Stat. § 736.05053 ("A trustee of a trust described in s. 733.707(3) shall pay to the *personal representative* of a settlor's estate any amounts

¹While Stansbury claims he is a creditor of the Estate, he does not assert that he is a creditor of the Trust.

that *the personal representative certifies in writing* to the trustee are required to pay the expenses of the administration and obligations of the settlor's estate.")(emphasis added). Only the personal representative is entitled to seek payment from the trustee of a trust. Fla. Stat. §733.607(2). There is no provision allowing a creditor of an estate to seek payment from a trust.

Stansbury's argues that the under section 736.05053 the Trust may be liable for obligations of the Estate, including payment of his claim if it exceeds the value of the Estate's assets. While that may be true, only the personal representative may make such demands. Stansbury, as a creditor of the Estate, has no right or authority to demand payment from the Trust. Thus, as Stansbury is not entitled to petition the Court to remove the Trustee pursuant to Fla. Stat. § 736.0706(1), he has no standing to have filed the Petition.

WHEREFORE, for the foregoing reasons, the Trustee respectfully requests this Court dismiss the Petition.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile **and** U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 11th day of August, 2014.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
email: arose@mrachek-law.com
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Fla. Bar No. 961825)

– and –

PANKAUSKI LAW FIRM P.L.L.C.
John J. Pankauski
Florida Bar No. 0982032
120 South Olive Avenue, Suite 701
West Palm Beach, FL 33401
(561) 514-0906
email: courtfilings@pankauskilawfirm.com
Attorneys for Ted S. Bernstein

SERVICE LIST

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0766 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

William H. Glasko, Esq.
Golden & Cowan, P.A.
17345 S. Dixie Highway
Palmetto Bay, FL 33157
(305) 856-5440 - Telephone
(305) 856-9388 - Facsimile
Email: eservice@palmettobaylaw.com;
bill@palmettobaylaw.com;
tmealy@gcprobatelaw.com
Counsel for Lisa Sue Friedstein, individually and
as trustee for her children, and as natural guardian
for M.F. and C.F., Minors; Jill Marla Iantoni,
individually and as trustee for her children, and as
natural guardian for J.I. a minor

Benjamin P. Brown, Esq.
Matwiczuk & Brown, LLP
625 North Flagler Drive, Suite 401
West Palm Beach, FL 33401
(561) 651-4004 - Telephone
(561) 651-4003 - Facsimile
Email: attorneys@matbrolaw.com

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
(561) 734-5554 - Facsimile
Email: pfeaman@feamanlaw.com;
service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Irwin J. Block, Esq.
700 South Federal Highway, Suite 200
Boca Raton, FL 33432
(561) 910-3071 - Telephone
(561) 910-3080 - Facsimile
Email: ijb@ijblegal.com
Counsel for Tescher & Spallina

Robert Spallina, Esq.
Donald Tescher, Esq.
Tescher & Spallina
Wells Fargo Plaza
925 South Federal Hwy
Suite 500
Boca Raton, Florida 33432

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com