

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT, IN AND FOR PALM
BEACH COUNTY, FLORIDA

CASE NO. 502014CP003698XXXXSB
PROBATE DIVISION

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended

Honorable Martin Colin

Petitioner,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of his minor children D.B., Ja. B. and Jo. B.;
JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F., Respondents,

ANSWER

COMES NOW, PRO SE, Eliot Ivan Bernstein ("Eliot") as Beneficiary and Interested Party both for himself personally and as Guardians for his three minor children of the alleged "Shirley Bernstein Trust dated May 20, 2008, as amended" ("Shirley Trust") and as Trustee of the "Eliot Bernstein Family Trust dated 5/20/2008" and hereby files this "ANSWER" and in support thereof states, on information and belief, as follows:

ANSWER

ANSWER

Tuesday, September 2, 2014

Page 1 of 66

1. Plaintiff Ted Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is the Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended, under Article IV.C.1 of the Trust ("Trustee.").

ANSWER – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Shirley Trust and the admitted fraudulently altered amendment have been challenged due to evidence of fraud, forgery and more. The crimes of admitted forgery, proven fraudulent notarizations, proven Fraud on the Court, admitted improper and illegal distributions, and admitted fraudulently altered trust documents have already been proven and admitted in the Probate actions of the Estates and Trusts of Shirley and Simon Bernstein. In part, these crimes were committed by the alleged Trustee of the Shirley Trust, Theodore Bernstein and his former counsel, Robert Spallina, Esq. and Donald Tescher, Esq. primarily.

Spallina and Tescher not only acted as Theodore's counsel in Shirley's Estate and Trust but also acted as Co-Personal Representatives, Co-Trustees and Counsel for themselves in Simon's Estate and Trusts.

Theodore Bernstein, due to his direct involvement in the crimes and being the primary party benefiting from the crimes and other reasons before this Court in the Probate actions is not now or ever qualified to act in any fiduciary capacities in the Estates and Trusts of both Shirley and Simon Bernstein.

Theodore has advanced fraudulent schemes that benefited him directly and primarily. These schemes were aided and abetted by his Attorneys at Law who are also his close personal friends and business associates, Tescher and Spallina, who together have all caused intentional interference with expectancy of inheritances, committed thefts and a multitude of other criminal acts.

4
ANSWER

That there is language in the Shirley Trust and the Simon Trust that specifically precludes Theodore from acting as Trustee, as he is considered dead for ALL purposes of the Shirley Trust and Simon Trust and distributions made thereunder.

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person.

Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, [emphasis added] however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

2. Shirley Bernstein died on December 10, 2010, and at the time of her passing was a resident of Palm Beach County, Florida.

ANSWER – Deny, Shirley Bernstein died on December 08, 2010. That it is insulting that Shirley's son Theodore and his counsel have repeatedly misstated the day she died, despite repeated corrections.

3. Prior to her death, Shirley Bernstein created a trust known as the Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley's Trust").


ANSWER

Tuesday, September 2, 2014

Page 3 of 66

ANSWER – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. There is not enough information at this time to determine if the Shirley Trust is a valid document created on that day or if it is another fraudulent document in a series of documents in both the Estates and Trusts of Simon and Shirley that have been fraudulently notarized, forged and more. That fraudulent documents were distributed by the Fiduciaries and Attorneys at Law to the beneficiaries and others and further posited with Court. The crimes were done by Officers of this Court, Attorneys at Law and Fiduciaries who used this Court in order to illegally seize Dominion and Control of the Estates and Trusts of Simon and Shirley by putting in place imposter Personal Representatives/Executors and Trustees and then once in control committing hosts of further alleged crimes. That the original Shirley Trust document is missing, along with other dispositive documents and has been suppressed and denied by the fiduciaries despite repeated requests to inspect and review it for evidence of further fraudulent activity. The former acting Attorney at Law, Co-Personal Representative, Co-Trustee of Simon’s Estate and Trusts, Manager of certain Bernstein family entities, Robert Spallina, Esq., has already admitted to Palm Beach County Sheriff Investigators¹ to having fraudulently altered a Shirley Trust document that attempted to change beneficiaries to benefit his client Theodore’s family which had no interests in the Shirley Trust and Simon Trust at the expense of beneficiaries that he is alleged fiduciary for. Spallina stated to Investigators, “That against his better judgment he altered the first page of the first amendment to the Shirley Bernstein trust agreement, before he turned it over to Yates [Eliot and his minor children’s counsel].”

The Court will remember that in addition to this fraudulent alteration of a trust document, Shirley’s Estate was also closed by a DEAD Personal Representative, Simon, who while DEAD was used by Spallina to submit false instruments to the Court that included illegally notarized and forged

¹ Palm Beach County Sheriff Report at [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/Sheriff%20Reports.pdf)

documents and acted alive while dead for months. This fraud on the Court illegally enabled Shirley's Estate to be closed fraudulently and changes made to her Estate by Simon acting as the PR/Executor POST MORTEM. These crimes are why Your Honor reopened the Shirley Estate and in part what led to Tescher and Spallina's removal from these matters in all fiducial and legal capacities in both the Estates and Trusts of both Simon and Shirley.

4. Shirley Bernstein was a resident of Palm Beach County, Florida when she created Shirley's Trust.

ANSWER – Admit in Part. Shirley was a resident of Palm, Beach County, Florida. Deny in part. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot cannot be sure that Shirley created the alleged Shirley Trust or if this is a further fraudulent document and evidence exists that it may be fraudulent and this evidence has been presented to the Court in the Probate cases before the Court currently for both Simon and Shirley were evidence of criminal misconduct has occurred in both.

5. An authentic copy of Shirley's Trust is attached as Exhibit "A".

ANSWER – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Trustee is aware of the fraudulent activity and to date has failed to take any actions to inspect or allow others to inspect the alleged documents, further suppressing and denying them so that it cannot be stated that this is an authentic copy of the original Shirley Trust. The Shirley Trust is also not complete as there are Schedules and Addendums referenced in the alleged Shirley Trust that are wholly missing and not attached to the Shirley Trust. These suppressed and denied Schedules and Addendums would allow the beneficiaries to see the corpus or Trust Res of the Shirley Trust. Without these items, the attached Shirley Trust is not an authentic copy of the Shirley Trust and all of its parts and what property was made a part of it.

6. Shirley's Trust, Exhibit A, is clear and unambiguous.

ANSWER – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Shirley Trust, along with all other dispositive documents in both Simon and Shirley’s Estates and Trusts, are not known to be authentic at all despite the alleged clarity and unambiguity of any language in them. Due to the fraud already committed, proven and admitted and other recently discovered evidence that shows the alleged Shirley Trust is a fraud, the whole document is challenged before the Court as being a part of a larger fraud to alter illegally the beneficiaries of the alleged Shirley Trust, Post Mortem. Changes attempted to be made years after the beneficiary class was irrevocably established. There are reasons to believe the Shirley Trust document also has been altered to add Theodore Bernstein as a Successor Trustee fraudulently, as part of the larger fraud to seize illegally Dominion and Control of the Shirley Trust and Estate. In fact, the language that states that Theodore is the alleged Successor Trustee, which is oxymoronic and contradicts other very specific language that states that for ALL purposes of the Shirley Trust and distributions made thereunder Theodore is considered DEAD. Why then would Shirley then make him a Successor Trustee, leaving the document both unclear and ambiguous?

7. Shirley Bernstein was survived by her husband, Simon L. Bernstein.

ANSWER – Admit.

8. The marriage between Shirley and Simon L. Bernstein was the first and only marriage for each of them.

ANSWER – Admit.

9. The marriage lasted 52 years, and during that time Shirley and Simon had five natural born children. Neither Simon nor Shirley had any other children.

ANSWER – Admit.

10. The five children of Shirley and Simon are Plaintiff Ted Bernstein, and Defendants Pamela B.

Simon, Eliot Bernstein, Jill Iantoni and Lisa Friedstein, each of whom is living, over the age of 18 and a lineal descendant of Shirley.

ANSWER – Admit in part and deny in part. Admit to the names of the five children of Shirley.

Deny the remainder. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that the alleged Shirley Trust became irrevocable after her death and has specific language that has removed both Theodore and Pamela and their lineal descendants from her definition of lineal descendant in the alleged Shirley Trust document. That Theodore and Pamela, and their lineal descendants, are considered PREDECEASED for all purposes of the purported Shirley Trust and for distributions made thereunder, making Theodore and Pamela currently for the purposes of the Shirley Trust no longer defined as living lineal descendants. The alleged language states clearly and unambiguously as follows;

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person.

Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, [emphasis added] however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal

ANSWER

Tuesday, September 2, 2014

Page 7 of 66

descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

That the alleged Trustee and his counsel are aware of this language in the alleged Shirley Trust and yet file an improper pleading with misinformation to this Court, despite language that clearly and unambiguously predeceases Theodore for all purposes of the alleged Shirley Trust and dispositions made thereunder, disqualifying him to be the alleged Trustee and make any distributions. That for this reason alone the alleged Trustee should instantly be removed and this complaint stricken other than allowing Eliot's Counter Complaint. Despite repeated requests for the alleged Trustee to resign, in light of this language and a long list of other reasons currently before the Court that make him unfit, the alleged Trustee Theodore continues to act despite knowing that he is not qualified at this time to be a fiduciary or make distributions thereunder. More astonishingly is that his Attorneys at Law have allowed their client to continue to act despite knowing that he is considered dead for all purposes of the Shirley Trust. The Court should also take note that similar language exists that predeceases Theodore in Simon's Trust. Again, Theodore, who is not named in the alleged Simon Trust as a Successor has now been illegally appointed Successor by his former counsel Tescher and Spallina who passed the baton to their close personal friend and business associate Theodore. This illegal and prohibited transfer to an unqualified party who was part of advancing their fraudulent schemes and benefitted their client Theodore set up a Successorship of Criminals. This illegal appointment that defies the language in the alleged Simon Trust has further illegally stymied and delayed inheritances and the administration of the Estate and Trusts of Simon, similar to what is occurring in the administration of Shirley's Estates and Trusts. This criminal Successorship committed by Tescher and Spallina who drafted the alleged Simon Trust and knew that Theodore was considered predeceased for ALL purposes of the Simon Trust and dispositions made thereunder and thus could not become a Successor Trustee.

ANSWER

Tuesday, September 2, 2014

Page 8 of 66

11. Shirley Bernstein was the original sole trustee of Shirley's Trust and, upon her death, was succeeded as sole trustee by Simon L. Bernstein.

ANSWER – Deny. Eliot lacks sufficient information, documents and knowledge, to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Again, due to the fraudulent documents and forgeries already proven and admitted in these matters can now be forensically analyzed and the originals produced for inspection, this alleged Shirley Trust is alleged to be part of a series of fraudulent documents and amendments that may be legally void.

12. Simon L. Bernstein died on September 13, 2012.

ANSWER – Admit.

13. Simon L. Bernstein was succeeded as sole trustee of Shirley's Trust by son Ted Bernstein, who presently serves as sole trustee of Shirley's Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot disagrees that Theodore could in fact be a Successor Trustee, as Shirley removed Theodore and considered him PREDECEASED for all purposes of the alleged Shirley Trust and distributions made thereunder. That for Shirley to have used that language explicitly to then construct the document to make Theodore an alleged Trustee to make distributions thereunder contradicts her explicit language and definitions that remove Theodore for ALL purposes, including making distributions and this reeks of further alteration of documents. In light of the many fraudulent and forged documents already uncovered, this oxymoronic contradiction of the alleged Shirley Trust terms, indicates that Theodore may have been inserted fraudulently into a copy of the original document in efforts to illegally seize Dominion and Control of the Shirley Trust. This document tampering aided and abetted by his former Attorneys at Law, Tescher and Spallina, who have already been removed for admittedly altering Shirley Trust documents to benefit their client Theodore and whose offices were

ANSWER

Tuesday, September 2, 2014

Page 9 of 66

involved in Notarization Fraud, Forgery, Fraud on the Court and Fraud on the beneficiaries and more already. Simon and Shirley had mirror estate plans. Eliot believes the Successor Trustee to Shirley's trust was Bill Stansbury, mirroring the original Simon Trust (recently uncovered and suppressed and denied until May 06, 2014 when it was turned over to the Curator Ben Brown) that named Bill Stansbury as Successor Trustee. Evidence suggests that Theodore was fraudulently inserted into the Shirley Trust in direct contradiction to the terms of the Shirley Trust that state that he is deceased for ALL purposes of the Shirley Trust and distributions made thereunder.

14. It is believed that Shirley Bernstein amended Shirley's Trust by executing a document titled "First Amendment to Shirley Bernstein Trust Agreement" dated November 18, 2008. An authentic copy of the First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 is attached as Exhibit "B". This First Amendment has no bearing on the issue in this case.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That the original of this alleged First Amendment document has also been repeatedly requested and denied to the beneficiaries. That Eliot states that this document has a MASSIVE BEARING on this case as it is a central component of the admitted fraudulent alteration of a Shirley Trust document committed and admitted to being altered by the alleged Trustee Theodore's former counsel, Spallina. Robert Spallina, Esq. admitted to the Palm Beach County Sheriff Department that he fraudulently altered this alleged First Amendment. This statement is further misinformation provided in this action to this Court to try to deny the importance of the fraud that has taken place by the Fiduciary Theodore and his minion of Attorneys at Law and attempt to cover up and gloss over the truth.

15. There is another document which purports to have the same title, "First Amendment to Shirley Bernstein Trust Agreement", which also purportedly is dated November 18, 2008. Such document,

which the Trustee first learned of in mid-January 2014, is not a valid amendment to the Shirley's Trust, and has no bearing on this issue in this case.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That the original of this alleged second First Amendment document has also been repeatedly requested and denied. Eliot states that this document has MASSIVE BEARING on this case, as it is central to the admitted fraud committed by the alleged Trustee's former counsel Robert L. Spallina, Esq. and was altered to include language that benefited Theodore's family directly by circumventing the Shirley Trust language that predeceased Theodore's lineal descendants. Spallina's admits to altering the alleged first Amendment to Palm Beach County Sheriff Investigators and states to them,

That against his better judgment he [Spallina] altered the first page of the first amendment to the Shirley Bernstein Trust agreement, before he turned it over to Yates [Yates is Christine Yates, Esq. of the law firm Tripp Scott who was acting on behalf of Eliot's minor children]... Spallina said that they noticed that the first page of the document skipped from one to three, so he took it upon himself to add in number two, before sending it to Yates. The change that number two made to the trust, amended paragraph E of Article III, making it read that only Ted and Pam were considered predeceased, not their children. He said the original trust states that Ted, Pam and their children are deemed predeceased. Spallina said he did this at this office in Boca Raton.

This fraudulent alteration of a Shirley Trust document done Post Mortem was used in addition to other fraudulently notarized and forged documents proven and admitted already in the Shirley Estate that his law firm, Tescher and Spallina, P.A. also illegally created for six parties, including one for Simon Post Mortem to advance the fraud with Yates and others. These crimes all worked to benefit the alleged Trustee Theodore and his respective lineal descendants by reinserting his lineal descendant back into the Shirley Trust illegally in order to then make illegal distributions of Shirley Trust properties that benefited Theodore and Pamela. The admitted alteration was done at the expense of the named and proper beneficiaries as defined in the irrevocable beneficiary class of the

alleged Shirley Trust and set in stone with her death three years earlier, which wholly excluded Theodore, Pamela and their lineal descendants from the Shirley Trust. This fraudulent alteration of a Shirley Trust document and claim by the Trustee that is not relevant to this actions is yet another example of Theodore and his counsel further misinforming this Court of the truth.

Ted was aware of this document prior to Jan of 2014 or else he could have never seen language that included his children in the Shirley Trust as he claimed to PBSO investigators in January 2014, as that language does not exist other than in the fraudulent amendment. Ted telling PBSO Investigators,

Ted stated that he did not read all of Shirley's Trust documents and that Spallina and Tescher had both told him several times how Shirley's Trust was to be distributed. Ted said that he did read in the documents where the 10 grandchildren were to receive the assets from the trust.

Ted retained Spallina and paid for his services as counsel to Ted in his alleged role as Trustee of the Shirley Trust and Spallina was providing legal advice to Ted. If Ted's counsel had knowledge of the fraudulently altered document and fraudulent language that permitted distributions to 10 grandchildren, then Ted had knowledge. Therefore, both Ted and Spallina were acting under this altered document language far before Spallina claims to have altered it in January 2013 and began selling assets and making distributions to improper parties as if the altered document existed. Again, NOWHERE in the alleged Shirley Trust is there any reference to 10 grandchildren getting distributions of the Shirley Trust as four of them were considered predeceased with their parents for ALL purposes of the Shirley Trust and distributions made thereunder.

16. With regard to the Shirley Trust, the only genuine and authentic trust documents signed by Shirley during her lifetime are Exhibits "A" and "B".

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Exhibits "A" and "B" are only copies and no original documents have been provided in four years to the

beneficiaries and have been denied, suppressed and withheld despite repeated requests to produce them for inspection and to forensically analyze their authenticity.

17. Pursuant to Shirley's Trust, upon Shirley's death, a "Family Trust" is created pursuant to Article II, ¶ C.1.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. No copies of this alleged Family Trust have been provided to beneficiaries despite repeated requests for it, in violation of Probate and Trust Rules and Statutes.

18. Pursuant to Shirley's Trust, no "Marital Trust" is created, as that term is used in Article II of Shirley's Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

19. Article II, ¶ E. 1. of Shirley's Trust granted to Shirley's surviving spouse, Simon L. Bernstein, a limited or special power of appointment over the Family Trust to or for the benefit of Shirley Bernstein's "lineal descendants and their spouses."

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot does not know what a "special" power of appointment is as it does not appear mentioned in the alleged Shirley Trust. What is special is that lineal descendants according to the alleged Shirley Trust definition provided already herein, are only Eliot, Lisa and Jill and their spouses, as again, Theodore, Pamela, their lineal descendants and spouses are considered predeceased for **all** purposes of the alleged Shirley Trust and distributions made thereunder, including any trusts created thereunder. The term "beneficiary" is clearly defined to be Family Trusts created for Eliot, Lisa and Jill and include the "Eliot Bernstein Family Trust Created on May 20, 2008" which was created, along with similar

Family Trusts for Jill and Lisa. NO Family trusts were created for Theodore and Pamela, as they and their lineal descendants are considered dead for ALL purposes of the Shirley Trust and distributions made thereunder.

ARTICLE II E.1

Disposition of Trusts Upon Death of Survivor of my Spouse and Me.
Upon the death of the survivor of my spouse and me,

1. **Limited Power.** My spouse (if my spouse survives me) may appoint the Marital Trust and Family Trust (except any part added by disclaimer from the Marital Trust and proceeds of insurance policies on my spouse's life) to or **for the benefit of one or more of my lineal descendants and their spouses** [emphasis added];

ARTICLE II E.2

2. Disposition of Balance. Any parts of the Marital Trust and the Family Trust my spouse does not or cannot effectively appoint (including any additions upon my spouse's death), or all of the Family Trust if my spouse did not survive me, **shall be divided among and held in separate Trnsts for my lineal descendants then living** [emphasis added], per stirpes. **Any assets allocated under this Subparagraph II. D. to my children (as that term is defined under this Trust), shall be distributed to the then serving Trustees of each of their respective Family Trnsts[emphasis added]**, established by my spouse as grantor on even date herewith (the "Family Trusts" which term includes any successor trust thereto), to be held and administered as provided under said Trusts. **The provisions of the Family Trusts are incorporated herein by reference**, and if any of the Family Trusts are not then in existence and it is necessary to accomplish the foregoing dispositions, the current Trustee of this Trust is directed to take such action to establish or reconstitute such applicable trust(s), or if the Trustee is unable to do so, said assets shall be held in separate trusts for such lineal descendants and administered as provided in Subparagraph II. E. below. **Each of my lineal descendants for whom a separate Trust is held hereunder shall hereinafter be referred to as a "beneficiary," with their separate trusts to be administered as provided in Subparagraph II. E. below** [emphasis added].

Clearly, the alleged language states that lineal descendants are only those defined, which include only Eliot, Jill and Lisa and their lineal descendants and exclude Theodore and Pamela and their lineal descendants as already defined herein. The power granted Simon was a "Limited Power" and not a "special" power. The alleged Shirley Trust by this language above referenced by the alleged

ANSWER

Tuesday, September 2, 2014

Page 14 of 66

Trustee, incorporates by reference the Family Trusts set up for Eliot, Jill and Lisa into the Shirley Trust. These Family Trust are not attached to the alleged Shirley Trust presented in this case, along with the other missing referenced Schedules and Addendums, making the claim that this is an authentic copy of the Shirley Trust a further misleading statement to this Court.

20. The Shirley Trust was funded by assets transferred to it during Shirley's life and also was funded by the residue of her estate.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that information and accountings have been suppressed, withheld and denied and not provided in both the Estate and Shirley Trust for **four years** to the beneficiaries, **IN GROSS VIOLATION and BREACH OF PROBATE and TRUST RULES and STATUTES** and thus it is unknown what was funded in the Shirley Trust. Again, Schedules and Addendums referenced in the alleged Shirley Trust are also suppressed and denied making it impossible to know what assets are part of the trust corpus or Trust Res. That Theodore in two years acting as the alleged Trustee has also failed to provide statutorily required accountings that are also required under the terms of the alleged Shirley Trust when demanded and again these requests to produce accountings have been denied.

That documentation regarding the information on the inventories provided in Simon and Shirley's Estates have also been challenged and alleged as part of the larger theft of assets of Simon and Shirley that are under ongoing investigations and civil and federal actions. The alleged Trustee, Theodore is the central suspect in **ALL** of these investigations, along with his sister Pamela and their minion of Attorneys at Law who have all participated in the already proven frauds and others alleged. Four of Theodore's Attorneys at Law are removed and resigned from these matters already, including the recent withdrawal of John Pankauski, Esq. and the Pankauski Law Firm PLC for irreconcilable differences with their client Theodore.


ANSWER

Tuesday, September 2, 2014

Page 15 of 66

21. After Shirley's death, the beneficiary of the Shirley Trust was Simon L. Bernstein during the remainder of his life.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same

22. Upon Simon's death, the Shirley Trust provided to Simon a Limited Power to appoint the trust's assets "to or for the benefit of one or more of my [Shirley's] lineal descendants and their spouses."

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states again that Shirley's lineal descendants and their spouses are clearly defined in the alleged Shirley Trust and specifically exclude for ALL purposes of the alleged Shirley Trust and distributions made thereunder, Theodore and Pamela, their lineal descendants and their spouses, all considered as PREDECEASED.

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

1. ... **Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, [emphasis added]...**

Again, what is important to note is the definition of lineal descendants, which is clear and unambiguous that Theodore, Pamela, and their lineal descendants are NOT lineal descendants of Shirley as defined as they are specifically excluded by name as living lineal descendant. That if Simon could have or allegedly attempted to make changes to the disposition of the Shirley Trust he could only make changes to the IRREVOCABLE beneficiary class established at her death.


ANSWER

Tuesday, September 2, 2014

Page 16 of 66

That further, the alleged Simon Trust that was later allegedly amended to amend language that was specifically deemed unamendable regarding Simon's limitations on Shirley's property added to his Simon Trust at her death, stated,

ALLEGED ORIGINAL 2008 SIMON L. BERNSTEIN TRUST

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

- A. Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. **However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise [emphasis added].**

Then, the alleged Simon Trust was fraudulently amended to leave out this language that prohibits Simon from attempting to amend or revoke anything to do with the Shirley Trust properties transferred to Simon in order to perpetrate a fraud and try to change through amendment that which could not be amended, as stated,

ALLEGED 2012 AMENDED AND RESTATED SIMON L. BERNSTEIN TRUST

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

- A. Rights Reserved.** I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

This Court must note that despite the Original 2008 Simon Trust language stating that no amendment could be made to change any property added by Shirley by Will or otherwise after her death, by any means, including revocation or amendment or otherwise, this prohibited amendment to Shirley Trust allegedly by Simon is exactly what was being attempted by allegedly amending Simon's Trust and attempting to then use those changes to attempt to change the Shirley Trust beneficiary class.

Even more telling of criminal intent in the Estates and Trusts with regard to this “special” power of Simon’s, is that in the alleged 2012 Amended and Restated Trust of Simon, drafted by Tescher and Spallina, there is language that STRICTLY LIMITS Simon’s power in regard to Shirley Trust properties. The language “However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.” was intentionally deleted from the alleged Amended and Restated Simon Trust, which language specifically prohibits revocation or amendment regarding Simon’s powers in regard to Shirley’s property.

Then, copies of the alleged original Simon Trust with that language in it was intentionally suppressed and denied from beneficiaries despite repeated requests, in order to hide the fact that Simon could do nothing to amend the Shirley Trust or make changes to her properties transferred or change her irrevocable class of beneficiaries once she died. The original alleged Simon Trust was not turned over to beneficiaries until this Court Ordered Tescher and Spallina to turn over all documents and properties to the newly appointed Curator Benjamin Brown, Esq. upon their resignations and removal. Where Brown then turned the alleged original Simon Trust over and this fraudulent alteration was then discovered when the language of the two documents could be analyzed side by side.

23. The Shirley Trust provides an alternate or default disposition for any parts of the trust that Simon does not or cannot effectively appoint: such assets “shall be divided among and held in separate Trusts for my [Shirley] lineal descendants then living, per stirpes.”

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states again that Shirley’s lineal descendants then living and their spouses specifically excludes for ALL purposes of the alleged Shirley Trust, Theodore and Pamela, their lineal descendants and their spouses and

considers them PREDECEASED and thus not living as clearly defined in number 19 above in the alleged language of II E. 2 and throughout the Shirley Trust.

24. Simon exercised his Special Power in Article II in the Will of Simon L. Bernstein dated July 25, 2012 (“Simon’s Will”).

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Everything Simon did allegedly to make changes in he and Shirley’s Estates and Trusts in 2012 is already challenged in this Court. Challenged for being Fraudulently created, alleged Forged, proven Improperly Notarized² and part of a larger fraud to seize illegally Dominion and Control of the Estates and Trusts and then loot the Estates and Trusts of Simon and Shirley through this series of fraudulent documents done POST MORTEM. Already several documents are proven POST MORTEM FORGED AND FRAUDULENTLY NOTARIZED. That again, there is no defined “Special Power” in the alleged Shirley Trust and Eliot has never heard of a “special” power appointment. What the Trustee is hesitant to make clear to this Court is that it was a VERY LIMITED POWER OF APPOINTMENT and the only permissible appointees under the limited power of appointment are Eliot, Jill and Lisa and their respective lineal descendants as already exhibited in the Section E.1 Limited Power of Appointment language cited already herein. It is unknown if Simon exercised this alleged Limited Power of Appointment or if it too was also done for him Post Mortem. From the PBSO report, it becomes clear that Simon was prohibited from making any changes to Shirley’s Trust and Spallina alleges that he drafted documents that were fraudulent and that made changes Simon COULD NOT LEGALLY DO, as stated to Palm Beach County Sheriff Investigators by Spallina when he claimed,

² The alleged 2012 Will and alleged 2012 Amended and Restated Trust of Simon have already been found by Governor Rick Scott’s Notary Public division to be improperly notarized so as it make it unknown if Simon appeared before the Notary, a one Lindsay Baxley, the alleged Trustees personal assistant. There are other severe problems with the construction of all of these documents Simon was alleged to have signed already pled to the Court in the Estate matters.

Spallina said that he explained to him [Simon] again, that only his trust, not Shirley's can go to both grandchildren, unless he takes all of the assets out of the Shirley Trust and puts them into his name...

New documents were drawn up for Simon's estate. These new documents gave everything to all 10 grandkids, he also exercised his power over Shirley's estate, leaving everything to all 10 grandkids, **even though legally he could not include Ted and Pam's kids because of the predeceased limitations.**

25. An authentic copy of Simon's Will is attached as Exhibit "C".

ANSWER - Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Exhibit C is a copy, no original has been provided in two years to the beneficiaries by the fiduciaries, both former removed fiduciaries and the alleged current fiduciary and it has been further been denied and suppressed despite repeated requests to produce it. In fact, it has been claimed by the Curator Benjamin Brown, Esq. to Eliot that no original document may exist and that an original Will was not provided in the production from the former fiduciaries upon their resignation and removal in Simon's Estate.

26. Simon's Will specifically references Shirley's Trust and the power given to him under subparagraph E.1 of Article II of Shirley's Trust. The relevant provision of Simon's Will reads:

Under Subparagraph E.1. of Article II of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, (the "Shirley Trust"), I was granted a special power of appointment upon my death to direct the disposition of the remaining assets of the Marital Trust and Family Trust established under the Shirley Trust. Pursuant to the power granted to me under the Shirley Trust, upon my death, I hereby direct the then serving Trustees of the Marital Trust and the Family Trust to divide the remaining assets into equal shares for my then living grandchildren and distribute said shares to the then serving Trustees of their respective trusts established under Subparagraph II.B. of my Existing Trust, as referenced below, and administered pursuant to Subparagraph II.C. thereunder.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states

that then living grandchildren Simon allegedly claims in the alleged 2012 Will can only refer to the grandchildren of the Shirley Trust that are lineal descendants as defined in her language, as Eliot, Lisa and Jill's children only. Simon was precluded under language of the original Simon L. Bernstein Trust dated May 20, 2008 from making any changes or amendments to his Trust in regard to Shirley's Trust property as stated in the opening of the document,

SIMON L. BERNSTEIN TRUST DATED MAY 20, 2008

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

- A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement. **However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.**

Further and not as if that is necessary but in formality to Answer this Toxic, Vexatious, Frivolous, Costly and Fraudulent pleading, as already stated, for all purposes of the alleged Shirley Trust(s) and distributions thereunder, Theodore, Pam and their lineal descendants, also known as grandchildren are considered predeceased for all distributions made thereunder. Do note the use of a lower case g in grandchildren in the language cited by the Trustee, the term grandchildren is not defined by Simon to be the 10 grandchildren in his alleged 2012 Will as it is not capitalized. Nor did Simon name or number the grandchildren in any way to equal the 10 grandchildren in the language cited and even if he did it was impermissible for him to take make changes to Shirley's Trust property. Therefore any power he granted himself under a newly drafted amendment was Limited in the original trust, as the Limited Power was intended ONLY for the living grandchildren defined specifically to exclude Theodore, Pamela and their lineal descendants under the Shirley Trust, thus it could only refer to Eliot, Lisa and Jill's six children, of which Eliot has three. Therefore, the above language referenced was knowingly and with scienter unlawfully created and inserted into the document by Robert

ANSWER

Tuesday, September 2, 2014

Page 21 of 66

Spallina and Donald Tescher to wrongfully benefit their client and close bedfellow Theodore Bernstein and business associate Pamela Simon in their creation of these premeditated frauds.

Spallina in fact stated to PBSO Investigators,

New documents were drawn up for Simon's estate. These new documents gave everything to all 10 grandkids, **he also exercised his power over Shirley's estate, leaving everything to all 10 grandkids, even though legally he could not include Ted and Pam's kids because of the predeceased limitations.**

Here in black and white Spallina admits that Simon COULD NOT LEGALLY INCLUDE TED AND PAM'S CHILDREN for distributions of the Shirley Trust property because of the "PREDECEASED LIMITATIONS." Yet, here in this newly filed complaint we have the alleged Trustee Theodore, now aided and abetted by Alan Rose, trying to claim that there were no predeceased limitations and that distributions could be legally made to include Theodore and Pamela's kids. This statement despite Spallina's statement to PBSO claiming it could not legally be done and where Spallina drafted the document for Tescher, who better to tell Alan Rose that this cannot be legally done and what he is attempting through this felonious legal pleading is merely further legal process abuse.

This time the attempt to commit the fraud is to make the clearly illegal distributions now appear legal through a cleverly crafted word fraud constructed in this TOXIC, VEXATIOUS, FRIVOLOUS, COSTLY and FRAUDULENT pleading attempting to claim the fraudulent distributions made already are legal by cutting and pasting partial statements, wholly out of context. The fraud Spallina claims was illegally committed by Simon, was done despite he and his partner Tescher knowing this language was prohibited and fraudulent, claiming apparently that his legal work aided and abetted and allowed Simon to commit a fraud. Simon loved his wife Shirley profusely as noted for 50+ years and would never under any circumstances attempted to dishonor her last wishes and desires steeped in fraud. Eliot states this whole document, allegedly done days before Simon died, was in fact

another fraudulent and forged document that came Post Mortem. Where all witnesses to the documents alleged execution have already either been arrested and convicted of fraudulently notarizing documents or admitted to fraudulently altering trust documents and thus have NO CREDIBILITY FORWARD in attesting to the documents.

Further, the Notarization failed to state if Simon was present at the signing and this done by Theodore's assistant Lindsay Baxley. The language in the alleged original Simon Trust, specifically stated that Simon was also unable to amend or revoke anything in regard to the properties of the Shirley Trust transferred to him upon her death. This language prohibiting any changes through amendment, revocation or otherwise was intentionally omitted when the Simon Trust was allegedly amended. Then to cover up their fraud Spallina, Tescher and Theodore suppressed and denied the original Simon Trust to advance the fraud hiding the illegal amendment to the original trust, as already exhibited herein.

27. In essence, through his Special Power, Simon directed Shirley's Trustee to divide the remaining trust assets into equal shares for his then living grandchildren, to be added to trusts established for each such grandchild under Simon's Trust.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that "in essence" despite any "special" power the only living grandchildren in reference to Shirley Trust property can only include grandchildren that are her defined living lineal descendants, Eliot, Lisa and Jill. Again, as already stated, for ALL purposes of the alleged Shirley Trust(s) and distributions thereunder, Theodore, Pam and their lineal descendants, also known as grandchildren have been considered PREDECEASED and thus Simon could not legally make any changes to alter the irrevocable beneficiary class or make distributions to any other parties. That Eliot further claims that Simon could not alter the Beneficiary Class of Shirley's Trust once it became irrevocable. That the

Shirley Trust does not provide provision for Simon to illegally convert and distribute assets of the IRREVOCABLE Shirley Trust from her designated class of beneficiaries to newly created trusts executed POST MORTEM of Simon through Simon's alleged Will and Trusts. Spallina stated to PBSO,

He [Spallina] told Simon (Si as he called him) that he could not make those changes to Shirley's Trust because she had wrote Ted and Pam and their children as predeceased in her Trust. Spallina reiterated that Simon can do whatever he wants with his estate, but all he can do with Shirley's Trust is give it to Lisa, Jill, and Eliot's children.

The alleged 2012 Simon Trust is further not a valid legal document as it is already proven improperly notarized and suffers from other construct defects already pled to this Court and currently before the Court in the Simon and Shirley Estate matters.

28. The persons identified by Simon, "his then living grandchildren," all appear to be among the class of permitted appointees as defined in the Shirley Trust to be Shirley's "lineal descendants and their spouses".

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. This statement hinges on the word "appear" when in fact the living grandchildren in regard to the Shirley Trust property legally appear to be ONLY the living grandchildren of Shirley as defined in her irrevocable beneficiary class of Eliot, Lisa and Jill. Again, Theodore, Pamela, their lineal descendant and their spouses, Deborah Bernstein and David B. Simon, are ALL considered PREDECEASED AND NOT LIVING for all purposes of the alleged Shirley Trust and distributions made thereunder and Simon was precluded specifically from amending or altering the Shirley Trust property as illustrated already herein.

The word grandchildren is not capitalized nor defined in the Simon Trust language so obviously if he exercised this power, he was referring only to the grandchildren of Eliot, Lisa and Jill as those were

the only legally permissible grandchildren, as Theodore and Pamela's children were considered predeceased for ALL purposes of the Shirley Trust and distributions made thereunder. Per the terms of the Shirley Trust therefore the only legal permissible appointees under the Shirley Trust are the living grandchildren of Eliot. Jill and Lisa whose shares could be adjusted only by Simon through his Limited Power and NO NEW PARTIES could be added once Shirley's Trust beneficiary class became irrevocable.

29. Because Simon exercised his power of appointment, the assets in the Shirley Trust do not pass under the Shirley Trust to the alternate, default beneficiaries: "my lineal descendants then living, per stirpes."

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Simon cannot effectively appoint assets outside of the permissible appointees of the irrevocable class of beneficiaries defined under the alleged Shirley Trust.

The beneficiaries of the alleged Shirley Trust are family trusts created on May 20, 2008 for ONLY Eliot, Lisa and Jill as defined in the IRREVOCABLE alleged Shirley Trust. This Class of Beneficiaries is therefore closed and unchangeable, despite what Simon is alleged to have attempted to do. Again, Theodore, Pamela, their lineal descendant, their spouses (Deborah Bernstein and David B. Simon, Esq.) are ALL considered PREDECEASED AND NOT LIVING for all purposes of the alleged Shirley Trust and distributions made thereunder and are not permissible appointees or distributees. Simon was specifically precluded from amending or revoking anything in the Shirley Trust or distributions made thereunder in Article 1, Section A of his alleged original Simon Trust he executed with Shirley while they both were alive, as it stated prior to amendment, which was prohibited,

SIMON L. BERNSTEIN TRUST DATED MAY 20, 2008

ANSWER
Tuesday, September 2, 2014
Page 25 of 66

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise.

30. The class of permissible appointees for Simon's power (Shirley's "lineal descendants and their spouses") is different that the class of alternate/default beneficiaries (Shirley's "lineal descendants then living, per stirpes").

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That if Simon's alleged LIMITED POWER OF APPOINTMENT class of permissible appointees is different that Shirley's Trust, which it is not it still would it would not matter, as Shirley's IRREVOCABLE Class of beneficiaries is defined and irrevocable upon her death. Nothing Simon allegedly did after her death to change that could alter the IRREVOCABLE Class of Shirley's beneficiaries, as he was limited and under Section I, Article A of the alleged Simon Trust, he could not amend or change anything in regards to Shirley's Trust property, including who it was to be distributed to under the Shirley Trust. That the appointees allowable were unchangeable after her death by any party, even one alleging new or "SPECIAL" or magical powers subsequently created. That this would be a construction flaw in Simon's alleged 2012 Amended and Restated Trust done allegedly 48 days before his passing while he was medically unfit to even make changes being of unfit mind and body at that time as pled to this Court in the Simon and Shirley Estate cases already before this Court.

31. Because Simon L. Bernstein exercised his Special Power in favor of his [and also Shirley's] grandchildren, none of Shirley's and Simon's children is a beneficiary under the Shirley Trust. Thus,

ANSWER

Tuesday, September 2, 2014

Page 26 of 66

it appears that neither Ted, Pam, Eliot, Lisa or Jill are to receive any portion of the assets in the Shirley Trust.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. There is no "special" power of appointment granted to Simon in the alleged Shirley Trust, only a **LIMITED** power of appointment for a permissible class of appointees defined in Shirley's definition of lineal descendants to exclude Theodore and Pamela and their lineal descendants. Any language to the contrary in any amended document of Simon is procured in fraud and drafted by Robert Spallina and Donald Tescher to unlawfully benefit their client and business associate Theodore Bernstein and business associate Pamela Simon and their respective lineal descendants who were disinherited in the Shirley Trust. Eliot states that Simon and Shirley's definition of grandchildren in the alleged dispositive documents referenced is different and so the alleged Trustee and his counsel, through careful wordsmithing games try now to mislead the Court that their grandchildren are similar for distributions made under the alleged Shirley Trust. From this false statement of the alleged Trustee he then leaps to an invalid conclusion based on the faulty premise claiming Eliot, Lisa and Jill are not to receive any portion of the assets in Shirley's Trust, knowing that in no way could Simon change the class of beneficiaries from Eliot, Jill and Lisa to **ANY OTHER PERSON OR PERSONS**. That Simon's ability to replace Eliot, Lisa and Jill with their children **ONLY** as beneficiaries after Shirley's death is already challenged as well and will have to be determined by this Court if such attempted change is legal. This determination of course can only be done once the dispositive documents are **FINALLY TURNED OVER** and are analyzed for further evidence of forgery and fraud to see if they have also been tampered with and determinations are made as to what documents will ultimately prevail. That Eliot, Jill and Lisa and their lineal descendants are the only beneficiaries under the Shirley Trust once


ANSWER

Tuesday, September 2, 2014
Page 27 of 66

it became irrevocable at her death, the beneficiary class forever closed and any attempt by Simon to change this would have been through knowingly fraudulent acts.

32. Pursuant to Article IV.C.1., upon Simon's death, Ted became the Successor Trustee of the Shirley Trust. Ted also serves as the Successor Personal Representative of Shirley's Estate.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Theodore references the alleged Shirley Trust where documents are admitted altered and tampered with already and Eliot has no belief in the validity of any parts of the Shirley Trust at this time. That Theodore is alleged to have become Successor through further alleged fraudulent alteration and fabrication of the Shirley Trust documents in order to illegally gain Dominion and Control of the trust with his sister Pamela and their minion of Attorneys at Law who aided and abetted in the frauds. **THEODORE IS CONSIDERED PREDECEASED FOR ALL PURPOSES OF THE ALLEGED SHIRLEY TRUST AND DISTRIBUTIONS MADE THEREUNDER AND THUS CANNOT BE A TRUSTEE AS HE IS DEAD.** Therefore, despite what any ALLEGED documents may say, Theodore is not now or ever was qualified to act as Trustee by the very terms of the alleged Shirley Trust document he acts under and in addition to the language that precludes him there are now a host of legally valid other reasons already presented to this Court that make him unfit to serve in any fiducial capacities in either Simon and Shirley's Estates and Trusts. The other reasons, include but are not limited to, conflicts of interests and adverse interests (to Eliot especially who has uncovered all these frauds and other crimes and is pursuing Theodore with criminal authorities and civil authorities) that prohibit his continued acts in any fiducial capacity in the Estates and Trusts of Simon and Shirley. Further, Theodore and his predecessors failure to account in violation of Probate and Trust Rules and Statutes and his direct involvement in the prior fraudulent activities with his Counsel that benefited him directly. Theodore further claimed to the Palm Beach County Sheriff

Investigators that he did not read the trust document he was operating under and only acted to make distributions on the advice of his counsel Spallina, which is directly contradicted by Spallina's statements to Palm Beach County Sheriff Investigators where he claims that he advised Theodore NOT to make distributions. Theodore stated to investigators as cited in the Palm Beach County Sheriff Report,

He [Theodore] said that Tescher and Spallina told him after his father's death that he was the Trustee for his mother's estate. He said over many in person meetings and phone calls he was given guidance by the attorneys on how to perform his duties as Trustee, because this was all new to him. He had never been in this role before. He stated he was not provided a checklist or book on how to perform these duties... **Ted stated he did not read all of Shirley's trust documents** [emphasis added] and that Spallina and Tescher had both told him several times how Shirley's trust was to be distributed. Ted said that he did read in the documents where the 10 grandchildren were to receive the assets of the Trust.

Spallina then stated to investigators,

Spallina stated that against his advice, a distribution was made from one of the trusts after Simon's death. He stated that he advised against this and when Simon passed a former partner filed a claim against the Estate for \$2,500,000... He [Spallina] said that in September of 2013, \$80,000 was distributed to each of the seven trusts, which is a total of \$560,000. Spallina reiterated that Ted was told not to make distribution.

That the Court should note that either Ted cannot read or had read the fraudulently altered first amendment, prior to when Spallina claims anyone knew about the document in January 2014 when he confessed to altering the document to add language to include illegally Theodore and Pamela's children back in. NOWHERE in the alleged Shirley Trust does it state that distributions are to be made to the 10 grandchildren as Ted claims and then acted to make such unlawful and prohibited distributions to his and Pamela's family.

Eliot also states that before this frivolous, vexatious and premature action was taken by the Trustee in filing this ridiculous construct action, Eliot filed a Counter Complaint in yet another frivolous and

ANSWER
Tuesday, September 2, 2014

Page 29 of 66

vexatious action filed and now before the Court, in the Oppenheimer v. Eliot and Candice Bernstein lawsuit. The Oppenheimer lawsuit directly relates to the nexus of past and present frauds committed in the Estates and Trusts of Simon and Shirley and involves their Estate and Trust documents but was filed in a separate action and sought no relation to the Estate actions. Eliot countersued the Shirley Trust in his Counter Complaint and thus this action for construction should have been filed in that case where the Shirley Trust is already a Defendant, along with Theodore, Alan Rose and others. Eliot asks the Court to relate ALL of these related cases to avoid further WASTE, FRAUD AND ABUSE OF PROCESS. The Oppenheimer lawsuit has counts against Theodore and his minion of Attorneys at Law for Breach of Fiduciary Duties, Interference with an Expectancy, Legal Malpractice, Theft and more, all making Theodore further unqualified to act as fiduciary any longer, as pled in numerous pleadings filed by Eliot and the Creditor Stansbury in the Simon Estate currently before the Court.

The next item up to be heard in the Estate of Simon are the motions to remove Theodore as a fiduciary, including a motion for Your Honor to make the decision on your own initiative under Fl. Statute 736, due to recent information showing assets under Theodore's control as fiduciary are now missing, mismanaged, unaccounted for and probably stolen. Evidence learned in a hearing before this Court revealed that Theodore and his counsel Alan Rose did not know where assets of the Simon Estate were after the sale of Shirley's condominium. This lack of accountability for assets under Theodore's control led to an Order from this Court over two months ago in the Estate of Simon for re-inventorying the assets and that Order has not been complied with and is being evaded.

After the Court Order to re-inventory the missing assets at Simon's other home in Saint Andrews Country Club, where Alan Rose and Theodore claimed the furniture and other effects had been taken after the illegal sale of Shirley's condominium, in a deposition of Donald Tescher he claimed the personal property of Simon's was sold with the condominium, directly contradicting Theodore's

ANSWER

Tuesday, September 2, 2014

Page 30 of 66

prior statements to the Court and directly contradicting the final accounting Tescher and Spallina filed with the Court in Simon's Estate where the assets are listed as still owned by the Estate.

33. Sometime after Simon's death, a significant asset of Shirley's Trust (a condominium) was sold. The decision was made to make a partial interim distribution to all of the beneficiaries of the Shirley Trust. At the time of this decision, the Trustee was not aware of any question or issue as to Simon's right to appoint the assets to his ten grandchildren.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that the condominium was an asset of the alleged Shirley Trust that was ONLY to be distributed to her legally qualified beneficiaries at the time, which the alleged Shirley Trust clearly defines as Eliot, Lisa and Jill and their lineal descendants. That at the time the condominium was sold, Theodore signed forms, including tax forms while acting as the alleged PR of the Estate of Shirley. That at that time he sold the condominium Theodore was not the successor PR and not appointed by the Court. This was in large part due to the fact that NO successor PR was chosen when Simon died to replace Simon as they needed Simon to **appear** alive while executing POST MORTEM changes to his and Shirley's dispositive documents. Then almost defying belief, Simon, while dead, was further used by Attorneys at Law Tescher and Spallina to close the Estate of Shirley while he was DEAD, yes, DEAD and the Court was not notified of his death and no Successor was legally appointed or accepted such position. These FRAUDS ON THE COURT were done as part of the larger fraud to illegally seize Dominion and Control of the Estates and Trusts through a series of POST MORTEM FORGED AND FRAUDULENT DOCUMENTS POSITED BY A DEAD PR. The series of fraudulent documents include documents that were forged and notarized by Simon Post Mortem and that were posited for him with the Court while he was dead for four months and whereby nobody notified the Court that he was DEAD and nobody elected a new PR to legally close the Estate. That

ANSWER

Tuesday, September 2, 2014

Page 31 of 66

this Fraud on the Court of using a DEAD PR to close the Estate of Shirley led this Court to reopen the Estate of Shirley and further delay and stymie expected inheritances of Eliot. In the September 13, 2013 hearing where Your Honor first learned of these frauds on this Court, Your Honor issued the statement that you had enough evidence there and then to read Miranda Warnings to Theodore, Spallina and Tescher. That all distributions made from this sale were made after Theodore and the others who took them knew at the time that their own names had been forged and documents of theirs and their father were fraudulently notarized and forged. Yet, none of them contacted the authorities once they had this knowledge that the documents were fraudulent making them all further unqualified to act in any fiduciary matters they claim in this lawsuit and cause for all of them to be reported by this Court to the proper authorities and have Guardians appointed for their children's protection, as many of the alleged crimes have Theodore and Pamela attempting to take monies they claim are due to their children, instead to themselves without their children's knowledge as the Federal Illinois insurance action in Simon's estate will further prove.

34. The Trustee attempted to make a partial interim distribution to the trusts for all ten living grandchildren of Simon, into a separate trust for each grandchild under the Simon L. Bernstein Trust Dtd 9/13/12, with the respective parent of each grandchild as the trustee.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Trustee made distributions to Simon's grandchildren, which the Trustee knew were not the same as Shirley's grandchildren by definition in the alleged Shirley Trust document he operates under, which is a defined and closed Beneficiary Class of Eliot, Jill and Lisa and their lineal descendants only, as already defined herein. This conversion and comingling of funds benefited Theodore the most and this is a classic conflict of interest where the Trustee is acting to benefit himself rather than the true and proper legally qualified beneficiaries. How can Theodore be Trustee if he is fighting to have

language that his attorney Spallina fraudulently fabricated or else does not exist now inserted into an irrevocable trust or attempt to reconstruct the trust to include himself and his children at the expense of other defined beneficiaries, to the tune of converting approximately 33% percent of the sale price of the condominium alone to his family, again a classic conflict that cannot be parsed or allowed and violates Probate and Trust Rules and Statutes and further reason for his removal instantly by this Court in any alleged Fiducial capacity in Simon and Shirley's Estates and Trusts. Monies therefore were knowingly and illegally converted and comingled to Theodore and his sister Pamela's lineal descendant in violation of the terms of the alleged Shirley Trust. That monies from the alleged Shirley Trust were taken out and distributed to Post Mortem Trusts allegedly created by Simon, created allegedly on the day he died but Eliot as of this date has never received a trust instrument for him to review but has been urged to take distributions blindly to it and waive all rights in so doing. Shirleys trust is clear that she and her spouse provided for Theodore and Pamela and their lineal descendants during her lifetime and were to receive NOTHING.

35. The Trustee was able to complete the partial interim distributions to the trusts for seven of the ten living grandchildren of Simon, but not to Eliot's children. Despite having tried on numerous occasions, the Trustee was unable to make a partial interim distribution to the trusts for the other three living grandchildren (Eliot's minor children) because Eliot refused to accept these distributions. **ANSWER – Deny.** Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot did not refuse to accept the "partial interim distributions" for any reason other than the way they were structured was through FRAUD and based on fraudulent, forged and fabricated documents. Eliot, as he stated to Judge Colin in the September 13, 2013 hearing, would not participate in the same FRAUD that his siblings did and convert and comingle funds illegally to knowingly improper beneficiaries or waive any rights in receiving those distributions or release the trustee for making

ANSWER

Tuesday, September 2, 2014

Page 33 of 66

those distributions illegally. Eliot, after seeking the Court's approval to take knowingly fraudulent distributions for the condominium transaction was not given such blessing by Hon. Martin Colin after careful review of the situation would not give his judicial blessing on the transaction to make it legally approved for Eliot to take such fraudulent distribution without giving any implied consent or waiving his rights to sue others for their fraud.

36. The Trustee believes that there is a disagreement between and among the children and grandchildren of Shirley Bernstein as to effect of the exercise of the power of appointment by Simon L. Bernstein and which persons are entitled to receive a distribution from the Shirley Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Robert Spallina even admits that the powers cited were not permissible and Simon's Trust was thus restated unlawfully based on fabricated documents he prepared for his client.

The alleged Trustee and his minion of Attorneys at Law that he personally brought into the Bernstein family affairs has participated in creating the disagreement with intent and scienter so as to benefit his family personally and to gain 33% of a beneficial interest in something that he and his children are prohibited from having by the express language in the alleged Shirley Trust. Simon's alleged power of appointment has not been verified at this time to be a legally qualified power, as the very document it comes from, the 2012 alleged Amended and Restated Trust is improperly notarized and constructed This may be evidence of a premeditated attempt to either force Simon to sign documents while he was suffering mental and physical symptoms that were unexplainable by his doctors, starting approximately 60 days before his death and lasting until his final breath or to his alleged murder (where MURDER was alleged to PBSO by Theodore the day Simon died, see PBSO Report at [www.iviewit.tv/Sheriff Reports.pdf](http://www.iviewit.tv/SheriffReports.pdf) and Theodore pointed the finger and accused Simon's girlfriend of poisoning him). The documents allegedly signed 48 days before his death cannot even

be shown to have been signed by Simon at all that day, as the notary failed to state such appearance and to further complicate matters, all the potential witnesses to the documents allegedly signed by Simon are involved directly in the proven Fraudulent Notarizations done POST MORTEM, the admitted Alteration of trusts documents done POST MORTEM and the admitted Forgeries done POST MORTEM. All these 2012 documents are under ongoing investigations and have been challenged before the Court. The Trustee and others who took ILLEGAL INTERIM DISTRIBUTIONS knowingly, knew what they were doing and that everything was challenged and that their names had been forged and fraudulent notarizations affixed upon documents in the Estate of Shirley, in fact, Eliot specifically notified them all not to make any distributions to the grandchildren at all until the Court and investigators could determine what the effects of the fraudulent documents were and if they could change in any way the Shirley Class of Beneficiaries. Instead, they rushed to take the monies and were advised by Theodore, Spallina, Tescher, Manceri and Rose that the distributions were legal, despite their knowledge that they had committed fraud to achieve the illegal distributions.

37. The disagreement and dispute involves the interpretation of the Shirley Trust and the construction of Article III.E.1 of Shirley's Trust, which defines who is Shirley Bernstein's "child", "children", and "lineal descendant" "for the purposes of the dispositions made under this Trust."

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. There is no disagreement or dispute involving the Shirley Trust or its construction, other than the document appears as fraudulent and more, as it was Irrevocable and its beneficiary class sealed and so Tescher, Spallina, Theodore, Pamela and others decided to create disputes to enable them to convert and comingle funds that benefited them all to the detriment of the true and proper beneficiaries.

ANSWER

Tuesday, September 2, 2014

Page 35 of 66

38. Article III.E.1 of Shirley's Trust states that, "for purposes of the dispositions made under this Trust, my children, Ted S. Bernstein ("TED") and Pamela B. Simon ("PAM") and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me [Shirley]".

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That again, the actual language states in full,

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

1. Children, Lineal Descendants. The terms "child," "children" and "lineal descendant" mean only persons whose relationship to the ancestor designated is created entirely by or through (a) legitimate births occurring during the marriage of the joint biological parents to each other, (b) children and their lineal descendants arising from surrogate births and/or third party donors when (i) the child is raised from or near the time of birth by a married couple (other than a same sex married couple) through the pendency of such marriage, (ii) one of such couple is the designated ancestor, and (iii) to the best knowledge of the Trustee both members of such couple participated in the decision to have such child, and (c) lawful adoptions of minors under the age of twelve years. No such child or lineal descendant loses his or her status as such through adoption by another person. Notwithstanding the foregoing, as I have adequately provided for them during my lifetime, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), and their respective lineal descendants shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their lineal descendants all predecease the survivor of my spouse and me, then TED and PAM, and their respective lineal descendants shall not be deemed to have predeceased me and shall be eligible beneficiaries for purposes of the dispositions made hereunder.

39. At the time of Simon's death, there were ten grandchildren who were alive: Alexandra Bernstein, Eric Bernstein, Michael Bernstein, Molly Simon, D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

ANSWER - Admit.

ANSWER

Tuesday, September 2, 2014

Page 36 of 66

40. If the exclusionary language of Article III.E.1 of Shirley's Trust applies to Simon's exercise of his Special Power, then Simon's then living grandchildren, at the time of his death, could be construed to include only D.B., Ja. B., Jo. B., J.I., Max Friedstein and C.F.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That again the language cannot be relied upon as the authenticity of the dispositive document referenced is challenged in toto at this time as being a Fraud and Forged document, along with the many others already proven and admitted to as Forged and Fraudulent. The definitions in the alleged Shirley Trust appear to be clear regarding permissible appointees as Eliot, Jill and Lisa and their lineal descendants only.

41. If the exclusionary language of Article III.E.1 of Shirley's Trust does not apply to Simon's exercise of his Special Power, then the appointment would be in favor of all ten grandchildren identified in ¶40.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That again the language cannot be relied upon as the documents authenticity in toto is challenged as being a Fraudulent and Forged document, along with the many others already proven and admitted to as Forged and Fraudulent. The definitions in the alleged Shirley Trust are clear that Simon has a limited power of appointment over permissible appointees defined as Eliot, Jill and Lisa and their lineal descendants only. Simon's alleged "Special" power is alleged to have been done almost two years after Shirley's death and may have been done POST MORTEM as alleged and despite the alleged magical nature of this document that makes it "Special" it was only referencing the LIMITED POWER granted under the alleged Shirley Trust and thus could not favor any party other than her irrevocable class of beneficiaries, Eliot, Jill and Lisa and their lineal descendants. Simon

could not alter or change this irrevocable class of beneficiaries to any other parties and Spallina and Tescher who drafted this alleged language would have been perpetrating a fraud if they tried to make Simon have "Special" magical powers to break the law. Again, it appears this "Special" power where it is known that there are only "limited" and "general" powers of appointment, appears to be an attempt by Spallina and Tescher to make a new power not defined in law that has "Special" powers of committing FRAUD. Now after being busted and admitting to authorities that these changes to the Shirley Trust could not be done, THEODORE and his COUNSEL, both involved directly in advancing the proven and admitted frauds to benefit THEMSELVES, attempt to CON this Court into attempting to rewrite the Shirley Trust and commit further FRAUD ON THE COURT and FRAUD on the BENEFICIARIES through this legal process abuse in efforts to make the PRIOR PROVEN AND ADMITTED FRAUD LEGAL through this TOXIC, VEXATIOUS, FRIVOLOUS, ABUSIVE, COSTLY and FRAUDULENT pleading. What can one expect when their lives hang in the balance as without this Court making "Special" powers legal that are not, they are going to jail for their acts, which makes them further conflicted, adverse and retaliatory to the beneficiaries, adverse to the wishes and desires of the decedents and further reason for Theodore's removal as a Fiduciary in all capacities in the Estates and Trusts of Simon and Shirley and for Alan Rose's removal as the Attorney at Law for the alleged Trustee Theodore. That this Court needs to now report Theodore and his counsel to the proper authorities for this attempted Fraud on the Court to pass further fraudulent documents to the Court and attempt to have the Court approve the criminal FRAUDULENT DISTRIBUTIONS already made and miraculously provide an illegal "Get Out of Jail Free Card" by further violating law and this Court by attempting to make a crime now legal.

42. A telephone conference occurred in May 2012 between and among Simon L. Bernstein, his lawyer Robert Spallina, each of Shirley's and Simon's children (Ted, Pam, Eliot, Jill and Lisa), and some or all of their spouses.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that Donald Tescher was also on the line and participated in the phone call.

43. Based upon the discussions during that telephone call, there is no uncertainty that Simon L. Bernstein advised each of his children that Shirley's and Simon's wealth was going to be divided equally among all ten grandchildren.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that Simon did say on a phone call with his children that he was considering changing he and Shirley's plans and asked for agreement in principle before making any changes. If the proposed changes could be legally done, where it is now confessed by Spallina that he knew this legally could not be done, it would have divided the Estates and Trusts of Shirley equally among all ten grandchildren. This meeting was really about Simon asking Eliot, Jill and Lisa ONLY, if they would be willing to give up their 1/3rd interests in the Estates and Trusts of Simon and Shirley as they were the only beneficiaries at the time, in order to have the abuse by Theodore and Pamela as defined herein stop. These changes briefly contemplated by Simon were to be in exchange for Theodore and Pamela agreeing to stop their abuse of Simon and stop pressuring him to make changes to put them back into the Wills and Trusts or they would continue withholding their children from seeing him and using them as pawns to force the changes. Threatening that if Simon did not comply with their demands for changes he would never see four of his ten grandchildren again.

There was a concurrent extortion of Simon for several months leading up to the meeting in addition to the one being waged by Theodore and Pamela to make the changes, which was engaged in by four of five of Simon's children, Theodore, Pamela, Jill and Lisa. This extortion again used their children's as pawns so that if Simon did not comply with their demands to either stop seeing his

girlfriend, Maritza Puccio Rivera they and their children would not see Simon. Simon would not stop seeing his girlfriend, Simon refused to make changes to his and Shirley's Estates and Trusts and Theodore, Pamela, Lisa and Jill and their children did not see Simon for almost a year and half over this. All of this starting almost immediately after the loss of his wife and carrying on for over a year and half and the withholding of his grandchildren started almost immediately after Shirley's death when Theodore and Pamela were unscrupulously informed by Tescher and Spallina that they were entirely disinherited with their lineal descendants. This rage despite the reason stated being that they had already been fully compensated for millions upon millions of dollars by acquisition of family businesses and more while Simon and Shirley were living. The other three children and their children had not.

The rage caused by this release of this private, highly sensitive and confidential information about their being disinherited in the Estates and Trusts of both Simon and Shirley was done without Simon's consent by Spallina and left Simon a sitting or possibly a dead duck, see Pamela's Attorney Letter to Simon www.iviewit.tv/20111128PamelaLettertoSimonHeriaud&Genin.pdf after learning of her and Theodore and their lineal descendants disinheritance, fully incorporated by reference herein. That this Court should note that Simon may have been being drugged or poisoned at the time of the meeting as Theodore alleged to Palm Beach County Sheriff Investigators on the day Simon died that he was being poisoned³, as defined herein and this drugging and poisoning may have been started months before his death.

That this Court should note that Simon was under so much duress from this elder abuse that he sought mental health treatment from Patricia Fitzmaurice LCSW, due to mental duress, stress and fear caused by four of his children and from the pain from the extortion with his children withholding his grandchildren was causing him. This was like the death of 11 of 14 of his living direct lineal

³ September 13, 2012 Palm Beach County Sheriff Report @ www.iviewit.tv/Sheriff Reports.pdf pages 24-27, fully incorporated by reference herein.

descendants. Eliot and his family while have been requested to join the abuse of their father and withhold his children in protest too, flatly refused to participate in the cruelty as he loved and respected his father and mother until the day they died, along with Eliot's lovely wife Candice and their three children.

That Spallina in the meeting inferred at the time that all the changes could legally be done, despite later claiming he advised Simon that he could not make the changes, however this admission only came after the Sheriff came knockin. The fact that the Shirley Trust was irrevocable and that Eliot, Lisa and Jill were the only beneficiaries of the Shirley Trust and Simon could not change this and thus to change this would require fraud was never disclosed to any parties at the meeting.

Until the meeting, on May 10, 2012, Eliot had never been informed that he was a one third beneficiary of both Simon and Shirley's Estates and Trusts, nor that Theodore and Pamela had been WHOLLY disinherited but once learned it explained why they were abusing Simon for months since Shirley passed and why they were trying to extort him to commit fraud and make changes or else. In fact, Spallina's claimed to Palm Beach County Sheriff Investigators that these changes to the beneficiary class of Shirley could not be made legally, which they cannot. Therefore, his own statement invalidates any alleged agreement made by any parties who were misled, coerced or otherwise engaged to participate in fraudulent transactions promulgated by Tescher and Spallina and furthered now by Theodore and Alan Rose in this fraudulent pleading.

That Eliot, Jill and Lisa agreed in principle to the suggested estate plan changes that they first heard about in the May 10, 2012 meeting and had no idea they were being asked to give up their inheritances in both Estates. Eliot requested from Spallina and Tescher all documentation showing his newly learned of interests as a one third beneficiary in the Estates and Trusts, the dispositive documents that existed and those that were going to be change or amend the existing documents before he would fully agree and sign anything. Eliot did sign one document but with language

attached that stated the signature was not valid until receiving the documents requested to review and to ascertain what interests he was being asked to forgo or waive. Eliot also requested to be provided with an accounting as required in the Estate and Trusts of Shirley that he was a beneficiary of and that was also never sent by Tescher and Spallina. That Simon on May 09, 2012 was unaware that Spallina and Tescher had not sent out the legally required dispositive documents and accountings to Eliot after Shirley's death and advised Eliot to ask for them before doing anything from Spallina and Tescher.

Eliot after the meeting stated orally and in writing repeatedly to Spallina and Tescher that before making any final decisions and waiving any interests, Eliot would have to see these statutorily required items he was owed as a beneficiary and the other requested documents. These documents were promised to be sent to him before any changes would be made, Spallina stating he would have them within a few days.

That a singular Waiver was the only document ever sent to Eliot and that was later discarded by the Court as being FORGED and FRAUDULENTLY NOTARIZED for Eliot and thus legally void.

This was sent to the Court with two Waivers for Simon, one already admitted FORGED for Simon Post Mortem and the other one challenged as forged too and these FORGED AND FRAUDULENT waivers were then submitted to this Court by Tescher & Spallina, P.A. on behalf of Simon, acting as the PR/Executor when they were posited with the Court while dead.

That the agreement in the May 10, 2012 meeting was based on the fact that the issues between Theodore and Pamela with Simon to make these changes or else would cease if Simon made the changes. However, the hostilities against Simon from the meeting to the day of his death months later never ceased between Theodore and Pamela, as the changes were never executed upon and for a number of reasons including the fact that Simon learned that they were illegal changes being forced upon him that he could not and would do. This only enraged Theodore and Pamela further and

ANSWER

Tuesday, September 2, 2014

Page 42 of 66

Spallina and Theodore are alleged to have had a huge fight with Simon only days before he passed in efforts to force him to make changes or else.

Simon had determined that he could not legally make the changes and being an expert estate planner for most of his life knew these changes to either he or Shirley's estate could legally not be done and did not therefore make the changes that were suggested, which would have made him participate in a fraud. Theodore and his counsel were attempting to extort him to commit this fraud or else with Spallina and Tescher together drafting the alleged documents knowing what they were doing was illegal.

That even if Simon, Theodore, Pamela, Spallina and Tescher all wanted or intended to make these changes, the only way they could be done would be through committing fraud. An agreement construed in fraud is not legally valid so the 2012 Will and Amended and Restated Trust would not survive is so constructed to commit a fraud. Since nothing could be done to legally change the irrevocable beneficiary class of Shirley once Shirley died as stated in their dispositive documents, without committing fraud on the beneficiaries Eliot, Lisa and Jill an agreement to try and do so would be a fraudulent agreement and thus void.

For these reasons it is believed that Simon never legally executed any changes in he or Shirley's 2008 estate plans and all attempts to do so appear to have been done POST MORTEM and done with knowingly fraudulent intent by Spallina, Tescher and Theodore, all claiming to be expert estate planners who knew this was legally impossible. This leads one to believe that the meeting and these documents were part of a premeditated plan to have Simon under duress and pressure commit fraud to make changes or else. After Simon died suddenly and unexpectedly those who wanted these changes so badly, Theodore and Pamela, along with Tescher and Spallina, then created Post Mortem forged and fraudulent documents to achieve these fraudulent ends and make the illegal changes they knew could not be legally done. It is apparent Simon never executed any of the alleged 2012

ANSWER

Tuesday, September 2, 2014

Page 43 of 66

dispositive documents that would have made him commit fraud knowingly and that his Attorneys at Law were claiming at the time could be legally done to Eliot and others, while knowing they were advancing a fraudulent scheme.

44. Each of Simon's children, including Eliot, acknowledged and agreed with Simon's stated decision to leave all of his and Shirley's wealth to the ten grandchildren.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that no matter what Eliot or anyone else stated or agreed to at the May 10, 2012 meeting, Eliot DID NOT AGREE, nor did anyone else Eliot recollects, agree to participate in fraudulent transactions that were legally impermissible.

In fact, in either of the alleged Simon Trust documents the following language is specific and unchallengeable,

ALLEGED 2008 SIMON L. BERNSTEIN TRUST

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

However, after my spouse's death I may not exercise any of said rights with respect to property added by my spouse upon my spouse's death by my spouse's Will or otherwise [emphasis added].

ALLEGED 2012 AMENDED AND RESTATED SIMON L. BERNSTEIN TRUST

ARTICLE I. DURING MY LIFE AND UPON MY DEATH

A. Rights Reserved. I reserve the right (a) to add property to this trust during my life or on my death, by my Will or otherwise; (b) to withdraw property held hereunder; and (c) by separate written instrument delivered to the Trustee, to revoke this Agreement in whole or in part and otherwise modify or amend this Agreement.

ANSWER

Tuesday, September 2, 2014

Page 44 of 66

This Court must note that despite the Original 2008 Simon Trust language stating that no amendment could be made to change any property added to Simon's Trust by Shirley after her death, by any means, including revocation or amendment or otherwise and yet this is exactly what was being attempted by allegedly amending Simon's Trust. This same change to her trust property is being attempted through this pleading that attempts to mislead the Court by failing to include this language that specifically prohibits such attempted amendment. In fact, in so illegally crafting the alleged Amended and Restated Simon Trust, Spallina attempted to just erase that language prohibiting the changes to Shirley's property in the new trust altogether. Then Spallina and Tescher hid the alleged 2008 Simon Trust from the beneficiaries in violation of Probate and Trust codes and statutes, until they were forced to turn it over by Court order upon their removal in all capacities from the Estates and Trusts of Simon and Shirley.

That when turning over in January of 2013 (four months after Simon's death) the 2012 Amended and Restated Simon Trust to Eliot's counsel, Christine Yates of Tripp Scott law firm, who was hired to get the documents Spallina and Tescher refused to give Eliot, Spallina failed to enclose the 2008 Simon Trust as required. This done in order to hide this fraudulent and illegal change that was being made in his alleged amended document that anyone who would have saw the document being amended would have instantly found the attempted amendment to change Shirley's property as prohibited.

That it gets worse, as to further the fraud, Spallina admitted to Palm Beach County Sheriff Investigators that he further altered a Shirley Trust Amendment to compliment the fraudulent amendment in Simon's Trust and sent them together via US Mail to Eliot's counsel Christine C. Yates, in efforts to try and fraud her that the beneficiaries of Shirley's trust could be changed to all the 10 grandchildren by Simon using the two combined fraudulent documents.

ANSWER

Tuesday, September 2, 2014

Page 45 of 66

The admitted fraudulent alteration of Shirley's Trust Amendment by Spallina inserted the following admitted fraudulent language into an older amendment that did not have this language, effectively trying to alter Shirley's Trust through fraud,

"Notwithstanding the foregoing, as my spouse and I have adequately provided for them during our lifetimes, for purposes of the dispositions made under this Trust, my children, TED S. BERNSTEIN ("TED") and PAMELA B. SIMON ("PAM"), shall be deemed to have predeceased the survivor of my spouse and me, provided, however, if my children, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, and their respective lineal descendants all predecease the survivor of my spouse and me, then TED and PAM shall not be deemed to have predeceased the survivor of my spouse and me and shall become eligible beneficiaries for purposes of the dispositions made hereunder."

That the slight change in language in this fraudulent amendment from what Shirley's Trust actually states, is the omission of Ted and Pam's lineal descendants as also being excluded and considered predeceased from the Shirley Trust. Spallina admitted to the Palm Beach County Sheriff Investigators that he made this change to further his fraud in January 2013 POST MORTEM OF BOTH SIMON AND SHIRLEY, as with other documents used in this fraud in both estates and trusts of both Simon and Shirley.

45. Despite Simon L. Bernstein's stated intentions and his actual exercise of his Special Power through his Will, the Trustee presently is uncertain whether to distribute assets in favor of ten or only six grandchildren, or otherwise.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. A little late for the alleged Trustee to start asking this Court how to distribute assets after distributions were made to knowingly improper parties and now that they are caught committing fraud trying to change the documents to fit the crimes. That Eliot states that the words "stated intentions" has no documents legally executed to support the stated intentions, whereby 10 grandchildren received distributions.

ANSWER

Tuesday, September 2, 2014

Page 46 of 66

Even if it were Simon's stated intention and was executed, it was not done legally under Article I, Section A of Simon's Trust and under the alleged Shirley Trust language that defined her class of beneficiaries, which were set in stone at her death. Therefore, who cares what Simon intended to do if it was impermissible, illegal and consummated through intentional fraud, which would void any attempted change entirely.

It appears that when Simon refused to make changes and found changing anything in Shirley was legally impossible, the changes were made for him POST MORTEM and may have been part of premeditated plan once Simon was allegedly murdered or even died naturally. Therefore, no matter what may have or may not have been agreed to in regard to changing the beneficiary class after Shirley's death on her property that became irrevocable under her Shirley Trust or what was alleged done to so do, NO CHANGES to the defined beneficiary class could legally be made without committing fraud.

NO CHANGES OR AMENDMENTS IN SIMON'S ALLEGED 2012 Will and Trust that attempted to alter SIMON OR SHIRLEY'S class of beneficiaries are legally valid. Even if they were executed these changes are still legally invalid and those who participated in attempting to alter that class of beneficiaries set in stone once Shirley died are guilty of knowingly participating in fraud. Therefore, the BENEFICIARIES Shirley's Trusts ARE STILL THE ONLY LEGALLY ALLOWABLE BENEFICIARIES OF ELIOT, JILL AND LISA and their lineal descendants. Simon, nor anyone else's intent or acts could change the beneficiary class of the Shirley Trust legally once one of them had died and therefore any documents so attempting to commit fraud are therefore legally void and any distributions made to any other parties based on the fraudulent documents or illegal agreements are fraudulent conversions as well. ALSO MISSING FROM THE SHIRLEY AND SIMON TRUSTS AND ESTATES ARE THE REMOVED SCHEDULES OF ASSETS REFERRED TO IN THE DISPOSITIVE DOCUMENTS, yet another series of frauds unfolds concerning the alleged

Shirley Trust that is missing KEY COMPONENTS that have been suppressed and denied in violation of Probate and Trust Rules and Statutes and law.

46. Palm Beach County, Florida is where the Trustee administers Shirley's Trust, is the location where the books and records of Shirley's Trust are kept, and is the principal place of administration of Shirley's Trust.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot has been refused all requests for inspection of books and records and it remains unknown if there are proper books and records or where they are in violation of Probate and Trust Rules and Statutes.

47. This proceeding seeks the intervention of this Court in the administration Shirley's Trust by an interested person, the Trustee, and declaratory relief.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. The alleged Trustee Theodore is not a qualified Trustee now or ever, even if he was named a Successor as he is excluded by the very terms of the alleged Shirley Trust document and is further not an interested person as **THEODORE IS CONSIDERED DEAD** by the terms of the Shirley Trust for all purposes including any distributions made thereunder. Thus it would be prohibited oxymoronic contradictory language if Theodore's name was put there by Shirley instead of fraudulently inserted as is alleged. Thus, Theodore cannot be Trustee by the very terms of the document and has no interests that are not created through a series of fraudulent documents and other frauds. Thus, this baseless lawsuit stands merely as further **EVIDENCE OF FRAUD ON THIS COURT** and **FRAUD ON THE BENEFICIARIES AND INTERESTED PARTIES** and yet another attempt to commit fraud hoping Your Honor will aid and abet this time around.


ANSWER

Tuesday, September 2, 2014

Page 48 of 66

48. This Court has subject matter jurisdiction pursuant to Sections 736.0203 and 736.0201, Florida Statutes.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

49. Pursuant to Article III.I, Shirley's Trust is governed by the laws of the State of Florida.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Again, the documents validity and ANY language thereunder is challenged as fraudulent and thus NOTHING can be relied upon in the document until it is first determined if the document is legally valid and to date, Eliot, despite repeated requests, has not been able to inspect and analyze the original to know if it even exists at this time. Certainly the Shirley Trust would have to include all Schedules, etc. that were attached, which still remain suppressed and denied.

50. This is a judicial proceeding concerning Shirley's Trust pursuant to Section 736.0201, Florida Statutes.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

51. Venue is proper in this Court pursuant to Section 736.0204, Florida Statutes.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

52. Venue is appropriate in the Probate Division of this Court pursuant to Administrative Order 6.102-9/08.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

53. Plaintiff Trustee is entitled to retain counsel pursuant to Article IV.A.29 of Shirley's Trust and Section 736.0816 (20), Florida Statutes.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That the alleged Trustee Theodore cannot be the Trustee by the very language of the Shirley Trust as he is dead and therefore cannot retain legal counsel as alleged Trustee as he is dead for ALL purposes of Shirley's Trust and distributions made thereunder.

54. Plaintiff Trustee has retained the undersigned counsel, and has agreed to pay it reasonable attorney's fees and to reimburse it for costs and may do so from Shirley's Trust.

ANSWER - Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that if Theodore has retained counsel acting as an alleged Trustee and agreed to pay attorney fees and reimburse costs from Shirley's Trust and his counsel agreed to this too, they are both knowingly furthering a fraud. Both Theodore and his counsel are aware of the language prohibiting Theodore from being a Trustee or making any distributions under Shirley's Trust, as Ted is considered dead for ALL purposes of the Shirley Trust and distributions made thereunder, including distributions to any Attorney at Law, including the five or six of them that he has already made distributions to.

55. Defendants Alexandra Bernstein, Eric Bernstein, and Michael Bernstein are lineal descendants of Ted S. Bernstein.^[Footnote 1] Each is over the age of 18 and claims a beneficial interest in the Shirley Trust.

ANSWER – Affirm and Deny - Eliot affirms the names and stated age of over 18 regarding Theodore's children. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot further states that Theodore and his lineal descendants have absolutely no beneficial interest in the

Shirley Trust and are not permissible beneficiaries, appointees, defendants or even interested parties and that this newest attempt to convert and comingle the funds to them through a wordsmithing game to commit fraud through this pleading is further Fraud on this Court.

The fact that the alleged Trustee admits herein that there are disputes created by his former counsel that create a question if HIS family is to receive ANY distributions from Shirley's Trust again sets up a classic Conflict of Interest and another reason he should voluntarily resign as Trustee. Yet, Theodore, as an alleged Trustee and Fiduciary, again Breaches his Duties regarding resigning when there are not waivable conflicts and refusing to resign due to this conflict that his own counsel created to benefit him and pits him against the interests of the beneficiaries. Theodore however continues to act in these matters that he is knowingly conflicted with directly and further now has adverse interests and hostilities to other beneficiaries and the creditor Stansbury who are alleging he is unfit to be a fiduciary and alleging that he is committing criminal acts and civil torts against them. That Theodore and his counsel Rose who were both involved in advancing the fraudulent distribution scheme, including through this Toxic pleading are also arguing and pleading for their lives, as if these documents are fraudulent, as others have been and found to be part of a Fraud, he and his counsel are the central accused parties.

FOOTNOTE 1

Ted S. Bernstein is the Trustee of three separate trusts created f/b/o Alexandra, Eric and Michael Bernstein under the Simon L. Bernstein Trust Dtd 9/13/12. Solely in the capacity as Trustee of each of these three trusts, each of which received an partial interim distribution, Ted S. Bernstein has signed a Receipt of Partial Distribution, agreeing to return the distribution if the Court determines that the distribution should not have been made. Ted S. Bernstein believes that the power of appointment was validly exercised by Simon L. Bernstein and that the prior partial interim distributions were proper; however, individually he takes no position in this lawsuit and agrees to abide by any final, non-appealable order entered by this Court with respect to the construction of the Shirley Trust. Ted S. Bernstein, individually, makes no claim of entitlement to any individual right to receive any

devise, bequest, inheritance or beneficial interest in any portion of the Shirley Trust or her estate.

FOOTNOTE 1 ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

That Eliot believes that no Receipts were initially signed or agreement to return the ILLEGAL and IMPROPER distributions made to parties knowing they were committing fraud. All parties ignored repeated warnings to NOT MAKE OR TAKE THE ILLEGAL DISTRIBUTIONS prior to taking them (Spallina even claiming to PBSO Investigators that he told Theodore not to make distributions.)

That Eliot states the statement that Theodore takes “no position in this lawsuit” is a flat out lie.

Theodore is the Plaintiff in this lawsuit acting as the alleged Successor Trustee to defend the interests of the Trust and simultaneously Theodore has another position as the acting Trustee for his children/defendants interests. This conflict makes Theodore stand to gain or lose the most if this attempted FRAUD ON THE COURT and FRAUD ON THE BENEFICIARIES, INTERESTED PARTIES and CREDITOR succeeds or fails. If it fails his children get nothing, if it succeeds, his children may get something, setting up another irrefutable classic conflict of interest with the other beneficiaries that he is required to resign as Trustee over but again holds on, urged on by his Attorney at Law Rose.

56. Defendant Molly Simon is a lineal descendant of Defendant Pamela B. Simon. She is over the age of 18 and claims a beneficial interest in the Shirley Trust.

ANSWER – Affirm and Deny - Eliot affirms the name Molly Simon and her stated age of over 18. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot further states that Pamela and her lineal descendant Molly have absolutely no beneficial interest in the Shirley Trust.

57. Defendant Pamela B. Simon, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot further states that Pamela and her lineal descendants have absolutely no beneficial interest in the alleged Shirley Trust and are not permissible distributees or have any beneficial interests under any circumstances by express language in the Shirley Trust and the original 2008 Simon Trust that prohibit any distribution to them.

Pamela is also arguing here that she has a beneficial interest personally somehow for she refuses to believe or accept the language that has her and lineal descendant predeceased for all purposes of the distributions made under Shirley's Trust. This is a large problem underlying all of these crimes.

Pamela also has other problems in these matters, including her involvement in the fraudulent attempt to convert Simon's life insurance policy from the Estate to benefit her pockets directly while moving the assets from the Estate, where her child was alleged to be a beneficiary. In essence, stealing money from her child who she claims is a beneficiary of the Shirley Trust. Pamela is also fending for her life in this pleading. If these documents are further proven fraudulent, as so many others have already been and found to be part of a larger fraud, than Pamela is one of the central accused parties that promoted and participated in the advancement of the fraudulent beneficiary scheme working with Theodore, Tescher, Spallina and others. She is also one of two who benefited the most through the illegal distributions and fraudulent beneficiary scheme.

58. D.B., Ja. B. and Jo. B. are minors and are lineal descendants of Defendant Eliot Bernstein, who is their father and claims on behalf of each minor child a beneficial interest in the Shirley Trust.


ANSWER

Tuesday, September 2, 2014

Page 53 of 66

ANSWER – Admit in Part. The names and relation to Eliot of his children. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot also does not claim that his minor children have a beneficial interest in the Shirley Trust directly and only as Eliot’s lineal descendants would they inure interests.

59. Eliot Bernstein, Individually, as Trustee f/b/o D.B., Ja. B. and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B. and Jo. B., is over the age of 18. As Trustee, he claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

ANSWER –Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that he is not Trustee of D.B., Ja. B. and Jo. B. trusts created allegedly POST MORTEM under the challenged Simon L. Bernstein Trust Dtd 9/13/12 and that he has never seen a copy of any such trusts allegedly created under an alleged legally void document.

60. J.I. is a minor and a lineal descendant of Jill Iantoni, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

ANSWER – Admit in Part. The names and relation of Jill and her child. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that Jill may have a beneficial interest in the alleged Shirley Trust with Eliot and Lisa.

61. Jill Iantoni, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

62. Defendant Max Friedstein is a lineal descendant of Defendant Lisa Friedstein. He is over the age of 18 and claims a beneficial interest in the Shirley Trust.

ANSWER – Admit in Part. The names and relation of Lisa and her child. Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot states that Lisa, not her child directly has a beneficial interest in the alleged Shirley Trust.

63. C.F. is a minor and lineal descendant of Lisa Friedstein, who is her mother and claims on behalf of her minor child a beneficial interest in the Shirley Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

64. Lisa Friedstein, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., is over the age of 18. As Trustee, she claims a beneficial interest in the Shirley Trust, and individually also may claim a beneficial interest in the Shirley Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

65. Each of the Defendants is subject to personal jurisdiction pursuant to Section 736.0202, Florida Statutes.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

WHEREFORE, Defendant, Eliot Bernstein, respectfully requests that this lawsuit be dismissed or stayed until the documents it relies upon are thoroughly investigated and inspected by

the beneficiaries and this Court and the Court determines if the document can legally stand or to simply dismiss this lawsuit based on parties that have no legal interest in the Shirley Trust filing it to make prior conversions and comingling done fraudulently be somehow rewritten to make the documents fit the crime and thus is further FRAUD ON THIS COURT and FRAUD ON THE BENEFICIARIES TO INTENTIONALLY DELAY AND INTERFERE WITH EXPECTANCIES. That any dismissal of the Plaintiffs lawsuit still retain Eliot's rights to his Counter Complaint for damages and Eliot requests such other and further relief as the Court deems just and proper.

COUNT I –DECLARATORY AND OTHER RELIEF

66. Trustee restates the allegations contained in Paragraphs 1-65.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

67. This is a cause of action to ascertain beneficiaries, to determine a question arising in the administration or distribution of Shirley's Trust, to obtain a declaration of rights, and to instruct and discharge the trustee.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

68. This cause of action seeks a declaration and other relief or intervention by this Court as to who should receive Shirley's Trust; whether and to what extent Simon L. Bernstein's exercise of his limited or special power of appointment pursuant to his will should be given effect; which if either of the documents titled First Amendment of Shirley's Trust is valid; to whom the Trustee should distribute the assets of Shirley's Trust; and a discharge of the Trustee.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

ANSWER

Tuesday, September 2, 2014

Page 56 of 66

69. It is in doubt as to whether Eliot Bernstein adequately represents the interests of his minor children and whether there are conflicts of interest between Eliot and the interests of his minor children, each of whom is expressly named in the Special Power.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. Eliot has admitted to this Court already that a direct conflict of interest was created with his children through the frauds, which has delayed his inheritances. Once realizing the conflicts intentionally created between he and his children through the fraud, Eliot immediately sought separate and distinct counsel for he and his children to negate this conflict as is required by him, especially when acting as Trustee to his children. The question is why did his siblings and all of them, not take similar steps to have separate counsel for their children. This conflict was immediately recognized by Eliot’s counsel Tripp Scott and Christine Yates, Esq. who was forced to stop representing Eliot to represent his children instead and this information was passed to Eliot’s siblings who simply ignored the information while acting as Trustees for their children despite the conflict.

By this statement, the Trustee is admitting that all the children of Shirley are conflicted with their children similar to Eliot and yet Eliot is the only one who sought separate and distinct counsel for he and his children to avoid this Breach of Fiduciary Duty as a Trustee of his children as required by Probate Rules and Statutes.

70. This is an action for declaratory relief pursuant to Chapter 86 of the Florida Statutes and seeking the intervention of the Court in the administration of the Trust, pursuant to Section 736.0201, Florida Statutes.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

71. The Trustee, and the Trust, will suffer irreparable harm if relief is not granted.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states massive irreparable harm has already come to the true and proper beneficiaries from the Frauds that have already interfered and delayed inheritances by now four years in Shirley and two years in Simon committed mainly by Officers and Fiduciaries who are under the tutelage of this Court. Theodore and Alan are alleged central parties in advancing the frauds and more.

Any irreparable harm to the trust and the beneficiaries are the trustees fault caused by his own breaches of duties and breaches of trust and he and his counsel should be held personally and professionally responsible, liable sanctioned, held accountable and forced to repay any damages his actions and inactions have caused by this Court.

72. There is no other adequate remedy at law.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

73. The relief sought constitutes and deals with a bona fide question between the Trustee and the Defendants.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

74. The declaration sought deals with a present state of facts or presents a controversy as to a state of facts.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

75. The Trustee has a justiciable question and has a bona fide, actual, and present practical need for a declaration from this Court.

ANSWER

Tuesday, September 2, 2014

Page 58 of 66

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

76. The Trustee’s rights, duties, and obligations are dependent upon the facts or law applicable to the facts.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same.

77. The seeds of litigation are ripening such that a declaration from this Court will benefit the Trust.

ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states that the only seeds ripening at this time are the seeds of fraud that are under multiple ongoing state and federal investigations and civil actions, all involving a mass of fraudulent acts to convert, comeingle and outright steal assets in what is alleged to be anywhere from 40-100 million dollars as Alan has stated in prior pleadings to this Court in the probate cases of Simon and Shirley.

78. Further, to the extent that the Court determines any prior interim distribution to have been improper, Plaintiff seeks supplemental relief in the form of an order directing and compelling the recipients of the any and all such distributions to return the funds. To date, funds were distributed to Lisa Friedstein, as Trustee for Max Friedstein and C.F.; Jill Iantoni, as Trustee for J.I.; Pamela B. Simon, as Trustee for Molly; and Ted S. Bernstein, as Trustee for Alexandra, Eric and Michael. Eliot as Trustee for his three children refused the interim distribution, even though it appears that his minor children should receive some distribution under the exercise of the Special Power. Each of the trustees who received a distribution for their children signed a Receipt of Partial Distribution, agreeing to return the distribution of the Court determines that the distribution should not have been made.



ANSWER – Deny. Eliot lacks sufficient information, documentation and knowledge to form a belief as to the truth of the allegations of this paragraph and therefore denies the same. That Eliot states the distributions were not just improper but ILLEGAL and felonious conversions and comingling done knowingly and with scienter by those who took them, all against the advice of Eliot and his counsel and others. Note that Eliot is the only party that did not have to sign anything about receiving improper illegal fraudulent distributions that he converted and comingling to improper parties with knowledge that it was illegal. That for these reasons, again, Eliot suggests Guardians for the children of each child of Simon and Shirley’s who knowingly did these fraudulent distributions, knowing of fraudulent and forged documents in their own names and their father’s name and failed to take any legally required steps to report the crimes, in fact suppressing their knowledge, while acting as Fiduciaries for their children are unfit to be Trustees to their children any longer.

79. “Plaintiff, TED BERNSTEIN, as trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended (the “Trust”), files this Complaint against and provides notice to those interested in the Trust, Defendants, ALEXANDRA BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN; MOLLY SIMON; PAMELA B. SIMON, Individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually, as Trustee f/b/o D.B., Ja. B., and Jo. B. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of his minor children D.B., Ja. B., and Jo. B.; JILL IANTONI, Individually, as Trustee f/b/o J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her Minor child J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F., and states that at all times relevant.”

ANSWER – Deny. Theodore is alleged to be Trustee through a fraudulent document and that document needs to be further analyzed by beneficiaries and authorities to determine its alleged

authenticity. That Theodore's Trusteeship would be doomed as it directly conflicts with other language in the document. Even if he were named in the document as Successor he is firmly stated to be PREDECEASED for ALL purposes of the alleged Shirley Trust and distributions made thereunder and thus would not now or ever be qualified to make distributions as Trustee thereunder, as Ted again is dead for all purposes of the Shirley Trust and distributions made thereunder. That the alleged Defendants listed above are not at all named as beneficiaries in the Shirley Trust and are strictly prohibited from being included as having a beneficial interest. The Shirley Trust is irrevocable with a specific beneficiary class and trusts created thereunder that already exist and could not be altered Post Mortem by any party, including this Court despite this desperate and Toxic, Vexatious and Ridiculous pleading. These alleged Defendant trusts are created years after Shirley's death and after Simon's death as well and are alleged to be part of a further attempt to make fraudulent conversions and illegal distribution of benefits to improper parties. That Eliot has never seen or been given any such trusts in he or his children's names as listed by the alleged Trustee as Defendants and knows not who has executed these or how or how these trusts have become defendants in this nonsensical pleading.

WHEREFORE, Defendant, Eliot Bernstein, respectfully requests that this lawsuit be dismissed or stayed until the documents it relies upon are thoroughly investigated and inspected by the beneficiaries and this Court and the Court determines if the ALLEGED dispositive documents can legally stand. Or simply dismiss this lawsuit based on the fact that the parties that have no legal interest and standing in the Shirley Trust and this lawsuit is a further Fraud on the Court by Officers of this Court and Fiduciaries to attempt to make prior conversions and comingling done fraudulently somehow now post criminal acts legal. This attempt by using this TOXIC, VEXATIOUS, FRIVOLOUS, HARASSING and COSTLY pleading make the documents now fit the crimes. Thus is yet another FRAUD ON THIS COURT and FRAUD ON THE BENEFICIARIES TO

ANSWER

Tuesday, September 2, 2014

Page 61 of 66

INTENTIONALLY DELAY AND INTERFERE WITH EXPECTANCIES. That any dismissal of the Plaintiffs lawsuit however retain all Eliot's rights to his Counter Complaint for damages and Eliot requests such other and further relief as the Court deems just and proper.

Filed on Tuesday, September 2, 2014.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children and as Trustee of the Eliot Bernstein Family Trust.

X _____

CERTIFICATE OF SERVICE

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Tuesday, September 2, 2014.

Eliot Bernstein, Pro Se, Individually and as legal guardian on behalf of his three minor children and as Trustee of the Eliot Bernstein Family Trust.

X _____

SERVICE LIST

ANSWER

Tuesday, September 2, 2014
Page 62 of 66

Robert L. Spallina, Esq.,
Tescher & Spallina, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
rspallina@tescherspallina.com
kmoran@tescherspallina.com
ddustin@tescherspallina.com

Ted Bernstein
880 Berkeley
Boca Raton, FL 33487
tbernstein@lifeinsuranceconcepts.com

John J. Pankauski, Esq.
Pankauski Law Firm PLLC
120 South Olive Avenue
7th Floor
West Palm Beach, FL 33401

Pankauski Law Firm PLLC
120 South Olive Avenue
7th Floor
West Palm Beach, FL 33401
courtfilings@pankauskilawfirm.com
john@pankauskilawfirm.com

Donald Tescher, Esq.,
Tescher & Spallina, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
dtescher@tescherspallina.com
ddustin@tescherspallina.com
kmoran@tescherspallina.com

Ted Bernstein
Life Insurance Concepts et al.
950 Peninsula Corporate Circle
Suite 3010
Boca Raton, FL 33487
tbernstein@lifeinsuranceconcepts.com

Pamela Beth Simon
950 N. Michigan Avenue
Apartment 2603
Chicago, IL 60611
psimon@stpcorp.com



ANSWER

Tuesday, September 2, 2014
Page 63 of 66

TESCHER & SPALLINA, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
dtescher@tescherspallina.com
ddustin@tescherspallina.com
kmoran@tescherspallina.com

Alan B. Rose, Esq.
PAGE, MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
arose@pm-law.com
and
arose@mrachek-law.com

Pamela Simon
President
STP Enterprises, Inc.
303 East Wacker Drive
Suite 210
Chicago IL 60601-5210
psimon@stpcorp.com



ANSWER

Tuesday, September 2, 2014
Page 64 of 66

Mark R. Manceri, Esq., and
Mark R. Manceri, P.A.,
2929 East Commercial Boulevard
Suite 702
Fort Lauderdale, FL 33308
mrmlaw@comcast.net
mrmlaw1@gmail.com

L. Louis Mrachek, Esq.
PAGE, MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
lmrachek@mrachek-law.com

Charles D. Rubin
Managing Partner
Gutter Chaves Josepher Rubin Forman
Fleisher Miller PA
Boca Corporate Center
2101 NW Corporate Blvd., Suite 107
Boca Raton, FL 33431-7343
crubin@floridatx.com

Kimberly Moran
Tescher & Spallina, P.A.
Wells Fargo Plaza
925 South Federal Hwy Suite 500
Boca Raton, Florida 33432
kmoran@tescherspallina.com

Lindsay Baxley aka Lindsay Giles
Life Insurance Concepts
950 Peninsula Corporate Circle
Suite 3010
Boca Raton, FL 33487
lindsay@lifeinsuranceconcepts.com

Estate of Simon Bernstein
Personal Representative
Brian M. O'Connell, Partner
Ciklin Lubitz Martens & O'Connell
515 N Flagler Drive
20th Floor
West Palm Beach, FL 33401
boconnell@ciklinlubitz.com
jfoglietta@ciklinlubitz.com

ANSWER
Tuesday, September 2, 2014
Page 65 of 66

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
Lisa@friedsteins.com
lisa.friedstein@gmail.com
lisa@friedsteins.com



ANSWER

Tuesday, September 2, 2014
Page 66 of 66