

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

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

Probate Division
Case No.: 502014CP003698XXXXSB

Plaintiff,

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.,

Defendants.

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MOTION TO SEVER AND STAY COUNTERCLAIM PENDING
RESOLUTION OF TRUST CONSTRUCTION COUNTS

Plaintiff, Ted S. Bernstein (the "Trustee"), moves to sever and stay the counterclaim filed
by Respondent, Eliot Bernstein, and states:

1. The Trustee filed a simple, one count Complaint for declaratory judgment seeking
to have this Court determine the proper construction to be given to the Shirley Bernstein Trust and
to determine the validity of the exercise of a power of appointment given by the Trust to Simon L.
Bernstein. The resolution of the one count trust construction Complaint is critical to the

administration of this Trust and the final distribution of assets to the rightful ultimate beneficiaries. Without determining the proper and rightful beneficiaries of this Trust, it is impossible for the Trustee to properly administer the Trust and make a final distribution of assets.

2. There are a number of potential beneficiaries, including the ten living grandchildren of Simon Bernstein (each grandchild's respective parent is designated by Simon as trustee of a newly-formed trust); and three of the five children of Simon L. Bernstein. These potential beneficiaries have been named in the Complaint, and each has been either served or has agreed to waive service of process and respond. It is anticipated that all of the respondents will either answer the Complaint or default within the next 20. Thereafter, the one count trust construction action will be ripe for adjudication.

3. In addition to answering the Complaint, Eliot Bernstein has filed a 79-page Counterclaim naming numerous parties, including counsel for many of the parties, as additional counter-defendants. The Counterclaim is not in compliance with Florida Rules of Civil Procedure because it does not contain a short and plain statement of the facts supporting the claim. Instead, the Complaint is a verbose, shotgun-style pleading which raises myriad irrelevant and immaterial issues. The Trustee submits that the resolution of the Trust Construction action will resolve all or virtually all of the allegations raised in this Counterclaim.

4. In the interest of justice, for the convenience of the parties, and to preserve the value of the Trust assets by reducing the cost and expense of litigation, the Trustee respectfully requests that this Court sever the Counterclaim from the Complaint, and stay the Counterclaim until and pending the resolution of the issues raised in the Complaint. Thereafter, once the Court has entered

its judgment on the trust construction, the Court can decide on a more efficient basis if any of these claims are needed or should be permitted to proceed.

5. The Trustee believes that, given the limited resources available to the Trust, and given the narrow scope of the relief sought in the Complaint, severance is not only appropriate but warranted in this case. Severance is permitted under Florida Rule of Civil Procedure 1.270(b), and the trial court has broad discretion to grant a motion for separate trial when a joint trial would be inconvenient.¹ Here, it will be far more convenient to all of the parties to sever any counterclaim by Eliot, which relates to Eliot's false impressions as to his parent's financial resources (\$40 to \$100 million; Counter Complaint ¶¶63) and their estate plan, rather than delay for an extended period of time the resolution of this simple and necessary trust construction action. Otherwise, all of the beneficiaries other than Eliot will be inconvenienced and burdened by the extra cost of a combined or joint trial, which in this case will be more far expensive and time consuming to the beneficiaries than separate trials.²

6. Also, it would be more efficient, under the circumstances of the case, to resolve the trust construction action and determine the proper beneficiaries, before considering numerous other irrelevant and immaterial matters including Eliot's counterclaim.³ Indeed, the resolution of the trust construction may or likely will moot Eliot's counterclaims. A court may try a threshold issue in

¹Fla. Civ. P. 1.270(b).

²5 Fla. Prac., Civil Practice § 15:8 (2014).

³*Microclimate Sales Co., Inc. V. Doherty*, 731 So. 2d 856, 858 (Fla. 5th DCA 1999).

advance of all other issues in the case if completion of the threshold issue would make other issues moot and subject to dismissal.⁴

WHEREFORE, the Trustee respectfully requests that this Court enter an Order immediately severing and staying Eliot's Counterclaim pending the resolution of the claims set forth in the Complaint.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile **and** U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 3rd day of September, 2014.

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⁴*O’Keeffe v. Okeeffe*, 522 So. 2d 460, 461 (Fla. 3d DCA 1988).

SERVICE LIST

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