

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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXSB (IY)

OPPENHEIMER TRUST COMPANY
OF DELAWARE, in its capacity as
Resigned Trustee of the Simon Bernstein
Irrevocable Trusts created for the benefit
of Joshua, Jake and Daniel Bernstein,

Petitioner,

vs.

ELIOT AND CANDICE BERNSTEIN,
in their capacity as parents and natural
guardians of JOSHUA, JAKE AND
DANIEL BERNSTEIN, minors,

Respondents.

OPPENHEIMER TRUST COMPANY OF DELAWARE'S
MOTION TO STRIKE OR SEVER COUNTER-COMPLAINT

Petitioner, OPPENHEIMER TRUST COMPANY OF DELAWARE (“Oppenheimer”), as the resigned trustee of three irrevocable trusts created by the late Simon Bernstein for the benefit of his minor grandchildren, Joshua, Jake and Daniel Bernstein, moves to strike or abate the “Counter-Complaint” filed in this action by non-party, Eliot Bernstein, or to sever the Counter-Complaint from the main claim and stay the Counter-Complaint pending resolution of the main claims and alleged “related claims.” In support hereof, Oppenheimer states:¹²

¹ Oppenheimer filed this action solely in its capacity as the Resigned Trustee and does not, by the filing of this Motion, voluntarily appear in this action or subject itself to the jurisdiction of this Court in any other capacity.

² Oppenheimer has simultaneously filed a *Motion to Appoint Guardian Ad Litem for Minor Beneficiaries* (the Minor Beneficiaries are only real parties in interest in this action). If that Motion is granted, it will be up to the guardian *ad litem* (not Eliot Bernstein) to plead on behalf of the Minor Beneficiaries).

I. SUMMARY OF RELIEF SOUGHT

1. Oppenheimer filed this action against Eliot and Candice Bernstein (the “Bernsteins”), *in their representative capacities* (as the parents and natural guardians of Oppenheimer’s minor beneficiaries, Joshua, Jake and Daniel Bernstein (the “Minor Beneficiaries”)). *Critically, the Minor Beneficiaries are the only beneficiaries under the small “Grandchildren Trusts” that are the subject of Oppenheimer’s Petition, and therefore, the only real parties in interest on the respondent side of this action.* The Bernsteins have no standing to file a “Counter-Complaint” individually (or in any capacity other than that in which they were sued). Because the Bernsteins (themselves, non-parties) impermissibly filed a Counter-Complaint in their individual and other capacities, the Counter-Complaint is a nullity and must be stricken.

2. The Counter-Complaint should be stricken or abated because it is duplicative of several other lawsuits already pending before this Court and other courts, and appears on its face to violate a “vexatious litigant” injunction entered against Eliot Bernstein by the United States District Court for the Southern District of New York. According to the Bernsteins, the Counter-Complaint “is related to [nine other lawsuits pending] worldwide involving Eliot Bernstein where there are claims of conspiracy...” The Bernsteins have declared all of these “related” actions, *en masse*, to be a single “adversary proceeding,” *see Declaration of Adversary Proceeding* filed in this action (p. 7), and have expressly incorporated all “pleadings, rulings, evidence, etc.” from all of these other lawsuits “and others related” into the Counter-Complaint. *See Counter-Complaint, ¶ 108, 237.* Given the pendency (or prior adjudication) of these other lawsuits, to avoid duplication and preserve judicial resources, the Court should order that any counterclaims filed in this action be limited to issues related to the Grandchildren

Trusts (and be filed on behalf of the beneficiaries thereof – the Minor Beneficiaries). The Counter-Complaint, in its present form, should be stricken.

3. The Counter-Complaint should be stricken because it is an unmanageable, unworkable document, violative of basic rules of pleading. It is impossible to discern who is suing who and in which capacity(ies). Eliot Bernstein is suing in more than twenty (20) capacities. He is seeking all relief against all counterclaim-defendants in all counts based upon generalized allegations of “conspiracy” (and there is no specific allegation that Oppenheimer was a party to any agreement to conspire).

4. At a minimum, the Counter-Complaint should be severed from the narrowly-tailored main claim, and stayed, in the interest of judicial economy.

II. ARGUMENT

A. Procedural Background

5. On July 8, 2010, on the Bernsteins’ Petition, this Court (in Case Nos. 502010CP003123XXXXSB, 502010CP003125XXXXSB and 502010CP003128XXXXSB) entered Final Orders appointing Oppenheimer Trust Company as the successor trustee of three, irrevocable trusts created by the late Simon Bernstein for the benefit of his minor grandchildren, Joshua, Jake and Daniel Bernstein (the “Grandchildren Trusts”). Copies of those Orders are attached hereto as Composite Exhibits “A” through “C.” Oppenheimer requests that the Court take judicial notice of the Final Orders pursuant to §§ 90.201(1) and/or 90.202(6), Florida Statutes.³

6. On July 30, 2010, Oppenheimer Trust Company accepted the Court’s appointments and began serving as Trustee of the Grandchildren Trusts. *See Exhibit “D”* (the

³ Mr. Bernstein alleges “that the fiduciaries of the Estates, Trusts and corporate entities sued hereunder are alleged to have gained their fiduciary positions through a series of fraudulent documents...” *See Counter-Complaint*, ¶ 291. It is unclear if his allegation of fraud extends to the Court’s Final Orders appointing Oppenheimer as trustee.

Affidavit of Oppenheimer representative Hunt Worth authenticating the three “Acceptance” documents signed by him on July 30, 2010).⁴

7. On May 26, 2014, Oppenheimer resigned as the Trustee of the “Grandchildren Trusts” (as it was permitted to do a matter of right). *See Exhibit “F.”* Because the Minor Beneficiaries’ parents, Eliot and Candice Bernstein (the “Bernsteins”), declined to appoint a successor trustee as permitted by the terms of the Grandchildren Trusts, or provide instructions to Oppenheimer regarding the delivery of the trust property, Oppenheimer was forced to file this lawsuit.

8. In Count I of its Petition, Oppenheimer seeks instructions as to where to deliver the trust property now that it has resigned. In Count II of its Petition, Oppenheimer seeks review and approval of its final accounting. Critically, the only real parties in interest with regard to Oppenheimer’s Petition are the beneficiaries of the Grandchildren Trusts, to wit: Joshua, Jake and Daniel Bernstein. Eliot and Candice Bernstein were named as Respondents solely in a representative capacity.

9. In response to the lawsuit, Eliot and Candice Bernstein filed a Counter-Complaint, not merely in their representative capacity, and not merely related to the Grandchildren Trusts. Rather, *the Bernsteins purport to bring the Counter-Complaint: (i) “Individually, PRO SE;” (ii) “as the Natural Guardians of [the beneficiaries of the Grandchildren Trusts];” (iii) “as Guardians of the members of Bernstein Family Realty, LLC;” and (iii) “as beneficiaries of [sixteen (16) Trusts, two (2) Estates, and multiple] Corporate Entities set up by Simon and Shirley Bernstein.” See Counter-Complaint, first unnumbered paragraph.*

⁴ “Oppenheimer Trust Company” was merged into “Oppenheimer Trust Company of Delaware” effective December 20, 2103. *See Exhibit “E.”* Oppenheimer requests that the Court take judicial notice of the information contained in Exhibit “E” pursuant to §§ 90.202(5), 90.202(12) and/or 90.202(13), Florida Statutes.

10. The style of the Counter-Complaint alone is seven (7) pages long, single-spaced.

In addition to “counter-suing” Oppenheimer and all of its

current and former divisions, affiliates, subsidiaries, stockholders, parents, predecessors, successors, assignors, assigns, partners, members, officers, directors, trustees, employees, agents, administrators, representatives, attorneys, insurers and fiduciaries,

the Bernsteins purport to sue seventy-six (76) additional counterclaim-defendants (not including “John Doe’s 1-5000”), and all of their

current and former divisions, affiliates, subsidiaries, stockholders, parents, predecessors, successors, assignors, assigns, partners, members, officers, directors, trustees, employees, agents, administrators, representatives, attorneys, insurers and fiduciaries.

The Counter-Complaint purports to seek relief against parties having nothing to do with Oppenheimer or the Grandchildren Trusts, including a wide variety of law firms, accountants and banks. According to Eliot Bernstein, the counterclaim “is related to [nine other lawsuits pending] worldwide involving Eliot Bernstein where there are claims of conspiracy...” against lawyers, state Bar associations, judges, etc. *See Counter-Complaint*, ¶ 238.

11. Oppenheimer requests that the Court take particular note of the following allegations and characteristics of the Counter-Complaint:

- a. Despite the fact that they were sued only in their capacity as their children’s parents, the Bernsteins purport to bring the Counter-Complaint: (i) “Individually, PRO SE;” (ii) “as the Natural Guardians of [the beneficiaries of the Grandchildren Trusts];” (iii) “as Guardians of the members of Bernstein Family Realty, LLC;” and (iii) “as beneficiaries of [sixteen (16) Trusts, two (2) Estates, and multiple] Corporate Entities set up by Simon and Shirley Bernstein.” *See Counter-Complaint, first unnumbered paragraph.*
- b. The counterclaim-defendants are described in paragraphs 3 through 106 of the Counter-Complaint (104 paragraphs). The “Background” does not begin until paragraph 108 on page 26. Most of the defendants, including other banks and insurance companies, are not alleged to have any connection whatsoever to Oppenheimer or the Grandchildren Trusts.

- c. Virtually all of the claims raised in the Counter-Complaint have already been raised (and/or adjudicated) elsewhere. For instance:
- i. Eliot Bernstein alleges “that many of these frauds have already been brought before the Court in the Petitions and Motions filed by Eliot in the Estate cases before this Court, which remain unheard since May of 2013, which ties all of these defendants together as part of the larger conspiracy in a variety of criminal acts, civil torts, again most of these illegal legal crimes were committed by officers of this Court under the tutelage of your Honor.” *See Counter-Complaint*, ¶ 228.
 - ii. Eliot Bernstein “incorporates by reference all ongoing cases before this Court related to the Simon and Shirley Bernstein Estates and Trust, including but not limited to, pleadings, rulings, evidence, etc. that are currently before Honorable Judge Colin in the related cases are already before this Court for almost two years.” That incorporation specifically includes the “many criminal acts and civil torts of each of the counter defendants, including those proven, admitted and alleged crimes committed by some of the “Fiduciaries and Attorneys at Law acting as Officers of this Court before the Honorable Judge Martin Colin and Honorable David French, in the Estates and Trusts of Simon and Shirley Bernstein...” *See Counter-Complaint*, ¶ 108.
 - iii. In the Counter-Complaint, Eliot Bernstein is suing Theodore Stuart Bernstein (“Ted Bernstein”) in 12 different capacities, including as a fiduciary of other trusts and estates pending before this Court under different case numbers. *See Counter-Complaint*, ¶¶ 15-19.
 - iv. In the Counter-Complaint, Eliot Bernstein is suing attorneys representing parties in other cases pending before this Court (in over 30 different capacities). *See Counter-Complaint*, ¶¶ 20-25, 28-36.
 - v. In the Counter-Complaint, Eliot Bernstein is suing a life insurance company based upon a “dispute already in an Illinois Federal Court.” *See Counter-Complaint*, ¶ 98.
- d. Despite a federal district court injunction prohibiting Eliot Bernstein from filing certain claims in any court without its permission, Mr. Bernstein has expressly incorporated the allegations of that lawsuit, and joined several of the same defendants, in this one. *See Counter-Complaint*, ¶¶ 61-64, 217, 223.
- e. In Count XII of his Counter-Complaint, Eliot Bernstein is suing for Oppenheimer’s removal, yet he is opposing Oppenheimer’s resignation.

B. The Counter-Complaint Should Be Stricken Because The Bernsteins Have No Standing To Assert Counterclaims In A Different Capacity Than That In Which They Were Sued

“As a general rule, there must be mutuality between the parties to a counterclaim; that is, an asserted counterclaim must exist in favor of the counterclaimant in the same right, or capacity, in which he or she is sued.” 40 Fla. Jur. 2d Pleadings § 91 (rev. 2014) (emphasis supplied), citing *Skaf’s Jewelers, Inc. v. Antwerp Import Corp.*, 150 So. 2d 260 (Fla. 2nd DCA 1963); see also *Proodian v. Plymouth Citrus Growers Ass’n*, 6 So.2d 531 (Fla. 1942); *Juega v. Davidson*, 105 So. 3d 575 (Fla. 3rd DCA 2012); *Nationwide Terminals, Inc. v. MC Construction Group, Inc.*, 964 So. 2d 705 (Fla. 3rd DCA 2007); *Hall v. McDonough*, 216 So. 2d 84 (Fla. 2nd DCA 1968). **“When a minor is represented by a parent as “next friend,” the “next friend” is not a party to the action; the real party in interest is the minor.”** *Watson By and Through Watson v. State Farm Mut. Auto. Ins. Co.*, 639 So. 2d 687 (Fla. 2nd DCA 1994) (emphasis supplied), citing *Fla. R. Civ. P. 1.210(b)*; *Youngblood v. Taylor*, 89 So. 2d 503 (Fla. 1956); *Brown v. Caldwell*, 389 So. 2d 287 (Fla. 1st DCA 1980). In this case, the Bernsteins are not parties to this action with standing to file counterclaims in their own right (or in other capacities). Because the Counter-Complaint is brought by non-parties (the Bernsteins in other capacities), it must be stricken.⁵

⁵ In the matter of *Stone v. Harris*, 721 So. 2d 1264 (Fla. 5th DCA 1998), a defendant who was sued in her individual capacity asserted a counterclaim in her capacity as the personal representative of an estate that was not a party to the action. The trial court granted the plaintiff’s motion to dismiss the counterclaim for lack of standing. Although the appellate court determined that it had no jurisdiction over the appeal (because it was a non-final order), it described “the issue raised on appeal [as] the ability of a *third party* to join in an action without seeking the court’s permission to intervene.” *Id.* (emphasis supplied). Implicit in the language used by the court is the continued recognition that a person sued in a representative capacity is not a party individually or in any other capacity.

C. The Counter-Complaint Should Be Stricken Or Abated Because It Is Duplicative Of Claims Pending Or Adjudicated In Other Forums

As set forth above, the claims raised in the Counter-Complaint with regard to instruments other than the Grandchildren Trusts are identical to, or inextricably intertwined with, claims Eliot Bernstein has asserted in other forums. Indeed, he affirmatively asserts that the Counter-Complaint “is related to [nine other lawsuits pending] worldwide involving Eliot Bernstein where there are claims of conspiracy. Mr. Bernstein has expressly incorporated all “pleadings, rulings, evidence, etc.” from all of these other lawsuits “and others related” into the Counterclaim. *See Counter-Complaint*, ¶ 108, 238. The filing of this duplicative Counter-Complaint violates the Rule of Priority and principles of comity and offends traditional notions of judicial economy. For this reason too, the Counter-Complaint should be dismissed or abated.⁶

D. The Counter-Complaint Should Be Stricken Because, On Its Face, It Appears To Violate A Federal Court Injunction

On August 29, 2013, the United States District Court for the Southern District Of New York found that Eliot Bernstein had engaged in serial court filings that were "frivolous, vexatious, overly voluminous, and an egregious abuse of judicial resources," and entered an injunction against him, as follows:

Eliot I. Bernstein is hereby enjoined from filing any action in any court related to the subject matter of this action without first obtaining leave of this Court. In moving for such leave, Bernstein

⁶ Generally, a court which first exercises its jurisdiction over a particular matter (such as this Court has done in other cases before it, and other courts throughout the country have done in other cases filed by Eliot Bernstein), acquires exclusive jurisdiction to proceed with regard to that matter. *Bedingfield v. Bedingfield*, 417 So. 2d 1047, 1050 (Fla. 4th DCA 1982) (citing 20 Am.Jur.2d Courts § 128 (1965), *receded from on other grounds*; *Thomas v. Thomas*, 724 So.2d 1246 (Fla. 4th DCA 1999); *see also Merrill Lynch, Pierce, Fenner & Smith, Inc. v. Ainsworth*, 630 So.2d 1145, 1147 (Fla. 2d DCA 1993); *Sauder v. Rayman*, 800 So.2d 355, 358 (Fla. 4th DCA 2001); *REWJB Gas Investments v. Land O' Sun Realty, Ltd.*, 643 So. 2d 1107 (Fla. 4th DCA 1994) (noting that, “[u]nlike a stay, which is discretionary, a party may be entitled as a matter of law to abatement of a second lawsuit, because of the pendency of another action, and thereby entitled to a dismissal of the second lawsuit.”).

must certify that the claim or claims he wishes to present are new claims never before raised and/or disposed of by any court. Bernstein must also certify that claim or claims are not frivolous or asserted in bad faith. Additionally, the motion for leave to file must be captioned "Application Pursuant to Court Order Seeking Leave to File." Failure to comply strictly with the terms of this injunction shall be sufficient grounds for denying leave to file and any other remedy or sanction deemed appropriate by this Court.

A true copy of the injunction is attached hereto as Exhibit "G." Oppenheimer requests that the Court take judicial notice of the injunction pursuant to §§ 90.202(2), (5) and/or (13), Florida Statutes.

Despite the injunction prohibiting him "from filing any action in any court related to the subject matter of [the federal court] action without first obtaining leave of [the federal court]," Eliot Bernstein boldly filed this Counter-Complaint, expressly alleging that it "is related to" the federal court action. *See Counter-Complaint*, ¶ 238(i); *see also* ¶¶ 61-64, 211, 216-217, 220-223.⁷ The Counter-Complaint should be stricken pending Eliot Bernstein's strict compliance with the terms of the injunction.

E. The Counter-Complaint Should Be Stricken Because It Is An Unmanageable Document That Violates the Rules of Pleading

The Bernsteins have filed a pleading that is long and convoluted, and at the same time, fails to allege any specific facts that would make Oppenheimer liable for the acts or omissions of other defendants. The rules require a short and plain statement of the facts giving rise to a

⁷ Mr. Bernstein accuses the defendants in the federal court action (and this one) of "murdering" Simon Bernstein. Specifically, in paragraph 211, he alleges that Simon was murdered by "those involved in the criminal conspiracy to steal intellectual properties worth billions upon billions of dollars, a conspiracy that has already been filed in a RICO and ANTITRUST lawsuit, already embodied herein whereby there are allegations that attorneys at law and others put a bomb in the minivan of Eliot to murder he and his family, have made repeated and reported death threats to Eliot and more" (upon information and belief, this is a direct reference to the federal court action). In paragraph 210, he alleges that Simon Bernstein was murdered by the parties to this action -- "those involved in the criminal conspiracy that is taking place to illegally seize dominion and control of the Estates and Trusts of Shirley and Simon and loot their assets to the tune of between \$20 and \$100 million dollars and deprive Eliot and his family of these inheritances." Note that Oppenheimer was not even appointed by this Court until after Simon's death. This scandalous allegation against Oppenheimer should be stricken.

claim and specific allegations regarding fraud and conspiracy. Although the Bernsteins request leniency in pleading because they are *pro se*, they ask for too much here.

Oppenheimer is the trustee of three small, stand-alone trusts in which the Bernsteins have no interest. The Bernsteins have not alleged any relationship between either Oppenheimer or the Grandchildren Trusts and the scores of defendants being sued by Eliot Bernstein in other cases across the country. Yet, the Bernsteins wish to throw Oppenheimer into the mix with these other defendants, and incorporate all of the “pleadings, rulings, evidence, etc.” from all of these other lawsuits “and others related” into the Counter-Complaint against Oppenheimer. The unfairness and impracticality of that procedure is patent.

If *the beneficiaries of the Grandchildren Trusts* (the Minor Beneficiaries) believe that Oppenheimer did something wrong in connection with the administration of the Grandchildren Trusts, they can raise their objections, through an appropriate representative, in connection with Oppenheimer’s Petition to Approve its Final Accounting (or in a counterclaim specifically related to the Grandchildren Trusts). The Counter-Complaint, in its present, unmanageable form, should be stricken.

F. At a Minimum, The Counter-Complaint Should Be Severed From The Main Claim and Stayed Pending Resolution of the Main Claims and “Related” Claims

If the Court declines to strike or abate the Counter-Complaint, it should be severed from the main claim, and stayed, in the interest of judicial economy and to preserve the scarce assets of the Grandchildren Trusts. Any alleged wrongdoing of Oppenheimer will necessarily be adjudicated either (i) in connection with Oppenheimer’s *Petition to Approve Final Accounting* (in which objections to Oppenheimer’s administration will be heard), or (ii) in connection with the broad conspiracy claims filed by Eliot Bernstein elsewhere. The Counter-Complaint should be severed and stayed pending the resolution of those claims. *See Fla. R. Civ. P. 1.270(b), 5*

Fla. Prac., Civil Practice § 15:8 (2014); Microclimate Sales Co., Inc. v. Doherty, 731 So. 2d 856, 858 (Fla. 5th DCA 1999); O'Keefe b. O'Keefe, 522 So. 2d 460, 461 (Fla. 3rd DCA 1988).

III. CONCLUSION

The Counter-Complaint was impermissibly filed by non-parties to the original action. It is duplicative of several other lawsuits which are pending (or have already been adjudicated) around the country. It appears to violate a federal court “vexatious litigant” injunction. It is a rambling, unmanageable document which fails to allege any connection between Oppenheimer and the vast majority of facts alleged or defendants named. For all of the foregoing reasons, the Counter-Complaint should be stricken or abated, or at a minimum, severed and stayed.⁸

Respectfully submitted,

GRAYROBINSON, P.A.
Attorneys for Petitioner
225 N.E. Mizner Boulevard, Suite 500
Boca Raton, FL 33432
Telephone: (561) 368-3808

By: /s/ Steven A. Lessne
Steven A. Lessne, Esq.
Florida Bar No. 107514
steven.lessne@gray-robinson.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to all parties on the attached Service List this 19th day of September 2014.

/s/ Steven A. Lessne

⁸ If this Motion is denied, Oppenheimer reserves the right to seek dismissal of the Counter-Complaint for failure to state causes of action and other grounds. Oppenheimer should not be required to substantively address the Counter-Complaint in that manner unless and until the Court finds that the Bernsteins have standing to file the Counter-Complaint in their own right, and that the pleading passes basic muster.

SERVICE LIST

Eliot Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434
ivewit@ivewit.tv
ivewit@gmail.com

Candice Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434
tourcandy@gmail.com

EXHIBIT A

2010 JUL - 8 AM 9:43
SHARON R. BOOK
PALM BEACH COUNTY
SOUTH CITY BRANCH

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

In Re: DANIEL BERNSTEIN IRREVOCABLE TRUST
TRUST dated September 7, 2006

PROBATE DIVISION
FILE NUMBER:

502010CP00 3123 XXXXSB

FINAL ORDER ON PETITION TO APPOINT SUCCESSOR TRUSTEE

THIS CAUSE came before the Court on the Petition to Appoint Successor Trustee filed by ELIOT BERNSTEIN and CANDICE BERNSTEIN as parents and natural guardians of DANIEL BERNSTEIN, a minor, as sole beneficiary of the DANIEL BERNSTEIN IRREVOCABLE TRUST, and the Court, after reviewing the Petition, hearing argument of counsel, and being otherwise fully advised in the premises holds as follows:

- (A) All parties are before this Court, either by appearance, waiver and consent, or representation by counsel.
- (B) This Court has jurisdiction pursuant to Sections 736.0201 and 736.0202 of the Florida Statutes to grant the relief requested.
- (C) Oppenheimer Trust Company is hereby appointed as successor Trustee of the DANIEL BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006.

Done and Ordered in Chambers at Palm Beach County, Florida this 8 day of July 2010.



CIRCUIT COURT JUDGE



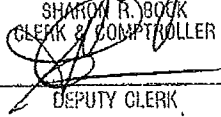
STATE OF FLORIDA • PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record in my office.
THIS 8 DAY OF July, 2010
SHARON R. BOOK
CLERK & COMPTROLLER
By 
DEPUTY CLERK

EXHIBIT B

2010 JUL - 8 AM 9:43
SHARON R. BORK
PALM BEACH COUNTY CLERK
SOUTH CITY BRANCH

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

In Re: JAKE BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006

PROBATE DIVISION
FILE NUMBER:

502010 CP 003125 XXXXSB

FINAL ORDER ON PETITION TO APPOINT SUCCESSOR TRUSTEE

THIS CAUSE came before the Court on the Petition to Appoint Successor Trustee filed by ELIOT BERNSTEIN and CANDICE BERNSTEIN as parents and natural guardians of JAKE BERNSTEIN, a minor, as sole beneficiary of the JAKE BERNSTEIN IRREVOCABLE TRUST, and the Court, after reviewing the Petition, hearing argument of counsel, and being otherwise fully advised in the premises holds as follows:

- (A) All parties are before this Court, either by appearance, waiver and consent, or representation by counsel.
- (B) This Court has jurisdiction pursuant to Sections 736.0201 and 736.0202 of the Florida Statutes to grant the relief requested.
- (C) Oppenheimer Trust Company is hereby appointed as successor Trustee of the JAKE BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006.

Done and Ordered in Chambers at Palm Beach County, Florida this 8 day of July 2010.



CIRCUIT COURT JUDGE



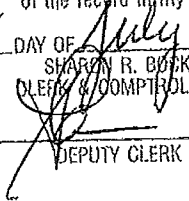
STATE OF FLORIDA - PALM BEACH COUNTY
I hereby certify that the foregoing is a true copy of the record in my office.
THIS 8 DAY OF July, 2010
SHARON R. BORK
CLERK & COMPTROLLER
By 
DEPUTY CLERK

EXHIBIT C

2010 JUL - 8 AM 9:43
SHARON R. BOCK
PALM BEACH COUNTY
SOUTH CITY BRANCH

IN THE CIRCUIT COURT FOR PALM BEACH COUNTY, FLORIDA

In Re: JOSHUA Z. BERNSTEIN IRREVOCABLE
TRUST dated September 7, 2006

PROBATE DIVISION:
FILE NUMBER:

502010 CP 003128XXXXJB

FINAL ORDER ON PETITION TO APPOINT SUCCESSOR TRUSTEE

THIS CAUSE came before the Court on the Petition to Appoint Successor Trustee filed by ELIOT BERNSTEIN and CANDICE BERNSTEIN as parents and natural guardians of JOSHUA Z. BERNSTEIN, a minor, as sole beneficiary of the JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST, and the Court, after reviewing the Petition, hearing argument of counsel, and being otherwise fully advised in the premises holds as follows:

- (A) All parties are before this Court, either by appearance, waiver and consent, or representation by counsel.
- (B) This Court has jurisdiction pursuant to Sections 736.0201 and 736.0202 of the Florida Statutes to grant the relief requested.
- (C) Oppenheimer Trust Company is hereby appointed as successor Trustee of the JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST dated September 7, 2006.

Done and Ordered in Chambers at Palm Beach County, Florida this 8 day of July 2010.



CIRCUIT COURT JUDGE

STATE OF FLORIDA • PALM BEACH COUNTY

I hereby certify that the foregoing is a true copy of the record in my office.

THIS 8 DAY OF July, 2010

SHARON R. BOCK
CLERK & COMPTROLLER

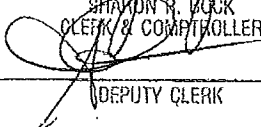
By 
DEPUTY CLERK

EXHIBIT D

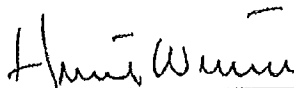
**AFFIDAVIT OF HUNT WORTH IN SUPPORT OF OPPENHEIMER TRUST
COMPANY OF DELAWARE'S MOTION FOR SUMMARY JUDGMENT AS TO
COUNT I OF ITS PETITION**

STATE OF Delaware :
:
COUNTY OF New Castle :

BEFORE ME, the undersigned authority, personally appeared Hunt Worth, who, after being duly sworn by me under oath, deposes and says:

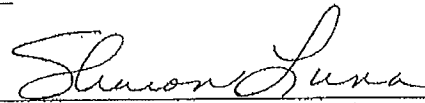
1. I am the President of Oppenheimer Trust Company of Delaware, formerly known as Oppenheimer Trust Company.
2. I am over the age of eighteen (18). All statements contained herein are based upon my personal knowledge.
3. The three documents attached hereto, entitled "Acceptance by Successor Trustee," are true copies of the documents I executed on July 30, 2010 pursuant to the *Final Orders on Petition to Appoint Successor Trustee* entered on July 8, 2010 by the Palm Beach County Circuit Court in Case Nos. 502010CP003123XXXXSB, 502010CP003125XXXXSB and 502010CP003128XXXXSB.

FURTHER AFFIANT SAYETH NAUGHT.



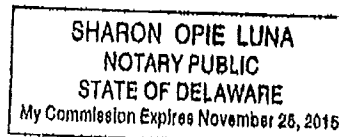
Hunt Worth

The foregoing instrument was acknowledged before me this 21 day of August, 2014, by Hunt Worth, who is [] personally known to me, or [] who produced _____ as identification.



NOTARY PUBLIC, STATE OF DELAWARE

My Commission Expires: 11-25-15



ACCEPTANCE BY SUCCESSOR TRUSTEE

THE UNDERSIGNED, pursuant to the FINAL ORDER ON PETITION TO APPOINT SUCCESSOR TRUSTEE dated July 8, 2010, by the Circuit Court for Palm Beach County, South Palm Beach County Division, in the matter of the JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006, Case No. 502010CP003128XXXXSB, does hereby accept its appointment as Successor Trustee of the JOSHUA Z. BERNSTEIN IRREVOCABLE TRUST, dated September 7, 2006, and hereby agrees to administer said Trust in accordance with the terms contained therein, effective immediately.

IN WITNESS WHEREOF, THE UNDERSIGNED has executed this Acceptance by Successor Trustee on this 30th day of July, 2010.

Witnesses:

OPPENHEIMER TRUST COMPANY

[Signature]

Print Name: _____

Print Name: _____

By: [Signature]
Its: CHIEF TRUST OFFICER
S.V.P.

STATE OF FLORIDA
SS
COUNTY OF PALM BEACH

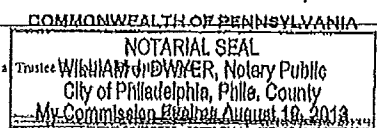
THE FOREGOING was acknowledged before me this 30 day of July, 2010, by Judy as S.V.P. of OPPENHEIMER TRUST COMPANY.
HUNT WORTH

[Signature]
Signature - Notary Public

Print, type or stamp name of Notary Public

- Personally Known
- Produced Identification/Type of Identification Produced

NAWPDATA\dt\Wermuth, Shirley & Simon\Grandchildren's Trusts Successor Trustee Appointments\Acceptance



ACCEPTANCE BY SUCCESSOR TRUSTEE

THE UNDERSIGNED, pursuant to the FINAL ORDER ON PETITION TO APPOINT SUCCESSOR TRUSTEE dated July 8, 2010, by the Circuit Court for Palm Beach County, South Palm Beach County Division, in the matter of the JAKE BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006, Case No. 502010CP003125XXXXSB, does hereby accept its appointment as Successor Trustee of the JAKE BERNSTEIN IRREVOCABLE TRUST, dated September 7, 2006, and hereby agrees to administer said Trust in accordance with the terms contained therein, effective immediately.

IN WITNESS WHEREOF, THE UNDERSIGNED has executed this Acceptance by Successor Trustee on this 30 day of July, 2010.

Witnesses:

OPPENHEIMER TRUST COMPANY

[Signature]
Print Name: _____

By: [Signature]

Print Name: _____

Its: CHIEF TRUST OFFICER
S.V.P.

STATE OF FLORIDA

SS

COUNTY OF PALM BEACH

THE FOREGOING was acknowledged before me this 30 day of July, 2010, by [Signature] as S.V.P. of OPPENHEIMER TRUST COMPANY.

[Signature]
Hunt Winters

[Signature]
Signature - Notary Public

Print, type or stamp name of Notary Public
COMMONWEALTH OF PENNSYLVANIA

Personally Known
 Produced Identification/Type of Identification Produced

NOTARIAL SEAL
WILLIAM J. DWYER, Notary Public
City of Philadelphia, Phila. County
My Commission Expires August 10, 2018

ACCEPTANCE BY SUCCESSOR TRUSTEE

THE UNDERSIGNED, pursuant to the FINAL ORDER ON PETITION TO APPOINT SUCCESSOR TRUSTEE dated July 8, 2010, by the Circuit Court for Palm Beach County, South Palm Beach County Division, in the matter of the DANIEL BERNSTEIN IRREVOCABLE TRUST DATED SEPTEMBER 7, 2006, Case No. 502010CP003123XXXXSB, does hereby accept its appointment as Successor Trustee of the DANIEL BERNSTEIN IRREVOCABLE TRUST, dated September 7, 2006, and hereby agrees to administer said Trust in accordance with the terms contained therein, effective immediately.

IN WITNESS WHEREOF, THE UNDERSIGNED has executed this Acceptance by Successor Trustee on this 30th day of JULY, 2010.

Witnesses:

OPPENHEIMER TRUST COMPANY

[Signature]

Print Name: _____

Print Name: _____

By: [Signature]

Its: CHIEF TRUST OFFICER
S.U.P.

STATE OF FLORIDA

SS

COUNTY OF PALM BEACH

THE FOREGOING was acknowledged before me this 30th day of July, 2010, by HUNT WOODS S.U.P. of OPPENHEIMER TRUST COMPANY.

[Signature]

Signature - Notary Public

Print, type or stamp name of Notary Public

Personally Known

Produced Identification/Type of Identification Produced

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
WILLIAM J. DWYER, Notary Public
City of Philadelphia, Phila. County
My Commission Expires August 19, 2013

NAWPDA/Adm/Berastela, Sblifey & Simon/Grandchildren's Trusts Successor Trustee Appointment/Acceptance as Trustee for D...

EXHIBIT E

Delaware

PAGE 1

The First State

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

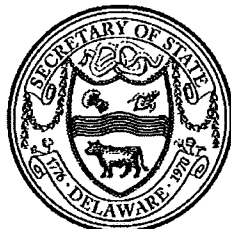
"OPPENHEIMER TRUST COMPANY", A NEW JERSEY CORPORATION, WITH AND INTO "OPPENHEIMER TRUST COMPANY OF DELAWARE" UNDER THE NAME OF "OPPENHEIMER TRUST COMPANY OF DELAWARE", A CORPORATION ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE NINETEENTH DAY OF DECEMBER, A.D. 2013, AT 3:02 O'CLOCK P.M.

AND I DO HEREBY FURTHER CERTIFY THAT THE EFFECTIVE DATE OF THE AFORESAID CERTIFICATE OF MERGER IS THE TWENTIETH DAY OF DECEMBER, A.D. 2013, AT 11:59 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.

5410598 8100M

131452674



You may verify this certificate online
at corp.delaware.gov/authver.shtml


Jeffrey W. Bullock, Secretary of State
AUTHENTICATION: 1006546

DATE: 12-23-13

CERTIFICATE OF MERGER

MERGING

OPPENHEIMER TRUST COMPANY

INTO

OPPENHEIMER TRUST COMPANY OF DELAWARE

(pursuant to Section 751 of Title 5 and
Section 252 of Title 8 of the Delaware Code)

The undersigned, a Delaware limited purpose trust company formed as a Delaware corporation, does hereby CERTIFY that:

FIRST: The constituent entities in the merger are:

1. Oppenheimer Trust Company, a New Jersey limited purpose trust company organized as a New Jersey banking corporation
2. Oppenheimer Trust Company of Delaware, a Delaware limited purpose trust company organized as a Delaware corporation

SECOND: An Agreement and Plan of Merger between the parties to the merger has been approved, adopted, certified, executed and acknowledged by each of the constituent entities in accordance with the requirements of Section 252 of the Delaware General Corporation Law and the applicable requirement of New Jersey law.

THIRD: Oppenheimer Trust Company of Delaware shall be the surviving entity.

FOURTH: Upon the completion of the merger, the Articles of Association of Oppenheimer Trust Company of Delaware shall constitute the Articles of Association of the surviving entity.

FIFTH: This Certificate of Merger shall be effective at 11:59 p.m. (Eastern Time) on December 20, 2013.


SIXTH: The executed Agreement and Plan of Merger is on file at an office of the surviving entity, the address of which is 405 Silverside Road, 2nd Floor, Wilmington, Delaware, 19809.

SEVENTH: A copy of the Agreement and Plan of Merger will be furnished by the surviving entity, on request and without cost, to any stockholder of, or any other person holding an interest in, any of the constituent entities in the merger.

EIGHTH: The authorized capital stock of Oppenheimer Trust Company is 1,000,000 shares of common stock with a par value of \$2.00 per share.

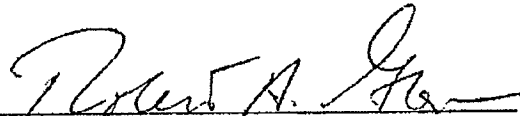
IN WITNESS WHEREOF, Oppenheimer Trust Company of Delaware has caused this Certificate of Merger to be executed by its duly authorized officer as of October 9, 2013.

OPPENHEIMER TRUST COMPANY OF DELAWARE

By: 
Name: MELKON A. WORTH
Title: PRESIDENT

7341234.2

The foregoing Certificate of Merger merging Oppenheimer Trust Company with and into Oppenheimer Trust Company of Delaware is hereby approved.

A handwritten signature in black ink, appearing to read "Robert A. Glen", written over a horizontal line.

Robert A. Glen
Delaware State Bank Commissioner

EXHIBIT F

GRAY | ROBINSON
ATTORNEYS AT LAW

433 PLAZA REAL, SUITE 339
BOCA RATON, FLORIDA 33432
TEL 561-368-3808
FAX 561-368-4008

BOCA RATON
FORT LAUDERDALE
JACKSONVILLE
KEY WEST
LAKELAND
MELBOURNE
MIAMI
NAPLES
ORLANDO
TALLAHASSEE
TAMPA

561-886-4122

STEVEN.LESSNE@GRAY-ROBINSON.COM

April 22, 2014

VIA E-MAIL, FEDERAL EXPRESS AND CERTIFIED MAIL

Eliot and Candice Bernstein
as the natural guardians of Joshua, Jacob and Daniel Bernstein
2753 N.W. 34th St.
Boca Raton, FL 33434-3459

Re: Resignation as Trustee of Trusts for the benefit of Joshua, Jacob and Daniel
Bernstein; Offer to Resign as Manager of Bernstein Family Realty, LLC

Dear Mr. and Mrs. Bernstein:

I represent, and am writing to you on behalf of, Oppenheimer Trust Company of Delaware ("Oppenheimer"), in its capacity as Trustee of the three trusts created by Simon Bernstein for the benefit of your minor children, Joshua, Jacob and Daniel Bernstein (the "Trusts"). This letter is directed to you, as the parents and natural guardians of Joshua, Jacob and Daniel Bernstein (the "Beneficiaries"), and will constitute due notice to the Beneficiaries under the Trusts and Florida law.

Oppenheimer hereby notifies you that it will resign as Trustee of the Trusts effective May 26, 2014 (the "Effective Date"). You, as the natural guardians of the Beneficiaries, have the right and obligation to appoint a successor corporate trustee. If you do not provide Oppenheimer, through me, with a written document evidencing that a successor corporate trustee has been appointed and has accepted the appointment before the Effective Date, Oppenheimer will petition the Court to either appoint a successor trustee or terminate the Trusts and distribute their assets to you, as natural guardians of the Beneficiaries.

For your information, the Trusts provide, in relevant part, as follows:

Eliot and Candice Bernstein
April 22, 2014
Page 2

5.2 Resignation. Any Trustee may resign by giving 30 days' written notice delivered personally or by mail to any then serving Co-Trustee and to the Settlor if he is then living and not disabled; otherwise to the next named successor Trustee, or if none, to the persons having power to appoint successor Trustees.

5.3 Power to Name Other Trustees. Whenever a successor Trustee is required and that position is not filled under the terms specified in this Trust Agreement, an individual Trustee ceasing to serve (other than a Trustee being removed) may appoint his or her successor, but if none is appointed, the remaining Trustees, if any, or the beneficiary shall appoint a successor Corporate Trustee. The appointment will be by a written document (including a testamentary instrument) delivered to the appointed Trustee. In no event may the Settlor ever be appointed as the Trustee under this Trust Agreement nor shall a Successor trustee be appointed that will cause this trust to be a grantor trust.

Similarly, Fla. Stat. § 736.0705, entitled "Resignation of trustee," provides, in relevant part, as follows:

(1) A trustee may resign:

(a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees...

Finally, Fla. Stat. § 736.0704, entitled "Vacancy in trusteeship; appointment of successor," provides, in relevant part, as follows:

(3) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(a) By a person named or designated pursuant to the terms of the trust to act as successor trustee.

(b) By a person appointed by unanimous agreement of the qualified beneficiaries.

(c) By a person appointed by the court.

Please let me know of your intentions with regard to the appointment of a successor trustee before the Effective Date.

Eliot and Candice Bernstein
April 22, 2014
Page 3

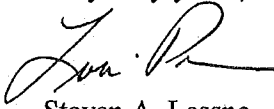
I am also writing to you on behalf of Oppenheimer, in its capacity as the Manager of Bernstein Family Realty, LLC (the "Company"). As you know, the Trusts are the sole owners and members of the Company, and the Company owns the house occupied by you and the Beneficiaries. Oppenheimer understands that the house is encumbered by two mortgages which probably exceed the value of the house. A third party, William Stansbury, claims that he is entitled to an equitable lien on the house, and he has sued the Company to establish such a lien. At Oppenheimer's direction, the Company is defending the lawsuit in order to avoid the claimed third lien on the house.

You have expressed unhappiness with Oppenheimer's management of the Company. In light of Oppenheimer's decision to resign as Trustee, Oppenheimer would like to offer you the opportunity to assume management of the Company, or appoint another successor manager, so that you or your chosen manager can defend the Stansbury lawsuit, operate the Company and deal with third parties on behalf of the Company as you deem to be in the best interest of the Company's members and, ultimately, your children. If you would like Oppenheimer to resign as Manager, please notify me in writing, before the Effective Date, of your selection of an appropriate successor manager and the successor's agreement to serve. Upon receipt of your selection, Oppenheimer will resign as Manager and, on behalf of the member Trusts, appoint your chosen successor.

Please note that, if you do not request Oppenheimer's earlier resignation and designate a successor manager, it is Oppenheimer's intent to resign as Manager of the Company after a successor trustee is appointed or the Trusts are terminated. At that point, it will be up to the successor trustee or you, as natural guardians of the Beneficiaries, to appoint a new manager.

If you have any questions regarding the foregoing, please contact me or have your attorney do so.

Very truly yours,


Steven A. Lessne FOR

SAL/sl

cc: Oppenheimer Trust Company of Delaware (via e-mail and U.S. Mail)

EXHIBIT G

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X
**ELIOT IVAN BERNSTEIN and P.
STEPHEN LAMONT,**

Plaintiffs,

- against -

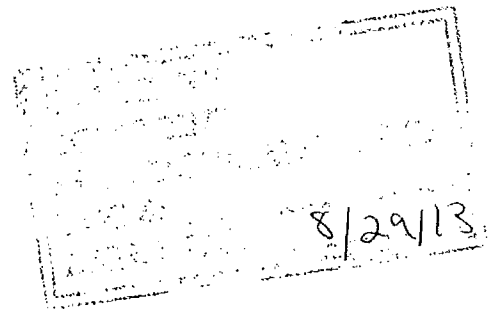
**APPELLATE DIVISION, FIRST
DEPARTMENT DEPARTMENTAL
DISCIPLINARY COMMITTEE, et al.,**

Defendants.
-----X

SHIRA A. SCHEINDLIN, U.S.D.J.:

ORDER

07 Civ. 11196 (SAS)



I. BACKGROUND

Pro se plaintiff Eliot Bernstein filed this action in December 2007.

On August 8, 2008, this Court dismissed all of his federal claims on the merits, with prejudice. Bernstein's request for leave to file a second amended complaint was denied. On January 27, 2010, the Second Circuit issued a Mandate dismissing Bernstein's appeal *sua sponte*, finding that it lacked an arguable basis in law or fact. Approximately two and one-half years later, on July 27, 2012, Bernstein filed his first motion to re-open this case, entitled "Emergency Motion to Reopen Case."

This motion, which was opposed by the Proskauer Defendants,¹ was denied in an

¹ The "Proskauer Defendants" include Proskauer Rose LLP, Kenneth Rubinstein, Christopher C. Wheeler, Stephen C. Krane (deceased) and the Estate of

Order dated August 14, 2012 (the “August 14th Order”).² In the August 14th Order, I found plaintiff’s Emergency Motion to be “frivolous, vexatious, overly voluminous, and an egregious abuse of judicial resources.” I cautioned plaintiff that any additional frivolous filings could subject him to monetary and/or injunctive sanctions under Federal Rule of Civil Procedure 11 (“Rule 11”).

Failing to heed this Court’s warning, Bernstein filed a second motion to re-open this case³ on February 28, 2013. In addition to opposing the motion, the Proskauer Defendants filed a Rule 11 motion for sanctions on May 7, 2013, which was previously served on Bernstein on April 5, 2013. Bernstein filed two additional motions on May 15, 2013: Notice of Motion to Re-Open Based on Fraud on the Court and More⁴ and Notice of Emergency Motion for Clarification of Order⁵, which sought reconsideration of the August 14th Order denying Bernstein’s first motion to re-open. On May 15, 2013, this Court denied Bernstein’s second and third motions to re-open as well as his motion for

Stephen R. Kaye.

² See Docket Entry # 141.

³ See Docket Entry # 142.

⁴ See Docket Entry # 149.

⁵ See Docket Entry # 150.

reconsideration,⁶ stating as follows:

Even if an alleged conflict on the part of the [New York State Attorney General's Office] were established, this would not overcome the fact that plaintiff's claims were barred on numerous jurisdictional and legal grounds. For example, the allegations against the State Defendants were based on their alleged failure to handle attorney grievances. But in dismissing these claims, this Court held that "there is no clearly established right to have complaints investigated or pursued," nor is there any "cognizable interest in attorney disciplinary proceedings or in having certain claims investigated." Furthermore, plaintiff had no standing to challenge the state court system's actions regarding attorney discipline. In addition, plaintiff's claims were barred by absolute judicial, quasi-judicial and qualified immunity as well as numerous other defenses.⁷ Because plaintiff has not, and cannot, remedy the fundamental defects in the Amended Complaint, re-opening this action would be futile. Plaintiff's application to reopen and his request to alter or amend judgment must therefore be denied.

5/15/13 Order at 5-6 (footnotes omitted).

The Proskauer Defendants now seek monetary and injunctive sanctions against Bernstein for his vexatious and frivolous conduct. Specifically, they seek monetary sanctions in an amount not less than \$3,500 and the following injunctive relief:

⁶ See Docket Entry # 151.

⁷ See *id.*

Eliot I. Bernstein is hereby enjoined from filing any action in any court related to the subject matter of this action without first obtaining leave of this Court. In moving for such leave, Bernstein must certify that the claim or claims he wishes to present are new claims never before raised and/or disposed of by any court. Bernstein must also certify that claim or claims are not frivolous or asserted in bad faith. Additionally, the motion for leave to file must be captioned "Application Pursuant to Court Order Seeking Leave to File." Failure to comply strictly with the terms of this injunction shall be sufficient grounds for denying leave to file and any other remedy or sanction deemed appropriate by this Court.

Proposed Order (Docket Entry # 146-2).

II. LEGAL STANDARDS

A. Rule 11 in General

The purpose of Rule 11 is "the deterrence of baseless filings and the curbing of abuses."⁸ Filings that have a complete lack of a factual and legal basis have been found "to harass, cause unnecessary delay, or needlessly increase the cost of litigation[.]"⁹ In appropriate cases, pro se litigants are subject to Rule 11

⁸ *On Time Aviation, Inc. v. Bombardier Capital, Inc.*, 354 Fed. App'x 448, 452 (2d Cir. 2009) (quoting *Caisse Nationale de Credit Agricole-CNCA, N.Y. Branch v. Valcorp, Inc.*, 28 F.3d 259, 266 (2d Cir. 1994)).

⁹ *Lawrence v. Richman Group of CT LLC*, 620 F.3d 153, 156 (2d Cir. 2010) (quoting Rule 11(b)).

sanctions.¹⁰ Pro se litigants who show contempt for the judicial system, harass defendants, and/or cause courts and litigants to waste resources may be sanctioned under Rule 11.

B. Injunctive Relief

It is “beyond peradventure” that “[a] district court possess[es] the authority to enjoin [a litigant] from further vexatious litigation.”¹¹ In determining whether a litigant’s future access to the courts should be restricted, courts should consider the following factors:

- (1) the litigant’s history of litigation and in particular whether it entailed vexatious, harassing or duplicative lawsuits;
- (2) the litigant’s motive in pursuing the litigation, e.g., does the litigant have a good faith expectation of prevailing?;
- (3) whether the litigant is represented by counsel;
- (4) whether the litigant has caused needless expense to other parties or has posed an unnecessary burden on the courts and their personnel; and
- (5) whether other sanctions would be adequate to protect the courts and

¹⁰ See *Maduakolam v. Columbia Univ.*, 866 F.2d 53, 56 (2d Cir. 1989) (stating that “Rule 11 applies both to represented and pro se litigants”). See also *Malley v. New York City Bd. of Educ.*, 207 F. Supp. 2d 256, 259 (S.D.N.Y. 2002) (“The fact that a litigant appears pro se does not shield him from Rule 11 sanctions because one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already overloaded court dockets.”) (quotation marks and citations omitted).

¹¹ *Safir v. U.S. Lines Inc.*, 792 F.2d 19, 23 (2d Cir. 1986). Accord *Lipin v. National Union Fire Ins. Co. of Pittsburgh, PA.*, 202 F. Supp. 2d 126, 142 (S.D.N.Y. 2002) (“A district court has the authority to enjoin a plaintiff who engages in a pattern of vexatious litigation from continuing to do so.”).

other parties. Ultimately, the question the court must answer is whether a litigant who has a history of vexatious litigation is likely to continue to abuse the judicial process and harass other parties.¹²

III. DISCUSSION

Bernstein had no factual or legal basis for his second motion to re-open or any subsequent motion he filed. Nonetheless, Bernstein must have believed his motion had merit, as evidenced by his twenty-two page Plaintiff's Opposition to Proskauer Defendant's [sic] Motion for Sanctions ("Opposition"). But there is no subjective, bad faith requirement in Rule 11. "The mental state applicable to liability for Rule 11 sanctions initiated by motion is objective unreasonableness"¹³ Moreover, as the following excerpt from his Opposition makes clear, Bernstein has no plans to ever end this litigation.

Bernstein is notifying Proskauer and this Court that he will have a lifelong and generational long litigious history in pursuing his patent royalties, as litigation is the key to prosecuting patents over their useful life and will also have a litigious ongoing history in pursuing the crimes and criminals who are attempting to steal them, despite whether they are cleverly disguised as Attorneys at Law, Judges, Prosecutors, etc. and despite the ridiculous Orders trying to prevent him from his due process rights and rights to his

¹² *Safir*, 792 F.2d at 24.

¹³ *In re Pennie & Edmonds LLP*, 323 F.3d 86, 90 (2d Cir. 2003).

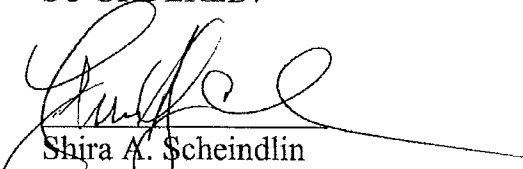
properties.¹⁴

Given these statements, this Court has no choice but to impose significant monetary and injunctive sanctions in an attempt to end this lengthy litigation.

IV. CONCLUSION

For the foregoing reasons, a monetary sanction in the amount of \$3,500 is hereby imposed on Bernstein as is the injunctive sanction described above. The money is to be paid to the Clerk of the Court, Southern District of New York, forthwith. If Bernstein ignores the monetary sanction, defendants may obtain an enforceable judgment in the amount of \$3,500. If Bernstein continues to file motions in this case, he may be subject to additional monetary sanctions. The Clerk of the Court is directed to close the motion for sanctions (Docket Entry # 145).

SO ORDERED:



Shira A. Scheindlin
U.S.D.J.

Dated: New York, New York
August 29, 2013

¹⁴ Opposition at 13.

- Appearances -

Plaintiff (Pro Se):

Eliot I. Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434
(561) 245-8588

For the Proskauer Defendants:

Gregg M. Mashberg, Esq.
Proskauer Rose LLP
11 Times Square
New York, NY 10036
(212) 969-3450

For the State Defendants:

Monica A. Connell
Assistant Attorney General
120 Broadway - 24th Floor
New York, NY 10271
(212) 416-8965