

Please note Fla.R.Civ.P. 1.110(b) "Claims for Relief." "A pleading which sets forth a claim for relief.. .must state a cause of action and shall contain:

(1) A short and plain statement of the grounds upon which the court's jurisdiction depends; (2) short and plain statement of the ultimate facts

showing the pleader is entitled to relief and (3) a demand for judgment for

the relief to which the pleader claims himself entitled."

Please consider the language used twice, "a short and plain statement..

Please also note Fla.R.Civ.P. 1.130(a): "All.. .documents upon which an action may be brought shall be incorporated in or attached to the pleading. No papers shall be unnecessarily annexed as exhibits." Further, the rule states: "The pleading shall contain no unnecessary

recitals of deeds, documents, contracts or other instruments," Put simply, documents which will be used as evidence should not be attached to the complaint, only those documents necessary to give the Court an understanding upon which the cause of action is based. In this case this would only be the 2012 Simon Trust from which you want Ted removed, the letter from Tescher and Spallina explaining how Ted became the Successor Trustee, and the Court Order which you cite in your Complaint denying Ted's Motion to be Successor Personal Representative or Curator of the Estate of Simon. No other documents are necessary to be attached, nor should any other documents be attached.

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

IN RE:

Case No. 50 2012 CP 004391 SB
JUDGE MARTIN COLIN

ESTATE OF SIMON
BERNSTEIN,

Deceased.

Division: IY

ELIOT BERNSTEIN, individually and as
Legal Guardian of JOSHUA BERNSTEIN,
JACOB BERNSTEIN, and DANIEL
BERNSTEIN,

Plaintiffs,

v.

THEODORE STUART BERNSTEIN, individually;
THEODORE STUART BERNSTEIN, as Successor
Trustee of the 2008 SIMON L. BERNSTEIN
TRUST AGREEMENT, as amended and restated in the
SIMON L. BERNSTEIN AMENDED AND RESTATED
TRUST AGREEMENT dated July 25, 2012;

***ELIOT: LIST 7 OTHER GRANDCHILDREN AS
DEFENDANTS***

Defendants.

**PETITION TO REMOVE THEODORE STUART BERNSTEIN
AS SUCCESSOR TRUSTEE**

COMES NOW, Eliot Ivan Bernstein ("Eliot" or "Plaintiff"), beneficiary of the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008 and Eliot Bernstein as Legal Guardian of his three minor children under the SIMON L. BERNSTEIN TRUST AGREEMENT dated May 20, 2008, as amended and restated in the SIMON L. BERNSTEIN AMENDED AND RESTATED TRUST AGREEMENT dated July 25, 2012 (the "2012 Simon Trust or "Trust"),

and pursuant to §736.0706, Fla. Stat. (2013), files this Petition To Remove Theodore Stuart Bernstein (“Ted”) As Successor Trustee, and in support states as follows:

1. Plaintiff Eliot Ivan Bernstein is over the age of 18, a resident of Palm Beach County, Florida and is a beneficiary of the 2008 Simon Trust.
2. Plaintiff Eliot Ivan Bernstein is legal guardian of his three minor children, Joshua Bernstein, Jacob Bernstein and David Bernstein, beneficiaries under the SIMON L. BERNSTEIN AMENDED and RESTATED TRUST dated 7/25/2012.
3. Plaintiff has standing to seek removal in his capacity as Legal Guardian for his minor children who are beneficiaries of the 2012 Simon Trust.
4. Defendant, Theodore Stuart Bernstein is currently serving as the Successor Trustee of the Trusts and is a resident of Palm Beach County.
5. Defendants, (*list the 7 other grandchildren*) are all beneficiaries under the _____ Trust.

Legal Standard for Removal of Trustee

6. When removal of a trustee is at issue, §736.0706, Fla. Stat. (2014) governs:

736.0706. Removal of trustee

(2) The court may remove a trustee if:

- (a) **The trustee has committed a serious breach of trust;**
- (b) **The lack of cooperation among cotrustees substantially impairs the administration of the trust;**
- (c) **Due to unfitness, unwillingness, or persistent failure of the trustee to administer the trust effectively, the court determines that removal of the trustee best serves the interests of the beneficiaries;** or
- (d) **There has been a substantial change of circumstances** or removal is requested by all of the qualified beneficiaries, the court finds that removal of the trustee best serves the interests of all of the beneficiaries and is not inconsistent with a material purpose of the trust, and a suitable cotrustee or successor trustee is available.

7. TED's removal is warranted by Subsections (2) (a), (c) and/or (d) of §736.0706, Fla. Stat. (2014).
8. The previous Co-Trustees of the 2012 Simon Trust were DONALD R. TESCHER, ESQ. and ROBERT L. SPALLINA, ESQ. (Tescher & Spallina) by virtue of the Successor Trustee

provision set forth in Article IV, Section C of the 2012 Simon Trust. A copy of the 2012 Amended and Restated Trust is attached hereto as Exhibit "A."

9. By a letter dated January 14, 2014 addressed to the five children of Simon Bernstein, as opposed to the beneficiaries of the 2012 Simon Trust, TESCHER and SPALLINA resigned as,
- i. Co-Trustees of Simon's 2012 trust,
 - ii. Co-Personal Representatives/Executors to the Simon Estate,
 - iii. Counsel to themselves as Co-Trustees and Co-Personal Representatives,
 - iv. Counsel to TED as alleged Trustee of the Shirley trust (for irreconcilable differences),
 - v. Counsel to TED as Personal Representative of the Shirley Estate, and,
 - vi. Counsel in all other fiducial and legal capacities they were acting in for any Bernstein family related matters.

A copy of the letter is attached hereto as Exhibit "B."

10. Upon their resignation, TESCHER stated, "If the majority of the Bernstein family is in agreement, I would propose to exercise the power to designate a successor trustee by appointing Ted Bernstein in that capacity."

COUNT I

TED BERNSTEIN IS NOT ELIGIBLE TO SERVE AS SUCCESSOR TRUSTEE AS THE LANGUAGE OF THE TRUST DISQUALIFIES HIM TO SERVE AS SUCH

11. Article IV, Section C.(3) (Page 16) of the 2012 Simon Trust states:

C. Appointment of Successor Trustee

3. . . . A successor Trustee appointed under this subparagraph shall **not** be a Related or Subordinate Party of the trust. (**emphasis added**)

12. Under Article III, Subsection E (7), A "Related or Subordinate Party" is defined in the Trust as follows:

ARTICLE III. GENERAL

E. Definitions. In this Agreement,

7. Related or Subordinate Party. A "*Related or Subordinate Party*" to a trust describes a beneficiary of the subject trust or a related or subordinate party to a beneficiary of the trust as the terms "related or subordinate party" are defined under Code Section 672(c).

The "Code" is defined as "the Internal Revenue Code of 1986 ... "

A "Related or subordinate party" under the Code means any nonadverse party who is " ... (2) any one of the following: The Grantor's father, mother, issue, brother or sister ... "

13. TED is the son, or an "issue" of the Grantor, SIMON BERNSTEIN, and a related party (father) to some of the beneficiaries. Therefore, TED is ineligible as a "Related or Subordinate Party" to serve as a Successor Trustee under §736.0706(2)(c).
14. Further, TED is specifically disqualified to be a Successor Trustee by the terms of the alleged 2012 Simon Trust in another provision of the Trust that also disqualifies TED. Article III E (1) states:

Notwithstanding the foregoing, **for all purposes of this Trust and the dispositions made hereunder**, my children, TED S. BERNSTEIN, PAMELA B. SIMON, ELIOT BERNSTEIN, JILL IANTONI and LISA S. FRIEDSTEIN, shall be deemed to have predeceased me..."

15. Therefore, by the very language of the Trust, TED, in any scenario, is wholly disinherited, considered legally predeceased, and further disqualified by the provision of the Trust to serve as a Successor Trustee.

COUNT II

TED BERNSTEIN, AS SUCCESSOR TRUSTEE, HAS FAILED TO FOLLOW FLORIDA STATUTE 736.0813 AND 736.08135 BY BREACHING HIS DUTY TO INFORM AND ACCOUNT

16. The duty of a trustee to account has been codified in Florida Statute 736.0813:

736.0813 Duty to inform and account.—The trustee shall keep the qualified beneficiaries of the trust reasonably informed of the trust and its administration.

(1) The trustee's duty to inform and account includes, but is not limited to, the following:

(a) Within 60 days after acceptance of the trust, the trustee shall give notice to the qualified beneficiaries of the acceptance of the trust and the full name and address of the trustee.

(b) Within 60 days after the date the trustee acquires knowledge of the creation of an irrevocable trust, or the date the trustee acquires knowledge

that a formerly revocable trust has become irrevocable, whether by the death of the settlor or otherwise, the trustee shall give notice to the qualified beneficiaries of the trust's existence, the identity of the settlor or settlors, the right to request a copy of the trust instrument, and the right to accountings under this section.

(c) Upon reasonable request, the trustee shall provide a qualified beneficiary with a complete copy of the trust instrument.

(d) A trustee of an irrevocable trust shall provide a trust accounting, as set forth in s. 736.08135, to each qualified beneficiary annually and on termination of the trust or on change of the trustee. (emphasis supplied)

(e) Upon reasonable request, the trustee shall provide a qualified beneficiary with relevant information about the assets and liabilities of the trust and the particulars relating to administration.

17. TED has provided NO accountings for the estate and the Simon and Shirley Trusts.
18. The duty to account is so fundamental to the law of trusts that this duty cannot be diminished by the trust itself. The trust instrument may provide that a trustee need not account or only account informally to a beneficiary, but according to the Florida Trust Code, any such limiting provisions are ineffectual and cannot relieve the trustee of his or her duty to account fully to a qualified beneficiary. See: Florida Statute. 736.0105(2) (s).

A. FAILURE TO ACCOUNT IN THE SIMON ESTATE AND TRUST

19. Ted, currently acting as successor trustee in 2012 Simon Trust has provided NO accountings despite repeated requests by beneficiaries and despite changes in fiduciaries, when TED's former counsel and fiduciaries for the 2012 Simon Trust, TESCHER and SPALLINA resigned.
20. Between TED and his former counsel there has been NO accounting for over two years in violation of probate and trust rules and statutes.

B. FAILURE TO ACCOUNT IN THE SHIRLEY ESTATE AND SHIRLEY BERNSTEIN TRUST

21. Since Ted was appointed Personal Representative in the Shirley Bernstein Estate, NO statutorily required accounting has been filed with beneficiaries despite repeated requests, and despite the change in fiduciaries when the Estate was reopened, in violation of probate and trust rules and statutes.
22. Since becoming the Successor Trustee of Shirley's 2008 Shirley Bernstein Trust Agreement on September 13, 2012 Ted has failed to provide a full copy of Shirley's Trusts with all Schedules and Addendums (as required by statute to account for the Trust Corpus/Trust Res) and has provided no statutorily required accountings.
23. A trustee cannot fulfill his duty to account by merely turning over to the beneficiaries the check register of the trust bank account, a list of checks, bank statements, copies of bills and receipts. It is the duty of the trustee to provide a proper and sufficient accounting.
24. TED's failure to account in the Shirley Estate, the Shirley trust and the Simon Trust is cause for this Court to remove TED as a fiduciary of the Simon Trust.

COUNT III

TED BERNSTEIN, AS TRUSTEE, HAS FAILED TO KEEP ACCURATE RECORDS AND COMMITTED WASTE OF TRUST AND ESTATE ASSETS

25. TED as successor trustee has a duty to maintain clear, complete, and accurate books and records regarding the trust.
26. The Florida Trust Code explicitly states that a trustee shall keep clear, distinct and accurate records of the administration of the trust.

736.0810 Record keeping and identification of trust property.

- (1) A trustee shall keep clear, distinct, and accurate records of the administration of the trust.
- (2) A trustee shall keep trust property separate from the trustee's own property.
- (3) Except as otherwise provided in subsection

(4), a trustee shall cause the trust property to be designated so that the interest of the trust, to the extent feasible, appears in records maintained by a party other than a trustee or beneficiary.

(5) If the trustee maintains records clearly indicating the respective interests, a trustee may invest as a whole the property of two or more separate trusts.

27. Tescher and Spallina were ordered to turn over all their records and properties in their possession to the Curator, Benjamin Brown, Esq. No original signed and executed Trust for Simon and Shirley were turned over to him. TED does not possess the original signed and executed 2012 Simon Trust under which he alleges to operate as Successor Trustee.
28. At this time no original signed and legally executed originals exist of the 2012 Simon Trust.
29. The former fiduciaries of the Trust, TESCHER and SPALLINA, upon termination as Co-Trustees, have produced no original dispositive documents to the former Curator, Benjamin Brown, Esq., despite the Court's Order to turn over all records and properties in their possession to the former Curator.
30. The 2012 Simon Trust was also used to seize control of Trust assets.
31. Once control was gained by TED and his attorneys, TESCHER and SPALLINA, they began to loot Trusts through a series of fraudulent acts and they began recklessly billing outrageous and unaccounted for legal and fiduciary fees, while simultaneously concealing, altering and destroying records and precluding beneficiaries from any financial information or access to the dispositive documents.
32. Legal and fiduciary fees have run rampant, with often 6-7 attorneys attending hearings.
33. Real estate was sold at fire sale prices and distributions were made to knowingly improper parties by TED, against the advice of SPALLINA, and other accounts were discovered being used post mortem at Legacy Bank and others. Bank accounts and investment accounts are unaccounted for.

34. A trustee who, after being requested to do so, refuses to provide a beneficiary with relevant information about the assets of the trust, refuses to account for how the trust is being administered, and who refuses to provide an accounting when required, has breached his fiduciary duty owing to the beneficiaries and should be removed.

COUNT IV

TED BERNSTEIN SHOULD BE REMOVED AS SUCCESSOR TRUSTEE BASED ON CONFLICT OF INTEREST

A. ILLINOIS INSURANCE LITIGATION CONFLICT OF INTEREST

35. At the time of SIMON'S death, it was determined that there existed a life insurance policy issued by Heritage Union Insurance Company ("Heritage") allegedly payable to the Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 (the "Insurance Trust") as beneficiary.
36. Shortly after SIMON's death in 2012, SPALLINA submitted a claim form to Heritage Union Life on behalf of the nonexistent Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995. SPALLINA signed the claim form as the "acting Trustee" of the nonexistent trust in an effort to make the insurance proceeds payable to his law firm trust account and to then distribute the proceeds outside the Simon Bernstein Estate and Simon Bernstein Trust to the detriment of the Estate and Trust beneficiaries.
37. SPALLINA did this for the benefit of the grown children of Simon Bernstein (excluding Eliot), including TED, who as set forth above, was considered predeceased under the Simon's estate and Trust plans.
38. Under Florida law, if it is determined that no Simon Bernstein Irrevocable Insurance Trust dated June 1, 1995 existed at the time of SIMON'S death, the insurance proceeds are payable

to the Estate of Simon and then per the terms of Simon's Last Will and Testament, would pour over into Trust.

39. After SPALLINA'S claim was denied by Heritage, TED somehow replaced SPALLINA as the alleged "Trustee" of the lost trust and he filed an Illinois circuit court breach of contract lawsuit against Heritage. The suit was transferred to federal court in the United States District Court for the Northern District of Illinois in Chicago.
40. After TESCHER and SPALLINA resigned as Personal Representatives, the Estate of Simon Bernstein filed a Motion to Intervene in the Illinois life insurance litigation to assert the Estate's interest in the life insurance proceeds. The Curator, Ben Brown, retained counsel with the approval of this Court.
41. The Plaintiffs in the Life Insurance Litigation, include TED acting as "Trustee" of the nonexistent 1995 trust and TED, individually. They filed a Memorandum of Law in Opposition to the Estate's Motion to Intervene (the "Opposition Memorandum").
42. The opening paragraph of the Opposition Memorandum states as follows:

NOW COMES Plaintiffs, SIMON BERNSTEIN IRREVOCABLE INSURANCE TRUST dtd 6/21/95, by **TED BERNSTEIN, as Trustee, (collectively referred to as "BERNSTEIN TRUST"), TED BERNSTEIN, individually,** PAMELA B. SIMON, JILL IANTONI AND LISA FRIEDSTEIN... (**emphasis added**)
43. As Plaintiff, TED stands to benefit personally if the claim by the Simon Bernstein Estate to the life insurance proceeds is defeated because TED and his siblings (other than Eliot) have taken the position that they are the beneficiaries of the nonexistent Insurance Trust and not their children.
44. Despite the opposition of TED BERNSTEIN to the Intervention, the federal court granted the Estate's Motion to Intervene.

45. TED is now an opposing party of record to the Estate's claim in the Illinois life insurance litigation.
46. TED, individually and as the alleged trustee of the nonexistent 1995 Insurance Trust, has placed his personal interests above the interests of the 2012 Simon Trust beneficiaries, the grandchildren of SIMON, including his own children.
47. Through TED's opposition to the Estate's intervention in the Illinois life insurance litigation, an inherent conflict of interest is displayed where TED is blocking the interests of his children and other beneficiaries of the Trust while simultaneously acting as Trustee of the Trust.
48. TED, as Successor Trustee of the 2012 Simon trust, owes a duty of loyalty under §736.0706(1), Fla. Stat. (2014) to the trust beneficiaries to administer the trust solely in their interests. His actions in the Illinois Insurance Litigation have violated that duty.
49. TED, acting as a fiduciary to the Trust, must support, or at the least not obstruct, the efforts of the Estate and 2012 Simon Trust to recover an additional \$1.7 million in life insurance benefits. However, TED benefits directly from his obstruction and therefore has an obvious conflict of interest.
50. If the insurance proceeds are recovered for the Estate, this would dramatically increase the Estate assets that Estate and Trust beneficiaries receive.
51. This attempt to redirect the insurance proceeds by TED through a lost insurance trust scheme has caused intentional interferences and delays with expectancies to the Trust beneficiaries.
52. TED blocked the grandchildren, including minor children, from their interests being represented by counsel in the Illinois insurance litigation, leaving the grandchildren's interests wholly unprotected while trying to secure the benefits for himself.
53. The Federal court has now allowed intervention by the Estate of Simon Bernstein despite the best efforts to block the Estate's intervention by TED.

54. More importantly, TED'S efforts in the Life Insurance Litigation are designed to keep the 1.7 million out of the estate and trust and to redirect the money to him and his siblings (excluding Eliot).
55. As a consequence of the foregoing conflict of interest, TED is in breach of his fiduciary duty to the beneficiaries of the 2012 Simon Trust by opposing efforts to make the Estate and Simon Trusts more solvent, which in turn exposes the Estate and Simon Trusts to increased liability. This warrants his removal under §736.0706(2)(a).
56. TED's continued interference is an attempt to redirect estate assets to him personally and would further damage the trust beneficiaries as Ted's interference has caused unnecessary and costly legal fees to the Estate and Trust beneficiaries.

B. TED'S CONFLICT OF INTEREST WITH BENEFICIARIES

i. TED'S ADVERSE INTEREST WITH ELIOT

57. TED has adverse interests to Eliot and in fact is hostile towards Eliot and his minor children, due to the fact that Eliot is the one who has uncovered their wrongdoings, exposed them to potential criminal prosecution.
58. TED and his attorneys have conspired to use a strategy of force and aggression on Eliot, which was discovered in an email TED sent to Eliot describing their tactics.

ii. TED'S CONFLICT OF INTEREST HAS CAUSED HARM TO MINOR CHILDREN BENEFICIARIES

59. This Court ordered on _____ (date), that tuition for Saint Andrews school, including past due balances, be paid for Eliot's three minor children for the 2014-2015 school year.

60. TED intentionally failed to make the Court-ordered payment, resulting in all three children being removed from school and forced them to attend new schools, causing damages to the minor children both emotionally and scholastically.
61. Because of the conflicts of interests with the beneficiaries, TED has failed to maintain a duty of impartiality owed to the beneficiaries and should therefore be removed.
62. Attorney SPALLINA, representing TED as Personal Representative of the Estate of Shirley Bernstein, has admitted to altering provisions of the Shirley Bernstein Trust to Palm Beach County Sheriff investigators, which had the effect of benefitting TED'S family over others.
63. No successor was appointed until this Court reopened the Estate of Shirley due to the fact that Simon closed the Estate as Personal Representative/Executor while dead, yet TED acted as Personal Representative in multiple transactions during that time in order to begin selling assets of the estate and trusts of Shirley.
64. Statements made by SPALLINA to Palm Beach Sheriff investigators reveal that TED took distributions against the advice of his counsel, again making him wholly unfit to continue as a fiduciary in these matters.
65. TED also claimed to Palm Beach Sheriff investigators that he had not read all of the trust documents that he was acting as fiduciary under.
66. Ted Bernstein's involvement with his former counsel TESCHER and SPALLINA in such activity involving the Estate and Trust of Shirley Bernstein should disqualify him from serving as Successor Trustee of the Simon Trusts or any other fiducial capacities in the Estates and Trusts of Simon and Shirley.

COUNT V

**THIS COURT PREVIOUSLY REJECTED TED AS A FIDUCIARY IN THE
ESTATE OF SIMON BERNSTEIN**

67. TED's Petition to be appointed Curator or Personal Representative was rejected on February 19th, 2014 by this Court. See, Order attached hereto as Exhibit "C."

WHEREFORE, Plaintiff requests that this Court;

1. Remove TED as the alleged successor trustee of the Simon Trust,
2. Appoint a successor trustee with no conflicts of interests or affiliation with any of the former fiduciaries or attorneys at law involved in the prior frauds in any way,
3. Require the filing of a Trust Accounting.
4. Award damages for failure to account or for improper accounting, including the removal of the trustee, reducing or denying compensation to the trustee, requiring the trustee to repay money to the trust or by restoring property to the trust by other means, or any other relief the court deems appropriate.
5. Compel the trustee to redress a breach of trust by paying money or restoring property or by other means;
6. Appoint a special fiduciary to take possession of the trust property and administer the trust;
7. Deny compensation to the trustee;
8. Subject to §736.1016, void an act of the trustee, impose a lien or a constructive trust on trust property, or trace trust property wrongfully disposed of and recover the property or its proceeds; or
9. Order any other appropriate relief.

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EXHIBIT A

2012 TRUST OF SIMON L. BERNSTEIN

EXHIBIT B

DONALD R. TESCHER, ESQ. LETTER DATED JANUARY 14, 2014

EXHIBIT C

**COURT ORDER DENYING TED BERNSTEIN'S MOTION TO BE
APPOINTED CURATOR OR SUCCESSOR PERSONAL
REPRESENTATIVE TO THE ESTATE OF SIMON BERNSTEIN**