

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 TERMINATE  
GRANDCHILDREN TRUSTS AND DELIVER ASSETS TO NATURAL GUARDIANS  
OF MINOR BENEFICIARIES**

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 (the “Grandchildren Trusts”), moves to terminate the Grandchildren Trusts for want of a trustee, and for permission to deliver the trust assets to Eliot and Candice Bernstein (the “Bernsteins”), as the natural guardians of Joshua, Jake and Daniel Bernstein. In support hereof, Oppenheimer states:<sup>1</sup>

\_\_\_\_\_  
<sup>1</sup> 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.

1. As the Court previously recognized, “Oppenheimer effectively resigned as Trustee of the [Grandchildren Trusts] effective as of May 26, 2014.” *Omnibus Order dated November 7, 2014*, ¶ 1(a). A copy of the Omnibus Order is attached hereto as Exhibit “A.”

2. The Court ordered that, “[b]y October 30, 2014, the Bernsteins, as natural guardians of the minor beneficiaries of the Grandchildren Trusts, shall submit the name and address of a proposed Successor Trustee to the Court, to Oppenheimer’s counsel and to the proposed Successor Trustee.” *Omnibus Order*, ¶ 1(b).

3. The Court further ordered that, “[i]f the proposed Successor Trustee accepts the appointment, Oppenheimer shall deliver the trust assets to the Successor Trustee in accordance with the provisions of Fla. Stat. § 736.0707(2). If the proposed Successor Trustee declines the appointment or fails to respond, the Court will consider other available options in light of Oppenheimer’s resignation.” *Omnibus Order*, ¶ 1(c).

4. The Bernsteins failed to submit the name of a proposed successor trustee by October 30, 2014, and as of the date of this filing, nearly four months later, they still have not done so.

5. Consistent with the relief requested in Count I of Oppenheimer’s Petition, Oppenheimer hereby requests that the Court declare the Grandchildren Trusts terminated and permit Oppenheimer to deliver the trust property to Eliot and Candice Bernstein, as the natural guardians of the trusts’ minor beneficiaries, subject to the provisions of Fla. Stat. § 736.0707(2).

WHEREFORE, Oppenheimer requests that the Court declare the Grandchildren Trusts terminated, permit Oppenheimer to deliver the trust assets to Eliot and Candice Bernstein, as

the natural guardians of Joshua, Jake and Daniel Bernstein, subject to the provisions of Fla. Stat. § 736.0707(2), and grant such other relief as is just and proper.

Respectfully submitted,

GUNSTER, YOAKLEY & STEWART, P.A.  
*Counsel for Petitioner*  
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West Palm Beach, FL 33401  
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By: /s/Steven A. Lessne

Steven A. Lessne, Esq.  
Florida Bar No. 107514  
[slessne@gunster.com](mailto:slessne@gunster.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 13<sup>th</sup> day of February, 2015.

/s/ Steven A. Lessne

**SERVICE LIST**

Eliot Bernstein  
2753 N.W. 34<sup>th</sup> Street  
Boca Raton, FL 33434  
[ivewit@ivewit.tv](mailto:ivewit@ivewit.tv)  
[ivewit@gmail.com](mailto:ivewit@gmail.com)

Candice Bernstein  
2753 N.W. 34<sup>th</sup> Street  
Boca Raton, FL 33434  
[tourcandy@gmail.com](mailto:tourcandy@gmail.com)

# **EXHIBIT A**

NOV 17 2014

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**OMNIBUS ORDER**

THIS MATTER came before the Court on October 20, 2014 upon the following Motions filed by Oppenheimer Trust Company of Delaware ("Oppenheimer"): (i) Motion for Summary Judgment As To Count I Of Its Petition; (ii) Motion To Strike Or Sever Counterclaim; and (iii) Motion To Appoint Guardian *Ad Litem* For Minor Beneficiaries. Having considered the Motions, heard argument from Oppenheimer's counsel and from Eliot and Candice Bernstein (the "Bernsteins"), and being otherwise duly advised in the premises, it is hereupon

ORDERED and ADJUDGED as follows:

1. Oppenheimer's Motion for Summary Judgment As To Count I Of Its Petition is granted as follows:

a. Oppenheimer effectively resigned as Trustee of the three "Grandchildren Trusts" at issue in this case effective as of May 26, 2014.

b. By October 30, 2014, the Bernsteins, as natural guardians of the minor beneficiaries of the Grandchildren Trusts, shall submit the name and address of a proposed Successor Trustee to the Court, to Oppenheimer's counsel and to the proposed Successor Trustee. At the time of their submissions, the Bernsteins shall notify the proposed Successor Trustee that he/she shall either accept or decline the appointment by November 10, 2014 by notifying the Court, the Bernsteins and counsel for Oppenheimer of his/her election in writing.

c. If the proposed Successor Trustee accepts the appointment, Oppenheimer shall deliver the trust assets to the Successor Trustee in accordance with the provisions of Fla. Stat. § 736.0707(2). If the proposed Successor Trustee declines the appointment or fails to respond, the Court will consider other available options in light of Oppenheimer's resignation.

2. Oppenheimer may file and serve final accountings for each of the Grandchildren Trusts with the Court. Within twenty (20) days after Oppenheimer files and serves its final accountings, the Bernsteins, as natural guardians of the minor beneficiaries, may file form, line-item objections to the final accountings. Thereafter, the Court will conduct appropriate proceedings to review and settle the final accountings.

3. The Court withholds ruling on Oppenheimer's Motion To Appoint Guardian *Ad Litem* For Minor Beneficiaries, but may reconsider Oppenheimer's Motion after the Bernsteins file their objections to the final accounting or at a later date.

4. The Counter-Complaint filed in this action remains stayed pending further Order of this Court.

DONE AND ORDERED in Chambers, Palm Beach County, Florida, this \_\_\_\_ day of October, 2014.

Hon. Martin H. Colin, Circuit Judge

cc: Steven A. Lessne, Esq.  
Eliot and Candice Bernstein  
Alan Rose, Esq.

SIGNED & CLERKED  
NOV 07 2014  
JUDGE MARTIN H. COLIN