

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.

**MOTION TO APPROVE TRUST PROPERTY AND FOR  
ORDER PROHIBITING INTERFERENCE WITH CLOSING,  
INCLUDING DISCHARGING LIS PENDENS**

Plaintiff, Ted S. Bernstein, Successor Trustee of the Shirley Bernstein Trust (the "Trustee"),  
moves for an Order approving a sale of trust property and prohibiting interference with the closing,  
and states:

1. The most significant asset now held by the Shirley Bernstein Trust is a single-family  
home located at 7020 Lions Head Lane, Boca Raton, 33496, located within the St. Andrews Country  
Club (the "House").

We have no Trust accounting in violation of Statutes to determine if  
this statement is true.

2. The House was placed on the market by Simon Bernstein, as Successor Trustee, before his death, and has been professionally marketed by a extremely well known and successful real estate firm, Nestler Poletto Sotheby's International Realty ever since. See attached Affidavit of John Poletto. Simon Bernstein chose Nestler-Poletto, which is one of the most respected real estate companies in Boca Raton, and the Ted S. Bernstein, as Successor to Simon, continued to list the House with the same company.

Nester listed home at 3.2M weeks before Simon died in 2012, the value of properties and market has only increased since, not plummeted over 50% as this sale would indicate. Ted Bernstein is alleged to be a not valid trustee and their are legal actions pending regarding this.

3. After years of active and professional marketing efforts, the Trust has received a bona fide offer, all cash with no financing contingency, for which the buyer is accepting the property in as is condition.

No details have been provided to beneficiaries of this sale, no info regarding terms etc.

4. The House is an unusual, "Spanish-style" design, out of character with the St. Andrews community, and has been very difficult to sell. Any realistic buyer would be expected to immediately incur hundreds of thousands in repairs and expenses of a major renovation.

Who says, house was in perfect condition when Simon died, what hap?

5. The current offer is, in the opinion of the professional realtor, indicative of fair-market value and is within a reasonable range of a recent appraisal.

Nestler is alleged to help illegal sale of Shirley Condo already and is Ted's close personal friend and client.

6. Eliot Bernstein has served a Notice of Lis Pendens, without the Court's prior permission. The purported Notice of Lis Pendens is improper in several regards, including the fact that there is no legal right to serve a lis pendens; there is no claim which and Eliot has for specific performance or to enforce a lien under Chapter 713; and there is no claim that Eliot is entitled to a direct ownership interest in the House. In short, there is no lawsuit pending that could affect the title to property; thus, there is not a "fair nexus between the apparent legal or equitable ownership of the property and the dispute embodied in the lawsuit." The attempt to serve a lis pendens is improper under Florida law.

Eliot has a stayed counter complaint and other filings in Shirley's estate where property is subject to claims. Eliot is a direct owner in home as he is a beneficiary of the Shirley Trust. There are lawsuits pending that could affect title to property, as the beneficiaries are still unknown and Alan and Ted have trust construction case pending and more.

7. The pending sale must close by March 31, 2015, because it is a condition of the contract between the Buyer and the Trust, and this exigency is caused by the fact that the St. Andrews Country Club is increasing its equity membership requirement by \$30,000 and it is a condition of this contract that it close by that date. If the closing does not occur, there will be an immediate loss of value to the Trust, as well as all of the corresponding carry costs of the House, including the Club membership.

This is no reason to sell home at over 50% off prior listing price with increasing market value. If Ted is found to have been a not qualified Trustee as alleged in litigation it could force home to be recovered due to fraud and more costing trust much more in expenses.

8. The Trustee will take appropriate action to protect and preserve the personalty in the House, all or almost all of which is owned by the Estate of Simon Bernstein, and which is not included within this sale.

Not sure what personalty of house is but all Shirley and Simon personal properties are stated to be in the house, unaccounted for and where there is still a court order to re-inventory that is being evaded and contradictory stories as to where the properties are now exist.

9. The Trustee request that the Court enter an Order approving the sale of trust property; prohibiting anyone from interfering with the sale or the closing; and to the extent necessary, dissolving the lis pendens.

10. Due to the time exigency, the Trustee requests an immediate hearing on this Motion.

WHEREFORE, the Successor Trustee respectfully requests an Order approving the sale and prohibiting anyone from interfering with the sale or the closing, and such other relief as the Court deems necessary including, without limitation, entering an Order dissolving and discharging the lis pendens.

**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;  Email Electronic Transmission;  FedEx;  Hand Delivery this 23rd day of March, 2015.

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Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

## SERVICE LIST

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
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Defendants.

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**AFFIDAVIT OF JOHN POLETTO**  
(STATE OF FLORIDA)  
(COUNTY OF PALM BEACH)

BEFORE ME, the undersigned authority, personally appeared John Poletto, who was duly Sworn, deposes and says:

1. My name is John Poletto. I am over 18 years of age, *sui juris*, and have personal Knowledge of the facts and matters contained herein.
2. I am a Florida licensed real estate broker, and I am a founder and Co-Owner of Nestler Poletto Sotheby's International Realty ("Nestler Poletto"). For more than 25 years, Nestler Poletto has represented South Florida's luxury home buyer. As the sole Sotheby's International Realty firm representing the greater Boca Raton and Delray Beach Areas, we have the expertise in this market. We specialize in sales and marketing of properties in luxury communities ranging from intimate gated communities to waterfront or oceanfront properties in Boca Raton and Delray Beach, Florida. I have handled over six billion dollars in personal residential real estate brokered and corporate managed sales.
3. Simon Bernstein was not only a real estate client, but our Insurance consultant both personally and corporately for years, as well as a friend. While he was alive, Simon Bernstein retained Nestler Poletto to sell the residence owned by the Shirley Bernstein Trust at 7020 Lions Head

Lane, Boca Raton, Florida 33496, located in the St. Andrews Country Club community. My firm and I have extensive experience in the country club market in Boca Raton in general, and in St. Andrews Country Club specifically. After Simon died, the Successor Trustee of the Shirley Bernstein Trust continued to list the property through our firm. We have been actively and professionally marketing the home for several years with all past interest being substantially below the listed MLS offering price.

4. The house has been owned by Shirley Bernstein since 1993. Although it is a large Home, given its age, it is need of substantial, immediate renovation, upgrades and improvements for any typical buyer in this market. Also, being located within a country club is a challenge for Marketing given the expense of purchasing an equity membership and the annual membership dues and related expenses. The major obstacle has been the extensive "Spanish elements of the house that make it simply too Spanish for buyers seriously consider. The Spanish tile begins in on the driveway, all floors of the main house and even the patio. It's too much. The interior walls have heavy plastering which again is too much. The current buyer is proposing major renovation and would not consider the house unless it could be achieved for a price that substantiates this new renovation work. Since the original listing, the house has been shown over 75 times.

5. We have been marketing this property under the direction of Ted S. Bernstein, Trustee. Ted has solicited our professional advice and recommendations on a regular basis and has followed our suggestions. The asking price was set in consultation with my firm as experienced real estate brokers; we have obtained a confidential appraisal; the asking price was reconsidered periodically and lowered as appropriate in consultation with the Trustee.

6. We have just recently received a very good offer which we recommended the Trustee accept, and which the Trustee has independently determined to accept. This offer resulted from arm's-length negotiations with bona fide purchasers, who were working with their own Knowledgeable and experienced realtor. The buyers are serious, qualified buyers, and the transaction has no financing contingency. Before accepting the offer, there were verbal negotiations under \$1,000,000 by the buyer then a written offer at \$1.1m; the Trustee's counteroffer of \$1,150,000 was rejected, with the buyer countering with a best and final offer. In my opinion, the offer accepted by the Trustee as Seller appeared to be and likely was the best and final from this buyer.

7. The pending offer is all cash (or no financing contingency); is the highest and best offer received to date along with the terms, and I believe is the best offer for the property. The inspection has been performed and the buyers are now prepared to move forward and purchase in "As Is" condition and close by March 31<sup>st</sup>, 2015.

8. CLOSING BY MARCH 31<sup>ST</sup> IS ESSENTIAL FOR THE BUYER IN THAT THE COST OF THE ST ANDREWS CC MEMBERSHIP INCREASES BY \$30,000; FROM \$95K TO \$125K. The buyers must join the country club at closing requiring a large, upfront equity contribution and substantial membership dues, which limits the buyer pool and impacts what a willing buyer will pay for the same type house. There is a required equity club membership, which costs

\$125,000 in addition to the house price. Significantly, the closing must occur before March 31st, as a condition to the contract agreement.

9. Based upon my experience with marketing this property, the pending offer (if the inspections are fine and the deal closes) is representative (i.e. is within reasonable range of) the current fair market value, including as reflected in the appraisal.

10. My firm recommended that Seller accept the pending offer without further qualification, and the Trustee as Seller did so.

11. My firm also handled the professional marketing and sale of the Trustee's other property, which was the Aragon, an oceanfront condominium. That sale was arm's-length, to a bona fide purchaser, and was at fair market value in my opinion and supported by MLS comparable sale.

12. It is my professional opinion that the pending sale is in the best interests of the Trust and should be approved by the Court.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
JOHN POLETTO

Subscribed and sworn to before me this 23 day of March, 2015, by JOHN POLETTO,  who is personally known to me or  who has produced \_\_\_\_\_ as Identification, and who did take an oath.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:



Dina Boyer  
COMMISSION # EE 198356  
EXPIRES: MAY 15, 2016  
WWW.AARONNOTARY.com