**MOTION TO DISMISS COMPLAINT TO REMOVE TED AND MOTION TO COMPEL ACCOUNTING**

**Alleged Successor Trustee Ted Motion Paragraphs**

1. Joinder issue we did not discuss with Peter.
	1. Eliot is a beneficiary and children beneficiary so I am just standing in shoes of children who are minors who would have standing if adults.
	2. Eliot and his children have no conflicts and are aligned on the motion to remove Ted to find out if he is now qualified legally to be Successor Trustee, not about distributions.
	3. Eliot can argue this either for Eliot individually or on behalf of his minor children as beneficiaries.
2. Plaintiff Eliot is a beneficiary and has standing to remove Ted as Successor Trustee.
	1. Under Page 2 Article II of alleged trust in regard to PP. States,

**A. Disposition of Tangible Personal Property.** If any non-business tangible personal property other than cash (including, but not limited to, my personal effects, jewelry, collections, household furnishings, and equipment, and automobiles) is held in the trust at the time of my death, such items shall be promptly distributed by the Trustee of the trust to such person or persons, including my estate, as to the item or items or proportion specified, as I may appoint, and to the extent that any such items are not disposed of by such appointment, such item's shall be disposed of by the Trustee of the trust in exactly the same manner as such items would have been disposed of under the terms and provisions of my Will (including any Codicil thereto, or what the Trustee in good faith believes to be such Will and Codicil) had such items been included in my probate estate. Any such items which are not effectively disposed of pursuant to the preceding sentence shall pass with the other trust assets.

* 1. Under the alleged 2012 Will on Page 1 Eliot is considered a beneficiary as a child. States,

I, SIMON L. BERNSTEIN, of Palm Beach County, Florida, hereby revoke all my prior Wills and Codicils and make this Will. I am a widower, but in the event that I marry subsequent to the execution of this Will, I specifically make no provision for my spouse. My children are TED S.

BERNSTEIN, PAMELA B. SIMON, **ELIOT BERNSTEIN**, JILL IANTONI and LISA S. FRIEDSTEIN.

**ARTICLE I. TANGIBLE PERSONAL PROPERTY**

I give such items of my tangible personal property to such persons as I may designate in a separate written memorandum prepared for this purpose. I give to my children who survive me, divided among them as they agree, or if they fail to agree, divided among them by my Personal Representatives in as nearly equal shares as practical my personal effects, jewelry, collections, household furnishings and equipment, automobiles and all other non-business tangible personal property other than cash, not effectively disposed of by such memorandum, and if no child of mine survives me, this property shall pass with the residue of my estate.

1. Eliot can represent his children in this matter to remove Ted as they are aligned and no conflict exists, this is not who gets a distribution Eliot or his children or what documents prevail where there may be conflict. Both merely seek to know if Ted is a valid trustee based on his acts at this time.
	1. The rest here are proof matters and this is not an evidentiary hearing and we have pled enough sufficient facts (all taken to be true for this Motion to Dismiss) to state a claim for relief.
	2. Oppenheimer stuff is not relevant and different circumstances.
2. Eliot has fulfilled all of the statutory requirements to remove Ted in his pleading.
	1. Eliot has pled serious breaches of trust and more.
	2. Unfitness, unwillingness and persistent failure to administer and account.
	3. Have not claimed any personality issues or hostilities as grounds and those are matters of evidence and a proof argument that are not applicable to a Motion to Dismiss. We have stated sufficient facts for relief to be granted on and all statements made in complaint are taken to be true for purposes of the complaint.
	4. There are sufficient facts in the pleading to form a legal basis for the removal of Ted.
3. Eliot has served the minor children’s parents and natural guardians EVIDENCE PROOF OF SERVICE is already in court file with parents served.
	1. Named them because they are beneficiaries.
4. Ted is a proper individual defendant we claim relief from him individually in Wherefore #4 for damages against Ted individually. Statute to trustee removal statute 736.1013 allows us to sue Ted personally.
5. IGNORE THIS

As long as Motion to Dismiss denied then I defer to your discretion on the MOTION TO STRIKE – If I have alleged too much I will defer to Your Honor’s discretion in regard to the Motion to Strike.

1. There is an order denying Ted to become Curator EXHIBIT THIS and then the Court urged Ted to withdraw his motion to become PR in Simon’s estate of which he did.
2. Ted was improperly and against the language of the trust appointed as Successor Trustee in Simon’s trust by Tescher & Spallina, Ted’s counsel at the time whose criminal acts benefited Ted and his children by inserting them into a fraudulent Shirley Trust document as beneficiaries. Therefore they are both relevant to this complaint.
3. Eliot and/or his children are beneficiaries and have standing to seek accountings. Failure to account is a relevant cause for removal.
4. Note sure if statute prohibits but let judge decide if important.

**Morrissey Motion Paragraphs**

1. Improperly Names 2 bene’s, the Court stated to name the beneficiaries and serve them, they were served as minors on behalf of their parent guardians.
	1. Rule states we have to put them on notice and we did. They know they are minors and where they live.
	2. Proof Service Documents EXHIBIT THEM, everyone accepted and minors served on behalf of parents. Minor children’s parents have not responded, nor counsel.
2. Five Separate Counts – Each count is a reason Ted should be removed that is separate and distinct, rule says short plain statement of fact and there are five reasons and any one of which is sufficient.
3. Prayer for Relief or Wherefore clause is at the end as the pleading as it applies to all counts to remove Ted.
4. Ted is a proper individual defendant we claim relief from him individually in Wherefore #4 for damages against Ted. Ted is also accused here of acting as a Trustee when knowing he was precluded by the language of Trust and thus may be personally liable.
5. Plaintiff Eliot is a beneficiary and has standing to remove Ted.
	1. Under Page 2 Article II of alleged trust in regard to PP. States,

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* 1. Eliot was also a prior beneficiary of the trust until 48 days prior to the alleged Amendment and due to challenge of Trust Amendment, may again be future beneficiary.
	2. The reason I have standing is that I have not received my Personal Property and thus am still a beneficiary.
	3. Eliot also is a guardian of 3 alleged beneficiaries and can argue the removal on their behalf.
1. Eliot can represent his children in this matter to remove Ted as they are aligned on this issue and no conflict exists, this is not who gets a distribution Eliot or kids or which documents prevail. Both Eliot and his children merely seek to know if Ted is a validly serving trustee now.
2. This is a proof argument and we are not at Proof stage, everything claimed is deemed to be true for this Motion to Dismiss and we have alleged enough sufficient facts to state a claim for relief. Hostility is a matter of evidence.
3. This is a proof argument and we are not at Proof stage, everything claimed is deemed to be true for this Motion to Dismiss and we have alleged enough sufficient facts to state a claim for relief. Plaintiff has stated sufficient law regarding very serious breaches and violations of statutes etc. against Ted.

Motion to Strike

1. Not important – let judge decide, I’ll defer that to you.
2. Plaintiff is a beneficiary of the trust prior to amendment in 2012 which has been challenged and therefore may again be a beneficiary if the documents are found legally void. Plaintiff is beneficiary of Personal Property in trust through the Will.
3. Plaintiff has standing either on behalf of himself as a beneficiary or his children to demand statutorily and trust required accountings and raise issues regarding any accountings. Ted’s failure to produce accountings timely and statutorily required is sufficient cause to remove Ted.
4. Tescher and Spallina were the prior removed Co-PR and Co-Trustees who made Ted Successor despite language in the trust they drafted that precluded him and thus are relevant to the proceeding.

**MOTION TO COMPEL ACCOUNTING**

We received an accounting earlier this week and I will withdraw my motion **without** prejudice.