

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; et al.

Defendants.

**MOVANT'S, TED S. BERNSTEIN, AS SUCCESSOR TRUSTEE OF
THE SHIRLEY BERNSTEIN TRUST, MOTION TO HOLD
ELIOT BERNSTEIN IN CONTEMPT OF COURT AND FOR SANCTIONS**

Movant, Ted S. Bernstein, Successor Trustee of the Simon Bernstein Trust, moves for an order finding Eliot Bernstein in contempt of court for intentionally violating the Courts' oral ruling made on March 26, 2015 and the written Order dated March 31, 2015 (Exhibit 1)¹ and for appropriate sanctions, and states:

1. At a hearing on the Trustee's Motion for Approval to sell the Trust's House at 7020 Lions Head Lane, the Court denied the motion as to a closing before March 31, 2015, and deferred ruling on approval of the sale with a closing date of April 20th, indicating that the sale would be approved unless there was bona fide evidence presented by Eliot Bernstein:

THE COURT: We have a closing now set for April 20th so, Eliot, you need to do your due diligence. If you're going to want something to be done, set it so I can hear it before the 20th. So if you want to file something, get me what you want to file, don't file it, I'll look at it, I'll give you a hearing date before the 20th, if it's bona fide. Otherwise, they are going to look forward to selling this on the 20th.

(Transcript, Exhibit 2, T. 25-26)

¹ The exhibits are being served upon the parties but not filed with the Clerk.

2. At the same hearing, the Court enjoined Eliot Bernstein:

THE COURT: So we're going to take this one small step at a time, but I'm ordering an injunction against you not to contact the buyers directly or indirectly with respect to any information concerning this transaction. Understood?

MR. ELIOT BERNSTEIN: Yes. I've never contacted any buyers. (T. 5)

3. Eliot also complained that his lis pendens was not filed or sent to the buyer:

MR. ELIOT BERNSTEIN: So are the buyers aware there's a lis pendens? I'm not allowed to ask that?

THE COURT: No, you're not allowed to ask that. I don't know who you gave notice to. If you sent notice to the contract -- if you sent notice of this lis pendens to a contract buyer, you're going to be right back in court here so quickly your head is going to ring.

MR. ELIOT BERNSTEIN: I'm not going to talk to the contract buyer.

THE COURT: No, but I don't want you to send something to them.

MR. ELIOT BERNSTEIN: I'm not going to send anything to the buyer. I would never do that. I'm not doing that.

THE COURT: Because, obviously, if there's a sale --

MR. ELIOT BERNSTEIN: I'm assuring you, I am assuring you on that.

THE COURT: -- because if we have a sale, the lis pendens is going to go away. They can't clear title. It can't be sold over that. (T. 5-6)

4. Later, the issue of publishing on the internet was raised:

THE COURT: No, but I don't want you to send something to them Eliot can't file anything without sending it to me first.

MR. ROSE: But he puts it on the Internet, and we don't want the appraisal to be on the Internet.

THE COURT: I've already ordered him not to do anything directly or indirectly -- contact any aspect of this transaction -- with the buyer. That's direct or indirect. (T. 12)

5. On March 31, 2015, the Court entered a written order stating that "all beneficiaries and other persons interested in this matter, specifically including Eliot Bernstein, are prohibited from doing anything to directly or indirectly contact the buyer about any aspect of this transaction or file anything with the clerk of the court without first sending it to the undersigned Judge Martin Colin." (Exhibit 1, ¶3)

6. Despite the Court's direct statements in orally ordering an injunction, within 24 hours of the hearing the following appeared online:

Boca Raton Broker John Poletto seems to be in on aiding and abetting Ted Bernstein to SELL a property that he has no legal right to Sell. The Property is 7020 Lions Head Lane Boca Raton Florida, the Simon Bernstein Estate Case

7020 Lions Head Lane Boca Raton Florida is clearly in a major legal litigation. Yet the GREED or aiding and abetting of John Poletto moves forward to sell a property for way to little of a price in a seeming conspiracy with Ted Bernstein.

* * * *

Are RESPA Laws being Broken? Are real estate consumers rights out the window? How is John Poletto getting away with his opinion being taken as law by Judge Martin Colin who seems to be letting everyone run amok with total disregard of the law, childrens rights and the rights of deceased.

Below are Links to the Property that is involved in multi-million dollar litigation and John Poletto, Boca Raton Real Estate Agent does not want buyers to know.

(Exhibit 3)²

² These materials were posted by Eliot directly or indirectly through Crystal Cox. Ms. Cox was not present in the courtroom and did not order the transcript. In 2012, Mr. Bernstein was found to have participated in a "sinister and tenacious scheme to extort money" through the use of administrative domain name transfers." See WIPO Arbitration and Mediation Center, Administrative Panel Decision, *Marc J. Randazza v. Reverend Crystal Cox, Eliot Bernstein*, Case

7. On Monday March 30th, the following appeared online in chronological order:

I wonder if Alan Rose is getting a bit nervous yet? I mean come on missing assets, murder allegations, insurance fraud, possible poisoning, attorneys dying of mysterious deaths, and clear and blatant obstruction of Justice and Fraud on the Courts.

(Exhibit 4) This post re-published the prior post as to Poletto. Similar inappropriate, offensive and unwarranted posts have frequently been made about fiduciaries, counsel and others, most often after a significant hearing or event in this case.

8. Later that same day, the following appears:

Why is there no Filed Lis Pendens? Buyers Watch Out on 7020 Lion Head Lane Boca Raton.

(Exhibit 5) This post includes a link to the hearing transcript. Clearly, this violates at least two parts of the Court's oral ruling – addressing a lis pendens that has never been recorded and warning potential buyers.

No. D2012-1525; see also *Randazza v. Cox, et. al.*, Case No. 2:12-cv-02040-GMN-PAL, Order (granting Plaintiff's Motion for Preliminary Injunction) (D. Nev. Jan. 11, 2013). (Exhibit 12)

In the WIPO Order, the Panel stated:

Once the Complainant informed Respondent Cox of this UDRP dispute, she transferred the registration of the disputed domain names listed in the original Complaint to Respondent Bernstein, who shortly thereafter transferred the domain name <marcrandazza.com> back to Respondent Cox. The remaining domain names are still registered to Respondent Bernstein, and the additional domain names are all registered to Respondent Cox. ***Respondent Bernstein acts on instructions provided by Respondent Cox and thus functions simply as a proxy for her. As such, for simplicity, all references hereinafter to Respondent Cox will simply be the "Respondent", unless specific reference is made to Respondent Bernstein.***

9. Finally, after the undersigned sent Eliot a copy of the hearing transcript, which Eliot requested,³ the hearing transcript from March 26 and a full story appeared:

7020 Lions Head Lane Boca Raton. Why Does Alan Rose Want to HIDE the TRUTH from the Buyers of this Property? It is NOT ok for a Real Estate Broker, a Seller and a JUDGE to HIDE Known Facts about a Real Estate Transaction from a Real Estate Consumer. PERIOD.

(Exhibit 6)

Among the statements in this posting are:

- 7020 Lions Head Lane Boca Raton. Real Estate Buyers have a Legal Right to have FULL DISCLOSURE. Buyer Be AWARE.
- The courts simply do nothing to protect this asset and now a buyer is to get in the middle of this mess? . . . I would not go anywhere near this property until this estate is REALLY Legally Settled.
- Judge Martin Colin has no LEGAL Reason, as a matter of LAW to withhold to a real estate buyer that the property is in litigation, this is a violation of the BUYERS Rights, and against the LAW PERIOD.
- John Poletto, a real estate broker in Florida seems to have no issue with hiding know facts from buyers. The law is that latent defects, lawsuits, and anything that can harm a buyer MUST be disclosed so why is the Florida Courts allowing this cover up that will cause BUYERS massive headache, stress and legal liability.
- Check out the Transcript below as you see a JUDGE, and several attorneys seem to conspire to aid and abet a real estate sale and NOT disclose to BUYERS that they may spend years in litigation down the road after they have fixed up a place that Ted Bernstein let run down as a BAD PR.

³ A draft of the written Order was sent to Eliot on Friday March 27th. He asked for a copy of the transcript, stating: "Please forward a copy to save expense, you will have my answer sometime after receipt." Exhibit 7. After the transcript was received, the undersigned edited the Order and circulated by email to all parties, including Eliot, a revised Order and a courtesy copy of the hearing transcript Eliot had requested. That email was sent at 3:04 pm. Exhibit 8. Contrary to his representation, Eliot never responded after receipt. But, at 4:47 pm the transcript except (which only the undersigned had ordered [see Exhibit 9]) appeared online.

- It is NOT ok for a JUDGE to want to hide this litigation from BUYERS. It is not lawful nor morally ethically for Judge Martin Colin to NOT want BUYERS to know when this affects their VERY life, the life of their children and their quality of life in EVERY WAY.

SHAME SHAME on this JUDGE.

- Really, Look Below, this document clearly shows this JUDGE ranting about YOU, the Real Estate Consumer NOT having a right to know what the Real Estate Seller and the Real Estate Broker KNOW and by law have to disclose.

8. These postings speak for themselves and could not more clearly violate the contempt order. Eliot has been using similar "cyber-terrorist attacks" since the beginning of this case. Indeed, these posts appear in the Ted Bernstein Report on <http://tedbernsteinreport.blogspot.com/>. This is Eliot acting like a vigilante police against the fiduciaries. It is the Court's job alone to supervise the fiduciaries appearing before the Court, and it certainly is not Eliot's job to police this Court.

9. It is bad enough for things to appear badgering Ted or his counsel, but these posts attack the realtor hired by the Trust to help it sell this property. It is despicable and inexcusable behavior by Eliot, but more importantly, it absolutely and clearly constitutes indirect communication with potential buyers in direct violation of the Court's ruling. Indeed, these vicious attacks were not merely posted in cyberspace, they were emailed directly to parties and potentially untold numbers of people within the community. Eventually, this buyer or other buyers will see this for what Eliot wants it to be. To use this Court's words, Eliot should be hauled "back in court here so quickly [his] head is going to ring."

10. These types of cyber-attacks are common in this case. Indeed, the title of the blog at issue is the Ted Bernstein Report, and is designed to harass and intimidate the people involved in this case – counsel, third parties, and even this Court. Eliot Bernstein is using this proceeding as part

of a crusade against everyone concerned with the case. Indeed, he recently has proposed to this Court in the Oppenheimer case that the Court appoint Jo Anne Denison as replacement trustee, and did so even after the Court was advised of issues with Ms. Denison.⁴ Dissatisfied with the Court's ruling and in an attempt to halt the sale of his parents' home, Eliot has intentionally launched a new crusade against all who are trying to administer the trust sale "[t]hrough websites, . . . emails, and blogs" accusing "these persons of theft, bribery, and other misconduct."

11. The Florida Supreme Court has addressed the issue of imposition of sanctions in *Mercer v. Raine*, 443 So.2d 944, 946 (Fla.1983), stating:

We agree that the striking of pleadings or entering a default for noncompliance with an order compelling discovery is the most severe of all sanctions which should be employed only in extreme circumstances. *Hart v. Weaver*, 364 So.2d 524 (Fla. 2d DCA 1978). A deliberate and contumacious disregard of the court's authority will justify application of this severest of sanctions, *Swindle v. Reid*, 242 So.2d 751 (Fla. 4th DCA 1970), as will bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness, *Herold v. Computer Components International, Inc.*, 252 So.2d 576 (Fla. 4th DCA 1971).

⁴ The Seventh Circuit Court of Appeals has written:

In addition to misrepresenting the identity of his client, Ditkowsky and a colleague, attorney JoAnne Denison, launched a crusade against everyone concerned with the guardianship Through websites, petitions, emails, and blogs, they accused these persons of theft, bribery, and other misconduct. They did not, however, identify any evidence of crime; they treated their dissatisfaction with Carolyn Toerpe's appointment as sufficient justification for making sweeping and unsupported accusations. This campaign of vilification is a second reason the Supreme Court of Illinois has suspended Ditkowsky from practice. (Exhibit 11)

12. In *Cem-A-Care of Florida, Inc. v. Automated Planning Systems, Inc.*, 442 So.2d 1048, 1049 (Fla. 4th DCA 1983), the Fourth DCA held:

[w]hen a trial judge expressly finds that a party willfully and flagrantly abused the system and violated court orders, then the severity of the sanction is within the very broad discretionary area noted in *Canakaris*. Although subject to review and reversal for abuse, that discretion is expansive and subject to being influenced by the parties' past actions and inactions in the litigation.

13. In *St. Mary's Hospital, Inc. v. Brinson*, 685 So.2d 33, 35 (Fla. 4th DCA 1996), *reh'g and reh'g en banc denied*, (Jan. 22, 1997), the court stated:

When a party fails to comply with an order, the trial court has a broad spectrum of sanctions to impose, although the sanction chosen must be commensurate with the offense. *Kelley v. Schmidt*, 613 So.2d 918 (Fla. 5th DCA 1993); *Insua v. World Wide Air, Inc.*, 582 So.2d 102 (Fla. 2d DCA 1991). Although striking a party's pleadings is the most severe sanction, it is appropriate where the offending conduct is flagrant, willful, or persistent. *Kelley*, 613 So.2d at 919.

14. The Fourth DCA in *Paranzino v. Barnett Bank of South Fla.*, 690 So. 2d 725 (Fla. 4th DCA 1997) affirmed a trial court order striking appellant's pleadings and dismissing the case with prejudice when the trial court found that the actions of appellant and her attorney "willfully and deliberately disregarded" a court order. Here, Eliot was clearly warned on the record; knowingly and intentionally violated the Court's order; and did so in a manner to undermine the Court's authority.

15. Movant seeks an order finding Eliot Bernstein in contempt and awarding appropriate sanctions, which should include the following:

a. striking all of his *pro se* court filings and precluding him from further participation in this case, and appointing a guardian ad litem to represent the interests of his minor children;

b. ordering Eliot immediately to remove all posting on the Ted Bernstein report and <http://tedbernsteinreport.blogspot.com> relating to the sale of House, using the coercive powers of this Court including incarceration if needed to compel compliance;

c. as a further sanction, ordering Eliot immediately to remove every single posting on the Ted Bernstein report and <http://tedbernsteinblogspot.com>, every posting anywhere concerning these trusts, estate, fiduciaries and/or beneficiaries, and forbidding any and all future posting relating to this case;

d. and an award of costs and attorneys' fees against Eliot Bernstein.

WHEREFORE, Successor Trustee, Ted S. Bernstein, respectfully requests that this Court find Eliot in contempt of Court, take such remedial steps as warranted, enter appropriate sanctions in favor of the Trust, and grant such other relief is just.

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 1 day of April, 2015.

MRACHEK, FITZGERALD, ROSE, KONOPKA,
THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 Telephone / (561) 655-5537 Facsimile
Email: arose@mrachek-law.com
Secondary: mhandler@mrachek-law.com
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
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: [Eliot I. Bernstein \(iviewit@iviewit.tv\)](mailto:iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: [John P. Morrissey
\(john@jmorrisseylaw.com\)](mailto:John P. Morrissey (john@jmorrisseylaw.com))
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for her
children, and as natural guardian for M.F. and
C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com