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

TED BERNSTEIN, as Trustee Probate Division

of the Shirley Bernstein Trust Agreement Case No.: 502014CP003698XXXXSB

dated May 20, 2008, as amended,

Plaintiff,

v.

ALEXANDRA BERNSTEIN; et al.

Defendants.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/

**Motion to Stop Sale Of 7020 Lions Head Lane PROPERTY**

1. That Eliot and other beneficiaries cannot determine if they can purchase the family home of their parents because as of this date accountings of their inheritances remain incomplete or missing entirely as the Trustee and his attorneys have failed to properly account according to Probate Rules and Statutes.
2. That until such time that beneficiaries, who at this time are unknown due to prior Fraud on the Court and Fraud on the Beneficiaries by the Trustee’s former counsel are determined and are made aware of the true and total value of their inheritances through statutorily required accountings, they are unable to determine if they need to sell the property or if they can buy the property and thus the sale should be halted until all accountings are complete, all objections resolved and the true and proper beneficiaries determined along with the resolution of the criminal complaints. Therefore, an Injunction regarding this matter is in order.
3. That to do the sale backwards, without determining beneficiaries and accountings first, could result later in lengthy litigation by aggrieved beneficiaries to claw back the property or for other relief.
4. There was a prior sale of a Condominium owned by Shirley’s Trust by the Trustee in 2013 and the Trustee has still failed to file with beneficiaries any of the transaction details of that sale, despite numerous requests, this self-dealing sale was devoid of any notice to beneficiaries prior to sale, so again no objections could be made.
5. That the proceeds from the sale of the Condominium were then distributed to improper parties by the Trustee, including to his own family, against the advice of counsel according to statements made by counsel to Palm Beach County Sheriff Investigators. (Exhibit 1 – PBSO Report)
6. That the Condominium was sold for $1,600,000.00 on April 18, 2013 and netted approximately $1,400,000.00 to beneficiaries according to statements made by Ted and his prior counsel, SPALLINA to PB Sheriff Investigators.
7. Eliot has provided a current MLS Seller Report (Exhibit \_\_ - Condo Report) with a current estimated value of 2,254,000.00 with an estimated range (AVM) up to $2,727,340.00. In two years, the sale of the condominium has proven a loss to beneficiaries of approximately $1,500,000.00 from this firesale transaction. Further compounding the loss to beneficiaries is the fact that the proceeds were then distributed to improper beneficiaries, including Ted’s family, which again, Ted and his lineal descendants were wholly disinherited in the Shirley Trust and would have received none of the proceeds of the sale and now the litigation costs alone for this will add several hundred thousand of costs and the court and Sheriff costs are also high to investigate and resolve this transaction.
8. That the beneficiaries were not properly notified by the Trustee of the Condo sale transaction details before the sale and were given no chance to purchase the Condo or dispute the transaction.
9. Fast forward two years to this attempted sale of the Primary Residence and again the alleged Trustee failed to give any notice to beneficiaries or the PR of the Estate or this Court of the pending sale on March 31, 2015 of the 7020 Lions Head Lane, Boca Raton, FL 33496. Eliot only found out days before the sale was to be complete by a Zillow Alert sent to his wife Candice.
10. That upon learning of the pending sale Eliot filed a Lis Penden with this Court that he had given the Court in October of 2014 and the Court was in the process of considering and which he sent to the beneficiaries, realtor, this Court and the Trustee, which at the hearing the following week in part led to this Court postponing the potential sale until April 20th 2015.
11. That the Court should take note that the sale contract was already signed on March 16, 2015 by the Trustee and absolutely no notice had been given to the beneficiaries, the Courts or the PR of the Estate who was in custody of the Personal Property that there was a pending sale and it appears without Eliot’s notice, no notice would have been given until after the fact and closing.
12. The fact that no notice was given to the PR of this sale is especially nefarious because the Personal Property of Shirley’s Condo that belonged to Simon and was in the custody of the PR O’Connell of the Estate that was Ordered by this Court to be re-inventoried due to the fact that the Trustee was not sure what happened to it when the Condo was sold, was alleged by the Trustee and his counsel to be stored at the Primary Residence that was being sold “AS IS.” Had the sale been completed it appears the Personal Properties of Simon’s would have been moved making it impossible to complete the Court Ordered inventorying that was ordered to take place at the residence address.
13. That the Court in the March 26, 2015 hearing agreed that Eliot and his children should have been given ample notice and a right to determine if they wanted to purchase the property prior to any sale being entered into and been given time to review any transaction details, which were not provided until the March 26, 2015 hearing by the Trustee and his counsel.
14. That in order for Eliot and his children to determine if they can afford to purchase or finance the family home they will need to have a complete accounting of both the Estates and Trusts of Shirley and Simon Bernstein to determine the value of their inheritances, which remains largely unknown at this time.
15. That the Trustee recently filed with the Court, a long overdue accounting of the Trust of Simon Bernstein but the Court will note that there are unlisted and un-named assets with an asset value simply stated as illiquid and no amount or description given, leaving no way to account for the values at all.
16. That the Trustee has claimed that accounting of Shirley’s Trust will not be completed until sometime after the intended sale date and thus without this information the sale of the home should be forbidden until a full and complete of accounting by the Trustee is proffered to beneficiaries.
17. That the Trustee has failed to account for over two years in the Shirley Trust in violation of Probate Rules and Statutes and this failure prevents beneficiaries from being unable to determine their inheritances and if the sale of the home is necessary at this time or if they can purchase it instead.
18. That the firesale price of the home appears to be due to the run down and dilapidated condition of the home that has occurred due to the failure of the Trustee to perform even basic maintenance on the home. (See Exhibit \_\_\_\_ - Pictures of Street View)
19. That according to the PR of the Estate of Simon’s assistant, Joielle "Joy" A. Foglietta Esquire (“Joy”), who went to the home to complete the Court ordered re-inventorying of the home PRIOR to any sale and transfer of the Personal Property, she stated the inside of the home looked as if it had been left untouched since Simon died on September 13, 2012, again perhaps part of the “AS IS” condition the home was being sold in.
20. That according to Joy the Personal Properties from the Condo sale that the Trustee Ted and his counsel Alan Rose told the court, the PR of Simon’s Estate who has custody of them and the beneficiaries, were safely stored in the Lions Head Lane home appeared to be missing and virtually nothing was there from the 4,000 sq ft condominium. (See Exhibits - \_\_\_\_)
21. The Court will recall that it issued an Order for re-inventorying of the items missing and now it appears that the these items have been stolen and another Fraud on the Court, Fraud on the Beneficiaries and Fraud on the Creditor has occurred by the Fiduciaries and Counsel involved in these matters.
22. That had the sale that was taking place without notice to the Court, the beneficiaries or interested parties taken place, the missing items would have disappeared with the sale and made it virtually impossible to comply with the Court Order to inventory the items at the 7020 Lions Head Lane home that has been evaded for months. The Trustee claimed to the PR O’Connell and others that the boxes containing the Condo Personal Property were so numerous in the garages that it would cost a fortune to unpack and re-inventory, costing far more than the $500.00 apportioned by the Court. The PR was in the process of submitting a new Proposed Order to increase the amount allocated by the Court to inventory due to the statements of the fiduciary and his counsel that they had boxed the items and now they would have to all be unpacked at great expense.
23. That the Trustee and his counsel were not planning notifying the beneficiaries and fully intended to notify parties after the sale was complete and the monies distributed, again any distributions would have been to improper parties, as beneficiaries remain unknown and this would have caused untold damages to beneficiaries in seeking redress and further litigation costs and claw back costs that could increase the cost of this underhanded firesale to everyone.
24. That the fiduciary Ted and his Counsel Alan Rose failed to seek Court approval to enter into the contract first despite the pending Lis Penden in the Court’s possession that they were fully aware of. What if the Court would have not approved the sale due to the Lis Penden or other reasons and determined this after the sale? This sneaky attempt to sell the home was willful, reckless and wanton disregard for this Court and the beneficiaries the fiduciary Ted and his Counsel, Alan B. Rose, Esq. both Officers of this Court under Your Honor’s tutelage and is further clear and convincing evidence of the continued breaches of fiduciary duties and more.
25. That it appears that the depilated condition the house was shown in has led to a steady and massive decline in listing prices since Simon died. Where Simon listed the home weeks before his death at $3.2M with the same broker, John Poletto who is now selling it in an up real estate market for the price of $1.1 M to his friend and insurance broker/client Ted. That since 2012 the country has realized an up market in real estate prices and the only explanation for such dramatic valuation decrease is the “AS IS” condition the home has been left in.
26. That it is hard to believe that the Trustee has allowed the condition of the property under his care to become so run down as to cause a massive price devaluation of the property but this appears to be with intent to set up a straw man buyer to come in and purchase the property for a low ball number, apply some quick fix remedies and then resell the property at a much higher value, thereby causing a massive loss and further damages to the beneficiaries. This is the same scenario the Condo was sold for and now in two years the buyer of that property has made almost a 100% profit on that sale.
27. That the Court has hearings to remove the Trustee Ted, who also has breach of fiduciary claims filed against him already in a stayed counter complaint in Shirley’s Trust case and if the sale is transacted and it is later determined that Ted was not a qualified or legal Trustee the sale of the home will additionally become a contentious litigation with buyer, seller, attorneys, title company and the beneficiaries. Demands for a claw back of the property may also be made under the circumstances.
28. That due to this highly probable litigation that would result if this were determined to have been a been a firesale by an inappropriate fiduciary, despite whether the sale of the property were reasonably priced due to its current condition, the costs of the litigations that would follow would make the price skyrocket to all parties involved.
29. That the Court should take note that while the property is held in the Shirley Trust, the Trust has not been released from the Gross Estate as the Estate was reopened due to the prior Fraud on the Beneficiaries and Fraud on this Court caused by the Trustee Ted’s former counsel Donald Tescher, Esq. and Robert Spallina, Esq. who resigned as Ted’s counsel after admitting to Palm Beach County Sheriff Officers that their law firm had fraudulently altered a Shirley Trust document that was to benefit Ted’s family by reinserting them into an irrevocable trust with a defined beneficiary class where Ted and his lineal descendants were considered predeceased.
30. That the Appraisal submitted by Poletto to this Court is dated July 09, 2014, approximately 9 months ago, and the Sale is “AS IS” and that is because the Trustee has let the property rot with no care in effect abandoning both the real property and his Fiduciary duties and responsibilities.
31. That Simon had listed the home for $3.2 Million dollars weeks before his death with John Poletto. That Eliot has obtained a recent MLS Sellers Report (Exhibit \_\_\_ - 7020 Lions Head Sellers Report) that shows the property value estimated between $1,594,780.00 to $1,770,205.00. Again, the proposed sale price of $1,100,000.00 represents a major loss to beneficiaries and if like the Condo another $200,000.00 is lost in unidentified closing costs and commissions it becomes even less profitable.
32. That it should be noted that Ted’s wife, Deborah Bernstein, who works for John Poletto’s firm may be the real estate agent that is getting commissions on these properties, although since the transaction details have never been provided by the Trustee to the beneficiaries this remains unknown.
33. That while the home on the supplied appraisal is estimated at approx. $1,600,000.00 the explanation for the $500,000.00 loss on the proposed sale price is blamed on the fact that Spanish Tile was used throughout the entire house. That this seems like a massive loss due to simple flooring and Eliot feels that with a new flooring for a few thousand dollars if necessary the house would regain this alleged cost and again be far more profitable to market for a little improvement.
34. That from the appraisal submitted by Poletto, the condition of the tile from the time Simon listed where it is photographed in pristine condition, has been allowed to weather and mold making it appear to be in need of replacement and with a little cost this could easily be washed back to pristine and a buyer that likes Spanish Tile would purchase the home at a much higher value.
35. That there is an alleged Mortgage / Line of Credit on the home of which Eliot has been denied any access to records showing when the Line was accessed, if it was Post Mortem, as the prior Co-Trustees initially stated to the beneficiaries that both the home and condo were both 100% debt free. When they later claimed there was a line of credit / mortgage on the home Eliot and his counsel were denied any accountings requested.
36. That the Line of Credit / Mortgage issues must also be resolved prior to any sale to confirm the legality and if the sale were done first and later it is found this mortgage was improper this could again be to the detriment of beneficiaries and again cause another level of legal entanglements regarding the legality of the transaction.
37. That Eliot requests that the E&O insurance of the appraiser be made available to the beneficiaries.

WHEREFORE, Eliot requests that this Court enter an order;

* 1. to halt the sale of the 7020 Lions Head Lane, Boca Raton, FL 33496 home until full statutorily required accountings are provided to beneficiaries to determine if they would like to purchase or finance the home,
  2. to halt the sale of the 7020 Lions Head Lane, Boca Raton, FL 33496 home until such time that a new real estate agent could properly clean the home and fix the surroundings for listing at the market value of the home,
  3. to halt the sale until it is determined if Ted is now a qualified Trustee of the Trust of Shirley,
  4. to halt the sale until all transaction details regarding the sale are fully disclosed to the beneficiaries,
  5. for legal fees of Eliot Bernstein Pro Se,
  6. any other remedies, relief, damages and sanctions this Court finds apropos.

Filed on Friday, January 30, 2015

Eliot Bernstein, Pro Se, Individually, as Trustee and as legal guardian on behalf of his three minor children.

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**CERTIFICATE OF SERVICE**

I, ELIOT IVAN BERNSTEIN, HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by email to all parties on the following Service List, Friday, January 30, 2015.

Eliot Bernstein, Pro Se, Individually, as Trustee and as legal guardian on behalf of his three minor children

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**SERVICE LIST**

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| --- | --- | --- | --- |
| Donald Tescher, Esq., Tescher & Spallina, P.A.  Boca Village Corporate Center I  4855 Technology Way  Suite 720  Boca Raton, FL 33431  [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com) [dtescher@tescherspallina.com](mailto:dtescher@tescherspallina.com) [ddustin@tescherspallina.com](mailto:ddustin@tescherspallina.com) [kmoran@tescherspallina.com](mailto:kmoran@tescherspallina.com) | Alan B. Rose, Esq.  Page, Mrachek, Fitzgerald & Rose, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  (561) 355-6991  [arose@pm-law.com](mailto:arose@pm-law.com)  and  [arose@mrachek-law.com](mailto:arose@mrachek-law.com)  [mchandler@mrachek-law.com](mailto:mchandler@mrachek-law.com)  [lmrachek@mrachek-law.com](mailto:lmrachek@mrachek-law.com) | John J. Pankauski, Esq.  Pankauski Law Firm PLLC  120 South Olive Avenue  7th Floor  West Palm Beach, FL 33401  (561) 514-0900  [courtfilings@pankauskilawfirm.com](mailto:courtfilings@pankauskilawfirm.com)  [john@pankauskilawfirm.com](mailto:john@pankauskilawfirm.com) | Robert L. Spallina, Esq.,  Tescher & Spallina, P.A.  Boca Village Corporate Center I  4855 Technology Way  Suite 720  Boca Raton, FL 33431  [rspallina@tescherspallina.com](mailto:rspallina@tescherspallina.com)  [kmoran@tescherspallina.com](mailto:kmoran@tescherspallina.com) [ddustin@tescherspallina.com](mailto:ddustin@tescherspallina.com) |
| Pamela Beth Simon  950 N. Michigan Avenue  Apartment 2603  Chicago, IL 60611  [psimon@stpcorp.com](mailto:psimon@stpcorp.com) | Theodore Stuart Bernstein  Life Insurance Concepts  950 Peninsula Corporate Circle, Suite 3010  Boca Raton, Florida 33487  [tbernstein@lifeinsuranceconcepts.com](mailto:tbernstein@lifeinsuranceconcepts.com) | Mark R. Manceri, Esq., and  Mark R. Manceri, P.A.,  2929 East Commercial Boulevard  Suite 702  Fort Lauderdale, FL 33308  [mrmlaw@comcast.net](mailto:mrmlaw@comcast.net)  [mrmlaw1@gmail.com](mailto:mrmlaw1@gmail.com) | Irwin J. Block, Esq.  The Law Office of Irwin J. Block PL  700 South Federal Highway  Suite 200  Boca Raton, Florida 33432  [ijb@ijblegal.com](mailto:ijb@ijblegal.com)  [martin@kolawyers.com](mailto:martin@kolawyers.com) |
| Jill Iantoni  2101 Magnolia Lane  Highland Park, IL 60035  [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)  Julia Iantoni, a Minor  c/o Guy and Jill Iantoni,  Her Parents and Natural Guardians  [jilliantoni@gmail.com](mailto:jilliantoni@gmail.com) | Lisa Friedstein  2142 Churchill Lane  Highland Park, IL 60035  Lisa@friedsteins.com  [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com)  [lisa@friedsteins.com](mailto:lisa@friedsteins.com)  Carley & Max Friedstein, Minors  c/o Jeffrey and Lisa Friedstein  Parents and Natural Guardians  Lisa@friedsteins.com  [lisa.friedstein@gmail.com](mailto:lisa.friedstein@gmail.com) | Kimberly Moran  Tescher & Spallina, P.A.  Boca Village Corporate Center I  4855 Technology Way  Suite 720  Boca Raton, FL 33431  [kmoran@tescherspallina.com](mailto:kmoran@tescherspallina.com) | John P Morrissey. Esq.  John P. Morrissey, P.A. 330 Clematis Street  Suite 213  West Palm Beach, FL 33401  [john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com) |
| Charles D. Rubin  Managing Partner  Gutter Chaves Josepher Rubin Forman Fleisher Miller PA  Boca Corporate Center  2101 NW Corporate Blvd., Suite 107  Boca Raton, FL 33431-7343  [crubin@floridatax.com](mailto:crubin@floridatax.com) | Joshua, Jacob and Daniel Bernstein, Minors  c/o Eliot and Candice Bernstein,  Parents and Natural Guardians  2753 NW 34th Street  Boca Raton, FL 33434  [iviewit@iviewit.tv](mailto:iviewit@iviewit.tv) | L. Louis Mrachek, Esq.  PAGE, MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A.  505 South Flagler Drive, Suite 600  West Palm Beach, Florida 33401  [lmrachek@mrachek-law.com](mailto:lmrachek@mrachek-law.com) |  |
| Lindsay Baxley aka Lindsay Giles  Life Insurance Concepts  950 Peninsula Corporate Circle, Suite 3010  Boca Raton, Florida 33487  [lindsay@lifeinsuranceconcepts.com](mailto:lindsay@lifeinsuranceconcepts.com) |  |  |  |

EXHIBIT