

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.

SUPPLEMENT TO MOTION TO APPROVE SALE OF TRUST PROPERTY
RE: CLOSING AND TITLE ISSUES FOR SHIRLEY'S HOMESTEAD

Plaintiff, Ted S. Bernstein, Successor Trustee of the Shirley Bernstein Trust (the "Trustee"),
files this Supplement to his Motion to Approve Sale of Trust Property, and states:

1. This supplements the pending Motion to Approve Sale of the Trust's property located
at 7020 Lions Head Lane, Boca Raton, Florida (the "House"), the most significant asset now held
by the Shirley Bernstein Trust. The closing has been extended to April 30th to allow the Court to
address these issues at the evidentiary hearing now set for April 23rd at 10:00 a.m.

2. The record owner of the House is the Shirley Bernstein Trust (the "Trust"). The Trust obtained title by a Quit Claim Deed signed by Shirley Bernstein, joined by her spouse Simon L. Bernstein. (Exhibit A) Although Simon raised no homestead issues while alive, and there has been no such claim by anyone else since Shirley's death, the title insurer has requested resolution of the issues addressed in this Supplement as part of insuring title.

3. When Shirley died, the house was her homestead, even though owned by the Trust. Shirley was survived by a spouse (Simon) and five adult children (Ted, Pam, Eliot, Lisa and Jill). Under Florida law, because the house was the homestead property of Shirley Bernstein at the time of her death, the title company has advised that under the case of *Aronson v. Aronson*, 81 So. 3d 515 (Fla. 3d DCA 2012), the fact that the house was titled in the name of a revocable trust has no impact on any homestead rights of Simon L. Bernstein. The Trustee does not necessarily agree with that position, but it is the position of the prospective title insurer.

4. It is the Trust's position that its title is valid because Simon L. Bernstein waived his homestead rights by signing the Quit Claim Deed. Under Florida law, "[t]he rights of a surviving spouse to . . . homestead . . . may be waived, wholly or partly, before or after marriage, by a written contract, agreement, or waiver, signed by the waiving party in the presence of two subscribing witnesses." § 732.702(1), Fla. Stat. (2008). Further, "**[u]nless the waiver provides to the contrary, a waiver of `all rights,' or equivalent language" may constitute a waiver of all homestead rights that would otherwise pass to the waiving spouse by intestate succession. *Id.***

5. In *Stone v. Stone*, Case No. 4D11-4541, 157 So. 3d 295, 2014 WL 5834826 (Fla. 4th DCA Nov. 12, 2014, *reh'g denied*, Mar. 16, 2015), the Fourth DCA held that the following language in a properly executed deed waived the surviving spouse's homestead rights:

"grants, bargains, sells, aliens, remises, releases, conveys, and confirms" the property "together with all the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining."

6. The Fourth DCA held that this constituted a waiver of any constitutional homestead rights the surviving spouse had in the homestead property. *Id.*

7. Here, the Quit Claim Deed signed by Simon before two subscribing witnesses and a notary provides that Simon:

does hereby remise, release and quit-claim¹ to Grantee and Grantee's heir and assigns forever, the following described real property . . .

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining."

That language is virtually indistinguishable from, and in all intents is the functional legal equivalent of, the language in the deed in *Stone*. Importantly, this document was recorded in the public records of Palm Beach County on May 30, 2008, so there is no issue as to the authenticity of the signatures of Simon or Shirley.

8. Moreover, the only person who could have raised a claim of homestead rights was Simon while he was alive. "When there are no surviving minor children and the surviving spouse has waived her homestead rights, there is no constitutional restriction on the devise of the homestead." *Stone*, quoting *Hartwell v. Blasingame*, 584 So. 2d 6 (Fla. 1991) (finding that an adult child was not entitled to seek the protection of the constitutional homestead devise restrictions where the surviving spouse had validly waived her homestead rights because the child was bound by the spouse's waiver); *Engelke v. Estate of Engelke*, 921 So. 2d 693 (Fla. 4th DCA 2006) (holding that

¹ "Quitclaim" means to transfer and terminates (i.e. "quit") any right and claim to the property, thereby allowing the right or claim to transfer to the recipient/grantee.

a spouse's waiver is the legal equivalent of predeceasing the decedent, so that the decedent may devise the homestead property free of the constitutional restrictions).

9. Because Simon did not assert any homestead rights while he was alive, and there were no minor children of Shirley when she died, none of the adult children would be permitted to raise this, even if they wanted to. *Stone* ("there were no surviving minor children and Alma waived her homestead rights. Ross, as an adult child, is not entitled to seek the protection of the homestead devise restrictions.").

10. On the other hand, if Simon L. Bernstein did not waive his homestead rights, then title to the House passed by operation of law at Shirley's death, outside of probate and outside of the Trust, creating a life estate in Simon Bernstein with the remainder to his five children. In this scenario, under section 732.401(1) of the Florida Statutes, "the surviving spouse shall take a life estate in the homestead, with a vested remainder to the descendants in being at the time of the decedent's death per stirpes," and this remainder interest "descend[s] in the same manner as other intestate property."

11. Under this scenario, notwithstanding Shirley's desire to exclude Ted and Pam from her estate planning, Ted and Pam each would own 20% of the House. Likewise, notwithstanding Simon's intent to bypass all of the children and pass the wealth to ten grandchildren, the grandchildren would get nothing and the House would have passed 20% to each child. That is so regardless of the testamentary plan and the documents signed by Simon and Shirley. *King v. Ellison*, 648 So. 2d 666(Fla. 1994)(descent of homestead "was governed by section 732.401(1), Florida Statutes (1991), notwithstanding any provision in his will to the contrary.).

12. The Trust's position is that Simon Bernstein waived his homestead rights by signing the Quit Claim Deed on May 20, 2008. Despite the fact that they stand to gain the most, Ted and Pam have acknowledged that there should be a declaration that Simon waived his homestead. Lisa and Jill have as well. Eliot has been asked to agree, but his consent is unlikely.

13. Importantly, Eliot stands be only person who loses financially on this issue:

2008 Docs	Beneficial Interest in House as Trust Asset under 2008 Docs	Interest in House under Homestead	Difference
Eliot	33.33%	20.00%	-13.33%
Lisa	33.33%	20.00%	-13.33%
Jill	33.33%	20.00%	-13.33%
Ted	0.00%	20.00%	20.00%
Pam	0.00%	20.00%	20.00%

2012 Docs	Beneficial Interest in House as Trust Asset – 2012 Docs	Interest in House under Homestead	Difference
Eliot's kids	30.00%	20.00%	-10.00%
Lisa's, Jill's, Ted's, Pam's kids	70.00%	80.00%	10.00%

Any rational economic actor in Eliot's position would prefer the waiver of the homestead to a situation in which Eliot's interest or his kids is diluted either -10.00% or -13.33%.

14. To close the transaction based upon that waiver, the title insurer has requested a court order determining that Simon Bernstein waived his homestead rights and, therefore, the ownership of the house remains in the Shirley Bernstein Trust. Accordingly, based upon the foregoing, the Trust requests entry of an order approving the sale and overruling Eliot's objections thereto; ruling that Simon waived any homestead rights; authorizing Ted S. Bernstein, the current Successor Trustee, to take all steps necessary and sign all documents necessary to effect a closing of the sale of the House; directing that the net sales proceeds shall be held in escrow or an attorney's trust account pending further order of this Court; prohibiting anyone from interfering with the sale or the closing; and granting such other relief as the Court deems necessary.

15. Alternatively in the absence of such a court order, and indeed more preferable to the title insurer, the title insurer is willing to close with a Quit Claim Deed signed by each of the surviving children of Shirley Bernstein, transferring any right, title, or interest he or she may have back to the trust, so that the property can be sold with insurable title. Not surprisingly, and despite the fact that it is contrary to their individual economic best interests, Pam and Ted have signed or are signing Quit Claim Deeds, as have Lisa and Jill, conditioned upon Eliot signing same. Although any rational economic actor in Eliot's position would prefer to sign a Quit Claim Deed so that (i) his and his children's beneficial interest in the House is not diluted, and (ii) the Trust can avoid incurring substantial legal fees to address this title issue, it is doubtful that Eliot would sign such a document. Obviously, if he does agree before the hearing, that will resolve this issue.

WHEREFORE, the Successor Trustee respectfully requests an Order:

- (i) approving the sale and overruling Eliot's objections thereto;
- (ii) ruling that Simon waived any homestead rights;
- (iii) authorizing Ted S. Bernstein, the current Successor Trustee, to take all steps necessary and sign all documents necessary to effect a closing of the sale of the House;
- (iv) directing that the net sales proceeds shall be held in escrow or an attorney's trust account pending further order of this Court;
- (v) prohibiting anyone from interfering with the sale or the closing; and
- (vi) granting such other relief as the Court deems necessary.

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 16th day of April, 2015.

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By: /s/ Alan B. Rose
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SERVICE LIST

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QUIT CLAIM DEED

THIS QUIT CLAIM DEED, is made this 20 day of May, 2008, between SHIRLEY BERNSTEIN, joined by her spouse, SIMON L. BERNSTEIN, as Grantor, and SHIRLEY BERNSTEIN, Trustee of the SHIRLEY BERNSTEIN TRUST AGREEMENT dated May 20, 2008, whose mailing address is 7020 Lions Head Lane, Boca Raton, Florida 33498, as Grantee.

(WHEREVER used herein, the terms "Grantor" and "Grantee" include all the parties to this instrument and their heirs, legal representatives and assigns of such individuals, and the successors and assigns of corporations.)

WITNESSETH, that said Grantor, for and in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration to it in hand paid by Grantee, the receipt of which is hereby acknowledged, does hereby remise, release and quit-claim to Grantee and Grantee's heirs and assigns forever, the following described real property situated, lying and being in Palm Beach County, Florida, to-wit:

Lot 781, ST. ANDREWS COUNTRY CLUB, PLAT NO. 14, according to the Plat thereof, as recorded in Plat Book 57, Pages 132, 135, inclusive, of the Public Records of Palm Beach County, Florida.

This conveyance is subject to the following:

1. Taxes and assessments for the year 2008 and subsequent years.
2. Conditions, restrictions, limitations, dedications, reservations, existing zoning ordinances, and easements of record including, but not limited to, water, sewer, gas, electric and other utility agreements of record.

Grantor hereby certifies that said property is the grantor's homestead.

TOGETHER with all the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining.

TO HAVE AND TO HOLD the same in fee simple forever.



