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

INITIAL STATEMENTS

1. IF NO COURT REPORTER WE WANT TO CREATE RECORD VIA TAPE because there are no court reporters who will do Pro Se litigants and Pro Se indigents especially, this denies due process rights and can be solved if we agree to recording and I will download via USB after hearing to Judge and other counsel. If not we can agree to two tapes being run one by me one by them. To not have record prejudices us.
2. THIS IS ELIOT’s hearing to REMOVE TED. Eliot allowed with permission to hear an add on of ONLY the Motion to Dismiss Petition. ALL OTHER PLEADINGS THAT WERE ADDED ON WERE ADDED WITHOUT PERMISSION OF ME OR COURT TO HEAR THEM TODAY AND WE REJECT AND THEY NEED TO BE RESCHEDULED AT ANOTHER TIME NOT DURING MY HEARING TIME. This is sharp practice to diffuse and confuse and delay issue to remove TED, SEE EVIDENCE COLIN STATEMENT AT LAST HEARING REGARDING HEARING TED REMOVAL FIRST BEFORE OTHER ITEMS.
3. No time to review or address other matters.
4. Home matter was not scheduled today and I asked the Court to schedule a separate time in my motion to hear that before the home so I will tonight tomorrow or whenever.
5. If we hear other first and then TED removed we will waste time effort and money and have to reverse sales of homes, etc.

**Alleged Successor Trustee Ted Motion Paragraphs**

Opening Paragraph is wrong case and trust, should be Shirley but let’s move on.

1. Petition does not violate any Court order that is in Simon may be part of continuing error. Everyone was served as service indicates on back, cover page was from Counter Complaint filed but same case. Eliot did not try to enjoin parties, he filed Petition under his Counter Complaint heading where they were joined but either way if you want to limit hearing to their Complaint participants ok, everybody was served and we can limit but no need to refile.
2. 1st Sentence. This is a motion to dismiss and misinterpret is a matter of law that needs briefs and stuff.
	1. Second Sentence. We challenge Ted’s being named but even if he were we are challenging that he is not now qualified to serve due to a host of very serious breaches alleged and more.
	2. Third Sentence. Petition does not fail to state a cause of action for removal as described above it is his current acts that are cause as well.
	3. **4th Sentence – In addition…** This is argumentative not appropriate for Motion to Dismiss. Still have other allegations. All statements in Petition are taken to be true so this is not proper for a Motion to Dismiss.
		1. IF WE ACCEPT THEIR ARGUMENT THAT TED IS TRUSTEE BUT CANNOT MAKE DISPOSITIONS THEN THE QUESTION BECOMES DID HE MAKE DISPOSITIONS AND IF SO THIS IS INSTANT GROUNDS FOR REMOVAL BY DEFAULT. THEY HAVE ADMITTED THAT TED CANNOT MAKE DISPOSITIONS YET HE HAS, CONDO SALE AND THEN DISTRIBUTIONS TO BENEFICIARIES – TWO DISPOSITIONS including to his family that is not bene???????? - Meaning of dispositions is clear “Act of disposing; transferring to the care or possession of another. The parting with, alienation of, or giving up of property.” Ted is considered deceased under the definition of lineal descendant for ALL PURPOSES OF DISPOSITIONS.
3. A petition to remove can be filed at any time to remove. Construction hearing nothing to do with remove and Apples and Oranges.
	1. To hear construction first without first determining if Ted is competent as a Fiduciary would be waste of time if after found he was incompetent causing reversal of Orders on construction more waste of time and monies for everyone.
4. Legally sufficient of insufficient is an issue of fact, not for a motion to dismiss.
5. Baseless, strike. Eliot is a beneficiary – CANDICE EVIDENCE – Page 3 Shirley Trust 3E2 and Line 3 “Held in Trust for my lineals” Eliot is not considered predeceased as TED and his lineals are, Page 7, Def of Lineal E1 and Page 3E1.
	1. Where it says Eliot considered predeceased show language on Page 3 3E2 where only TED and PAM are.
6. WE ARE ALIGNED ON THE ISSUE OF REMOVE TED.
	1. The Rest is not for a motion to dismiss. While there may be conflict on items dealing with beneficial distributions etc. until beneficiaries are decided by Court this is not one of those and the conflict arises from the Fraud of Ted’s former counsel altering Shirley Trust documents as admitted in TS Resignation Letter and PBSO Report.
	2. Grandkids not beneficiaries named in Shirley Trust. To argue them in is not for Motion to Dismiss.
7. Definitely alleged sufficient facts for relief to be granted on. Go to Petition Paragraphs for support and use headers and one or two Paragraphs from each to establish Conflicts, Adverse Interests, Breaches, Failure to Account and more.
	1. Personality, hostility, tension and issues like that are issues of fact and are not for a motion to dismiss. We show abuse and wrongdoing and breaches etc to remove.
	2. ON PAGE 7 we are claiming more than what TED’s prior counsel did and show that was in collusion and the acts were done to benefit TED.
	3. Rest all arguments and issues of fact, not for motion to dismiss.

MOTION TO STRIKE

If Judge wants to strike anything he can strike it during hearing to remove Ted scheduled there is no need to refile anything as this is not a new complaint that would need to be amended and responded to, this is just a Petition.

1. Don’t care let Judge decide
2. There is no complaint only a petition and Spallina and Tescher are material as they were TED’s counsel as PR and Trustee in Shirley and made changes to documents in Shirley Trust to benefit TED. Ted was alleged appointed Trustee Shirley the day Simon died so Spallina and Tescher were not prior to the time but during the whole time.
3. Don’t care let judge decide.
4. Don’t care let judge decide.
5. Don’t care let judge decide, the 1-5000 is on the notice of hearing but not on the Petition.
6. There does not appear to be a Motion to Dismiss by any other party not sure he is in right place and time.

HEARING TO REMOVE TED

**OPENING STATEMENT - POWERPOINT**

1. That Eliot gives no credence or attests to the legal validity of any of the dispositive documents used in these hearings and reserves his rights to challenge them and appeal any/all decisions depending on the outcome of the hearings to determine the validity of the documents being used in these proceedings at this time. This is due to ongoing investigations of the dispositive documents and prior fraud and forgery in the Estates and Trusts of Simon and Shirley committed by Counsel and Fiduciaries in these matters.
2. Note to court that Judge John Robert Blakey son to father of RICO law has taken over Il insurance litigation case.
3. TURN TO PAGE 59 of POWERPOINT
	1. ELIOT HAS STANDING TO REMOVE
4. PAGE 60 PPT - COURT HAS AUTHORITY TO REMOVE
5. FIRST POINT – BREACH OF TRUST - TED ADMITS THAT HE IS NOT ABLE TO MAKE DISPOSITIONS UNDER THE TRUST WHILE HE IS TRUSTEE IN HIS MOTION TO DISMISS.
	1. TED SOLD A CONDO
		1. EVIDENCE 12 – TAX FORM FOR CONDO SALE – did you sign this and where you the PR at the time of signing.
		2. EVIDENCE 72 – Shirley Trust Register
		3. EVIDENCE 74 – CHRISTINE YATES LETTER RE SOLD CONDO CONFIRMATION
	2. TED MADE DISPOSITIONS
		1. CALL TED, did you make sell condo and is that a disposition?
		2. Did You transfer take the sale proceeds and distribute to alleged beneficiaries including your family?
			1. EVIDENCE 72 – Check Register
			2. EVIDENCE 73 – Letter from TED to TESCHER subject TRUST FOR MY KIDS
		3. If you are the Trustee that cannot make dispositions how did you do sell a Condo and transfer monies to beneficiaries?
		4. When did you learn that your attorney Spallina had altered fraudulently a Shirley Trust document?
		5. What did that alteration change? How were the beneficiaries changed from that document? Did that benefit your family in any way?
6. There was a FRAUD ON THE COURT by TED and his counsel and TED should have been removed with his counsel and reported to proper by Your Honor. The Fraud benefited Ted’s family, was done by his counsel as alleged Trustee to detriment of other beneficiaries. TED was considered predeceased for ALL purposes of disposition of the Trust.
	* 1. EVIDENCE #75 – SPALLINA RESIGNATION LETTER FRAUDULENTLY ALTERED TRUST DOCUMENT AND SENT VIA WIRE AND MAIL TO MINOR BENE’S COUNSEL AND OTHERS.
7. There was another FRAUD ON THE COURT by TED and his siblings when they submitted fraudulent and forged Waiver’s to close Shirley’s Estate and once they found out they were fraudulent and forged they did NOTHING but try to resubmit the Waivers. When they knew their father’s name was forged and fraudulent and done POST mortem Ted did nothing as PR and TRUSTEE to resolve, investigate or anything to protect beneficiaries and failed to report felony criminal acts. TED further submitted another Waiver to the Court with perjured statements and continued the FRAUD.
8. There was another FRAUD ON THE COURT when the Estate of Shirley was closed by a DEAD PERSONAL REPRESENTATIVE SIMON and NO SUCCESSOR WAS APPOINTED AS SIMON CLOSED WHILE DEAD. Yet TED acted as PR in a CLOSED estate to sell properties of the SHIRLEY TRUST and fraudulently signed a tax document as PR of the closed estate. The court did not him appoint him until long after.
	1. EVIDENCE #76 – FLORIDA TAX DEPT LETTER CONDO – TED NOT SUCCESSOR AT THAT TIME
	2. EVIDENCE #77 – ELECTION TO TREAT TRUST AS PART OF ESTATE, SIGNED BY TED ON 10/5/2012 HAS NOT BEEN APPOINTED AS PR AND STATES DATE OF HIS APPOINTMENT IS 1/1/2011 A YEAR BEFORE SIMON DIED AND SIMON WAS PR UNTIL HE WAS DECEASED + 4 MONTHS POST MORTEM. SHIRLEY DATE OF DEATH IS ALSO WRONG.
9. Another FRAUD ON COURT - NEW EVIDENCE OF PERSONAL PROPERTY MISSING FROM SHIRLEY INVENTORY ALLEGED TRANSFERRED TO SIMON INVENTORY. Court was told Shirley Condo property was stored in garages of Saint Andrews home. TED transferred the properties which he had no right to do as he was not PR of Simon Estate ever and because he moved them the Court ordered Re-inventory. TED stated he could not comply with Court order because he had boxed all the items and it would cost more than Court allotted to unbox all of them. New PR had to redo Order to accommodate. When inventory was done nothing in 3-4 garages
	1. EVIDENCE #78 – PICS OF GARAGE
	2. EVIDENCE #79 – JOIELLE LETTERS RE PERSONAL PROPERTIES
	3. WITNESS TED – Did you or through counsel state to the Court that the contents of the home had been moved to Saint Andrews and boxed up and stored in garages? Did this include 3 bedrooms, dressers, couches, dining tables, tv’s, artwork, treadmill, clothing, etc.
		1. Did you know these were Shirley’s properties that were transferred to Simon after her death?
		2. If so, why were all these items not listed on Shirley’s Inventory as required by law before being transferred to Simon?
		3. Were these items worth more than $0.00? If so, then why did you recently submit to this Court an inventory that stated Shirley’s Personal Properties were worth $0.00. When you became aware that the former PR’s did not list the items on Shirley’s inventory why did you not amend? This is a violation of Statutes.
			1. EVIDENCE #80 – HOME APPRAISAL
		4. Are you aware of any Jewelry your mother owned at the time of her death?
		5. Are you aware that none of it is on the inventory of Shirley you submitted? If you are aware of Personal Property at her death that was not on the prior inventory alleged submitted by Simon, why have you not amended the Inventory you submitted. This is a violation.
			1. EVIDENCE #15– JEWELRY APPRAISAL
10. TED HAS FAILED DUTY TO ACCOUNT AND INFORM
	1. GO TO PAGE 69 OF PPT – READ STATUTE 736.0813
		1. On transfer of Trustee accounting is due.
		2. TED has still failed to produce accounting.
		3. TED has violated statute.
		4. WITNESS TED – Have you produced an accounting for the Shirley Trust upon the alleged transfer of trusteeship to you.
	2. Failed to provide Notice of the Trust
	3. Failed to provide notice of change of trustee from Simon and produce acceptance of trust to bene’s
	4. Failed to provide any accountings or records upon requests bene
	5. Trusts under the Shirley trust have not been disclosed, included Bene Family Trusts and SubTrusts, Family Trust, Marital Trust created thereunder.
	6. Failure to notify bene’s of sale of Trust property
	7. Failed to disclose Condo sale transaction and accounting
	8. Failed to disclose trust expenses for benes to determine if reasonable or if assets wasted
	9. Mismanaged Misappropriated and Comingled for Interest, including for personal defense in civil actions
11. CONFLICTS OF INTEREST – 736.0303 Rep
	1. Ted has Conflicts and Adversity with beneficiaries that preclude fair and impartial representation as a Fiduciary. Ted and his lineal descendants are considered predeceased in the Shirley Trust. Ted is arguing that his lineal descendants be included in the Shirley Trust for whatever reason and this put him squarely in conflict with other beneficiaries, whereas if he argues one way he is out and the other he is in. Without a doubt this creates conflict that would require him to have parsed the conflict by agreement with beneficiaries or this Court before filing anything ado with beneficiaries and he has not.
		1. Witness Ted – Ted are your children and yourself considered predeceased in the Shirley Trust?
		2. Are you arguing in pleadings to this Court filed that your children are somehow to be included in Shirley’s Irrevocable Trust as newly added beneficiaries? Do you find this conflicts you with other beneficiaries?
		3. Ted in a prior hearing did you state on the record and under oath that you had intended to use a strategy of forcefulness and aggression in regard to a strategy against me?
		4. EVIDENCE # 81 - TED TESTIMONY REGARDING FORCE AND AGGRESSION
	2. Stansbury Litigation Settlement Shirley Estate/Simon and Shirley Trust – Ted conflicted as acting to settle as Trustee of Trust in Stansbury litigation where Ted is a Defendant also. Ted’s personal interests are conflicted with the interests of bene’s and settlement was made that took Ted personally out of lawsuit and left bene’s to foot the bill of his bad acts. Since he and his lineal descendants were disinherited entirely why would Ted not want to leave the settlement costs to the trust bene’s and have no cost to himself. Worked both sides of deal and this was conflicted and now harms beneficiaries.
		1. Witness TED – Did you settle Shirley Estate and Trust with Stansbury acting as Trustee?
		2. Are you a defendant in the Stansbury litigation?
		3. Did you settle personally with Stansbury to get out of suit?
		4. Are the estates and trusts of Simon and Shirley still liable for settlement payments or damages won by Stansbury.
		5. TED are you a defendant in this case as a Counter Defendant in a Counter Complaint that was served upon you?
		6. Are you aware that breach of duties is charged against you in that counter complaint?
		7. Are you aware that the Counter Plaintiff is a beneficiary? Do you think that creates adversity?
		8. Are you aware that YOUR LAWYERS as TRUSTEE that you hired as TRUSTEE, TESCHER and SPALLINA, fraudulently altered a Shirley Trust document to include your lineal descendants into the Shirley Trust and disseminated that document via mail and wire to minor beneficiaries Florida Counsel?
			1. EVIDENCE #75 - TESCHER RESIGNATION LETTER IF HE DENIES

Do you think the fact that counsel you hired as Trustee committed fraud to benefit your children makes you conflicted in that as Trustee you have motives to not investigate or prosecute TESCHER and SPALLINA and recover funds distributed to the improper beneficiaries in the Shirley Trust or expose further the fraud, which could materially affect you if you are found to be involved? So you would say if that issue were derailed you would be in a better situation than you are today?

Describe what you did once you found that TESCHER and SPALLINA’s law firm had fraudulently created and admittedly FORGED signatures not only in your deceased fathers name but in YOUR name used to improperly close your mom’s estate?

* + 1. Did you file criminal charges on you or your father’s behalf?
		2. Did you notify the Court and seek to have all documents in the Estates and Trusts forensically investigated to make sure YOUR COUNSEL did not alter more?
		3. Did you withdraw your waiver?
		4. Are you aware you are under an ongoing investigation into stolen properties and fraudulent documents in the Shirley Trust by PBSO? Do you think when dealing with those issues in the Shirley Trust and Estate that you can be unbiased when investigation could lead to imprisonment for the alleged acts?
	1. Saint Andrews Order to Pay School
		1. EVIDENCE #82 - ORDER TO PAY SCHOOL
		2. Did you pay school as Ordered? Why not when the Order states if no agreement was reached the record would stand and the school be paid. Once you failed to pay did you make any efforts with the Court to resolve the failure and keep the children in their school?
		3. See Pleading Page 27
	2. Simon Bernstein IL Federal Insurance Case.
		1. Witness Ted – EVIDENCE #83 - Feaman Letter – Have TED read into record who wrote and what it says into record.
		2. Do you understand the conflict Feaman refers to and how you tried to block Simon beneficiaries from joining that lawsuit as Potential Benes? Are you the Trustee that is the Plaintiff in that action in IL?
		3. EVIDENCE #38 - TED memo of law in Opposition
		4. Is it true that if the IL litigation fails and the monies are paid to the Estate of Simon you will get nothing as you are predeceased? And if it is successful you will receive personally in your pocket a percentage of the benefits and your children none, is that correct?
		5. EVIDENCE #33 and #36 SPALLINA CLAIM FORM AND INSURANCE COMPANY LETTER WITH HIM AS TRUSTEE OF LASALLE AND TRUSTEE OF LOST TRUST –
		6. WITNESS TED – Ted have you seen this document before? Who is the Letter addressed to? Is Spallina the Trustee of LaSalle National Trust to the best of your knowledge? Are you aware that at the time of this letter LaSalle had been sold and merged?
		7. On the claim form who is Robert Spallina identified as? Are you aware that that Trust is claimed to be lost with no executed copies in existence? In the IL insurance litigation do you claim to be Trustee of that trust? Can you explain how Spallina and you switched from the time of filing the claim to the filing of the Breach of Contract lawsuit the trusteeship? What terms of the non-existent Trust were used?
		8. Was the Spallina claim denied by Heritage? Why?
		9. EVIDENCE #34 - HERITAGE DENIAL LETTER
		10. Are you aware of any other party that filed an official claim form with the Carrier?
		11. Did you favor the IL Insurance litigation claiming that if the benefit went to the estate it could be gotten to by the Creditor Stansbury? Are you as a Trustee obligated to protect the creditor?
			1. EVIDENCE #84 - Eliot Letter to Ted re Frauding Creditors
	3. Claims that Ted is operating the Simon Trust as a NOT VALID made by Attorney at Law O’Connell.
		1. WITNESS TED – Did you receive a copy of this pleading stating you are not a valid Trustee by the PR of the Estate?
		2. Are you aware that Mr. O’Connell at the hearing on March 26, 2015 stated to the Court and Your Honor when asked if you are a qualified Trustee stated that you were not due to the fact that Successor Trustees cannot be related? Are you related to Simon Bernstein.
		3. EVIDENCE #85 - O’Connell pleading TED not valid.
1. GO TO PPT QUESTIONS AND SEE IF YOU WANT TO PUT ANY OF THAT IN.
2. GO THROUGH SPARE EVIDENCE AND SEE IF WE CAN FIT ANY IN.
3. CLOSING
4. Bills ?’s
	1. Do you have original trust and will? If no, can I assume you are operating under copy.
	2. Who prepared Shirley Will and Trust.
	3. So as Trustee what have done to verify authenticity of Trust and Will especially where TS committed and admitted fraudulently altering a trust document to benefit you and your family?
	4. How do you know other pages have not had fraud on them?
	5. When did you first meet Tescher
	6. When did you first meet Spallina
	7. When did Shirley first meet Spallina and Tescher to best of knowledge
	8. Spallina stated to PBSO he met them in 2007-2008
	9. Did you do any types of transactions or business with Tescher and or Spallina prior to parents using them for Estate planning