

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.

**FINAL ORDER GRANTING SUCCESSOR TRUSTEE'S
MOTION TO APPROVE SALE OF TRUST PROPERTY**

THIS CAUSE came before the Court for hearing on March 25, 2015, and for evidentiary hearings on March 26, 2015, and May 6, 2015, upon Ted S. Bernstein's, Successor Trustee of the Shirley Bernstein Trust (the "Trustee"), *Motion to Approve Sale of Trust Property and For Order Prohibiting Interference With Closing etc. and Supplement to Motion to Approve Sale of Trust Property Re: Closing and Title Issues for Shirley's Homestead* ("the Motion"). The Court, having

reviewed the Motion and the record, having heard argument of counsel and/or the parties, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

Findings of Fact

A. The Court has been asked to approve a pending a sale of real property owned by the Trust located at 7020 Lions Head Lane, Boca Raton, Florida 33496 (the "House"). The Successor Trustee has entered into a contract to sell the House for \$1.1 Million, in an all-cash, no contingency deal to sell the House in "as is" condition.

B. Eliot Bernstein has served a Notice of Lis Pendens and has objected to the sale, in part claiming that the sale price of the pending contract is indicative of a "fire sale" rather than a sale at the current fair market value of the property. In his oral objection, Eliot suggested that this pending contract was at a price that is too low to be reasonable.

C. The Court has heard testimony from the realtor who has been handling the marketing of the House under a listing agreement for well over two years; advising the Trustee; and handling the negotiations with potential buyers. The Court finds, based upon that testimony, that the pending offer is representative of the current fair market value of the property; that the House has been adequately and professionally marketed; and that the buyer and seller engaged in arms-length, good faith negotiations. In the opinion of the professional realtor handling the matter, which testimony the Court accepts, the sale price of the House is fair, reasonable, and should be approved by the Court.

D. The Court has afforded Eliot Bernstein time to produce competent evidence to oppose the sale of the House. Eliot has consulted with a real estate broker, but has failed to submit sufficient evidence to warrant the Court not approving the sale.

E. The Court further finds that it is in the best interests of the Trust and the beneficiaries of the Trust to sell the property under the pending contract, given the extended period of time it has taken so far for marketing; the carrying costs of the property; and the fact that the equity membership contribution required at St. Andrew's Country Club has increased, which will not improve the prospects for selling the House.

F. The Court also finds that the House is properly titled in the name of and owned by the Shirley Bernstein Trust. To the extent that the House was the homestead of Shirley Bernstein as the time of her death, the Court finds that Simon Bernstein waived his homestead rights by signing a Quit Claim Deed, before two subscribing witnesses and a notary, which provides that Simon, as Grantor:

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

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

G. Although there is a claim by Eliot that the Trustee should be removed, such claim should not and does not prevent the sale of Trust assets on terms which are arm's-length, fair and reasonable.

Accordingly, based upon the foregoing factual findings which are adopted by the Court as part of this Order, it is hereby ORDERED AND ADJUDGED:

1. The Motion to Approve the Sale of the House is GRANTED. The Trustee may take all reasonable steps to effectuate and close on the transaction.
2. Eliot Bernstein's objections are overruled.

3. All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

4. Simon waived any homestead rights he may have had under Florida law, section 732.702(1), Fla. Stat. (2008), which allows the rights of a surviving spouse to homestead to be waived by a written contract, agreement or waiver signed in the presence of two subscribing witnesses, and further provides: "**[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.* A quitclaim deed transfers and terminates any right and claim to the property. Therefore, as set forth 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 language of the Quit Claim Deed waived any homestead rights held by Simon. As a result of Simon waiving his homestead rights, Shirley's children do not have a vested remainder in the House.

5. Ted S. Bernstein, the current Successor Trustee, is authorized to take all steps necessary and sign all documents necessary to close on the sale of the House, and to utilize the sales proceeds to satisfy any liens and pay all customary closing costs, including any closing costs required by the Agreement and any amendments to be paid by the Seller.

6. All remaining net sales proceeds (after the payments identified above) realized from the sale of the House shall be delivered by the title company or closing attorney to the Trust Account of the Trustee's Counsel, Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., who are

directed to ~~hold these funds in their attorney's trust account or, at their option,~~ to open a separate escrow account at an FDIC insured financial institution, pending further order of this Court. *

7. THE COURT RESERVES JURISDICTION TO ENFORCE THIS ORDER
DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 6 day of May,

2015.



Martin H. Colin
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

* NO WITHDRAWALS FROM THIS ACCOUNT
W/O COURT ORDER. ALL BENEFICIARIES
SHALL RECEIVE A COPY OF THE
DOCUMENT FROM THE BANK SHOWING
THE DEPOSIT OF NET PROCEED,
AS WELL AS A COPY OF THE CLOSING
STATEMENT OF THE TRANSACTION SALE.

SERVICE LIST

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