

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.

_____/

SUCCESSOR TRUSTEE'S ANSWER AND AFFIRMATIVE DEFENSES
TO AMENDED COMPLAINT DATED APRIL 28, 2015

Plaintiff, Ted S. Bernstein, as Successor Trustee (the "Trustee") of the Shirley Bernstein Trust Agreement dated May 20, 2008 (the "Trustee"), serves his Answer and Affirmative Defenses to the Amended Complaint to Remove Theodore Stuart Bernstein as Successor Trustee (the "Complaint") filed by Eliot Bernstein in numerous capacities ("Eliot"), and states:

ANSWER

1. As to paragraph 1, admitted that Eliot is over 18 years old; denied that Eliot is a beneficiary of the Trust as a result of Simon Bernstein's exercise of his special power of appointment; and otherwise without knowledge. In the unlikely event that and to the extent that Eliot is a beneficiary or is judicially determined to be beneficiary of the Trust, he has contractually agreed that payments made by his parents to him or for his benefit, in the amount of \$100,000 annually or more, from and after August 15, 2007, shall reduce dollar-for-dollar any inheritance of Eliot individually.

2. As to paragraph 2, admitted that Eliot is the father of three minor children; admitted that the three minor children are beneficiaries of the Trust under the power of appointment; and otherwise without knowledge.

3. As to paragraphs 3 and 6, admitted.

4. As to paragraph 4, 27, 39-40, 46, admitted that there are applicable Florida Statutes, which set forth the requirements of law as written and as interpreted by Courts, and otherwise denied.

5. As to paragraphs 5, 12, 13, 25, 26, 28-38, 43-45, 48-55, 58-59, 61, 63-79, and 84-88, denied.

6. As to paragraphs 7-11, 14-18, 21, 23, 24, 30, 32, 47, 56-57, 60, 83 and 89, the paragraphs were stricken by the Court, so no response is necessary. If for any reason it is determined that a response is necessary to any of these paragraphs, denied.

7. As to paragraphs 19, 20, 41 and 42, denied. The original Trust Agreements for Simon and Shirley Bernstein remain in the Tescher and Spallina law firm, where they were maintained

during the settlors' lives and where they been and remained throughout these proceedings, and the Trustee has possession of two duplicate originals of each Trust signed by Simon and Shirley Bernstein.

8. As to paragraph 22, the testimony of a witness if admissible is expressed in a written transcript; without knowledge as to whether the paraphrasing of such testimony is accurate; admitted that Simon's Will dated May 20, 2008 (later revoked) and Simon's Trust Agreement dated May 20, 2008 (later amended and restated) are similar but not identical to the Will and Trust signed by Shirley on May 20, 2008; and otherwise denied.

9. As to paragraph 62, the pleadings and court filings made in Illinois set forth the participants' respective positions; and otherwise denied.

10. As to paragraphs 80-82, denied. The Court approved the parties' agreement that the Trustee would make a partial interim distribution to Eliot and/or his children, directly to the St. Andrews School. The Trustee was ready, able and willing to complete the distribution, but Eliot refused to accept the distribution under the terms approved by the Court, and refused to cooperate with the Trustee for reasons known only to Eliot. Indeed, Eliot's recent testimony under oath suggested that either he did not want his children to attend St. Andrews or did not care if they did had to attend a suitable public school, which may help explain Eliot's conduct in refusing a partial interim distribution to him and/or his kids.

AFFIRMATIVE DEFENSES

11. Trustee, who is expressly named in the Trust Agreement, is entitled to indemnification to the fullest extent provided in the Trust, Article IV(G)(1-3), and hereby makes demand for all such indemnification rights.

12. The alleged conflicts of interest between Eliot and the Trustee, which are denied, were anticipated by the Settlor given Eliot's prior actions, his physical and mental health history, and his track record in dealing with persons of authority or persons who will not give in to Eliot's unreasonable demands. Any potential conflicts were specifically waived in the Trust. In truth, there is no conflict between the Trustee and Eliot; instead, this entire proceeding is simply Eliot expressing displeasure with the size of his inheritance and otherwise abusing the judicial system. To the extent that Eliot perceives there to be a personality issue, removal of a trustee must be predicated upon a clear showing of abuse or wrongdoing in the actual administration of the trust, not a personality issue by a beneficiary nor any potential mismanagement of the trust.

13. The alleged conflicts of interest relating to the life insurance policy and litigation in Illinois, although denied, are irrelevant to this matter because Shirley Bernstein Trust is not a beneficiary of the policy. Moreover, any potential conflicts were anticipated by the Settlor, and any potential conflicts were specifically waived in the Trust.

14. The Petition contains a misjoinder of causes of action, because Eliot has filed suit in numerous independent capacities, in violation of Rule 1.110(g), Fla. R. Civ.P.; *General Dynamics Corp. v. Hewitt*, 225 So. 2d 561, 563 (Fla. 3d DCA 1969); *County of Sarasota v. Wall*, 403 So. 2d 500 (Fla. 2d DCA 1981); 1 Am.Jur.2d Actions § 94 (1994).

15. Eliot is not a beneficiary of the Trust because Simon exercised his power of appointment. Eliot also is neither a beneficiary of Shirley's Estate (everything given to Shirley's Trust) nor Shirley's Trust (Simon exercised his Power of Appointment to distribute equal shares to his grandchildren). Thus, for all intents and purposes, Eliot was disinherited entirely and also was not named in any fiduciary role in either estate or trust. Simply, he lacks individual standing.

Pursuant to statute, only a "settlor, a cotrustee, or a beneficiary may request the court to remove a trustee." Fla. Stat. § 736.0706(1).

16. Eliot also is not qualified to act for his children because he admits there is a conflict between his position and theirs, and because Eliot is not a suitable representative for his children's interests based upon his vexatious and inappropriate litigation tactics demonstrated in this case. Eliot has stated that there is a conflict, between he and his children, as more fully explained in Oppenheimer's Motion to Appoint Guardian Ad Litem dated September 19, 2014 in Case No. 502014CP002815XXXXSB (IY)(incorporated herein by reference), which case is separate and unrelated to these estate and trust matters, but involves some of the same players. Oppenheimer stated:

Courts are inclined to appoint a parent as a child's litigation representative *unless "it appears that the minor's general representative has interests which may conflict with those of the person he is supposed to represent."* 1 Leg. Rts. Child. (Legal Rights of Children) Rev. 2d § 12:3 (2d ed. 2013), citing *Mistretta v. Mistretta*, 566 So. 2d 836, 837 (Fla. 5th DCA 1990)(other internal citations omitted). In this case, Eliot Bernstein has confirmed, by the allegations of his Counter-Complaint that he has interests which conflict (or certainly which may conflict) with those of the Minors. For instance, in the Counter-Complaint:

- Mr. Bernstein alleges that *beneficiary designations were changed from him to his children based upon fraudulent documents and frauds on this Court*. See Counter-Complaint, ¶ 253.
- Mr. Bernstein alleges that "approximately 1/3 of all assets [are] *either going to Eliot or his children or a combination of both depending on how this Court rules regarding the validity of the Wills and Trusts that have been challenged* and already found fraught with fraud, fraudulent notarizations, improper notarizations, forgeries and more." See Counter-Complaint, ¶ 186.
- Even though the Minors are clearly listed as the sole beneficiaries of the Grandchildren Trusts, Eliot Bernstein alleges that he himself is a beneficiary. Specifically, he alleges that "Simon and Shirley [Bernstein] set

up [the Grandchildren Trusts and Bernstein Family Realty, LLC] while living, in order to fund all of their living expenses due to the fact that Eliot has had a bomb put in his car, death threats and is in the middle of a very intense RICO and ANTITRUST lawsuit where he and his family have been in grave danger for many years fighting corruption inside the very framework of the legal system." ***He alleges that the Grandchildren Trusts were "set up by Simon and Shirley [Bernstein] for the benefit of Eliot, Candice and their children."*** See Counter-Complaint, ¶¶ 109-110

Eliot has demonstrated disrespect for the judicial system, this Court, the fiduciaries, counsel and others involved in the administration of this Trust and the related estates and trusts of his parents, and has engaged in frivolous and vexatious litigation. The Court should appoint a guardian ad litem to represent the interests of his minor children to prevent further loss or damage to his children and the Trust.

17. The costs and expenses of this proceeding should be borne by Eliot and surcharged against any inheritance of Eliot.

18. In addition to the Settlor's express naming of Ted S. Bernstein to serve as the successor trustee after the death of the Settlor and Simon, the majority of beneficiaries of the Trust favor, support and ratify the appointment of Ted S. Bernstein as Successor Trustee, and the only person opposing Ted S. Bernstein is Eliot Bernstein.

19. In all limited actions taken to date by this Trustee, the Trustee has acted in good faith, in the best interests of the beneficiaries, consistent with the powers granted by the Settlor in the Trust, and within the wide discretion granted under the business judgment rule and Florida law for the exercise of the Trustee's powers.

20. Trustee reserves the right to amend or supplement this Answer and the Affirmative Defenses based upon information learned through discovery.

WHEREFORE, for the foregoing reasons, and having fully answered the Complaint, the Trustee respectfully requests this Court enter judgment in his favor; award Trustee its costs and attorneys' fees under any applicable contract, trust or statute, and further order that such be paid by or from any eventual distribution to any of Plaintiffs; and grant such other relief as 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 20th day of May, 2015.

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