

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

PROBATE DIVISION

CASE NO. 502012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN

**CURATOR'S MOTION TO INSPECT AND TAKE POSSESSION OF
ESTATE TANGIBLE PERSONAL PROPERTY**

COMES NOW, Curator, Benjamin P. Brown ("Curator"), by and through undersigned counsel, files this Motion to Take Possession of Estate Tangible Personal Property, and states as follows:

1. On February 25, 2014, this Court entered an Order on "Interested Person" William Stansbury's Motion for the Appointment of a Curator or Successor Personal Representative ("Order Appointing Curator"), appointing Benjamin P. Brown as Curator of the Estate of Simon L. Bernstein ("Estate"). On March 11, 2014, this Court entered Letters of Curatorship in Favor of Benjamin Brown ("Letters of Curatorship").
2. Decedent passed away on September 13, 2014.
3. On March 18, 2014, the Curator sent the letter attached hereto as Exhibit A, along with the January 22, 2013 Fair Market Value Appraisal of the Personal Property of Simon L. Bernstein (effective date September 13, 2012) ("Appraisal", attached hereto as Exhibit B) to counsel for Ted Bernstein ("Ted").
4. Upon not receiving a response, the Curator followed up with the April 9, 2014 e-mail attached hereto as Exhibit C (without attachments). The Curator intended to, but did not, include the September 13-14, 2014 e-mails between Robert Spallina and Ted (now bearing bates



stamp numbers TS004584-5) with the April 9, 2014 e-mail. The September 13-14, 2014 e-mails between Robert Spallina and Ted (now bearing bates stamp numbers TS004584-5) are attached hereto as Exhibit D.

5. On April 10, 2014, counsel responded, and further e-mails were exchanged on April 14, 2014. Those e-mails are attached hereto as Exhibit E. One of the e-mails from Ted's counsel indicates that "Tescher and Spallina may have some" of the Estate tangible personal property listed on the Appraisal ("TPP"), but upon information and belief, that is not the case (Tescher & Spallina did have certain jewelry in its possession, which has been transferred to the Curator).

6. Based on the foregoing, at Decedent's date of death the Estate tangible personal property listed on the Appraisal ("TPP") was located at two addresses: 7020 Lions Head Lane, Boca Raton, FL ("House") and 2494 South Ocean Boulevard, Unit C-5, Boca Raton, FL ("Condo"). Apparently, both the Condo and the House were owned by the Shirley Bernstein Trust, and prior to April 10, 2014, the Condo was sold and the TPP located at the Condo was purportedly moved to the House.

7. Upon request, the Curator provided the aforementioned exhibits to Eliot Bernstein ("Eliot"). In a series of e-mails, attached hereto as Exhibit F, Eliot raised concerns about whether all of the TPP is located at the House.

8. Through counsel, Ted has indicated that the TPP will remain at the House. However, in order to determine what TPP is located at the House, and to otherwise safeguard the TPP, the Curator seeks to a) have one of the appraisers who signed the Appraisal inventory the TPP at the House; and b) move whatever TPP is located at the House to a storage facility pending distribution of the TPP (or sale and distribution of proceeds).

9. Because the actions the Curator seeks to take will necessarily cause the expenditure of Estate funds, the Curator makes this application to the Court.

WHEREFORE, the Curator respectfully requests that the Court enter an Order granting the relief set forth above, and such other relief as the Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by e-mail upon the parties listed on the attached service list, on this 10 day of June, 2014.

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By: 

Benjamin P. Brown
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EMAIL SERVICE LIST

Estate of Simon L. Bernstein

Palm Beach County Case No. 502012CP004391XXXXSB

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

PROBATE DIVISION
CASE NO. 5021012CP004391XXXXSB

IN RE: ESTATE OF SIMON L. BERNSTEIN

ORDER ON CURATOR'S MOTION TO INSPECT AND TAKE POSSESSION OF ESTATE TANGIBLE PERSONAL PROPERTY

THIS MATTER came before the Court on the Curator's Motion to Inspect and Take Possession of Estate Tangible Personal Property dated June 10, 2014 ("Motion"), the Court having reviewed the Motion, and the Court being otherwise fully advised in the premises, it is hereby:

ORDERED and ADJUDGED as follows:

The Motion is granted in part. Curator is authorized and directed to use Estate funds to retain Robert Hittel in order to inspect the tangible personal property at described on the January 22, 2013 Fair Market Value Appraisal of the Personal Property of Simon L. Bernstein (effective date September 13, 2012) ("Appraisal") located at 7020 Lions Head Lane, Boca Raton, FL ("House") and prepare a written report regarding whether such property is located at the House and its condition (if different than described on the Appraisal). The Court defers decision on the remainder of the Motion.

Mr. Hittel's fee shall not exceed \$500.00, Ted Bernstein and Eliot Bernstein may be present on the day Mr. Hittel conducts his inspection, but may not enter the House while Mr. Hittel conducts such inspection.

DONE AND ORDERED in Chambers, Delray Beach, Palm Beach County, Florida, on June _____, 2014.

SIGNED & DATED

JUN 19 2014

**MARTIN H. COLIN
CIRCUIT JUDGE**

Circuit Court Judge

Copies furnished to the parties on the attached service list

{00026974.DOC}



SERVICE LIST

Estate of Simon L. Bernstein

Palm Beach County Case No. 502012CP004391XXXXSB

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1 Q. Back at the time when an interim
2 distribution was being considered, what were your
3 thoughts as to the merits of the lawsuit by Mr.
4 Stansbury against the Shirley Bernstein estate or
5 the Shirley Bernstein Trust?

6 MR. FEAMAN: Objection to the form.

7 A. I thought it was ludicrous, frankly.

8 They continued to keep naming Mr. Spallina
9 and myself as the trustees of that trust, which we
10 never were in -- in all of the pleadings.

11 That trust had -- Shirley never owned any
12 interest in the business. And I could see no
13 reason why Mr. Stansbury was attempting to reach
14 into that trust, other than the fact that it had
15 some assets.

16 Q. Now, there is an issue -- there is an
17 issue on the Shirley side about whether the
18 distribution should have been made to all 10
19 grandchildren or to only six.

20 Were you aware at the time of the interim
21 distribution that there was a question about
22 distributions to six versus 10?

23 A. Not at that time; no.

24 Q. As far as you know, was Ted aware of the
25 issue of six versus 10?

1 MR. FEAMAN: Objection to the form.

2 A. To the best of my knowledge, I don't think
3 he was at that time.

4 Q. One second, please.

5 Do you recall when the Shirley Bernstein
6 Trust sold the condominium that, among the contents
7 of the condominium would be property that would
8 have then been owned by the estate of Simon
9 Bernstein?

10 A. Well, under -- under Shirley's documents,
11 all the tangible personal property passed to Simon.

12 Q. I thought -- at the time that Shirley's
13 condo was sold, whatever contents were in it would
14 have been owned by Simon's estate.

15 A. Correct.

16 Q. At the time you were the personal
17 representative or copersonal representative of
18 Simon's estate; is that correct?

19 A. At the time that the sale occurred; yes.

20 Q. Did you and the other copersonal
21 representative agree that the -- that the property
22 should be sold with the condominium; and that if
23 there was ever a time in the future when there
24 needed to be some allocation, it could be handled
25 in the future, rather than either interfering with

1 the sale of the condo, or requiring the furniture
2 to be to be removed from the condo?

3 MR. FEAMAN: Objection to the form.

4 A. I don't recall if I was directly involved
5 in that discussion.

6 Q. Does it make sense to you that if the
7 beneficiaries of the Shirley trust are the same as
8 the beneficiaries of the Simon estate should not
9 undergo an expense to move furniture or undertake
10 an allocation if the money is going to the same
11 people?

12 A. Correct.

13 Q. And if at some later point in time it
14 makes a difference, couldn't somebody then go back
15 and allocate some portion of the purchase price
16 from the Shirley condo and give the money to the
17 Simon estate for the value of the -- of his
18 personal property that was included in the sale?

19 A. Yes, it could true up.

20 Q. Does that make more sense to you, that an
21 estate with limited resources -- to true it up at
22 the end, if it matters, rather than undertake that
23 expense at the time of the sale?

24 MR. FEAMAN: Form.

25 A. From a practical standpoint, given the

IN THE CIRCUIT COURT IN AND FOR THE 15TH JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

IN RE: ESTATE OF:

PROBATE DIVISION

SIMON L. BERNSTEIN,

FILE NO: 502012CP4391XXXXSB

Deceased.

**PETITION TO TAKE POSSESSION, STORE, INSPECT AND APPRAISE ESTATE
TANGIBLE PERSONAL PROPERTY**

BRIAN M. O'CONNELL, as Successor Personal Representative of the Estate of SIMON L. BERNSTEIN ("Mr. O'Connell" or "Successor Personal Representative"), moves this Court for authorization to take possession, store, inspect and appraise the Estate's Tangible Personal Property ("TPP"), and states as follows:

1. On June 24, 2014, Mr. O'Connell was appointed as the Successor Personal Representative of the Estate of Simon L. Bernstein ("Estate" and "Decedent", respectively).
2. On or about January 22, 2013, while Donald Tescher and Robert Spallina were serving as co-personal representatives of the Estate, a Fair Market Value Appraisal of certain TPP (effective date September 13, 2012) was completed ("Appraisal").
3. Upon information and belief, at the time of the Decedent's death, the TPP was located at two addresses: 7020 Lions Head Lane, Boca Raton, FL ("House") and 2494 South Ocean Boulevard, Unit C-5, Boca Raton, FL ("Condo"). Per the filings in this case, the Condo and the House were both owned by the Shirley Bernstein Trust, and prior to April 10, 2014, the Condo was sold and the TPP located at the Condo was moved to the House.
4. Ted Bernstein, through his counsel, has indicated that the TPP from both the Condo and the House is currently located at the House.

5. The Successor Personal Representative has been informed by Elliott Bernstein that the values listed in the Appraisal, which was relied upon by the Successor Personal Representative in completing his inventory dated December 1, 2014, are incorrect.

6. On June 10, 2014, the Curator, Benjamin P. Brown ("Curator") filed a Motion to Inspect and Take Possession of Estate Tangible Personal Property ("Curator's Motion"), based, in part, on concerns raised by Elliot Bernstein as to whether all of the Decedent's TPP is located at the House. *See* Curator's Motion attached as Exhibit "A".

7. On June 19, 2014, an Order was entered by this Court authorizing the Curator to hire Robert Hittel ("Mr. Hittel") to inspect the personal property as described in the Appraisal and stated that Mr. Hittel's fee shall not exceed \$500.00. *See* Order on Curator's Motion attached hereto as Exhibit "B".

8. Mr. Hittel's original fee was based upon the TPP being kept in a certain fashion, i.e., visible, and not boxed or stored. The Successor Personal Representative has since been informed that the TPP is boxed and stored in a manner that will cause the appraisal costs to exceed \$500.00.

9. At this time, it is necessary for the Successor Personal Representative to complete the inspection and appraisal of the TPP.

10. In order to determine what TPP is located at the House, to further safeguard the TPP, and to verify the value of the TPP, the Successor Personal Representative seeks to: a) have an appraiser inspect and appraise the TPP and; b) take possession of the TPP located in the House and have it moved to a storage facility pending the sale of the TPP. The sale of the TPP will be the subject of a separate motion.

11. Accordingly, the Successor Personal Representative seeks authority from this Court to hire Hall & Hall Appraisals, Inc. in order to complete an inspection and appraisal of the Estate's TPP at a rate of \$125.00 per hour, and to hire an assistant for the appraiser which is necessitated by the boxed condition of many of the TPP items for \$100.00 per hour.

12. In addition, the Successor Personal Representative requests authority to take possession of the TPP and move it to a storage facility pending sale of the TPP.

13. Finally, upon information and belief, the Decedent has additional items of tangible personal property located at 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, Florida 33487. The Successor Personal Representative requests authority to inspect, appraise and take possession of such items of tangible personal property.

WHEREFORE, the Successor Personal Representative respectfully requests the Court enter an Order granting the relief set forth above and for his attorneys' fees and costs, and such other relief as the Court deems just and proper.

I HEREBY CERTIFY that a true and correct of the foregoing was sent by e-mail service or U.S. Postal Service on the 24th day of March, 2015 to the parties on the attached Service List.



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MR. ROSE: He has a copy of them, though. He now has the appraisal. I would not have advised he be given a copy --

THE COURT: He can't -- Eliot can't file anything without sending it to me first.

MR. ROSE: But he puts it on the Internet, and we don't want the appraisal to be on the Internet.

THE COURT: I've already ordered him not to do anything directly or indirectly -- contact any aspect of this transaction -- with the buyer. That's direct or indirect.

MR. ROSE: We didn't share the appraisal because, frankly, we were concerned it would be public and that would defeat their chance of selling it.

THE COURT: I'm not -- look, nothing is easy here. It's not going to get easier until we can get hearings where I can start to knock off some of the issues, which is what I have been saying now like a broken record.

At some point, either Eliot is going to be sustained on his positions or he's going to be overruled, but one way or the other, we can put some of this stuff to rest. The problem is we're

MR. ELIOT BERNSTEIN: No. Your Honor, you just said in the last hearing --

MS. FOGLIETTA: Your Honor, if I could --

THE COURT: Hold on. It's her motion.

MS. FOGLIETTA: If I could, I want to clarify a few things because we went so quickly through it, and I just want to bring to Your Honor's attention, if I may approach, an order that you prior entered on this, on Mr. Brown as curator, his motion, where you capped the price of the inspection at \$500 for Mr. Hittel to do it and then you included language that Ted and Eliot could be there, but only could be outside.

So what my petition has, which is directly under that order I've just handed you, Judge, is we're actually asking for a few things, and I want to address something Mr. Rose brought up outside to me, too, that I just confirmed with Mr. O'Connell. We're asking for an appraisal, an inspection, and to take possession and move the property in the house. Now, when Mr. Hittel originally agreed to that \$500, that was if things were not boxed in boxes in the house. We have since found out that there are. He had said previously, if things are boxed, now I need an

doing all of this business with some of the metes of the case still up in the air where I haven't been able to adjudicate; the claims that Ted should be removed; the claims that there's wrongdoing beyond Spallina and Tescher, the trust is not valid. I mean, give me a chance to rule on that, because once I rule on that, then the matter is over with on those and you'll know one way or the other what to do.

Do you understand what I'm saying? I think we have hearing time coming up. Let's use that, you know, prioritize hearings on this case. So as soon as we can, I'll give it to you.

MR. ROSE: I appreciate that.

We have one other thing, three seconds.

Miss Foglietta would like to go forward with the inspection on Friday and I have no objection to it. It had to be done at any point and she already had it scheduled.

THE COURT: That's fine.

MR. ROSE: The only issue is, your prior order was that Eliot could be present outside of the house but not go physically into the house during the inspection. We'd just like to maintain that same ruling.

assistant and it's not going to cost \$500.

So what I am seeking is to have Hall and Hall, a different appraiser, actually do this, not Mr. Hittel, at a rate of \$125 an hour, and also to get him an assistant at a rate of \$100 an hour. So that's the first thing.

THE COURT: And the tasks these people will undertake is what?

MS. FOGLIETTA: To inspect the property that's currently there because there's been allegations some of the property is missing; to do another appraisal because there's been allegations that the first appraisal was done incorrectly.

THE COURT: Appraisal of the personalty?

MS. FOGLIETTA: Yes, Judge.

THE COURT: Let me ask you something. This is being done this way in connection with the sale of the property?

MS. FOGLIETTA: Well, we had always planned on filing another motion because we found out Mr. Hittel couldn't do the appraisal -- or the inspection -- excuse me -- that you ordered for \$500 and now we've just, you know, kind of brought it to the forefront here because of the sale of the property. But, either way, it needs to get