

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

CASE NO.: 502012CP004391XXXXSB

IN RE:

ESTATE OF SIMON L. BERNSTEIN,
Deceased.

ELIOT IVAN BERNSTEIN, PRO SE

Petitioner(s),

vs.

TESCHER & SPALLINA, P.A., (and all
parties associated and of counsel);
ROBERT L. SPALLINA (both personally
and professionally); DONALD R. TESCHER
(both personally and professionally);
THEODORE STUART BERNSTEIN (as alleged
personal representative, trustee, successor
trustee) (both personally and professionally);
et al.,

Respondent(s).

TRANSCRIPT OF PROCEEDINGS BEFORE

HONORABLE HOWARD COATES

DATE: June 4, 2015

TIME: 4:10 p.m. - 4:20 p.m.

1 APPEARING ON BEHALF OF WILLIAM E. STANSBURY:

2 PETER M. FEAMAN, P.A.
3 3615 W. BOYNTON BEACH BOULEVARD
4 BOYNTON BEACH, FL 33436
5 By: JEFFREY ROYER, ESQ.

6 APPEARING ON BEHALF OF TED BERNSTEIN:

7 PAGE, MRACHEK, FITZGERALD ROSE
8 KONOPKA & DOW, P.A.
9 505 SOUTH FLAGLER DRIVE, SUITE 600
10 WEST PALM BEACH, FL 33401
11 By: ALAN B. ROSE, ESQ.

12 APPEARING ON BEHALF OF THE PR:

13 CIKLIN LUBITZ
14 515 N. FLALGER DRIVE, 20TH FLOOR
15 WEST PALM BEACH, FL 33401
16 By: BRIAN M. O'CONNELL, ESQ.

17 APPEARING ON BEHALF OF MOLLY SIMON, ET AL:

18 JOHN P. MORRISSEY, ESQ.
19 330 CLEMATIS STREET, SUITE 213
20 WEST PALM BEACH, FL 33401

21 ELIOT I. BERNSTEIN, Pro se

22 ALSO PRESENT: CANDICE BERNSTEIN

23 BE IT REMEMBERED, that the following
24 proceedings were taken in the above-styled cause before
25 the Honorable HOWARD COATES, at the Palm Beach County
Courthouse, 3188 PGA Boulevard, Room 3, in the City of
Palm Beach Gardens, County of Palm Beach, State of
Florida, on June 4, 2015, to wit:

1 P-R-O-C-E-E-D-I-N-G-S

2 - - - -

3 THE COURT: Good afternoon. You may be
4 seated.

5 MR. ROSE: Good afternoon, Your Honor.

6 MR. ELIOT BERNSTEIN: Good afternoon.

7 THE COURT: All right. We have the matter of
8 Estate of Simon Bernstein before the court this
9 afternoon.

10 The first motion that I had was a motion
11 to stay distribution of estate assets pending
12 satisfaction of all creditors claims. And then
13 I see that there was also an amended notice of
14 hearing for a multitude of different petitions.

15 So why don't we start out with having
16 counsel enter their appearances and then we'll
17 get going.

18 MR. O'CONNELL: Brian O'Connell, Your Honor.
19 I'm the personal representative of the estate.

20 MR. ELIOT BERNSTEIN: Eliot Bernstein, pro
21 se.

22 MR. MORRISSEY: John Morrissey here on behalf
23 of four adult grandchildren of the decedents,
24 Molly Simon, Alexander Bernstein, Michael
25 Bernstein and Eric Bernstein.

1 MR. ROSE: Good afternoon, Your Honor. Alan
2 Rose on behalf of Ted S. Bernstein as successor
3 trustee of the Simon Bernstein Trust, which is the
4 beneficiary of the estate.

5 THE COURT: Okay.

6 MR. ROYER: Your Honor, I'm Jeff Royer. I am
7 with Peter Feaman's office. We represent William
8 Stansbury, who's an interested person and a
9 substantial claimant of the estate of Simon
10 Bernstein.

11 THE COURT: So you're actually the movant on
12 the first motion I talked about then.

13 MR. ROYER: We are. Your Honor, I don't know
14 that we noticed for today, but, yes, it's -- it is
15 a motion that we filed.

16 THE COURT: Oh, that's the motion that I had
17 for hearing.

18 So anyway, who wants to go first in terms
19 of the pending motions because it would
20 probably be helpful to have someone kind of
21 give me an overview of who the players are.

22 MR. ROSE: Can I just raise one issue before
23 we start the hearing?

24 THE COURT: Sure.

25 MR. ROSE: Just because it's -- I sent a

1 letter to the court advising you that Mr. Eliot
2 Bernstein and his relationship to the Proskauer
3 firm, which you were employed at one time.

4 THE COURT: Yeah, I got that letter. I
5 reviewed it. Did you copy everybody else on the
6 letter?

7 MR. ROSE: I did.

8 THE COURT: All right. The letter raised an
9 issue of whether I, as the judge, should consider
10 disqualification of myself because of my prior
11 employment with Proskauer Rose, which was
12 approximately 15 years ago.

13 Once I received that letter, I looked into
14 the JEAC opinions regarding how far back the
15 judges normally go. And, normally, it's a one
16 to two year period that you look back in terms
17 of automatic recusal.

18 So based on that, I'm not going to sua
19 sponte disqualify myself from this matter. I
20 really have no -- I haven't had contact with
21 Proskauer in any meaningful way in 15 years,
22 so...

23 MR. ROSE: I was only raising it so that
24 Mr. Eliot Bernstein was aware of that. And if he
25 has any objection -- I don't have any objection.

1 I wanted to let -- make sure that he was aware of
2 that and would have an opportunity to --

3 THE COURT: I appreciate it.

4 MR. ROSE: -- object now if he wishes to.

5 THE COURT: Yeah. And I can -- if I can
6 find. I have it here, I'll let everyone know
7 which opinion I was relying on when I looked at
8 that.

9 Yeah, just to be more specific on the note
10 that was sent to me -- what was the name of the
11 corporate entity that they said was represented
12 by Proskauer?

13 MR. ROSE: It was an entity called Iviewit,
14 which engaged in a lengthy multi-year or
15 decade-long battle with that law firm.

16 THE COURT: With Proskauer or Proskauer was
17 representing one of the parties?

18 MR. ROSE: With Proskauer. Proskauer, I
19 think, represented the -- Proskauer represented
20 Simon Bernstein while he was alive and drafted
21 some documents in 2000 that would have been
22 superceded by 2008 documents. And Proskauer also
23 represented the company that Eliot Bernstein
24 started called Iviewit.

25 THE COURT: After 2000?

1 MR. ROSE: I think there was litigation -- it
2 was during the '90s.

3 THE COURT: Because I left -- I left the firm
4 in 2000, I believe, if my recollection is correct.

5 MR. ELIOT BERNSTEIN: I think I know you
6 from there. Did you work at the one in Boca?

7 THE COURT: Yeah, I have no recollection of
8 having represented Iviewit, though.

9 MR. ELIOT BERNSTEIN: Well, actually, which
10 department were you with?

11 THE COURT: Litigation.

12 MR. ELIOT BERNSTEIN: I was right across the
13 hall from your office, do you recall?

14 THE COURT: No.

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: This is going back 15 years.

17 MR. ELIOT BERNSTEIN: Okay. And --

18 MR. ROSE: Just for the record, if I could
19 finish. I wasn't suggesting that you did anything
20 wrong. I was just bringing it to your attention.
21 And, also, I do think, though, all the parties
22 would appreciate it if Mr. Eliot Bernstein has an
23 objection based upon your Proskauer relationship
24 and his relationship to that firm, which is --
25 that he would raise it if he wanted to, or

1 otherwise we're fine. Because I don't want to
2 have a problem and get recusal motions coming down
3 the road.

4 THE COURT: Yeah, and I never take those
5 things personally. It prompted me to go to the
6 Judicial Ethics Advisory Opinions and look at what
7 the standard is. Because if there is a legal
8 basis that I would need to disqualify myself, I
9 would absolutely do it. But going back 15 years,
10 based on the JEAC opinions, I didn't view there as
11 being any legal requirement that the court would
12 disqualify itself.

13 MR. ELIOT BERNSTEIN: There might be another
14 issue. I think Proskauer is a counter-defendant
15 in one of the estate counter complaints in this
16 matter.

17 THE COURT: Is this matter before me?

18 MR. ELIOT BERNSTEIN: Yes, sir.

19 THE COURT: Is that accurate?

20 MR. ROSE: Well --

21 MR. O'CONNELL: I'm not sure.

22 MR. ROSE: I don't want to be the spokesman
23 for the whole world. But I think starting in the
24 '90s Proskauer represented this company that
25 Mr. Eliot Bernstein called Iviewit. And he claims

1 that Proskauer stole his patents worth billions or
2 trillions of dollars. And then there was
3 litigation that started in maybe 2000 or 2001 and
4 continued through State Court, New York Federal
5 Court, and I believe even in this action he may
6 have -- he has filed a counterclaim and if he's
7 representing that he joined Proskauer as a -- he
8 also sued most of the partners of the firm at the
9 time.

10 THE COURT: Well, my --

11 MR. ROSE: Again, I'm just --

12 THE COURT: Well, I view the issue of
13 Proskauer attorneys being in front of me somewhat
14 differently than the firm Proskauer being in front
15 of me as a party. So if what I'm hearing is that
16 it's not just a situation where Proskauer
17 attorneys are in front of me, but Proskauer itself
18 is a party to the action, then -- and that's an
19 issue that Mr. Bernstein is raising -- then the
20 court would probably view that slightly
21 differently because in that situation because they
22 are a party and I was a partner, even though it
23 goes back 15 years -- I'd have to look at the JEAC
24 opinions, there may be a legal basis at that
25 point. And I don't know if you're sitting right

1 here now -- there may be a legal basis for me to
2 disqualify myself if Proskauer is actually a party
3 in this proceeding to where I would be asked to
4 make rulings, you know, for or against them. So
5 where -- they are a party in this -- because all I
6 have in front of me right now is an estate
7 proceeding.

8 MR. ROSE: Right. Well, there's five
9 related -- five or six related cases.

10 Judge Colin, I think after denying the second or
11 third motion to disqualify, recused himself and
12 the cases were just recently transferred. In one
13 of the cases there is a counterclaim. It has been
14 stayed because Mr. Bernstein is not allowed to
15 file any papers without getting permission from
16 the judge first.

17 MR. ELIOT BERNSTEIN: Not only
18 Mr. Bernstein, you too.

19 THE COURT: All right. Sir, don't interrupt.

20 MR. ELIOT BERNSTEIN: I'm sorry.

21 MR. ROSE: The counterclaim is stayed. And I
22 don't know if Proskauer is a party, but if
23 Mr. Bernstein represents to the court that they're
24 a party, then I would take it --

25 THE COURT: You know, the standard for a

1 motion to recuse is -- the objective standard is a
2 party reasonably in fear that he may not receive a
3 fair trial. And even at 15 years is remote -- and
4 I think the cases say that. I'm somewhat
5 sympathetic to a party that would have some
6 concern where a judge who was a former partner at
7 a previous firm is being asked to rule on issues
8 affecting that firm.

9 So I'm -- if you're raising the issue,
10 Mr. Bernstein, then I'm -- what I'm telling you
11 is at this point I would recuse myself, if
12 there was a motion filed. If you are not
13 raising the issue, then, you know, it's a
14 remote issue, but, you know, it's something
15 that -- it's in the eyes of the beholder to
16 some extent. Are you in reasonable fear of not
17 getting a fair hearing and trial on this
18 matter?

19 MR. ELIOT BERNSTEIN: I'm not certain yet.
20 That's kind of why I'm here today.

21 THE COURT: The thing is you have to move
22 quickly because you have to -- you have to do it
23 within 10 days of the date you become aware of the
24 information. And what I told you today is that I
25 was a -- you've probably already known it -- but I

1 was a former partner at Proskauer Rose.

2 MR. ELIOT BERNSTEIN: Well, your bio is
3 confusing on the Internet. Some have you there --

4 THE COURT: Maybe I'll have to fix that.

5 MR. ELIOT BERNSTEIN: And then your -- well,
6 you should fix the court one because it has no
7 biography.

8 THE COURT: The court ones, they don't give
9 that kind of -- it's not like private practice.

10 MR. ELIOT BERNSTEIN: Here's one of the
11 issues I want you to consider because, you know,
12 it's going to take me time to consider all the
13 factors here that I'm learning now. One of the
14 issues is that the technologies that I invented
15 that I allege that Proskauer stole --

16 THE COURT: Here's the thing. I don't really
17 want you to talk to me about anything regarding
18 the substance of this matter until we sort through
19 this recusal issue.

20 MR. ELIOT BERNSTEIN: This is what I'm
21 talking about.

22 THE COURT: Here's the problem. If I make
23 rulings today and you file a motion within 10
24 days, every ruling I made today is subject to
25 rehearing by the new judge. So it's a waste of

1 time to proceed and hear any motions if you're in
2 good faith telling me you're going to file a
3 motion to recuse.

4 MR. ELIOT BERNSTEIN: I'm not saying that.
5 But I don't know. But I am saying for you to
6 consider that the technologies are owned partially
7 by my father, 30 percent of the interests in them.
8 And that will also, I believe, bring Proskauer
9 into this matter as well. And so, you know, I
10 believe -- like I have obligations, you have
11 obligations under the judicial canons.

12 THE COURT: Is Proskauer a party now?

13 MR. ELIOT BERNSTEIN: Yeah.

14 THE COURT: All right. I'm going to sua
15 sponte disqualify myself from this matter. Had I
16 known that Proskauer was a party, I would have
17 done it when I reviewed it the first time. But I
18 understood it was just they were attorneys in the
19 case.

20 So that means, unfortunately, there's
21 going to have to be another assignment of a
22 judge in this matter.

23 Sir, at this point I don't really care if
24 you file a motion to recuse. You raised enough
25 for me that I'm going to sua sponte disqualify

1 myself.

2 MR. ROSE: Thank you, sir.

3 MR. O'CONNELL: Thanks, Your Honor.

4 MR. ELIOT BERNSTEIN: Thank you, sir.

5 THE COURT: Thank you.

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8 (Thereupon, the proceedings were

9 concluded at 4:20 p.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, DAVID L. MARSAA, Professional Reporter,
State of Florida at large, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a
true and complete record of my stenographic notes.

Dated this 29th day of February, 2016.



DAVID L. MARSAA, COURT REPORTER

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