

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT

CASE NO. 4D15-3849

ELIOT BERNSTEIN

Petitioner,

v.

IN RE: ESTATE OF SIMON  
BERNSTEIN,

Respondent.

\_\_\_\_\_ /

L.T. CASE NOS.:

502011CP000653XXXXSB

502014CA014637XXXXMB

502014CP002815XXXXSB

502014CP003698XXXXSB

502015CP001162XXXXNB

502015CP002717XXXXNB

**RESPONDENT'S SUGGESTION OF MOOTNESS  
AND ALTERNATIVE MOTION TO EXPEDITE RULING**

Respondent, Ted S. Bernstein, as Successor Trustee of the Shirley Bernstein Trust ("Trustee"), files this Suggestion of Mootness in connection with the pending *Petition for All Writs, Writ of Mandamus and Petition to Stay Cases and Temporarily Restrain Sale, Transfer, Disposition of Any Assets and for Production of All Evidence* ("Petition") filed by Eliot Bernstein, initially in the Florida Supreme Court on June 10, 2015, and recently transferred to this Court under the dictates of *Harvard v. Singletary*, 733 So. 2d 1020 (Fla. 1999), and states:

1. The impetus for the Petition is the Trustee's motion to approve a routine sale of real property – a single family residence owned by the decedent's trust. The sale was approved by court order dated May 6, 2015, by way of a final order under

Rule 9.170(b)(14). The sale approval order had become a final, nonappealable order when no appeal was filed on or before June 5, 2015, and the closing was scheduled for June 10, 2015. The pending Petition was filed on the June 10th, and already has delayed the closing for months, causing serious and immediate harm to the Trust and the incurring of fees and expenses carrying the property which will cease upon closing. The only thing delaying the sale is the pendency of this Petition.

2. Respondent was expecting and hoping that the Supreme Court or this Court would have denied the Petition by this time. However, the Petition remains pending and the sale continues to be delayed, causing the ongoing accrual of substantial sums for mortgage interest, real estate taxes, insurance and other expenses.

3. This Court is advised that Judge Martin Colin recused himself from each of the cases referenced in the Petition. Each case was then reassigned to Judge Howard Coates, who also recused himself at the first hearing, due to a potential conflict of interest raised by Eliot Bernstein. Thereafter, the cases were again reassigned, now to Judge John Phillips.<sup>1</sup>

4. Judge Phillips is now handling all aspects of these matters, and Judge Colin will no longer be involved in any way. Accordingly, it appears that the Petition,

---

<sup>1</sup> Copies of the relevant orders of reassignment to Judge John L. Phillips are attached as Composite Exhibit "A".

to the extent it seeks a writ of prohibition, is moot. *School Bd. of Indian River Co. v. Livaudais*, 720 So. 2d 1175 (Fla. 4th DCA 1998).

5. Alternatively, Respondent requests that this Court expedite the consideration and ruling on the extraordinary writ, which already has been pending since June, to avoid further delay to the sale and prejudice to the Trust and its beneficiaries.

WHEREFORE, Respondent files this Suggestion of Mootness, or alternatively, moves for expedited consideration of the pending Writ.

### **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;  E-mail Electronic Transmission;  FedEx;  Hand Delivery this 20th day of November, 2015.

MRACHEK, FITZGERALD, ROSE, KONOPKA,  
THOMAS & WEISS, P.A.  
505 South Flagler Drive, Suite 600  
West Palm Beach, FL 33401  
(561) 655-2250 Telephone / (561) 655-5537 Facsimile  
email: [arose@mrachek-law.com](mailto:arose@mrachek-law.com)  
Attorneys for Ted S. Bernstein

By: /s/ Alan B. Rose  
Alan B. Rose (Fla. Bar No. 961825)

**SERVICE LIST** - CASE NO. SC15-1077

Eliot Bernstein, individually  
and Eliot and Candice Bernstein,  
as Parents and Natural Guardians of  
D.B., Ja. B. and Jo. B, Minors  
2753 NW 34th Street  
Boca Raton, FL 33434  
(561) 245-8588 - Telephone  
(561) 886-7628 - Cell  
(561) 245-8644 - Facsimile  
Email: Eliot I. Bernstein ([iviewit@iviewit.tv](mailto:iviewit@iviewit.tv))

John P. Morrissey, Esq.  
330 Clematis Street, Suite 213  
West Palm Beach, FL 33401  
(561) 833-0766 - Telephone  
(561) 833-0867 - Facsimile  
Email: John P. Morrissey  
([john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com))  
Counsel for Molly Simon, Alexandra Bernstein,  
Eric Bernstein, Michael Bernstein

Lisa Friedstein  
2142 Churchill Lane  
Highland Park, IL 60035  
[lisa@friedsteins.com](mailto:lisa@friedsteins.com)  
Individually and as trustee for her children, and  
as natural guardian for M.F. and C.F., Minors

Jill Iantoni  
2101 Magnolia Lane  
Highland Park, IL 60035  
[jilliantoni@gmail.com](mailto:jilliantoni@gmail.com)  
Individually and as trustee for her children, and  
as natural guardian for J.I. a minor

Peter M. Feaman, Esq.  
Peter M. Feaman, P.A.  
3695 West Boynton Beach Blvd., Suite 9  
Boynton Beach, FL 33436  
(561) 734-5552 - Telephone  
(561) 734-5554 - Facsimile  
Email: [service@feamanlaw.com](mailto:service@feamanlaw.com);  
[mkoskey@feamanlaw.com](mailto:mkoskey@feamanlaw.com)  
Counsel for William Stansbury

Gary R. Shendell, Esq.  
Kenneth S. Pollock, Esq.  
Shendell & Pollock, P.L.  
2700 N. Military Trail, Suite 150  
Boca Raton, FL 33431  
(561) 241-2323 - Telephone  
(561) 241-2330 - Facsimile  
Email: [gary@shendellpollock.com](mailto:gary@shendellpollock.com)  
[ken@shendellpollock.com](mailto:ken@shendellpollock.com)  
[estella@shendellpollock.com](mailto:estella@shendellpollock.com)  
[britt@shendellpollock.com](mailto:britt@shendellpollock.com)  
[grs@shendellpollock.com](mailto:grs@shendellpollock.com)

Robert Spallina, Esq.  
Donald Tescher, Esq.  
Tescher & Spallina  
925 South Federal Hwy., Suite 500  
Boca Raton, Florida 33432

Brian M. O'Connell, Esq.  
Joielle A. Foglietta, Esq.  
Ciklin Lubitz Martens & O'Connell  
515 N. Flagler Dr., 20th Floor  
West Palm Beach, FL 33401  
561-832-5900 - Telephone  
561-833-4209 - Facsimile  
Email: [boconnell@ciklinlubitz.com](mailto:boconnell@ciklinlubitz.com);  
[jfoglietta@ciklinlubitz.com](mailto:jfoglietta@ciklinlubitz.com);  
[service@ciklinlubitz.com](mailto:service@ciklinlubitz.com);  
[slobdell@ciklinlubitz.com](mailto:slobdell@ciklinlubitz.com)

**COMPOSITE EXHIBIT "A"**

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

PROBATE DIVISION  
CASE NUMBER: 502012CP004391XXXXNB  
DIVISION: IH

IN RE: ESTATE OF

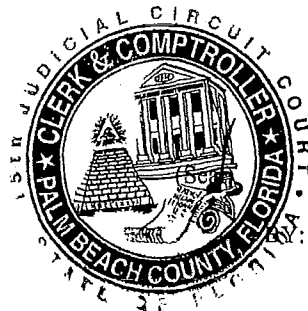
**SIMON L BERNSTEIN**, Deceased

---

***CLERK'S NOTICE OF REASSIGNMENT***

Pursuant to Court order of the Honorable **JUDGE HOWARD K COATES JR.** dated *JUNE 4, 2015*, the above styled case is reassigned to Division *IH*, Judge(s) **JUDGE JOHN L PHILLIPS** for all further proceedings.

WITNESS my hand and seal of this Court this 10 day of June, 2015.



Sharon R. Bock  
Clerk & Comptroller

*Angela Budd*  
Deputy Clerk

CC:  
CC: ALL PARTIES

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

PROBATE DIVISION  
CASE NUMBER: **502011CP000653XXXXNB**  
DIVISION: IH

IN RE: ESTATE OF

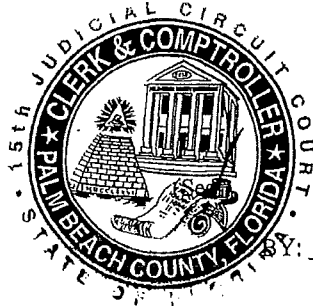
**SHIRLEY BERNSTEIN**, Deceased

---

***CLERK'S NOTICE OF REASSIGNMENT***

Pursuant to Court order of the Honorable **JUDGE HOWARD K COATES JR.** dated *JUNE 15, 2015*, the above styled case is reassigned to Division *IH*, Judge(s) *JUDGE JOHN L PHILLIPS* for all further proceedings.

WITNESS my hand and seal of this Court this 18 day of June, 2015.



Sharon R. Bock  
Clerk & Comptroller

*Angela Budd*  
Deputy Clerk

cc:  
cc: ALL PARTIES

RECEIVED JUN 22 2015

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

PROBATE DIVISION  
CASE NUMBER: 502014CP002815XXXXNB  
DIVISION: IH

OPPENHEIMER TRUST COMPANY OF  
DELAWARE, in its capacity as Resigned Trustee  
of the Simon Bernstein Irrevocable Trusts created  
for the benefit of Joshua, Jake and Daniel Bernstein,  
Petitioner,

V

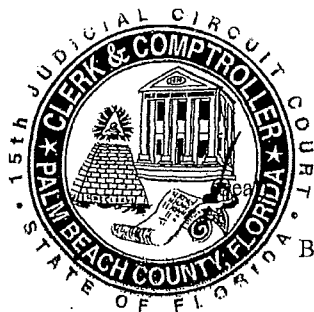
ELIOT AND CANDICE BERNSTIN,  
In their capacity as parents and natural guardians of  
JOSHUA, JAKE AND DANIEL BERNSTEIN, minors,  
Respondents

---

**CLERK'S NOTICE OF REASSIGNMENT**

Pursuant to Court order of the Honorable **JUDGE HOWARD K COATES JR.** dated **JUNE 15, 2015**, the above styled case is reassigned to Division **IH**, Judge(s) **JUDGE JOHN L PHILLIPS** for all further proceedings.

WITNESS my hand and seal of this Court this 18 day of June, 2015.



Sharon R. Bock  
Clerk & Comptroller

BY:

*Angela Buebel*  
Deputy Clerk

cc:  
cc: ALL PARTIES

RECEIVED JUN 22 2015



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

PROBATE DIVISION  
CASE NUMBER: **502014CP003698XXXXNB**  
DIVISION: IH

TED BERNSTEIN, AS TRUSTEE OF THE  
SHIRLEY BERNSTEIN TRUST AGREEMENT  
DATED MAY 20, 2008, AS AMENDED  
Plaintiff

V

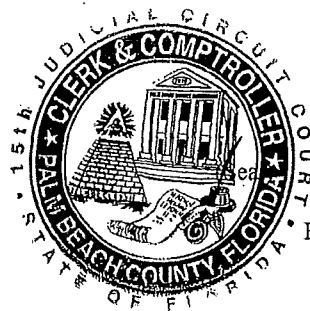
ALEXANDER BERNSTEIN; ET AL.,  
Defendants

---

***CLERK'S NOTICE OF REASSIGNMENT***

Pursuant to Court order of the Honorable **JUDGE HOWARD K COATES JR.** dated *JUNE 15, 2015*, the above styled case is reassigned to Division *IH*, Judge(s) *JUDGE JOHN L PHILLIPS* for all further proceedings.

WITNESS my hand and seal of this Court this 18 day of June, 2015.



Sharon R. Bock  
Clerk & Comptroller

BY:

*Angela Budd*  
Deputy Clerk

cc:  
cc: ALL PARTIES

RECEIVED JUN 22 2015

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

PROBATE DIVISION  
CASE NUMBER: 502015CP001162XXXXNB  
DIVISION: IH

ELIOT BERNSTEIN, individually;  
ELIOT BERNSTEIN, as a beneficiary of the  
2008 SIMON L. BERNSTEIN TRUST AGREEMENT,  
as amended and restated in the SIMON L. BERNSTEIN  
AMENDED AND RESTATE TRUST AGREEMENT dated  
July 25, 2012 and as Legal Guardian of JOSHUA BERNSTEIN,  
JACOB BERNSTEIN and DANIEL BERNSTEIN,  
Plaintiffs

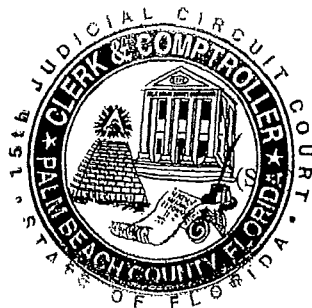
V

THEODORE STUART BERNSTEIN, individually;  
THEODORE STUART BERNSTEIN, as Successor  
Trustee of the 2008 SIMON L. BERNSTEIN TRUST  
AGREEMENT dated July 25, 2012; ALEXANDRA  
BERNSTEIN; ERIC BERNSTEIN; MICHAEL BERNSTEIN;  
MOLLY SIMON; JULIA IANTONI; MAX FRIEDSTEIN; CARLY  
FRIEDSTEIN; JOHN AND JANE DOE 1-5000,  
Defendants

**CLERK'S NOTICE OF REASSIGNMENT**

Pursuant to Court order of the Honorable **JUDGE HOWARD K COATES JR.** dated *JUNE 15, 2015*, the above styled case is reassigned to Division *IH*, Judge(s) *JUDGE JOHN L PHILLIPS* for all further proceedings.

WITNESS my hand and seal of this Court this 18 day of June, 2015.



Sharon R. Bock  
Clerk & Comptroller

BY:

*Angela Buebel*  
Deputy Clerk

CC: ALL PARTIES

RECEIVED JUN 22 2015