

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

PROBATE DIVISION
CASE NO.: 502014CP003698XXXXNB
DIVISION: IH

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,
Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC
BERNSTEIN; MICHAEL BERNSTEIN;
MOLLY BERNSTEIN; 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.

PETITION OF CLAIMANT AND CREDITOR
WILLIAM E. STANSBURY TO INTERVENE

COMES NOW, William E. Stansbury (“Stansbury”), claimant and creditor of the Estate of Simon Bernstein, and Plaintiff in a lawsuit against the Estate of Simon Bernstein, et al., by and through his undersigned counsel, and pursuant to Fla. Rule Civ. Proc. 1.230, hereby files this Petition for Leave to Intervene, and in support thereof states as follows:

1. Stansbury, under most circumstances, would not have standing to intervene in this action between the Shirley Bernstein Trust Agreement of 2008 and the trust’s putative

beneficiaries. However, Count II of the Amended Complaint added the Simon Bernstein Last Will and Testament and the Simon Bernstein Amended and Restated Trust and recently (November 20, 2015), Plaintiff's Witness List was filed in advance of the December 15, 2015 trial date that identifies as an expert witness Bruce Stone, Esq. of Goldman, Felcoski & Stone, P.A. Upon information and belief, Mr. Stone is anticipated to offer his opinion that Ted Bernstein ("TED") is qualified to serve as Successor Trustee of the Simon Bernstein Trust Agreement of 2102 (the "Revocable Trust or Trust"). The issue of TED's fitness to serve as Trustee of the Revocable Trust is at issue in the Estate of Simon Bernstein and a Motion to Remove TED as Trustee is pending in the Estate of Simon Bernstein.

2. The attempt to have this court receive evidence on and possibly resolve the issue of TED's fitness to serve as Successor Trustee in the present unrelated action compels Stansbury to intervene to protect his interests in the Revocable Trust.

3. As background, Stansbury filed a lawsuit styled *William E. Stansbury v. Ted Bernstein, et al*, Case. No. 50 2012 CA 013933 MB AA, Palm Beach County, Florida against Simon Bernstein ("SIMON") and TED and several corporate defendants in August of 2012 to collect compensation, corporate distributions and other damages due Stansbury, arising out of a business in which Stansbury, SIMON and TED were principals.

4. Stansbury asserted claims against SIMON and TED both as agents of the corporate defendants and in their individual capacities (the claims against TED have settled). The damages Stansbury claims are in excess of \$2.5 million.

5. Shortly after the lawsuit was filed, SIMON BERNSTEIN passed away in September of 2012. The Estate of Simon Bernstein was substituted as a party defendant.

6. There are allegations of misconduct on the part of TED in his capacity as Personal Representative of the Estate of Shirley Bernstein, as Trustee of the Shirley Bernstein Trust Agreement of 2008, and as Trustee of the Simon Bernstein Revocable Trust.

7. The most recent inventory of the Estate of Simon Bernstein shows assets valued in the approximate amount of \$1.2 million. If Stansbury prevails on his claim, a deficiency is assured.

8. Florida law provides that, in the event the assets of the estate are insufficient to pay its expenses, an existing revocable trust must pay them to the extent that there are assets to do so. Section 733.707(3), Fla. Stat. (2015), states:

(3) Any portion of a trust with respect to which a decedent who is the grantor has at the decedent's death a right of revocation...**is liable for the expenses of the administration and obligations of the decedent's estate to the extent the decedent's estate is insufficient to pay them...**" (emphasis added)

9. As a result of the foregoing, Stansbury, as a claimant and creditor whose claim exceeds the value of the assets of the Simon Bernstein Estate, has a beneficial interest in the Trust because, to the extent that the assets of Simon's Estate are insufficient to pay his claim, he has a contingent interest in the Revocable Trust.

10. This result establishes Stansbury's standing to intervene in this action. Fla. R. Civ. Proc. 1.230 states, in pertinent part: "Anyone claiming an interest in pending litigation may at any time be permitted to assert a right by intervention ..."

11. The Supreme Court of Florida in Union Central Life Insurance Company v. Carlisle, 593 So.2d 505 (Fla. 1992), in discussing the test to determine whether intervention is appropriate, quoted from Morgareidge v. Howey, 78 So.14, 15 (Fla. 1981), as follows:

The interest which will entitle a person to intervene. . . must be in the matter in litigation, and of such a direct and immediate character that the intervenor will either gain or lose by the direct legal operation and effect of the

judgment. In other words, the interest must be that created by a claim to the demand in suit or some part thereof. . . .

12. Stansbury asserts that, as a person with a beneficial interest in the Simon Bernstein Trust due to the anticipated inability of the Estate of Simon Bernstein to pay his total damages, Stansbury would have standing to challenge TED's conduct as Trustee and to seek his removal. This is established by the provisions of §736.0706(1), §736.0103, and §733.707(3), Fla. Stat., (2014) which establish the persons who have standing to seek removal of a trustee. Section 736.0706(1) Fla. Stat. (2014) states:

(1) The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, or a trustee may be removed by the court on the court's own initiative. (emphasis added)

§736.0103, Fla. Stat. (2014), defines a "beneficiary":

*(4) "Beneficiary" means a person who has a **present or future beneficial interest in a trust, vested or contingent**, or who holds a power of appointment over trust property in a capacity other than that of trustee. (emphasis added)*

13. A "beneficial interest" is defined as: "A right or expectancy in something (such as a trust or an estate), as opposed to legal title to that thing." Black's Law Dictionary 149 (7th ed. 1999). Therefore, because Stansbury has a claim that exceeds the value of the assets of the Simon Bernstein Estate, he has a contingent interest in the assets of the Revocable Trust. The assets of the Trust may and will be called upon to pay his claim under §733.707(3).

14. The fact that Stansbury is not a named beneficiary does not defeat this analysis as he is a legal "beneficiary" by virtue of his contingent beneficial interest under the statutory definition. Therefore, Stansbury has standing to seek removal of the Trustee.

15. Florida case law recognizes that a person not specifically named in a will or trust document as a beneficiary may nonetheless be deemed to have a sufficient beneficial interest in a

will or trust to be considered a beneficiary thereunder. See, In Re Estate of Nelson, 232 So.2d 222 (Fla. 1st DCA 1970).

16. While not entirely analogous to this case, the holding in Nelson makes clear that courts may look beyond the written documents to ascertain a claimant's status as beneficiary. Additionally, an articulable claim of economic interest, even though contingent, is a sufficient beneficial interest to determine that a claimant such as Stansbury is a trust beneficiary under the statute.

17. As a result of the foregoing, Stansbury seeks to intervene to protect his interests to the extent that the fitness of TED Bernstein to serve as Successor Trustee of the Simon Bernstein Revocable Trust becomes an issue in this case.

WHEREFORE, Petitioner, William E. Stansbury, respectfully requests that he be permitted to intervene in this case to protect his interests as stated herein, and or such other relief as the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically and served in the Florida Courts E-Filing Portal to all parties on the service list below this 15th day of December, 2015:

Eliot Bernstein, individually and Eliot and Candice Bernstein, as Parents and Natural Guardians of D.B., Ja.B. and Jo.B., Minors
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**Lisa Friedstein, individually and as trustee
for her children, and as natural guardian
for M.F. and C.F., Minors; and Max
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