

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.: 502014CP003698XXXXNB

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.

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**SUCCESSOR TRUSTEE'S MOTION FOR ORDER RESOLVING
INTERVENTION BY SIMON'S PERSONAL REPRESENTATIVE**

Successor Trustee, Ted S. Bernstein (the "Trustee"), moves the Court for an Order, resolving the intervention in this action by Brian O'Connell, the Successor Personal Representative of the Estate of Simon L. Bernstein ("Simon's PR"), and states:

1. Count II of this action seeks to determine the validity and enforceability of the Wills and Trusts of Simon Bernstein and Shirley Bernstein. Although this primarily is an action to construe Shirley's Trust, whether Simon's Will is valid is a necessary sub-issue. That is because, in his Will,

Simon exercised his limited power of appointment over the assets in the Shirley Trust. Also, Judge Colin ordered that this Complaint be amended to address the validity of Simon's Will.

2. Simon's PR has no interest in Shirley's Trust, but moved to intervene in this case because and to the extent Simon's Will is being challenged. The Trustee did not oppose intervention.

3. Now, however, the Trustee and Simon's PR have conferred and it appears to the Trustee that there is no need for Simon's PR to attend the trial or actively participate in this action. Simon's PR is not appointed by *any Will* of Simon. Instead, Simon's PR was appointed by this Court when the only named PRs resigned. Indeed, in either Simon's 2008 Will or his 2012 Will, there are no named persons eligible to serve as PR.

4. In the 2012 Will, Simon named two attorneys as co-PRs. They have both resigned. The 2012 Will names no one else. In the 2008 Will, the choices would have been Shirley (now dead) or Bill Stansbury (a claimant against the Estate who could not possibly be allowed to serve as PR).¹

5. The Trustee's interest in the upcoming trial is aligned with Simon's PR, as both seek to enforce and uphold the 2012 Will. Indeed, one of the Trustee's primary duties in this case is to determine the validity of the 2012 Will and Trust.

6. With regard to Simon's PR, it is of little concern which Will is ultimately determined to be valid because he was not appointed under *any* of the Wills. Simon's PR, Mr. O'Connell, was appointed by this Court and his appointment will not be directly affected by the outcome of the trial. Indeed, the duties of Simon's PR will not be directly affected by the outcome of the trial. Only the

¹ In the First Codicil to his 2000 Will, Simon named as PRs, singly and in order, the following: Shirley (dead); his then attorney Steven Greenwald (who he replaced in 2008); and his daughters Lisa and then Pam. Given the fact the 2000 Will provides Eliot with only 25% and names his sister Pam as a successor PR, it is highly unlikely Eliot would seek to invalidate the 2008 Will and revert to either 25% under the 2000 Will or 20% through intestacy.

ultimate beneficiaries of Simon's Estate may change; his appointment and his duties will not. And, his appearance and participation will incur significant expenses which can be avoided by entry of an Order resolving his intervention, by providing that regardless of the outcome of the trial on December 15th, Simon's PR will continue to serve as PR subject to Florida law and the Probate Code.

7. The Trustee and Simon's PR agree that during the trial on December 15, 2015, there will be no adjudication made by the Court regarding the following issues: (i) whether Ted Bernstein validly is serving as Successor Trustee of Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust"); and/or (ii) whether Ted Bernstein should be removed as Trustee of the Simon Trust.²

WHEREFORE, the Successor Trustee requests that the Court enter an Order resolving the intervention by Brian O'Connell by providing that: (i) regardless of the outcome of the trial on December 15th, Brian O'Connell shall continue to serve as Simon's PR subject to Florida law and the Probate Code.

² Ted Bernstein individually is not a named beneficiary of the Simon Trust, and all three of Ted Bernstein's children are adults so he is not acting in a representative capacity for any minor children who are or may be beneficiaries of the Simon Trust.

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 9th day of December, 2015.

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