

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL

33401

CASE NO.: 4D15-3849
L.T. No.:
502011CP00653XXXXSB
502014CA014637XXXXMB
502014CP002815XXXXSB
502014CP003698XXXXSB
502015CP001162XXXXNB
502015CP002717XXXXNB

ELIOT BERNSTEIN

v. ESTATE OF SIMON BERNSTEIN

Appellant / Petitioner(s)

Appellee / Respondent(s)

Petitioner's Reply to Ted Bernstein/Alan Rose Response:

Motion for Re-Hearing En Banc

I, Eliot Ivan Bernstein, appearing Pro Se as Petitioner-Appellant herein, respectfully shows this Court as follows:

1. I am acting Pro Se, as my own counsel and seek this Court's permission to file this Reply to the Response filed by attorney Alan M. Rose on behalf of Ted Bernstein as this Response misleads this Court about material facts and falsely states material facts before this Court and thus I pray such Sur-reply is in accordance with reporting ethical matters of attorneys and permitting the Court to have proper facts and ensure the integrity of its operations.

2. According to the following link from The Florida Bar Courtesy of the Ethics Department, Rules of Professional Conduct provide:

RULE 4-3.3 CANDOR TOWARD THE TRIBUNAL(a)False Evidence; Duty to Disclose. A lawyer shall not knowingly:(1)make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer; (2)fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client.¹

3. Alan B. Rose, Esq. stated to this Court “The issues raised seem to be exceptionally important, or obsessively important, to Eliot Ivan Bernstein, but to no one else in the world. Indeed, these issues already have been decided years ago. Bernstein v. New York, 591 F. Supp. 2d 448 (S.D.N.Y. 2008).”
4. This is at least in substantial part a knowingly false and misleading statement by attorney Alan Rose before this Tribunal.
5. As noticed in Par. 7 of the Petition for Re-hearing before this Court which this Court may have misapprehended and / or overlooked in the original All Writs Petition, was the following:

“Eliot Ivan Bernstein has pursued in investigations since early 2000 to present, including a Petition to the White House², the White House Counsel’s Office, the US Attorney General’s Office, investigations to the SEC³, FBI, and various State Attorney Generals, and actions with the USPTO, and other legal actions, including RICO and ANTITRUST civil litigation and criminal complaints several Florida Supreme Court Justices, The Florida Bar, several New York

¹ See,

[https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/0F161F3B5030FE0485256B29004BEEDD/\\$FILE/candor%20packet.pdf?OpenElement](https://www.floridabar.org/TFB/TFBResources.nsf/Attachments/0F161F3B5030FE0485256B29004BEEDD/$FILE/candor%20packet.pdf?OpenElement)

²

<http://iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090213%20FINAL%20SIGNED%20LETTER%20OBAMA%20TO%20ENJOIN%20US%20ATTORNEY%20FINGERED%20ORIGINAL%20MAIL%20I.pdf>

³

<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20090325%20FINAL%20Intel%20SEC%20Complaint%20SIGNED2073.pdf>

Supreme Court Justices, the New York Supreme Court Disciplinary Agencies 1st & 2nd, several large law firms and lawyers, political figures at the highest levels in both Florida and New York and others and this may cause any review of the following matters by any member of The Florida Bar, a subsidiary of the Florida Supreme Court, with any title in the organization, to prejudice the rights of Eliot Bernstein and his family and will be construed as a denial of due process that obstructs justice.”

6. First, the language in the All Writs was fairly explicit in saying “in investigations since early 2000 to present”, with “present” being the keyword. Thus, attorney Alan M. Rose representing Ted Bernstein knew and should have known reference to a Decision made in August of 2008 did not pertain to the “present” where it is now Dec. 17, 2015 and thus was knowingly misstating facts before this Tribunal.
7. Second, attorney Alan Rose should know such action in referencing a Decision of 2008 to be improper and goes beyond what was raised in the Petition for All Writs and is clearly prejudicial without full and fair briefing including rules of collateral estoppel but would further require new facts not alleged in the All Writs and is thus further improper by attorney Alan Rose.
8. Moreover, in the Petition for All Writs, the Petition to the White House is Footnoted and linked by a uniform resource locator. A simple due diligence review by Attorney Alan Rose prior to filing this false and misleading response before this Court would have shown the following:
 - a. the White House Petition was not filed until Feb. 13, 2009 thus Alan Rose’s reference to an Aug. 2008 Decision was improper and misleading since nowhere in said August 2008 Decision was the Petition to the White House discussed or referenced since it had not occurred yet, thus this is false and misleading; (Note: The Fax Receipt for this Petition which has my fingerprint showing successful transmission to the White House on it is technically incorrect on the date

showing Jan. 12, 2013 possibly due to a technical machine error; in any event, both dates are clearly beyond the Aug. 2008 Decision Alan Rose is referencing and other records confirm Feb. 13, 2009 as the date this Petition was successfully transmitted.);

b. As quoted from the Petition to the White House on Feb. 13, 2009,

“Of paramount importance to the interests of the “United States” is the fact that I, Eliot Bernstein, have been specifically urged by Harry I. Moatz, (“Moatz”) Director of the Office of Enrollment & Discipline of the USPTO (“OED”) to seek Congressional legislation to correct these urgent matters impacting the fundamental integrity of the USPTO and adversely impacting the future and development of Inventions and protection of patent rights in the United States with obvious corresponding implications for the future of the US economy and commerce.” (emphasis added);

and further,

“This event was reported to the FBI investigator, *Special Agent Stephen Lucchesi (“Lucchesi”) in the West Palm Beach FBI offices, who also was investigating for several years the Iviewit companies’ affairs and mainly the crime directly against the United States of Fraud on the USPTO in conjunction with Moatz. Moatz directed me to file with the Commissioner of Patents a complaint notifying the USPTO that Fraud against the United States had occurred in the submission of fraudulent applications to the USPTO as well as on my companies’ shareholders and me.* “ (emphasis added);

and still,

“More recently and surreally Special Agent Lucchesi has gone missing per the FBI, with the case files and this has elevated the matters to The Honorable Glenn Alan Fine (“Fine”), Inspector General ~ Department of Justice (“DOJ”) who invoked The Honorable H. Marshall Jarrett (“Jarrett”) from the FBI Office of Professional Responsibility (“OPR”) to further investigate,”

As clearly set out in the Petition to the White House in 2009, at least Harry Moatz who is a person in the world beyond myself, being Head of the Office of Enrollment and Discipline of the USPTO at the time deemed these matters of national interest against the “United

States” and presumably did FBI Agent Luchessi, also being a person in the world besides myself who was Investigating the matters for several years at least until he went missing with the case files.

9. Nowhere in the recent Response motion has Attorney Alan Rose produced one federal source from the White House, White House Counsel’s Office, the US Attorney General, the Dept. of Justice, or the USPTO, no US Secret Service Agent, Capitol Police, US DOJ Agent either of the FBI or any federal executive Agency who have declared these matters as unimportant, harassing or frivolous and certainly this is not stated anywhere in the 2008 Decision referenced by Alan Rose since some of these actions occurred after 2008 and could not have possibly been decided or ruled upon by 2008. Thus again, attorney Alan M. Rose is being false and misleading before this Tribunal.
10. Still further, attorney Alan Rose goes on in Paragraph 3 as follows: “ In Bernstein, the federal judge dismissed with prejudice...” regarding an August 08, 2008 Order by the most Honorable Shira A. Scheindlin. First and foremost, Alan Rose is again bringing up matters which were not directly part of the All Writs Petition. Further, a basic review of the Decision cited to by Alan Rose clearly shows that Hon. Judge Scheindlin did not dismiss the case with prejudice and the word “prejudice” is not contained anywhere in the Decision⁴.
11. More egregiously, however, attorney Alan Rose goes on to directly and knowingly imply a Mis-Quote to the 2008 Hon. Judge Scheindlin Decision by saying in Paragraph 3,

“In *Bernstein*, the federal judge dismissed with prejudice Eliot Bernstein's "fantastic conspiracy among members of the legal profession, judges and government officials and private individuals and businesses to deprive plaintiffs of what they describe as their 'holy grail' technologies.”

⁴ See Scheindlin August 08, 2008 Order
<http://www.iviewit.tv/CompanyDocs/United%20States%20District%20Court%20Southern%20District%20NY/20080808%20Scheindlin%20Dismissal%20of%20Complaint%20no%20comments.pdf>

12. Attorney Alan Rose in what has to be knowingly false conduct makes it appear that federal Judge Scheindlin claimed to have made the above quotation from her Order as if this was the Judge's finding of a "fantastic" story when in fact it was really a direct quote of Defendant law firm Proskauer Rose from their response to Eliot's Complaint that Judge Scheindlin simply quoted from, as Judge Scheindlin's quote is fantastically different than Rose's perversion of her statement.
13. What Hon. Federal Judge Shira A. Scheindlin really stated was much different however as cited directly from her Order as follows.

SHIRA A. SCHEINDLIN, U.S.D.J.:

I. INTRODUCTION

This action presents a dramatic story of intrigue, car bombing, conspiracy, video technology, and murder. In short, plaintiffs allege that hundreds of defendants engaged in a massive conspiracy to violate their civil rights and, in the process, contributed to the Enron bankruptcy and the presidency of George W. Bush.

In plaintiffs' words:

Plaintiffs depict a conspiratorial pattern of fraud, deceit, and misrepresentation, that runs so wide and so deep, that it tears at the very fabric, and becomes the litmus test, of what has come to be known as free commerce through inventors' rights and due process in this country, and in that the circumstances involve inventors' rights tears at the very fabric of the Democracy protected under the Constitution of the United States.¹

Defendants characterize the events quite differently:

For many years, *pro se* Plaintiffs Eliot I. Bernstein and Plaintiff Stephen Lamont have engaged in a defamatory and harassing campaign . . . alleging an immense global conspiracy Although largely unintelligible, the [Amended Complaint] purports to describe a fantastic conspiracy among members of the legal profession, judges and government officials and private

individuals and businesses to deprive plaintiffs of what they describe as their "holy grail" technologies.²

While I cannot determine which of these descriptions is more accurate [emphasis added]... are the words of Judge Scheindlin who further goes on in her Decision to detail the facts very specifically in a 50 page Decision.

14. Thus, attorney Alan Rose clearly misquoted Scheindlin's Order with scienter through sharp practices to this Court to sway the Court's opinion against Plaintiff-Appellant Eliot Bernstein.
15. Petitioner respectfully shows this Court and prays that the only appropriate sanction for attorney Alan Rose is at minimum to strike all such false and misleading references in his Response for Ted Bernstein from the Record and further those which go beyond the Petition for All Writs as otherwise the only fair way to balance the record is to permit myself to bring in new facts not part of the All Writs Petition relating to other Orders of Judge Scheindlin from cases that were marked "legally related" and other facts up to the present which to my understanding is not proper process or even permitted on a Motion for a Re-hearing in general or either for a Motion for a Re-hearing En Banc.
16. Permitting the Sale of Lions head under these circumstances where Judge Colin is not issued mandamus to have Disqualified and Voided his Orders would seem even from my layman's point of view of changing the entire law of Florida with respect to Real Estate Disclosures, and what is considered an "arms-length" transaction since as a Judge who should have already Disqualified himself from proceedings he went on to Order the Sale of the Lion's Head home that Alan Rose and Ted Bernstein are in such a rush to sell while Colin called this an "arm's length" transaction **knowing the identity of the Buyer had Never been**

disclosed in or out of court. These concepts of disclosure and Judge Colin's improper declaration of what is an "arms-length" transaction were brought up in the underlying Motion for Disqualification cited in the All Writs Petition.

17. This action not only creates extraordinary importance but also seems to raise substantial questions of statewide uniformity in the definition of "arms-length" transactions in Real Estate and further with respect to Florida Property Disclosure laws.

18. Other facts which may have been overlooked or misapprehended by this Court from the Petition for All Writs include:

Par. 9 from All Writs:

"The mandatory disqualification of Judge Colin herein came in the Estate cases of my parents, Shirley and Simon Bernstein, with Shirley predeceasing Simon on December 08, 2010 and Simon passing on September 13, 2012. According to the "official" Court records to date, Judge Colin presided over the Estate of Shirley Bernstein while initially Judge French presided over the Estate of Simon Bernstein although eventually Judge Colin begins making rulings and taking action in both cases.

At the time of Simon Bernstein's passing in 2012, his eldest son Ted Bernstein was claiming possible murder of his father at the hospital in Boca Raton, and proceeded to take steps to claim possible murder with the Coroner, members at the hospital and eventually on the day he passed the Palm Beach County Sheriff's Office back at the home of Simon Bernstein shortly after he was declared deceased. Since that time, valuable personal property items and jewelry which itself was worth more than a million dollars has gone missing and unaccounted for, Simon's home computer and hard drives had been wiped clean, Shirley's condo on the beach was sold off illegally, while multiple key and critical documents like Trusts and other business documents went "missing" and/or not produced by the involved attorneys and fiduciaries. Simon Bernstein had been in the insurance business some 50 years or so and a fair approximate combined worth of both estates could be \$50 to \$100 million. "

Par. 14 from All Writs:

"It is noted that at the time this mandatory disqualification motion had been filed, Judge Colin had already permitted the cases to continue for nearly 2.5 years without ever holding a hearing to determine who the proper Trustees were, who proper Personal Representatives of the Estate were and are, what the construction and meaning of the Trusts and Estates should be and if the dispositive documents

were valid after learning documents had been fraudulently altered and forged and posited with the court of Colin by the Fiduciaries and Counsel, all the while permitting parties such as Ted Bernstein and attorneys Tescher and Spallina who are involved in the direct frauds upon his court to nonetheless continue acting permitting properties to be illegally sold, substantial monies and assets transferred and disposed of while denying Petitioner and Petitioner's minor children rights of inheritancy causing substantial financial and related harm. "

Par. 23 of All Writs:

"The Disqualification motion clearly demonstrated Judge Colin as a material fact witness in relation to the fraud by Attorneys Spallina and Tescher specifically in relation to an Oct. 24, 2012 filing wherein Attorney Spallina files multiple documents allegedly signed by then Deceased Simon Bernstein nearly 6 months before, yet filing these documents in Judge Colin's Court in the Estate of Shirley Bernstein as if Simon was present and still alive, thus using a Deceased person to attempt to close the Estate of Shirley Bernstein. One of the documents filed at this time is an April 9, 2012 Petition for Discharge which was signed before attorney Robert Spallina allegedly by Simon Bernstein. In addition to this document being fraud as purporting in October of 2012 to be filed by Simon who was now deceased, the document had further fraud in the document such as alleging Waivers by the Simon Bernstein children had been performed by such date and yet these Waivers were not completed as of April 9, 2012. These Waivers which were not completed as of April 9, 2012 are other documents later admitted by the Tescher Spallina employee and Notary Kimberly Moran to have been forged. The Disqualification motion further shows Judge Colin and his Court Officer having Ex Parte contact with Attorney Spallina two weeks later on Nov. 5, 2012 but not even this Ex Parte communication is docketed until the next day, Nov. 6, 2012. "

WHEREFORE, it is respectfully prayed that this Court strike those portions of the Response filed for Ted Bernstein by his attorney Alan Rose and impose sanctions as otherwise just and proper and further grant relief as requested in the Petition for Re-Hearing En Banc.

Dated: December 17, 2015

/s/Eliot Ivan Bernstein
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CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by E-mail Electronic Transmission; Court ECF; this 17th day of December, 2015.

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