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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXNB (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,

vs.

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

Respondents.
_____/

OPPENHEIMER TRUST COMPANY OF DELAWARE'S OMNIBUS MOTION: (I) TO APPOINT A GUARDIAN *AD LITEM* FOR THE MINOR BENEFICIARIES OF THE "GRANDCHILDREN TRUSTS;" (II) TO HOLD ELIOT AND CANDICE BERNSTEIN IN CONTEMPT OF COURT FOR THEIR CONTINUED VIOLATION OF A COURT ORDER AND REPEATED STATEMENTS ASSAULTING THE DIGNITY OF THE COURT;AND (III) TO ESTABLISH A SCHEDULE AND PROTOCOL FOR ACCOUNTING AND TURNOVER PROCEEDINGS

Petitioner, OPPENHEIMER TRUST COMPANY OF DELAWARE ("Oppenheimer"), as the resigned trustee of three irrevocable trusts created by the late Simon Bernstein for the benefit of his minor grandchildren, Joshua, Jake and Daniel Bernstein (the "Grandchildren Trusts"), files this Omnibus Motion, and in support hereof, submits the following memorandum of law:

I. INTRODUCTION

On July 8, 2010, in *Palm Beach Circuit Court Case Nos. 502010CP003123XXXXSB, 502010CP003125XXXXSB and 502010CP003128XXXXSB* (the "2010 Proceedings"), the Honorable Martin Colin appointed Oppenheimer as successor trustee of the three small-value "Grandchildren Trusts" at issue in this case.[1] The Grandchildren Trusts were settled by Simon Bernstein for the benefit of his minor grandchildren, Joshua, Jake and Daniel Bernstein (the "Minor Beneficiaries"). The "Petitions to Appoint Successor Trustee" were filed in the 2010 Proceedings by Eliot and Candice Bernstein (the "Bernsteins"), as natural guardians of the Minor Beneficiaries, following the well-publicized collapse and receivership of then-trustee, Stanford Trust Company and its affiliates.

At the time Oppenheimer accepted the appointment (on July 30, 2010), Oppenheimer was unaware that Eliot Bernstein was an adjudicated vexatious litigant who was in the midst of a ten-year-long scorched-earth campaign "to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as attorneys at law, judges, politicians, and more." *See Bernsteins' Counter-Complaint filed in this action at ¶ 212*. For multiple reasons, including difficulties in dealing with the Bernsteins and the lack of liquid trust assets with which to comply with their increasingly unreasonable requests, Oppenheimer resigned as trustee of the Grandchildren Trusts effective May 26, 2014[2] and, thereafter, filed the instant Petition to have a successor appointed and Oppenheimer's final accountings approved.

---

[1] Each of the Grandchildren Trusts contain a *de minimus* amount of cash, and interests in closely held companies which Oppenheimer intends to transfer to its successor in-kind (to the extent such interests are not required to be sold to pay administrative expenses, including Oppenheimer's attorneys' fees incurred in this resignation and accounting proceeding).

[2] The fact and validity of Oppenheimer's resignation was recognized by Judge Colin in his Omnibus Order entered in this case on November 7, 2014 (DE 35), which granted Oppenheimer's Motion for Partial Summary Judgment as to that issue (DE 23).

For over nineteen (19) months, the Bernsteins have delayed the appointment of a successor trustee, the termination of the Grandchildren Trusts and/or the approval of Oppenheimer's accountings. They did so by inventing and obfuscating issues, filing frivolous papers, ignoring and violating multiple court orders, engaging in delay tactics, filing serial motions to disqualify judges and serial appeals (or petitions for writs) every time a ruling didn't go their way, and publicly accusing a growing number of people (now including this Court) of conspiracy. The Bernsteins' actions have needlessly caused Oppenheimer to incur hundreds of thousands of dollars in attorneys' fees just to resign. Sadly, all such fees are chargeable to the Grandchildren Trusts and, ultimately, to the Minor Beneficiaries.

A guardian *ad litem* should be appointed because: (i) the Bernsteins have no independent standing in this matter; (ii) the Bernsteins are unfit to serve as the "litigation representatives" for their minor children, the real parties in interest; (iii) the Bernsteins' interests clearly and directly conflict with their minor children's interests; and (iv) Eliot Bernstein (now joined by Candice Bernstein) is an adjudicated, serial, vexatious litigant who has been enjoined from filing certain claims in any court (but who is violating that injunction in this case). The record in this case shows that the Bernsteins are irresponsibly pursuing their own scorched earth agenda without regard for what's in their children's best interests. In doing so, they increase the cost and length of litigation to the prejudice of the Minor Beneficiaries, the Court and all parties involved.

By this Motion, Oppenheimer seeks: (i) the appointment of a guardian *ad litem* to exclusively represent the Minor Beneficiaries in this action going forward; (ii) alternatively, to strike the Bernsteins' objections to Oppenheimer's accountings due to their continued violation of paragraph nine of Judge Colin's May 4, 2015 Order (DE 68) (which required compliance by

June 1, 2015); (iii) an order establishing a schedule and protocol for the conclusion of the already-commenced accounting proceedings, the turnover of trust assets to a successor trustee or guardian, and Oppenheimer's discharge; and (iv) such other relief deemed just and proper to protect the Minor Beneficiaries and Oppenheimer from the Bernsteins' costly and abusive conduct.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Oppenheimer's Tenure as Trustee of the Grandchildren Trusts

1. On July 7, 2010, the Bernsteins, as parents and natural guardians of the Minor Beneficiaries, filed three Petitions to Appoint [Oppenheimer as] Successor Trustee [of the Grandchildren Trusts] in Palm Beach County Circuit Court, Case Nos. 502010CP003123XXXXSB, 502010CP003125XXXXSB and 502010CP003128XXXXSB, citing to the court-ordered dissolution of then-trustee, Stanford Trust Company.

2. On July 8, 2010, Judge Martin Colin entered *Final Orders on Petition to Appoint Successor Trustee*, appointing Oppenheimer as the successor trustee of each of the Grandchildren Trusts. Copies of the Final Orders are attached hereto as Exhibits "A" through "C." Those Final Orders were never challenged or appealed. On July 30, 2010 Oppenheimer formally accepted the appointments.

3. From July 30, 2010 through April 22, 2014, the Bernsteins requested distributions from the Grandchildren Trusts for the benefit of the Minor Beneficiaries and the family in general, and they accepted the benefits of the Grandchildren Trusts.

4. Because of the difficulty in dealing with the Bernsteins, and the lack of liquid trust assets to administer the Grandchildren Trusts in the manner requested by the Bernsteins, by letter dated April 22, 2014 (the "Notice of Resignation"), Oppenheimer resigned as trustee effective May 26, 2014. A copy of the Notice of Resignation is attached hereto as Exhibit "D."

5. Each of the Grandchildren Trusts provide, in relevant part, as follows:

5.2 Resignation. Any Trustee may resign by giving 30 days' written notice delivered personally or by mail to any then serving Co-Trustee and to the Settlor if he is then living and not disabled; otherwise to the next named successor Trustee, or if none, to the persons having power to appoint successor Trustees.

5.3 Power to Name Other Trustees. Whenever a successor Trustee is required and that position is not filled under the terms specified in this Trust Agreement, an individual Trustee ceasing to serve (other than a Trustee being removed) may appoint his or her successor, but if none is appointed, the remaining Trustees, if any, or the beneficiary shall appoint a successor Corporate Trustee. The appointment will be by a written document (including a testamentary instrument) delivered to the appointed Trustee. In no event may the Settlor ever be appointed as the Trustee under this Trust Agreement nor shall a Successor trustee be appointed that will cause this trust to be a grantor trust.

6. Similarly, Section 736.0705, Florida Statutes, entitled "Resignation of trustee," provides, in relevant part, as follows:

(1) A trustee may resign:

(a) Upon at least 30 days' notice to the qualified beneficiaries, the settlor, if living, and all cotrustees...

7. Section 736.0704, Florida Statutes, entitled "Vacancy in trusteeship; appointment of successor," provides, in relevant part, as follows:

(3) A vacancy in a trusteeship of a noncharitable trust that is required to be filled must be filled in the following order of priority:

(a) By a person named or designated pursuant to the terms of the trust to act as successor trustee.

(b) By a person appointed by unanimous agreement of the qualified beneficiaries.

(c) By a person appointed by the court.

8. Fla. Stat. § 736.0707 requires a resigned trustee to deliver trust property to a successor trustee or other person entitled to the property, and provides that the resigned trustee

has the duties of a trustee, and the power necessary to protect the trust property, until the property is so delivered.

B. The Bernsteins Failed To Nominate a Successor Trustee, Despite Court Order

9. In the Notice of Resignation, Oppenheimer requested that the Bernsteins, as natural guardians of the Minor Beneficiaries, nominate a successor corporate trustee, as required by the terms of the Grandchildren Trusts. They failed to do so.

10. On June 13, 2014, Oppenheimer filed the instant Petition (DE 1), requesting, in Count I, instructions regarding the delivery of the assets of the Grandchildren Trusts in light of Oppenheimer's resignation. *See Petition, ¶ 1.* Oppenheimer asked this Court to "either (i) appoint a successor trustee to whom Oppenheimer may deliver the Trust property or (ii) terminate the Trusts and permit Oppenheimer to deliver the Trust property to Eliot and Candice Bernstein, as the natural guardians of the Trusts' beneficiaries." *See Petition, ¶ 19.*

11. On October 20, 2014, Judge Colin heard argument on Oppenheimer's Motion for Partial Summary Judgment as to Count I of its Petition (DE 23) and granted the Motion, ruling that Oppenheimer had validly resigned on May 26, 2014. *See November 7, 2014 Omnibus Order (DE 35) at ¶ 1.*

12. Because the Bernsteins objected to the termination of the Grandchildren Trusts, Judge Colin ordered the Bernsteins to "submit the name and address of a proposed successor trustee to the Court, Oppenheimer's counsel and the proposed Successor Trustee" by October 30, 2014. *Id.* The Bernsteins failed to comply with that Order.

13. On February 26, 2015, following a "Status Check" hearing, Judge Colin again ordered the Bernsteins to designate a proposed successor corporate trustee. *See February 26, 2015 Order on Status Check (DE 52).*

14. Later that day, the Bernsteins provided the names of three corporate trustees to Oppenheimer's counsel (without supplying the names of contact people). The Bernsteins sarcastically wished Oppenheimer's counsel "[g]ood luck finding someone!" *See Exhibit "E."*

15. On February 27, 2015, Oppenheimer's counsel contacted the three corporate trustees proposed by the Bernsteins, informed them of the reason for the call and the nature and value of the assets of the Grandchildren Trusts (as set forth in the accountings previously filed with the Court). Oppenheimer later reported to the Court that the three proposed trustees had declined the appointment. *See Oppenheimer's February 27, 2015 Notice to Court That Respondents' Proposed Successor Trustees Have Declined the Appointment (DE 54).*

16. On March 31, 2015, at a hearing on multiple motions (DE 53), the Bernsteins proudly reported that an Illinois attorney, JoAnne Denison, had agreed to serve as successor trustee. The undersigned, as an officer of the court, presented the Court with documentation confirming that the Hearing Board of the Illinois Attorney Registration and Disciplinary Commission had recommended that Ms. Denison be suspended from the practice of law for three years for making "false statements concerning the integrity of judges, knowing they were false or with reckless disregard for their truth or falsity, and engaged in dishonest conduct and conduct prejudicial to the administration of justice." *See Exhibit "F" ("Report and Recommendation of the Illinois Attorney Registration and Disciplinary Commission," Commission No. 2013PR0001, filed November 21, 2014).* The undersigned also presented the Court with a copy of a recent Order entered by the United States Court of Appeals for the Seventh Circuit in which the court found that Ms. Denison and a colleague had "launched a crusade" against judges and lawyers involved in a particular matter, accusing them of "theft, bribery and other misconduct." *Denison v. Stern, Case No. 14 C 375 (7th Cir. 2014).* The

Seventh Circuit reprimanded Ms. Denison for moving her "campaign of vilification from the Internet to the courthouse" and warned Ms. Denison that "frivolous litigation will not be tolerated." *Id.* When asked by Judge Colin whether the Bernsteins knew of Ms. Denison's background and still wanted her to serve as their children's trustee, Mr. Bernstein responded in the affirmative, at which time the Court informed the Bernsteins that it would not accept Ms. Denison as a successor trustee. At that time, rather than permitting the termination of the Grandchildren Trusts, Mrs. Bernstein requested one additional week to find an alternate, suitable, Florida trustee for the court to consider. The Court granted Mrs. Bernstein's request and re-set the hearing for April 7, 2015.

17. At the time of the continued hearing on April 7, 2015, the Bernsteins had not identified any alternate trustee (corporate or otherwise) that has acknowledged that it, he or she is willing to serve as a successor trustee. The Bernsteins still have not done so as of the filing of this Motion, nor have they consented to the termination of the Grandchildren Trusts.

C. The Bernsteins Disobey Court Orders Regarding the Accounting Proceedings, and Make the Proceedings Unduly Expensive

18. In Count II of the instant Petition, Oppenheimer requested Court review and approval of its final accountings.

19. On November 7, 2014, this Court entered an Order providing, in relevant part, as follows:

> Oppenheimer may file and serve final accountings for each of the Grandchildren Trusts with the Court. **Within twenty (20) days after Oppenheimer files and serves its final accountings, the Bernsteins, as natural guardians of the minor beneficiaries, may file form, line-item objections to the final accountings**. Thereafter, the Court will conduct appropriate proceedings on the final accountings.
>
> The Court withholds ruling on Oppenheimer's Motion to Appoint Guardian *Ad Litem* for Minor Beneficiaries, but may reconsider

Oppenheimer's Motion after the Bernsteins file their objections to the final accounting or at a later date.

See November 7, 2014 Omnibus Order (DE 35) (emphasis supplied).

20. Oppenheimer filed and served its final accountings on December 17, 2014 (DE 38).

21. On January 22, 2015, the Bernsteins filed a document entitled **"Objection to Final Accounting; Petition for Formal, Detailed, Audited and Forensic Accounting and Document Production"** (DE 40) (the "Objection").[3]

22. The Bernsteins filed the Objection "**individually and on behalf of [their] minor children, who are *alleged* qualified beneficiaries of Settlor's Estate and Trusts...**" *See Objection, p. 20 (emphasis supplied).*[4]

23. The Objection challenges not only the final accountings, "in toto," but also the authenticity and validity of the Grandchildren Trusts, the Minor Beneficiaries' rights under the Grandchildren Trusts, and Oppenheimer's status as trustee.[5] Specifically, the Bernsteins:

- Object to the validity of the Grandchildren Trusts as being "alleged and legally deficient trusts," Objection, p. 1 (see fn 5 herein);
- Object to Oppenheimer's standing as trustee and characterize Oppenheimer as the "alleged Successor Trustee," Objection, p. 2 (see fn 5 herein);
- "Object to all withdrawals of trust funds by [Oppenheimer] and allege that they were done fraudulently and without proper documentation and converted to improper parties as part of a larger fraud on the beneficiaries of the

[3] The Objection violated the Omnibus Order in three ways: (i) it was not served within twenty days; (ii) it contains more than "form, line-item objections;" and (iii) it purports to assert objections in the Bernsteins' individual capacities, rather than "as natural guardians of the minor beneficiaries."

[4] The Objection (and prior filings, including the Bernsteins' Counter-Complaint (DE 14)) leaves no doubt that that the Bernsteins are questioning the validity of the Grandchildren Trusts and/or the minor beneficiaries' rights thereunder. Such a position puts the Bernsteins squarely at odds with their children.

[5] Any challenges to the validity of the Grandchildren Trusts and/or the authority of Oppenheimer to administer the Grandchildren Trusts were required to be made in the 2010 Proceedings pursuant to which Oppenheimer was appointed. Any such challenges raised in these proceedings are barred by *res judicata*, collateral estoppel and other preclusion doctrines.

[Grandchildren Trusts] and the beneficiaries of the Estates and Trusts of Simon and Shirley Bernstein…" Objection, p. 2, ¶ 3 (emphasis supplied); [6]

- Object that the "[t]rustees named in the document conflict with each other knowing who the Trustee actually was in the alleged trust document impossible to determine," Objection, p. 3, ¶ 7 (see fn 5 herein);

- Object that the trust accounting begins on the date Oppenheimer became accountable as successor trustee, and does not encompass periods when prior trustees were accountable, Objection, p. 5, ¶ 20 (*but see* Fla. Stat. § 736.07135, providing that a trust accounting must only report information "… from the date on which the trustee became accountable…");

- Object to the "whole accounting" because "[a]ccount balances beginning and ending cannot be confirmed or reconciled," Objection, p. 5, ¶ 21;

- Object to each and every section of the accountings, **"in toto"**, as follows:

    - The entire "Summary Accounting" (Summary of Account) section, Objection, p. 5, ¶¶ 19-22;

    - The entire "Receipts of Principal" section (pages 1-2 of the accountings), Objection, p. 6, ¶¶ 23-26;

    - The entire "Gains and Losses on Sales and Other Dispositions" section (pages 3-17 of the accountings), Objection, p. 10, ¶¶ 36-38;

    - The entire "Other Receipts Allocable to Principal" section (page 18 of the accountings), which section is comprised solely of "Income Taxes – Refunds" entries, Objection, p. 11, ¶¶ 39-42;

    - The entire "Disbursements of Principal" section (pages 19-20 of the accountings), including:

        - All "Accounting Fees," Objection, p. 11, ¶¶ 43-45;

        - All "Fiduciary Fees," Objection, p. 11, ¶¶ 46-48; and

        - All "Income Taxes," Objection, p. 12, ¶¶ 49-52;

    - The entire "Distributions of Principal for Beneficiaries" section (pages 21-27 of the accountings), Objection, p. 12, ¶¶ 53-56;

    - The entire "Principal Balance on Hand" section (page 28 of the accountings), Objection, p. 14, ¶¶ 61-64;

[6] Oppenheimer has never acted in a fiduciary capacity in connection with any Simon or Shirley Bernstein estate or trust other than the Grandchildren Trusts.

- The entire "Information Schedules" section (pages 29-33 of the accountings), which is comprised solely of "Changes in Investment Holdings" entries, Objection, p. 14, ¶¶ 66-69;
- The entire "Receipts of Income" section (pages 34-48 of the accountings), including:
  - All "Dividends" entries, Objection, p. 14, ¶¶ 70-73; and
  - All "Interest" entries, Objection, p. 14, ¶¶ 74-77; and
- Finally, the entire "Disbursement of Income" section (pages 49-50 of the accountings), including:
  - All "Accountant Fees" entries, Objection, p. 16, ¶ 78-80;
  - All "Fees and Commissions" entries, Objection, p. 16, ¶ 81; and
  - All "Fiduciary Fees" entries, Objection, p. 16, ¶¶ 82-84;

24. Because the vast majority of the Bernsteins' objections were based upon alleged lack of documentation, Oppenheimer culled and produced nearly 2,000 pages of backup documentation related to each line item of the accountings.[7] Further, Oppenheimer provided the Bernsteins and the Court with annotated copies of the accountings which cross-reference each line item in the accountings to the backup documents supporting each line item. *See Exhibits "G" through "I."* Nevertheless, the Bernsteins maintained each and every one of their objections.

[7] Oppenheimer produced documents Bates-stamped **OPP0001-1521**, a Business Records Certification and three public records related to real property on March 10, 2015. *See* Oppenheimer's "Notice of Production," "Notice of Intent to Introduce Evidence By Means of Business Records Certification," and "Request for Judicial Notice" filed with the Court on March 10, 2015 (DE 57-60). Oppenheimer produced documents Bates-stamped **OPP1522-1828**, a Business Records Certification and three Summaries of tax reporting and refund information on April 8, 2015. *See* Oppenheimer's "Notice of Production," "Notice of Intent to Introduce Evidence By Means of Business Records Certification," and "Notice of Intent to Rely on Summaries" filed with the Court on April 8, 2015 (DE 63-65).

D. The Bernsteins Remain In Violation of Judge Colin's Latest Order

25. Before recusing himself, Judge Colin held two evidentiary hearings on the Bernsteins' Objection, each time necessitating the attendance of Oppenheimer's out-of-state principals and trial-like preparations, at considerable expense.

26. On March 17, 2015, the Court considered and ruled upon objections 1 through 5, and at the continued hearing on April 20, 2015, the Court considered and ruled upon objections 6 through 27 (out of 90 total objections). By the time of his recusal on May 19, 2015, Judge Colin had not sustained a single one of the Bernsteins' objections. *See May 4, 2015 Order From April 20, 2015 Continued Hearing On Respondents' Objection to Final Accounting (DE 68).*

27. In paragraph 9 of the May 4, 2015 Order, Judge Colin ruled that:

> With regard to objections 12, 13, 23, 26, and 28 through 90, in light of [the Bernsteins'] claim that they have had insufficient time to review the backup documents produced by [Oppenheimer], [the Bernsteins] shall file a notice with this Court, **on or before June 1, 2015**, indicating which of these objections they are abandoning in light of [Oppenheimer's] production of documents. For each objection that [the Bernsteins] do not abandon, [they] shall give a one-sentence reason why they are not abandoning the objection.

See May 4, 2015 Order From April 20, 2015 Continued Hearing On Respondents' Objection to Final Accounting (DE 68) (emphasis supplied).

28. The Bernsteins violated paragraph nine of the May 4, 2015 Order because they failed to file the required notice, withdraw any objections or state their reasons for not doing so, by June 1, 2015. They still have not done so six months later despite their clear ability to do so. Therefore, the Bernsteins remain in willful violation of the May 4, 2015 Order.

E. The Bernsteins' Interests Are Inconsistent With Their Children's Interests

In their pleadings, the Bernsteins proudly state that **their overarching goal in litigating this case is "to bring about a change in the legal system in efforts to root out systemic corruption at the highest levels by a rogue group of criminals disguised as attorneys at law, judges, politicians, and more."** *Counter-Complaint ¶ 212.* No reasonable inference can be drawn that the Minor Beneficiaries have a similar interest or agenda, or that pursuing such a broad agenda is in their best interest. In addition to the inescapable conclusion that the Bernsteins' choice to engage in unnecessary, wasteful litigation to achieve their personal, "overarching goal" on their children's dime is not in their children's best interest, the Bernsteins have confirmed in their pleadings, and in the pending Objection, that they have interests which conflict with those of the Minor Beneficiaries. For instance, in their Counter-Complaint:

- The Bernsteins allege that ***beneficiary designations were changed from him to his children based upon fraudulent documents and frauds on this Court.*** *Counter-Complaint, ¶ 253.*

- The Bernsteins allege that "approximately 1/3 of all assets [are] ***either going to Eliot or his children or a combination of both depending on how this Court rules regarding the validity of the Wills and Trusts that have been challenged*** and already found fraught with fraud, fraudulent notarizations, improper notarizations, forgeries and more." *Counter-Complaint, ¶ 186.*

- The Bernsteins allege that Mr. Bernstein himself is a beneficiary of the Grandchildren Trusts. Specifically, **they allege that "Simon and Shirley [Bernstein] set up [the Grandchildren Trusts and Bernstein Family Realty, LLC] while living, in order to fund all of their living expenses, due to the fact that Eliot has had a bomb put in his car, death threats and is in the middle of a very intense RICO and ANTITRUST lawsuit where he and his family have been in grave danger for many years fighting corruption inside the very framework of the legal system." The Bernsteins allege that the Grandchildren Trusts were "set up by Simon and Shirley [Bernstein] for the benefit of Eliot, Candice and their children."** *Counter-Complaint, ¶¶ 109-110.*

- Sixteen of the trust agreements identified as counterclaim-defendants are described as having beneficiaries including but not limited to "Eliot and/or his children or both." *See Counter-Complaint, ¶¶ 44-50, 52-60, 65.*

Similarly, in their pending Objection, the Bernsteins refer to their children as the "alleged" beneficiaries and are continuing to frustrate the Minor Beneficiaries' ability to receive any part of their trust assets by engaging in spurious, expensive litigation, no doubt in furtherance of their personal, "overarching goal" to raze the judicial system.

F. The Bernsteins Have A Long and Proud History Of Vexatious Litigation

As set forth in detail in Oppenheimer's original *Motion to Appoint Guardian Ad Litem For Minor Beneficiaries* filed September 14, 2014 (DE 31),[8] Mr. Bernstein's crusade against the legal system and its professionals and institutions began more than a decade ago, in 2003. In the last 13 years, Mr. Bernstein's efforts have intensified, his "litigation skills" have been polished, and he has diversified his campaign into multiple trial and appellate courts where he defames and preys upon an ever-growing number of alleged "conspirators," including judges and litigation counsel.

Since he began his crusade, Mr. Bernstein has filed countless Bar complaints, complaints against police agencies, petitions to protect him from police agencies, federal lawsuits against the Florida Bar, the Virginia Bar, the State of New York and hundreds of defendants, including lawyers, judges and lawmakers, and even a United States Supreme Court petition. Throughout one matter -- litigation pending in the United States District Court for the Southern District of New York (the "New York Court") -- Mr. Bernstein made inflammatory and defamatory statements about the defendants, judges and others. His Complaint was ultimately dismissed on the merits, but he refused to acknowledge defeat. Instead, he pursued

[8] The contents of the September 14, 2014 Motion are incorporated here by reference. Judge Colin never read or ruled on that Motion. Oppenheimer respectfully requests that the Court review that Motion along with the instant Motion, so that it has full context for its decision.

the action on appeal and in independent proceedings for another five years. Ultimately, the New York Court sanctioned Mr. Bernstein for repeatedly filing frivolous papers. *Eliot I. Bernstein v. State of New York, et al, Case No. 1:07-cv-11196 (DE 154), Order on Motion for Sanctions (S.D. N.Y. August 29, 2013). See Exhibit "J."* Among other sanctions, the Court enjoined Mr. Bernstein as follows:

> **Eliot I. Bernstein is hereby enjoined from filing any action in any court related to the subject matter of this action without first obtaining leave of this Court. In moving for such leave, Bernstein must certify that the claim or claims he wishes to present are new claims never before raised and/or disposed of by any court. Bernstein must also certify that claim or claims are not frivolous or asserted in bad faith. Additionally, the motion for leave to file must be captioned 'Application Pursuant to Court Order Seeking Leave to File.' Failure to comply strictly with the terms of this injunction shall be sufficient grounds for denying leave to file and any other remedy or sanction deemed appropriate by this Court.**

Id. (emphasis supplied). Mr. Bernstein expressed his contempt for the court and the proscriptions of Rule 11 by stating the following in his Rule 11 opposition: **"Bernstein is notifying Proskauer and this Court that he will have a lifelong and generational long litigious history in pursuing his patent royalties…"** *Id. (emphasis supplied)*.

In the Bernsteins' latest pleading – the now-stayed "Counter-Complaint" filed in this action -- the Bernsteins' purport to assert claims in more than 20 capacities against Oppenheimer and all of its

> current and former divisions, affiliates, subsidiaries, stockholders, parents, predecessors, successors, assignors, assigns, partners, members, officers, directors, trustees, employees, agents, administrators, representatives, attorneys, insurers and fiduciaries,

and against seventy-six (76) additional counterclaim-defendants (not including "John Doe's 1-5000"), and all of their

> current and former divisions, affiliates, subsidiaries, stockholders, parents, predecessors, successors, assignors, assigns, partners, members, officers, directors, trustees, employees, agents, administrators, representatives, attorneys, insurers and fiduciaries.

See Bernsteins' Answer and Counter-Complaint (DE 14).

In contempt of the New York Court's Injunction, the Bernsteins' Counter-Complaint raises enjoined claims. For instance:

- The Bernsteins expressly incorporate the allegations of the New York lawsuit, and joined several of the same defendants, in their Counter-Complaint. *See Counter-Complaint, ¶¶ 61-64, 217, 223.*
- The Bernsteins allege that they are "pursuing Defendants, Proskauer Rose LLP, Gerald Lewin, CPA and Albert Gortz, Esq. as the main parties involved in the theft of Simon and Eliot's Intellectual Properties." *See Counter-Complaint, ¶ 217.*
- The Bernsteins allege "[t]hat Defendant's [sic] Oppenheimer and JP Morgan were both initially involved in Eliot's technologies and signed various agreements with the companies that held the Intellectual Properties…" *See Counter-Complaint, ¶ 223.*

To make matters worse, when the case was re-assigned to Judge Howard Coates after Judge Colin's recusal, Mr. Bernstein successfully persuaded Judge Coates to recuse himself, citing to the fact that Judge Coates' old law firm, Proskauer Rose, was (wrongfully) named as a defendant in the Bernsteins' Counter-Complaint. Not only is Mr. Bernstein violating the New York Court's injunction by filing unauthorized pleadings, he is using the enjoined pleadings to mislead judges, complicate issues and cause expense and delay in this case.

And just as the Bernsteins publicly disparaged and disrespected judges in the New York case and elsewhere, they continue to show contempt for the multiple judges that have presided over this case, and other Florida judges and Justices. For example, in their Florida Supreme Court filing related to this case, entitled "*Petition for All Writs, Writ of Prohibition, Writ of Mandamus and Petition to Stay Cases and Temporarily Restrain Sale, Transfer, Disposition of any Asset and for Preservation of all Evidence"* (the "Supreme Court Petition"), the Bernsteins

allege "fraud by the court," that "Judges are involved on the attempt to fix and silence the crimes of other members of the Florida Bar and others," that "two Florida judges [Colin and French]… [are] involved in the criminal acts described herein," and that all Florida Supreme Court Justices are complicit. *See Supreme Court Petition, pp. 5-6.* The Bernsteins claim that, due to their own conduct in pursuing broad conspiracy claims against all three branches of government, no court (or at least no Florida court) is unbiased enough to preside over his claims.[9]

What the Bernsteins conduct in this case and others shows is that the Bernsteins are unable to fathom even the possibility that a judge can make an adverse ruling because it is the right ruling. When the Bernsteins lose and appeal, they consistently allege, not that the judge got the law or facts wrong or made a mistake, but rather that the judge is a criminal fraudster involved in a broad conspiracy with the lawyers in the room and others well beyond the room. This level of contempt alone (unsupported by evidence) makes the Bernsteins unfit to serve as anyone else's representative in court. Indeed, if the Bernsteins are to be believed, their children will fare much better in the courts if they are not burdened by their parents real or imagined reputation within the legal community.

---

[9] The Supreme Court Petition begins (at pp. 2-3) as follows:

WARNING:
POTENTIAL CONFLICTS OF INTEREST

Eliot Ivan Bernstein has pursued in investigations since early 2000 to present, including a Petition to the White House, the White House Counsel's Office, the US Attorney General's Office, investigations to the SEC, 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 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.

III. ARGUMENT

A. The Court Should Appoint A Guardian *Ad Litem* For the Minor Beneficiaries

Courts should not permit a parent to act as a child's litigation representative where "it appears that the [parent] has interests which may conflict with those of the [child]." *1 Leg. Rts. Child. (Legal Rights of Children) Rev. 2d § 12:3 (2d ed. 2013), citing Mistretta v. Mistretta, 566 So. 2d 836, 837 (Fla. 5th DCA 1990) (other internal citations omitted).* In this case, the Court cannot reasonably conclude that the Minor Beneficiaries' separate interests in the Grandchildren Trusts and their assets "will be fully protected" by the Bernsteins. The Bernsteins have challenged their children's rights under the Grandchildren Trusts and continue to ignore court orders and engage in a litigation strategy which virtually guarantees the dissipation of the remaining trust assets. Accordingly, the appointment of a guardian *ad litem* is mandatory. *See Mistretta 566 So. 2d at 837-38* (denial of due process occurs when the interests of the child may be adverse to the interests of the parent); *Johns v. Dep't of Justice, 624 F.2d 522 (5th Cir.1980); Smith v. Langford, 255 So.2d 294 (Fla. 1st DCA 1971). Chapman v. Garcia, 463 So.2d 528 (Fla. 3d DCA 1985).*

Similarly, Fla. Stat. §§ 731.303(4) and 736.0305(1) and Fla. Prob. R. 5.120(a) provide authority for the appointment of a guardian *ad litem* in proceedings involving estates or trusts if the court determines that representation of a minor's interest otherwise would be inadequate. In this case, the Bernsteins' representation of the Minor Beneficiaries is not only inadequate; it is actually harming the minors' interests in their trusts.

Oppenheimer requests that a guardian *ad litem* be appointed, that all of the Bernsteins' pleadings (including their Objection and Counter-Complaint which they purported to file in

their individual capacities) be stricken, and that the guardian *ad litem* be given a reasonable amount of time to respond to the Petition and file appropriate accounting objections.

B. The Bernsteins Should Be Sanctioned and/or Held In Contempt Of Court For Violating The Court's May 4, 2015 Order (DE 68)

Paragraph 9 of the May 4, 2015 Order provides as follows:

> **With regard to objections 12, 13, 23, 26, and 28 through 90, in light of [the Bernsteins'] claim that they have had insufficient time to review the backup documents produced by [Oppenheimer], [the Bernsteins] shall file a notice with this Court, on or before June 1, 2015, indicating which of these objections they are abandoning in light of [Oppenheimer's] production of documents. For each objection that [the Bernsteins] do not abandon, [they] shall give a one-sentence reason why they are not abandoning the objection.**

The Bernsteins willfully violated paragraph nine of the May 4, 2015 Order because they failed to file the required notice by June 1, 2015, and still have not done so six months later. Accordingly, unless this issue is deemed moot by the appointment of a guardian *ad litem*, the Bernsteins should be sanctioned and/or held in contempt of court.

1. Inherent Authority to Sanction for Violation of Court Order

A "deliberate and contumacious disregard of the court's authority" may justify the striking of a party's pleadings without a finding of contempt. *Swindle v. Reid, 242 So. 2d 751 (Fla. 4th DCA 1970)*. So will "bad faith, willful disregard or gross indifference to an order of the court, or conduct which evinces deliberate callousness." *Herold v. Computer Components International, Inc., 252 So. 2d 576 (Fla. 4th DCA 1971); Paranzino v. Barnett Bank of South Florida, N.A., 690 So. 2d 725 (Fla. 4th DCA 1997); Cem-A-Care of Florida, Inc. v. Automated Planning Systems, Inc., 442 So. 2d 1048 (Fla. 4th DCA 1983).*

> Courts traditionally have broad authority through means other than contempt - such as by striking pleadings, assessing costs, excluding evidence, and entering default judgment - to penalize a party's failure to comply with the rules of conduct governing the

> litigation process. Such judicial sanctions never have been considered criminal, and the imposition of civil, coercive fines to police the litigation process appears consistent with this authority. Similarly, indirect contempts involving discrete, readily ascertainable acts, such as turning over a key or payment of a judgment, properly may be adjudicated through civil proceedings since the need for extensive, impartial fact-finding is less pressing.

International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 833 (1994) (internal citations omitted).

The above facts illustrate the Bernsteins' continuing pattern of ignoring and violating Court orders and failing to acknowledge the Court's authority. Accordingly, an order striking the Bernsteins' Objection to Oppenheimer's accountings is appropriate.

2. Holding a Party in Contempt for Violation of a Court Order

"A refusal to obey any legal order, mandate or decree, made or given by any judge either in term time or in vacation relative to any of the business of said court, after due notice thereof, shall be considered a contempt, and punished accordingly." *Fla. Stat. § 38.23 (2010).* A violation of a court order can form the basis for a finding of either civil or criminal contempt.[10] *See International Union, United Mine Workers of America v. Bagwell, 512 U.S. 821, 833 (1994)* ("Certain indirect contempts nevertheless are appropriate for imposition through civil proceedings. Contempts such as failure to comply with document discovery, for example, while occurring outside the court's presence, impede the court's ability to adjudicate the proceedings before it and thus touch upon the core justification for the contempt power.");

[10] Contempt is categorized as direct and indirect, civil and criminal. Criminal contempt, direct or indirect, "is conduct directed against the authority and dignity of the court or the judge in his judicial capacity." *Trawick, Fla. Prac. and Proc., §27-6.* Acts categorized as "direct criminal contempt" are committed "in the presence of the court or so near it as to interrupt or hinder judicial proceedings," whereas acts classified as "indirect criminal contempt" are those that "tend[] to obstruct, interrupt, hinder or embarrass the administration of justice, but which [are] committed at a distance." *Id.* Civil contempt is "the failure to do something ordered by the court for the benefit of a party in a civil action." *Id.*

see also Lo. v. Lo, 878 So. 2d 424 (Fla. 3rd DCA 2004) (noting that "[r]epeated disregard of court orders and lack of candor by a party toward the Court justifies findings of either civil contempt or indirect criminal contempt). Whether the conduct is sought to be addressed by civil or criminal means depends upon the Court's purpose in holding the contemnor in contempt – to punish for past conduct (criminal) or to secure future compliance (civil). *See Berlow v. Berlow, 21 So. 3d 81, 84 (Fla. 3d DCA 2009)*; *Perez v. Perez, 599 So. 2d 682, 683 (Fla. 3d DCA 1992).*

(a) Civil Contempt

Civil contempt sanctions, or those penalties designed to compel future compliance with a court order, are considered to be coercive and avoidable through obedience, and thus may be imposed in an ordinary civil proceeding upon notice and an opportunity to be heard. *See Nical of Palm Beach, Inc. v. Lewis, 981 So. 2d 502 (Fla. 4th DCA 2008).* In civil contempt proceedings, willfulness is immaterial and not a necessary element. *Dep't of Transportation v. Burnette, 399 So. 2d 51, 52 (Fla. 1st DCA 1981)*; *see also 17 Am. Jur. 2d Contempt § 27* (in a civil contempt action, "contempt does not require that disobedience be deliberate or willful, and a mere act of disobedience, regardless of motive, is sufficient."). The standard of proof for civil contempt is a preponderance of the evidence. *Dep't of Children & Families v. R.H., 819 So. 2d 858, 861 (Fla. 5th DCA 2002).*

There is a wide array of sanctions that may be imposed for civil contempt including incarceration and imposition of a fine, and courts are free to come up with creative solutions to coerce compliance with court orders. *See Parisi v. Broward County, 769 So. 2d 359, 365 (Fla. 2000)* ("… there is a broad arsenal of coercive civil contempt sanctions available to the trial court including "incarceration, garnishment of wages, additional employment, the filing of reports, additional fines, the delivery of certain assets, the revocation of a driver's license…"); *Bowen v. Bowen, 471 So. 2d. 1274, 1279 (Fla. 1985).* Regardless of the sanction, 'the key

safeguard in a civil contempt proceeding is a finding by the trial court that the contemnor has the ability to purge the contempt." *Dep't of Children and Families, 819 So. 2d 858 (Fla. 4th DCA 2002) (citing Parisi v. Broward County, 769 So. 2d 359, 365 (Fla. 2000).*

(b) Criminal Contempt

The purpose of criminal contempt is to vindicate the authority of the court, to punish an intentional violation of an order of the court that is offensive to the public, and to deter such conduct. *Parisi v. Broward County, 769 So. 2d 359 (Fla. 2000); The Florida Bar v. Forrester, 916 So. 2d 647 (Fla. 2005); Levine v. Keaster, 862 So. 2d 876 (Fla. 4th DCA 2003); Levey v. D'Angelo, 819 So. 2d 864 (Fla. 4th DCA 2002); Bowen v. Bowen, 471 So. 2d 1274 (Fla. 1985).* Because the purpose of criminal contempt is to punish rather than coerce, those subject to criminal contempt have the right to the same constitutional due process afforded criminal defendants. *Bowen v. Bowen, 471 So. 2d 1274, 1277 (Fla. 1985).*

In order for a court to impose a punishment for failing to comply with its orders (indirect criminal contempt):

> it must comply with Rule 3.840, Florida Rules of Criminal Procedure, including (1) the issuance of an order to show cause to be served upon the defendants stating the facts upon which each defendant must answer; (2) the appointment of counsel if the defendant is indigent; (3) the opportunity for the defendant to elect a jury trial, if the sentence the trial court seeks to impose is greater than six months; and (4) upon a finding of guilt, to afford the defendant with an opportunity to show good cause why the sentence should not be imposed and to offer evidence of mitigation.

See Jones v. Ryan, 967 So. 2d 342, 344-45 (Fla. 3d DCA 2007).[11]

---

[11] Alternatively, "[a] criminal contempt may be punished summarily if the court saw or heard the conduct constituting the contempt committed in the actual presence of the court." *Fla. R. Crim. P. Rule 3.830* (direct criminal contempt). In these instances, "[t]he judgment of guilt of contempt shall include a recital of those facts on which the adjudication of guilt is based. Prior to the adjudication of guilt the judge shall inform the defendant of the accusation against the defendant and inquire as to whether the defendant has any cause to show why he or she should not be adjudged guilty of contempt by the court and sentenced therefor. The defendant shall be given

To establish criminal contempt, the "evidence must establish a willful act or omission calculated to embarrass or hinder the court or obstruct the administration of justice; there must be proof that the accused intended to hinder or obstruct the administration of justice." *Carter v. State, 954 So. 2d 1185 (Fla. 4th DCA 2007).* The requisite intent for indirect criminal contempt can be inferred from the actions of the contemnor, where it is foreseeable under the circumstances that the contemnor's conduct would prompt action disruptive of the court proceedings. *Milian v. State, 764 So. 2d 860, 862 (Fla. 4th DCA 2000).*

The standard of proof for criminal contempt is beyond a reasonable doubt. *Dep't of Children & Families v. R.H.*, 819 So. 2d 858, 861 (Fla. 5th DCA 2002). The sanctions available for criminal contempt are significantly more limited than those that are available for civil contempt.

> Criminal contempts may be punished by a fine of not more than $500, or by imprisonment of not more than twelve months. These are the limits because there is no statute defining the maximum punishments for contempt and, when there exists no provision for the punishment of a criminal offense, *section 775.02* applies, and "the court shall proceed to punish such offense by fine or imprisonment, but the fine shall not exceed $500, nor the imprisonment twelve months." The trial court may not, however, award attorney's fees and costs to the party who prosecutes another for indirect criminal contempt in a civil case, because a judgment of guilt in criminal contempt should not inure to the benefit of a private individual.

16 Fla. Prac., Sentencing § 11:49, "Punishments – Criminal Sanctions" (2009-2010 ed.) (internal citations omitted).

(c) Sanctions Requested

If the Bernsteins are not removed from this case entirely and replaced by a guardian *ad litem*, Mr. Bernstein should either be incarcerated until he complies with the May 4, 2015 Order

---

the opportunity to present evidence of excusing or mitigating circumstances. The judgment shall be signed by the judge and entered of record. Sentence shall be pronounced in open court." *Fla. R. Crim. P. Rule 3.830.*

(as a sanction for civil contempt), or the Bernsteins' pleadings and Objection should be stricken in their entirety, with prejudice (as a penalty for criminal contempt).

IV. MOTION TO ESTABLISH SCHEDULE AND PROTOCOL TO WIND UP OPPENHEIMER'S TRUSTEESHIP

Regardless of how the Court rules on the above issues, Oppenheimer requests an Order establishing a reasonable schedule and protocol for concluding the accounting proceedings, permitting Oppenheimer to transfer possession of any remaining trust assets (after deducting ongoing administrative expenses), and discharging Oppenheimer.

V. CONCLUSION

For all of the foregoing reasons, Oppenheimer requests that a guardian *ad litem* be appointed to represent the Minor Beneficiaries in this matter or, alternatively, that the Bernsteins' pleadings and Objection be stricken or they are compelled to comply with the Court's May 4, 2015 Order. In any event, Oppenheimer requests an Order establishing a schedule and protocol for the accounting proceedings and turnover of trust assets, and such other relief as is just and proper.

Respectfully submitted,

GUNSTER, YOAKLEY & STEWART, P.A.
Counsel for Petitioner
4855 Technology Way, Suite 630
Boca Raton, FL 33431
Telephone: (561) 961-8085

By: */s/Steven A. Lessne*
Steven A. Lessne, Esq.
Florida Bar No. 107514
slessne@gunster.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via e-mail to all parties on the attached Service List this 7th day of January, 2016.

/s/ Steven A. Lessne

SERVICE LIST

Eliot Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434
ivewit@ivewit.tv
ivewit@gmail.com

Candice Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434
tourcandy@gmail.com