

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)

**Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland**

**Filers:
Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee and
Individually,
Pamela B. Simon, Jill Iantoni, Lisa
Friedstein, David Simon, Adam Simon,
The Simon Law Firm, and STP
Enterprises, Inc. (“Plaintiffs” or
“Movants”)**

**MOTION TO STRIKE
ELIOT BERNSTEIN’S
PETITON- EMERGENCY
MOTION FOR INJUNCTIVE RELIEF
UNDER THE ALL WRITS ACT,
ANTI -INJUNCTION ACT, FRCP 65,
AND OTHER RELIEF**

Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)

Third-Party Defendants.)
_____)

ELIOT IVAN BERNSTEIN,)

Cross-Plaintiff)

v.)

TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)

Cross-Defendant)

and,)

PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)

Third-Party Defendants.)
_____)

NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, and Co-Plaintiffs, Ted Bernstein, individually, Pamela Simon, Jill Iantoni, Lisa Friedstein, by and through their undersigned counsel, and move this court to strike Eliot Bernstein's Emergency Motion for Injunctive Relief under the All Writs Act, Anti-Injunction Act and alternatively for a Temporary Restraining Order-Stay-Preliminary Injunction and Other relief, and in support of their Motion to Strike state as follows:

INTRODUCTION

Eliot Bernstein has yet again filed a motion without providing any jurisdictional basis for this court to grant the relief requested. Eliot's motion is woefully insufficient as a matter of law. Eliot's motion also violates and attempts to circumvent this court's prior order and the page limitations in LR 7.1 because his Emergency pleadings consist of a 14 page brief in support of a 132 page motion. For these and other reasons, Plaintiff, in addition to certain other relief, moves this court to (i) strike Eliot's Emergency Motion and related pleadings, and (ii) require that Eliot seek leave of court prior to filing any further motions, or pleadings in the Northern District.

MOTION TO STRIKE AND FOR OTHER RELIEF

Eliot's Emergency Motion violates this court's prior order entered on May 6, 2015. The May 6, Order struck Eliot's omnibus motion [Dkt. 173], which like Eliot's current Emergency Motion sought this court's intervention in the probate actions pending in the Florida Probate Court. In its May 6 Order, this court struck Eliot's omnibus motion pursuant to LR 7.1 for exceeding the page limitations for a brief filed in the Northern District. In addition, the court ordered Eliot to restrict future motions to matters for which this court has jurisdiction over such

as deadlines in the instant litigation, etc. Plaintiffs ask this court to take judicial notice of its May 6 Order. [Dkt. 178].

Eliot has violated both aspects of the court's May 6 Order first by filing a 132 page so-called Emergency Motion in addition to a 14 page brief and second by seeking relief well outside the jurisdiction of this court. Because, Eliot has shown a willful disregard for this court's prior orders, Plaintiff asks that this court require Eliot to seek leave of this court prior to filing any further pleadings, petitions, complaints, motions or briefs in the Northern District of Illinois.

What Eliot stubbornly refuses to apprehend is that the instant litigation involves one and only one *non-probate* asset, the proceeds paid from a life insurance policy currently on deposit with the Registry of the Court for the Northern District of Illinois. Discovery in this matter was closed on January 9, 2016 [Dkts. #123 and #133]. Plaintiff's motion for summary judgment is fully briefed and awaits the court's ruling. (*see* [Dkt. #211]).

Thus, all of Eliot's new pleas for discovery in the instant litigation come far too late, especially in light of the fact that Eliot conducted virtually no discovery in this case during the time allotted to him. Eliot's pleas for additional discovery in the Florida Probate matters need be made in the Florida Probate court.

Eliot's Emergency motion makes no secret that it has virtually nothing to do with the insurance proceeds at issue in the Northern District, but everything to do with the Probate matters in Florida plus virtually every other piece of litigation Eliot has ever filed. As Eliot points out he has "lost standing in Florida" after a hearing in the Florida Probate Court. (Eliot's emergency motion at p.8, ¶18.)

Now, the Palm Beach County court is entertaining a motion to appoint a guardian *ad litem* for Eliot's children in the Florida Probate actions. (see Eliot's emergency motion at p.6, ¶15). In yet another telegraphed and desperate attempt at an end around of the Florida Probate Court, Eliot asks this U.S. District Court sitting in Chicago, Illinois to (i) sack a Judge sitting in his Florida state courtroom, and (ii) call a time-out in the probate actions pending before in the Florida state court.

Eliot has a multitude of insurmountable problems in addition to his violation of the local rules and this court's May 6 Order. First, this court lacks subject-matter jurisdiction over the Florida Probate actions, and this court ruled as much over 8 months ago. [May 6 Order, Dkt. #178].

Second, Eliot's motion is insufficient as a matter of law. Nowhere in his motion does Eliot allege that he has any likelihood of success on the merits in the matters he seeks to enjoin. Instead, Eliot in his own motion admits that he has already lost standing in the Florida Probate matters. Since Eliot has already lost standing that is the status quo as of the date of the filing of Eliot's motion for injunctive relief. The undisputed fact that as of the date of the filing of his Emergency Motion, Eliot lacked standing in the Florida probate matters makes his chances of success in Florida not just unlikely, but virtually nil.

Further, Eliot's own memorandum of law includes the following recitation of case law that completely undermines any argument in favor of this court's jurisdiction:

"It is true that a federal court has no jurisdiction to probate a will or administer an estate...But it has been established by a long series of decisions of this Court that the federal courts of equity have jurisdiction to entertain suits 'in favor of creditors, legatees and heirs' and other claimants against a decedent's estate to 'establish' their claims so long as the federal court does not interfere with the probate proceedings or assume general jurisdiction of the probate or control of the property in the custody of the state court". (Eliot's memorandum of law in support of his Emergency Motion, [DKT. #215, at p.14 of 17])

This portion of the *Marshall* decision starts with the premise that a federal court has no jurisdiction to probate a will. (Eliot's memorandum of law in support of his Emergency Motion, [DKT. #215, at p.14 of 17]. The *Marshall* court then distinguishes certain claims made by creditors or legatees against an estate (as opposed to the probate of that estate, itself) in holding that a Federal court may have jurisdiction over such claims. But, this brings us back to the same problem Eliot either misapprehends or refuses to accept, which is that the instant litigation is not a probate of Simon Bernstein's estate, nor is it a claim against the estate by creditors or legatees. Instead, it is an interpleader action involving one *non-probate asset*, the life insurance policy proceeds on deposit in the Northern District.

Perhaps most importantly, Eliot's citation to the *Marshall* decision includes the prohibition "so long as the federal court does not interfere" (Eliot's memorandum of law in support of his Emergency Motion, [DKT. #215, at p.14 of 17]. So the *Marshall* decision, upon which Eliot's motion relies, contains both the proclamation that the federal court does not have jurisdiction over the probate of an estate, but also, in those matters where a federal court exercises its jurisdiction to hear a creditor or legatee claim against an estate or an estate asset, it also contains the proscription that the federal court shall not interfere or exercise general jurisdiction over the actual probate of the estate.

Yet, Eliot's Emergency motion asks this court to not only interfere with the probate of the estate by "temporarily restraining" the probate proceedings in Florida, but also to take general control of the matters in the Florida Probate Court by issuing orders relating to preserving evidence and discovery, addressing conflicts, etc." (Eliot's memorandum of law in support of his Emergency Motion, [DKT. #215, at p.13 of 17])

CONCLUSION

This court already ruled that it has no jurisdiction over the matters described in Eliot's latest iteration now styled as Eliot Bernstein's Emergency Motion for Injunctive Relief, but previously filed as part of Eliot's omnibus motion. For this and all the other reasons stated herein, Plaintiffs ask this court to strike Eliot's motion in its entirety. Further, considering there is a summary judgment motion that is fully briefed and pending in this matter, Plaintiffs move this court to require Eliot to seek leave of this court prior to filing any further pleadings or motions in the Northern District.

In the event the court should determine that it must entertain Eliot's Emergency motion, Plaintiffs ask that it be set for a date certain in the future since there is also no showing of an emergency, and provide Plaintiffs with 21 days to file their memorandum of law in opposition. Also, Eliot's Emergency Motion, by its own admission seeks "extraordinary injunctive relief" so Plaintiffs further request that Eliot's phone appearance privileges for any hearings, or evidentiary hearings on the motion be revoked, and instead require his personal appearance in court.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court enter an Order as follows:

- a. striking Eliot Bernstein's Emergency Motion, and all related pleadings, for the reasons set forth herein; and
- b. requiring Eliot Bernstein to seek leave of this court before filing any future motions or pleadings of any kind in the Northern District of Illinois; or
- c. requiring Eliot Bernstein to personally appear in court for any hearings, and evidentiary hearings on this motion;

- d. requiring Eliot Bernstein to seek leave of this court before filing any future motions or pleadings of any kind in the Northern District of Illinois;
- e. granting Plaintiff until March 17, 2016 to file its memorandum of law in opposition;
- f. setting a hearing and/or evidentiary hearing dates thereafter, if needed; and
- g. granting such further relief as this court deems just and proper.

Dated: February 24, 2016

Respectfully Submitted,

/s/ Adam M. Simon

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