

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO.: 4D16-1449

L.T. CASE NO. 2014CP002815XXXXNB

ELIOT IVAN BERNSTEIN,

Appellant,

vs.

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,

Appellee.

_____ /

APPELLEE'S MOTION TO DISMISS APPEAL

Appellee, Oppenheimer Trust Company of Delaware, in its capacity as the resigned trustee of the Simon Bernstein Irrevocable Trusts created for the benefit of Joshua, Jake and Daniel Bernstein ("Oppenheimer"), by and through its undersigned attorneys, moves to dismiss this appeal, and states:

1. On June 15, 2016, this Court entered an Order requiring Appellant, Eliot Ivan Bernstein ("Bernstein") to show cause by June 27, 2016 why this appeal should not be dismissed due to his failure to file an initial brief ("Order to Show Cause").

2. On June 28, 2016, **the day after the Court-imposed deadline**, Bernstein filed a “Response Showing Cause for Extension of Time to File Initial Brief on Appeal” (“Response to Order to Show Cause”).

3. In the Response to Order to Show Cause, Bernstein asserts that the “Production of Full Records and Indexes on Appeal in ALL related cases,” is necessary for him to file his initial brief and prosecute this appeal. *See* Response to Order to Show Cause, ¶¶ 3, 4 and 16.

4. At the time he filed the Response to Order to Show Cause, Bernstein knew that his request for production of records and indexes on appeal in multiple, alleged related cases did not constitute “good cause” for failing to file his initial brief because that identical request was previously and repeatedly denied by this Court in connection with the appeal of two of the alleged “related cases.” Specifically, in the appellate matter of *Eliot Bernstein v. Ted S. Bernstein*, Case No. 4D16-0222:

a. On April 4, 2016, this Court entered an Order requiring Bernstein to show cause why the appeal should not be dismissed due to Bernstein’s failure to file an initial brief.

b. On April 12, 2016, Bernstein filed a “Response to Show Cause; Request for Extension of Time to File Initial Brief,” requesting fifteen (15) days to file his initial brief (“First Motion for Extension”).

c. On April 21, 2016, this Court granted Bernstein’s First Motion for Extension, giving him an additional fifteen (15) days to file his initial brief.

d. On May 3, 2016, Bernstein filed a “Motion for Extension of Time to File Brief and Request for Order to Produce Indexes for Appeal for Two Additional Cases the Appealed Order Addresses” (“Second Motion for Extension”). In the Second Motion for Extension, Bernstein requested an indefinite extension pending the production of all indexes and records on appeal in multiple cases. *See* Second Motion for Extension, WHEREFORE clause.

e. On May 13, 2016, this Court entered an Order “**denying [Bernstein’s] request for order to produce indexes for appeal for two additional cases.**”

f. On May 25, 2016, Bernstein filed a “Motion with Specificity to Order Production of the Full Record and Extend Time to File Initial Brief” (“Third Motion for Extension of Time”). Once again, Bernstein requested the “full production of the Indexes and Records of all cases...” *See* Third Motion for Extension, ¶ 1 and WHEREFORE clause.

g. On June 9, 2016, this Court **denied Bernstein's request to have the records produced**, but gave him an additional five (5) days to file his initial brief.

h. On June 15, 2016, Bernstein filed a "Motion for Extension of Time to Submit an Initial Brief upon Proper and Meaningful Access to Records on Appeal, Vacating and Rehearing En Banc this Court's Order of June 9, 2016 as violative of the US Constitution, Florida State Constitution and for a Written Opinion Clarifying such matters" ("Motion for Reconsideration"). Once again, Bernstein requested "production of the full Indexes and Records on Appeal." *See* Motion for Reconsideration, WHEREFORE clause.

i. On June 21, 2016, this Court **denied Bernstein's Motion for Reconsideration**.

j. On June 22, 2016, the Appellee, Ted Bernstein, filed his Second Motion to Dismiss the appeal.

k. On June 23, 2016, this Court entered an Order on the Second Motion to Dismiss, giving Bernstein ten (10) days to show cause why the appeal should not be dismissed.

5. Four (4) days later, on June 27, 2016, Bernstein filed his Response to Order to Show Cause in this appeal, arguing, once again, that “Production of Full Records and Indexes on Appeal in ALL related cases is necessary...” for him to file his initial brief. *See* Response to Order to Show Cause, ¶ 4. This, despite the fact that this same request was denied on three separate occasions by this Court in connection with the appeal of two of the alleged related cases.

6. Based upon the Court’s prior rulings, and the limited nature of this appeal, Bernstein knew that his request for production of indexes and records on appeal in multiple, alleged related matters did not and would not constitute good cause for failing to file his initial brief.

7. Oppenheimer recognizes that this is Bernstein’s first request for an extension of time in this appeal. However, Oppenheimer respectfully requests that the Court take Bernstein’s course of conduct in, and knowledge gleaned from, the other appeal into account when considering Bernstein’s Response to Order to Show Cause so that this appeal is not unduly delayed like the other.¹

¹ In Case No. 4D16-0222, nearly three months after this Court initially ordered Bernstein to show cause why his appeal should not be dismissed, Bernstein has not yet filed his initial brief. As evidenced by his recent filing in this appeal, Bernstein continues (and will continue) to delay appellate proceedings, using an already-rejected “records” argument as a pretext for doing so.

WHEREFORE, Oppenheimer respectfully requests an order determining that Bernstein's Response to Order to Show Cause is both untimely and insufficient, and dismissing this appeal with prejudice.

Respectfully submitted,

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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 30th day of June, 2016.

/s/ Steven A. Lessne
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