

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.: 4D16-1478

L.T. No.: 2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN,

Appellant / Petitioners,

OPPOSITION TO APPELLEE'S,
MOTION TO CONSOLIDATE
APPEALS IN CASES NO. 4D16-
1449, 4D16-1476 AND THIS CASE,
4D16-1478

V.

TED S. BERNSTEIN, AS TRUSTEE,
et al.

Appellee / Respondent(s)

Appellant-Petitioner Eliot I. Bernstein, respectfully says and moves this Court as follows:

1. I am the Appellant-Petitioner Pro Se and in indigent status.
2. I make this motion opposing the motion by Ted Bernstein filed by his attorney Alan B. Rose to consolidate both the appeals under the Shirley Trust case and the Oppenheimer Trust case in relation to appointment of a Guardian against my two minor children and my one adult child.

3. Said motion by Alan Rose being filed August 4th, 2016 and the 10th day falling on a Sunday, non-business day, the filing of this opposition is timely within the Florida Rules of Appellate Procedure.
4. There is some sense of efficiency and economy in consolidating the 2 Shirley Trust cases but neither should be consolidated with the Oppenheimer Trust cases on appeal as the underlying facts are significantly distinct and separate and in fact the Oppenheimer Trusts were created prior to the passing of Shirley or Simon Bernstein and are thus not testamentary or probate cases and not related to Simon and Shirley's estate and trust cases.
5. Therefore, I oppose any consolidation of the Shirley Trust case and Oppenheimer cases for the purposes of the present appeals.
6. That Alan B. Rose, Esq. on August 03, 2016 sent a draft of the motion herein to Eliot Bernstein and by August 04, 2016 had already filed this present motion to consolidate stating he conferred with me, however he did not give ample time to respond as required before filing this motion.
7. That sharp practices are again found in this pleading whereby false statements are being made to this Court in attempts to continue an ongoing pattern and practice of Fraud on the Court that has yet to be dealt with according to Florida's Statewide Court fraud policy and established procedures for proven frauds upon the court in the first instance dating back

almost 4 years and still unregulated according to the court's own fraud policy procedures and law.

8. The Court may recall Alan B. Rose, Esq. attempting to slander and defame me and mislead this court by falsely altering Federal Judge Shira Scheindlin's August 08, 2008 Order in a pleading to this court, as exhibited herein in a filing stricken by this Court on procedural grounds dated 12/17/2015, "Petitioner's Reply to Ted Bernstein/Alan Rose Response:Motion for Re-Hearing En Banc"¹ Pages 5-8.
9. That while the Response was stricken by this Court on procedural rules, this Court became aware of the false conduct of attorney Alan M. Rose and fraud of altering a Federal Judge's written Order and ruling in order to falsely defame me and gain favor before the Courts and thus became responsible and liable for taking appropriate actions under the Florida Court Fraud Policy and law to report this misconduct (criminal misconduct) of an officer of this Court. Again, it appears that nothing has been done according to the Court's procedural rules, attorney ethics rules, judicial canons and law, again furthering the frauds and covering up such misconduct instead of reporting the crimes to the proper tribunals.

¹ 20151217 "Petitioner's Reply to Ted Bernstein/Alan Rose Response:Motion for Re-Hearing En Banc" @ https://edca.4dca.org/DCADocs/2015/3849/153849_1668_12172015_05412299_e.pdf (fully incorporated by reference herein.)

10. This current pleading again comes under a case filed in the lower court by attorney Alan B. Rose, in which the parties sued do not legally exist as admitted to by Alan B. Rose in an email dated March 08, 2016² whereby he confirms that no Simon Bernstein Trust dated September 13, 2012 exists and that the alleged beneficiaries sued, trusts allegedly created on behalf of the grandchildren under such non-existent trust and the trustee of those trusts sued, myself Eliot Bernstein, also do not factually exist. Thereby the case is yet another example of False Process and Fraud On the Court and all pleadings, orders, etc. issued without first reconciling the original frauds and subsequent frauds are further part of aiding and abetting such fraud.

11. The Court should note that attached to the email above of the Alan B. Rose is a copy of a different trust than the defendants sued hereunder, the Simon Bernstein Amended and Restated Trust dated July 25, 2012. However that Trust is not a defendant or plaintiff in these matters and it should be noted by the court that this trust document has never been produced to the court and both Ted Bernstein and Alan Rose have both stated in hearings that they have never seen or possessed the original of this alleged Trust that was improperly validated by Judge Phillips.

² March 08 , 2015

<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20160308%20Alan%20Rose%20Mrachek%20Letter%20Regarding%20No%20Trusts%20for%20Josh%20Jake%20and%20Danny%20under%20Simon%20Trust.pdf>

12.I, Eliot Bernstein have never been in possession of trusts created f/b/o my three children that I am alleged in this suit and sued as trustee under, Alan Rose has failed to produce to any party including this Court these trusts.

13.In fact, in the underlying case of this Appeal is the Shirley Bernstein Trust case and her beneficiaries of her IRREVOCABLE trust are Eliot, Jill and Lisa Bernstein and their family trusts created and funded in 2008, namely the Eliot Bernstein Family Trust, the Jill Iantoni Family Trust and the Lisa Friedstein Family Trust. When Shirley Bernstein died in 2010 her trust beneficiaries became set in stone and Irrevocable yet none of her true and proper beneficiaries were sued by Alan M. Rose and Ted Bernstein in this trust validity lawsuit.

14.The actual language of the underlying suit in the caption naming the Defendants and in the pleadings used by Florida attorney at law Alan B. Rose regarding the naming of the defendants being sued are as follows;

“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.;

15. This is or should be important to this Court simply because this case is fraught with Fraud on the Court nearly since its inception in the lower tribunal that remains uncorrected, uninvestigated, unregulated and ongoing and is another lawsuit where alleged trusts are suing defendants and then the

Plaintiffs either cannot be legally produced or the defendants. This case is almost identical to the FRAUD ON THE ILLINOIS FEDERAL COURT, where again, Ted Bernstein is suing parties under a trust he cannot produce and does not at this time legally exist, yet Ted knowing he did not possess or ever see a copy of the trust he sued people as Trustee of in Illinois regarding a 2-3+ million dollar life insurance policy.

16. That further forcing this case to seek a Federal Monitor to oversight the Florida Courts is the very fact that ALL the court ordered records of Tescher and Spallina have not been produced to this Court or any party at this time, despite the lower court ordering production of them after learning that Tescher and Spallina committed fraud and fraud upon the court. Yet, not a single valid original testamentary document has ever been produced even at a validity hearing brought by Plaintiff on December 15, 2015, where it was learned that none of the Plaintiffs nor their witnesses had possession of the original documents and the fiduciaries claimed never to have seen them or possessed them.

17. At this time it is unclear who the judges on each of the separate appeals is as all orders are being signed by the Clerk of this Court and wherefore until such time that Appellant knows of the judges in each case and determines if any are conflicted with these matters, Appellant states the cases should not

yet be commingled and consolidated. There are many possible conflicts that may arise, some already identified and unresolved with this Court and the lower court case is fraught with conflict and fraud.

18. That the Plaintiffs, Defendants, Counter Defendants and Counter Plaintiffs in the lower court cases of the Shirley Trust case and the Oppenheimer are wholly different and these cases should not be combined, however it may be expeditious and cost efficient to combine the two Shirley Trust cases and then separately combine the two Oppenheimer cases, after PRE determining any judicial conflicts and ferreting them out and first taking all actions according to the Statewide fraud policy in these matters and preclude further fraud on and by the courts of Florida, including calling in the Inspector General of courts, the Chief Judge (who may have conflict with parties in these matters already) and law enforcement.

19. Appellees Motion incorrectly states and moves this Court knowingly improperly all of the following;

a. Paragraph 4 - "By way of brief explanation, this is a probate matter."

The Court should question as Appellant does why two civil trust cases, the Shirley Trust lawsuit and the Oppenheimer Trust lawsuit are not in the proper Court in the first place, as both are not probate court matters but civil trust cases and appear further erroneously filed

and handled in the probate court and are not subject to the civil procedure laws of Florida. Certainly the Oppenheimer Trust case being created in 2010 prior to the passing of Shirley and Simon Bernstein is a Civil case although treated as Probate and should Not be Combined with the Shirley Trust case, which again appears filed in the wrong court.

- b. Paragraph 4 - “Eliot Bernstein is the son of Simon and Shirley Bernstein, and would have been one of their natural heirs.” Where Eliot Bernstein is and always was a natural heir of Shirley Bernstein’s trust and estate and once she passed away it was IRREVOCABLE. This further attempts to mislead the court.
- c. Paragraph 4 - “However, in their final testamentary documents, if valid, Eliot Bernstein was to be disinherited in favor of his children.” This also is untrue as in Shirley Bernstein’s testamentary documents Eliot is and always was a beneficiary and could not be disinherited in favor of his children, especially, again, when her beneficiary class became IRREVOCABLE the day she died. The attempt to change this fact is part of an ongoing pattern and practice of fraud on the court in these matters, as Ted Bernstein has made improper dispositions of Shirley’s Trust as part of a prior fraud on selling and

distributing property in Shirley's trust to improper parties including his family, where Ted is factually by the language of the trust, considered predeceased with his lineal descendant for "**ALL PURPOSES OF DISPOSITIONS [emphasis added]**" OF THE SHIRLEY TRUST, despite whether he is a valid trustee he cannot make any dispositions and when he did they were then fraudulently conveyed. Through this Shirley Trust case ordered by Martin Colin an attempt was made to make it appear legal that Simon Bernstein's beneficiaries (again not legally resolved through a construction hearing yet) were part of Shirley Bernstein's Trust and that they could be paid benefits instead of the true and proper beneficiaries of Shirley's IRREVOCABLE trust.

- d. Paragraph 4 - "Because the assets in these trusts would be distributed to Eliot Bernstein's children, that would leave nothing for him and would also mean he lacks individual standing to participate in the case below." A compound lie by Alan Rose where the assets of the Shirley Trust are already to be distributed upon her death to Eliot Bernstein through his Family trust as named in the Shirley Trust and Irrevocable upon her death and thus this again an attempt to mislead the court. Rose also tries to claim that Eliot would therefore lose standing if the

first false argument was true. Even if true, Eliot has multiple standing grounds as a beneficiary in Shirley's Trust, as a beneficiary of Shirley's Estate, as a co-trustee of the Eliot Bernstein Family Trust, as the father of my two minor children and father, with Power of Attorney over my adult son Josh, as an interested party, as an injured party of the fraud on the court by court officers and fiduciaries and as a proper heir to my parents properties and thus Appellant is a proper party with multiple standing in the case below that technically is improperly filed in the first place against non existent parties.

- e. Paragraph 6 - "After it was determined that Eliot Bernstein was not a beneficiary, the trial court then entered an order determining that he lacked standing to participate in the probate matter." There was no construction hearing at the sham validity hearing and beneficiaries were never litigated and the Order issued does not reflect the trial transcript. The trial court entered an order determining that Appellant lacked standing after Appellant could not produce the code section that gave beneficiaries and interested parties standing, where they were sued in the matters by Plaintiff and thus must have standing to counter sue and for false process if they end up not having standing and were sued improperly. Despite later giving the trial judge Phillips

the proper codes for standing the pleadings were rejected allegedly by a court order. Again, Appellant has multiple standing grounds in these matters.

- f. Paragraph 6 - “Despite that ruling, Eliot Bernstein still purported to act as the parent and natural guardian of his three children, who are beneficiaries.” Eliot is the the parent and natural guardian of his two minor children and has Power of Attorney of his adult son Joshua and Eliot’s children are not beneficiaries of the Shirley Bernstein Irrevocable Trust and this was never adjudicated in the lower court by the trial judge as part of construction hearing. The ruling is part of the ongoing fraud and an attempt to overturn a defined irrevocable trust beneficiary with no due process or procedure as no construction hearing was had in order to make the fraudulent conveyances made by Ted Bernstein to improper beneficiaries appear legal, a fraud wrapped inside a fraud and new layers of fraud added with each action by the courts in these matters without first curing the underlying frauds.
- g. Paragraph 6 - “Appellee, joined by Oppenheimer in its case, moved for the appointment of a guardian ad litem.” Appellant is not sure if this is a coherent sentence or an attempt to confuse the court as to how Guardian hearings were held without audio recordings, transcripts and

were NOT scheduled as GAL hearings rather probate evidentiary hearings?

- h. Paragraph 7 - “After an evidentiary hearing, the probate court found that Eliot Bernstein was acting "adverse" and "destructive" to the interests of his children, and therefore would no longer be permitted to serve as their natural guardian in the litigation, and ruled a Guardian Ad Litem needed to be appointed, in consultation of the parties.” The hearing was not scheduled as a Guardian Ad Litem hearing and therefore due process and procedure were wholly denied in efforts to secure a predatory guardianship over Appellant’s three children, two being minors at the time and one an adult in efforts to silence Appellant’s efforts at further exposing the frauds on the court and frauds by the court by wholly removing Appellant and his children’s due process rights through these false processes and orders gained from them. There are no trial records of these guardian hearings disguised as evidentiary hearings in a probate case that should be a civil case and therefore the cases were shams from start to finish as they were not legally heard according to procedural due process rules for guardianship hearings.

i. Paragraph 8 - “The issues to be decided in the consolidated appeals would be: (i) whether the trial court erred in appointing a guardian ad litem for Eliot Bernstein's children, as beneficiaries of certain trusts; and (ii) whether the trial court erred in appointing former circuit judge Diana Lewis as the guardian.” There is first the issue of if the case has been filed properly and if the defendants exist as sued. Then there is the issue of ongoing frauds and breaches of fiduciary duties and the issue of if the hearings were held improperly as part of a continuing and ongoing fraud on the court and fraud on this Court. Then there is the first issue of if this court is conflicted with Appellant and if any adjudicators of these appeals is acting in conflict of interest and finally if Ted Bernstein can move this Court or any court under the Shirley Bernstein trust where the language of the trust is clear that Ted Bernstein is considered predeceased for “**ALL PURPOSES OF DISPOSITIONS**” whether he was a named successor trustee or not and this pleading would be in efforts to make dispositions of Shirley’s Trust and thus further false process and further that Ted Bernstein is not now a validly serving trustee for a number of serious breaches of fiduciary duties and direct involvement in depositing fraudulent documents with the lower tribunal through and with his former

counsel Tescher and Spallina et al. and his current counsel, Alan B.
Rose et al.

WHEREFORE, Appellant respectfully prays for an Order denying the consolidation of the Guardianship appeal in the Shirley Trust case with the Guardianship appeal from the Oppenheimer case and for such other and further relief as to this Court may seem just and proper.

Dated: August 15, 2016

/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 15th day of August, 2016.

/s/ Eliot Ivan Bernstein

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