

IN THE CIRCUIT COURT OF THE 15th
JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA

WILLIAM E. STANSBURY,

CASE NO: 50 2012 CA 013933 MB AA

Plaintiff,

vs.

TED S. BERNSTEIN; DONALD TESCHER and
ROBERT SPALLINA, as co-personal
representatives of the ESTATE OF SIMON L.
BERNSTEIN and as co-trustees of the SHIRLEY
BERNSTEIN TRUST AGREEMENT dated
May 20, 2008; LIC HOLDINGS, INC.;
ARBITRAGE INTERNATIONAL MANAGEMENT, LLC,
f/k/a ARBITRAGE INTERNATIONAL
HOLDINGS, LLC; BERNSTEIN FAMILY
REALTY, LLC,

Defendants.

**DEFENDANT'S, ESTATE, AMENDED ANSWER, AFFIRMATIVE DEFENSES,
AND COUNTERCLAIM TO SECOND AMENDED COMPLAINT**

Defendant, Brian O'Connell, as Personal Representative of the Estate of Simon L. Bernstein
("Estate" or "Defendant"), files its answer, affirmative defenses, and counterclaim.

ANSWER

1. Admitted for jurisdictional purposes only and otherwise denied.
2. Without knowledge.
3. Denied, as he is no longer a party.
4. Admit the first and second sentence; admit that there is an estate proceeding, and that

Brian O'Connell is now serving as personal representative of the estate; and otherwise without
knowledge.

5. Denied, as it is no longer a party.
6. Denied, as it is no longer a party.
7. Without knowledge.
8. Denied, as it is no longer a party.
9. Admitted for jurisdictional purposes only and otherwise denied.
10. Without knowledge.
11. Admitted.
12. Admitted.
13. Without knowledge.
14. Without knowledge.
15. Admitted.
16. Without knowledge.
17. Without knowledge.
18. Admitted solely to the extent that the Plaintiff, at some point in time, was owner of
10% of the stock of LIC, and otherwise denied.
19. Denied.
20. Denied.
21. Denied.
22. Without knowledge.
23. Denied.
24. Denied.
25. Denied.

26. Denied.

27. Denied.

28. Denied.

29. Denied.

30. Denied.

31. Admitted solely to the extent that the Plaintiff, at some point in time, was no longer owner of 10% of the stock of LIC, and otherwise denied.

32. Denied.

33. Denied.

34. Without knowledge.

COUNT I

35. This count is not directed toward Defendant, and therefore, no response is necessary.

To the extent that any response is deemed necessary, Defendant denies all allegations of each paragraph.

36. See response to 35 above.

37. See response to 35 above.

COUNT II

38. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

39. Denied.

40. Without knowledge.

41. Without knowledge.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

COUNT III

47. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

48. Without knowledge.

49. Denied.

50. Denied.

51. Denied.

52. Denied.

COUNT IV

53. See response to 35 above.

54. See response to 35 above.

55. See response to 35 above.

56. See response to 35 above.

57. See response to 35 above.

COUNT V

58. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

- 59. Denied.
- 60. Denied.
- 61. Denied.
- 62. Denied.
- 63. Denied.

COUNT V (SIC)

- 64. See response to 35 above.
- 65. See response to 35 above.
- 66. See response to 35 above.
- 67. See response to 35 above.
- 68. See response to 35 above.
- 69. See response to 35 above.

COUNT VII

70. Defendants restate responses 1 to 34 above and any other paragraph which is properly incorporated into this Count.

- 71. Denied.

COUNT VIII

72. Defendants restate responses 1 to 34 and 45 above and any other paragraph which is properly incorporated into this Count.

- 73. Denied.
- 74. Denied.
- 75. Denied.

76. Denied.

77. Denied.

78. Denied.

COUNT IX

79. Defendants restate responses 1 to 34, 45, and Counts III and IV above and any other paragraph which is properly incorporated into this Count.

80. Denied.

81. Denied.

82. Denied.

83. Denied.

84. Denied.

COUNT X

85. Defendants restate responses 79 through 84 above, and any other paragraph which is properly incorporated into this Count.

AFFIRMATIVE DEFENSES

86. Plaintiff's claims are barred in whole or in part by the applicable statute of limitations.

87. Plaintiff's claims are barred in whole or in part by the statute of frauds.

88. Plaintiff's claims are barred in whole or in part because Plaintiff lacks standing to pursue derivative claims because he is no longer a shareholder in LIC and lacks standing to pursue other claims because is no longer an employee of LIC or Arbitrage.

89. Plaintiff's claims are barred because Stansbury is no longer is a shareholder in LIC.

90. Plaintiff's claims are barred in whole or in part by because Plaintiff has misjoined causes of action held in different capacities, and therefore, the Complaint is improper and, at a minimum, certain claims must be dismissed such that Plaintiff pursues only those claims he has in one capacity.

91. Plaintiff's claims are barred in whole or in part by the doctrine of waiver. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies and was aware of the alleged actions which form the basis of his claim, and waived any claims against Defendants.

92. Plaintiff's claims are barred in whole or in part by the doctrine of ratification. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and the alleged actions which form the basis of his claim, and ratified such alleged actions.

93. Plaintiff's claims are barred in whole or in part by the doctrine of estoppel. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore is estopped to assert any claims against Defendants.

94. Plaintiff's claims are barred in whole or in part by the doctrine of acquiescence. Plaintiff was aware of the facts and circumstances of the companies' operations, and the financial transactions and dealings within the companies, and was aware of the alleged actions which form the basis of his claim, and therefore acquiesced in the conduct about which he now complains.

95. Plaintiff's claims against the Estate's decedent, Simon L. Bernstein, are barred in whole or in part by the corporate shield doctrine. All of the actions allegedly taken by Simon

Bernstein were actions taken on behalf of a legal entity (corporation or limited liability company), and not on behalf of himself individually, and therefore, any claims against Bernstein individually are barred.

96. Plaintiff has failed to comply with the requirements of section 607.07401 of the Florida Statutes.

97. Plaintiff's claims are barred in whole or in part by the doctrine of laches, in that Plaintiff unreasonably delayed bringing these claims for numerous years, while continuing to work and continuing to receive compensation, benefits and distributions; and Defendant was prejudiced by such delay, including by their actions in continuing such employment and such benefits, and in other ways.

98. Plaintiff's claim against the Estate is barred in whole or in part because Plaintiff failed to properly include all or a portion of the relief requested in the Second Amended Complaint within his claim filed in the Defendant-decedent's probate proceedings. As such, those claims are now barred and Plaintiff is estopped from pursuing same as the three (3) month statutory period for filing claims against the Estate had expired before some or all of the claims were properly made.

99. Plaintiff has failed to state a cause of action for Constructive Trust because Plaintiff has failed to plead all necessary elements of such a claim.

100. Plaintiff's claims are barred in whole or in part by virtue of Plaintiff's settlement with LIC Holdings, Inc. ("LIC"), Arbitrage International Management, LLC ("AIM"), and Ted. S. Bernstein ("Ted"), which contained a general release of LIC, AIM and Ted from, among other things, any and all claims, actions, causes of action, debts, accounts, contracts, agreements, promises, damages and demands.

101. Plaintiff's claims, including the fraud and conspiracy claims, are barred because there is no proof that Simon Bernstein did not intend to fulfill any promises he allegedly made, at the time the alleged promises were made, and that any failures were caused by changes in the insurance industry and/or the collapse of the financial markets, which had an unforeseen, but immediate, negative impact on LIC and AIM, and the entire industry.

102. Plaintiff's conspiracy claims are barred by the release of Ted, as there are no co-conspirators.

102. Plaintiff's claims which require proof of reliance, including the fraud and conspiracy claims, are barred because Plaintiff cannot establish justifiable reliance on any representation by Simon Bernstein individually, under the facts and circumstances of this case.

WHEREFORE, having answered the Complaint, Defendant demands judgment in its favor, together with an award of costs and, pursuant to any applicable contract or statute, attorneys' fees, and such other relief as it just.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to the Service List set forth below

by: E-mail Electronic Transmission; Facsimile; U.S. Mail; Overnight Delivery;

Hand-delivery, this 19th day of October, 2016.

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