IN THE CIRCUIT COURT OF THE 15TH JUDICIAL CIRCUIT IN AND FOR

PALM BEACH COUNTY, FLORIDA CASE NO. 502014CP003698xxxxnb

TED BERNSTEIN, as Trustee of the Shirley Bernstein Trust Agreement dated May 20, 2008, as amended,

Plaintiff,

vs.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;MICHAEL BERNSTEIN; MOLLY BERNSTEIN' PAMELA B.

SIMON, individually and as Trustee f/b/o Molly Simon under the Simon L. Bernstein Trust Dtd 9/13/12; 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.; JILL IANTONI,

individually, as Trustee f/b/o

J.I. under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, J.I.; MAX FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as Trustee f/b/o Max Friedstein and C.F., under the Simon L. Bernstein Trust Dtd 9/13/12, and on behalf of her minor child, C.F.,

Defendants.

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HEARING BEFORE THE HONORABLE JUDGE ROSEMARIE SCHER

Volume 1 of 1

Pages 1 through 19

Tuesday, November 22, 2016

9:15 a.m. to 9:30 a.m. North County Courthouse

3188 PGA Boulevard, Courtroom 4 Palm Beach Gardens, Florida

1. APPEARANCES:
2. On Behalf of Ted S. Bernstein:
3. MRACHEK, FITZGERALD, ROSE, KONOPKA, THOMAS & WEISS, P.A.
4. 505 South Flagler Drive, #600 West Palm Beach, Florida 33401

5 561.655.2250

[arose@pm-law.com](mailto:arose@pm-law.com)

1. BY: ALAN ROSE, ESQ.
2. On Behalf of Molly Simon, Alexandra Bernstein, Eric Bernstein, Michael Bernstein :

8

JOHN P. MORRISSEY, P.A.

9 330 Clematis Street, Suite 213 West Palm Beach, Florida 33401

10 561.833.0867

[john@jmorrisseylaw.com](mailto:john@jmorrisseylaw.com)

1. BY: JOHN P. MORRISSEY, ESQ.
2. On Behalf of William Stansbury:
3. PETER M. FEAMAN, P.A.

3695 West Boynton Beach Blvd., Suite 9

1. Boynton Beach, Florida 33436 561.734.5552
2. [mkos@feamanlaw.com](mailto:mkos@feamanlaw.com)

BY: PETER M. FEAMAN, ESQ.

16

On Behalf of William Stansbury:

17

NANCY GUFFEY-LANDERS, P.A.

18 315 26th Street

West Palm Beach, Florida 33407

19 561.236.5113

[nguffeyappeals@bellsouth.net](mailto:nguffeyappeals@bellsouth.net)

1. BY: NANCY GUFFEY
2. On Behalf of Eliot I. Bernstein:
3. 2753 NW 34th Street

Boca Raton, Florida 33434

23 561.245.8588

Eliot I. Bernstein (iviewit@iviewit.tv)

24 BY: ELIOT I. BERNSTEIN, PRO SE (Via telephone)

25

1. APPEARANCES (CONT.):
2. On Behalf of Eliot Bernstein's minor children:
3. ADA & MEDIATION SERVICES, LLC 2765 TECUMSEH DRIVE
4. 2765 Tecumseh Drive

West Palm Beach, Florida 33409

5 561.758.3017

[dzlewis@aol.com](mailto:dzlewis@aol.com)

6 BY: DIANA LEWIS, ESQ. 7

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1. PROCEEDINGS
2. THE COURT: And I know that we have
3. Mr. Bernstein on the phone.
4. MR. ELIOT BERNSTEIN: Correct. I'm
5. present, Your Honor.
6. THE COURT: All right.
7. MR. ROSE: Morning, Your Honor.
8. May I approach?
9. THE COURT: Yes. Tell me what you're
10. approaching with.
11. MR. ROSE: This is Alan Rose. I
12. represent -- we're here really in the --
13. there's two or three related matters that
14. involve Simon and Shirley Bernstein, but we are
15. here on the Simon Bernstein estate and Shirley
16. Bernstein matter to approve a settlement. It's
17. essentially uncontested.
18. And after that -- may I?
19. And after that we wanted to approach you
20. because there's a number of open issues that we
21. need to address, having a status conference to
22. figure how best to -- we have a myriad of
23. motions.
24. May I approach? This is the motion to
25. approve, and attached are two orders that I
26. tabbed.
27. The gentleman on the telephone is Eliot
28. Bernstein.
29. Judge --
30. THE COURT: Let me stop you one second.
31. I didn't have this last night. I had a
32. bunch of stuff. But please make sure I get
33. anything you want me to read before. So let me
34. read this a second.
35. Settlement is effective immediately and
36. continued only upon the affirment of the Fourth
37. of the pending appeal.
38. MR. ROSE: Correct.
39. THE COURT: We'll go there in a second.
40. MR. ROSE: Okay.
41. THE COURT: And then I'm going to ask
42. everybody who's here, just tell me why they're
43. here.
44. Okay. Okay, Mr. Rose.
45. MR. FEAMAN: May I make an appearance?
46. THE COURT: That's what I said. I want
47. everyone who is here.
48. MR. FEAMAN: Sorry. I didn't hear. Thank
49. you.
50. Peter Feaman, Your Honor, and my partner,
    1. Nancy Guffey --
    2. THE COURT: Thank you.
    3. MR. FEAMAN: -- here on behalf of William
    4. Stansbury. Mr. Stansbury is a claimant against
    5. the Estate of Simon Bernstein in an amount in
    6. excess of $2 million contained in a separate
    7. independent action in the Circuit Court down at
    8. the main branch.
    9. THE COURT: Okay.
    10. MR. MAN: However, what's confusing I
    11. think is that there are two other --
    12. MR. ROSE: Are we making argument or
    13. appearances?
    14. MR. FEAMAN: -- cases.
    15. THE COURT: No. You were just doing
    16. appearances now. Go ahead and have a seat.
    17. MR. FEAMAN: Thank you.
    18. THE COURT: Thank you.
    19. MR. MORRISSEY: John Morrissey here on
    20. behalf of the adult grandchildren, four of the
    21. adult grandchildren of the decedent.
    22. Alexandra, Eric, Michael Bernstein, and Molly
    23. Simon.
    24. MS. LEWIS: And I'm Diana Lewis. I'm the
    25. guardian ad litem for the Eliot and Candace
51. Bernstein children, Joshua, Jake, and Daniel.
52. THE COURT: Thank you.
53. MR. ROSE: Mr. O'Connell might be on the
54. phone also.
55. Okay.
56. So this is the first time we've been
57. before Your Honor. This case has been in front
58. of four judges previously. French, Colin,
59. Coates, Judge Phillips. We finally started
60. making progress with Judge Phillips. He
61. conducted a trial last December and determined
62. who the beneficiaries are of the estate. He
63. then entered two further orders, which I
64. provided to you, that state that Eliot
65. Bernstein, the gentleman on the phone, lacks
66. standing and is no longer able to participate
67. in these proceedings, is not allowed to file
68. any papers.
69. So I expected this motion -- we're trying
70. to approve a settlement. It was entered into
71. at mediation. There's a guardian that
72. represents three of the children. And we're --
73. it's uncontested, the settlement, with anyone
74. that has standing to contest it.
75. So we expected this to be an unopposed
    1. motion to approve the settlement and then to
    2. address the status conference. If Your Honor
    3. had any concerns over the settlement, we can
    4. set it for a hearing. But, again, there's --
    5. nobody with standing has opposed the
    6. settlement. It's signed off by all of the
    7. parties and by the guardian who represents the
    8. interests of three children.
    9. And, again, when I set these for motion
    10. calendar I did not anticipate there being any
    11. objection to it.
    12. Obviously, Mr. Bernstein, the gentleman on
    13. the phone, has appeals pending and he can
    14. pursue his appellate rights.
    15. THE COURT: There's an order issued that
    16. he lacks standing on February 1st.
    17. MR. ROSE: Correct.
    18. So I really thought we'd walk through the
    19. two settlements, get them signed. I'm sure
    20. somebody is going to appeal them and, you know,
    21. we have to let that happen.
    22. We have two relatively modest estates.
    23. The Estate of Shirley Bernstein has nothing in
    24. it. And there's less than -- there's about a
    25. million dollars in her trust. The Estate of
76. Simon Bernstein has well less than a million
77. dollars. And we're burning the money every
78. time we do things. So we got it to a
79. mediation. And we have a mediation settlement
80. agreement that --
81. THE COURT: Let's start -- okay. So
82. there's a mediation settlement agreement --
83. MR. ROSE: Yes.
84. THE COURT: -- in the Estate of Simon
85. Bernstein.
86. MR. ROSE: Well, it was a global
87. mediation. So what we did was we entered the
88. settlement agreement. And I have --
89. THE COURT: And you see me shaking my
90. head. The only reason I'm shaking my head
91. is --
92. MR. ROSE: There are three pending
93. matters. We went to mediation on all three and
94. we resolved all three. So the settlement
95. agreement has the style of two of the cases.
96. THE COURT: Got it. Thank you.
97. MR. ROSE: I have a motion. I have the
98. same motion filed in the --
99. THE COURT: In the other case.
100. MR. ROSE: -- in both cases today. But,
     1. again, I thought they would be walked through.
     2. THE COURT: The look on my face is because
     3. the only thing I had in front of me were the
     4. objection to scheduling of hearings on motion
     5. calendar and motion for special set hearings.
     6. MR. ROSE: I apologize if we didn't
     7. forward it to Your Honor.
     8. How do you like -- do you like email or
     9. only mail?
     10. THE COURT: Whichever you want, as long as
     11. I get it.
     12. MR. ROSE: Email is fine?
     13. THE WITNESS: Email is fine. And Harriet
     14. will send it to me.
     15. MR. ROSE: The settlement is not the most
     16. important thing in the world. It's just
     17. something that we'd like to get done, because
     18. it allows us to start to make progress and to
     19. close the estate.
     20. THE COURT: Let me ask you. Let me ask
     21. you. Is the basic why we need -- and you're
     22. objecting to hearing anything today,
     23. Mr. Feaman?
     24. MR. FEAMAN: Yes.
     25. THE COURT: Do we have an outline of what
         1. needs to be set?
         2. MR. ROSE: Yes.
         3. THE COURT: Has everybody seen exactly and
         4. approved the outline of what needs to be set?
         5. Because I'm going to tell you -- she's shaking
         6. her head.
         7. JUDICIAL ASSISTANT: I'm not sure what
         8. he's referring to.
         9. THE COURT: Here's what I suggest and then
         10. tell me why I'm wrong. Okay? Since I know
         11. nothing right now, it is very likely that I am
         12. very wrong. But I would like to have what I
         13. call a fifteen minute scheduling conference.
         14. But before that happens, you take the lead and
         15. you say, here's everything I want to be heard
         16. and the amount of time I think we need. And
         17. you circulate it. So when you come in -- and I
         18. can do this November 29th at 9:30, so that you
         19. don't feel that I'm putting off everything.
         20. Okay?
         21. And -- thank you, Harriet.
         22. I want every person to have had their
         23. comments on the piece of paper that somebody
         24. will then present to the Court prior. This is
         25. what we need. We're all going to come here and
101. we're going to set everything that we need to
102. set, and figure out how we're going to proceed
103. forward in the case.
104. Does that works for you?
105. MR. ROSE: That works. But one of our
106. hopes, though, was if we could find some block
107. of time to have -- you know, they're all
108. related matters, rather have six hearings of
109. 15 minutes each.
110. THE COURT: That's something to talk about
111. too.
112. MR. ROSE: That's fine.
113. THE COURT: Hear these three together.
114. Everybody agree to hear these three together.
115. But if you don't, on November 29th you're going
116. to say, we think they should all be heard
117. together. We think -- but then see something
118. like the compromise and settlement, approve
119. that, that might be something that you want to
120. have heard first.
121. MR. ROSE: I understand. That's part of
122. why we're here, to find out how you want to
123. proceed.
124. THE COURT: I really appreciate it. I
125. don't want you to take anything -- it's good.
126. I'm meeting everybody. I'm getting to see all
127. the players, what we have going on, and then we
128. can proceed forward.
129. And since I don't feel horrible, since
130. it's only postponing it a week. So then we can
131. actually have the time just with you all versus
132. in motion calendar, you know, the last one
133. essentially before Thanksgiving where I have a
134. whole crew in here, and I don't feel I can give
135. you proper time.
136. And also, in the meantime, I would like to
137. understand a little more of what I'm looking
138. at. So if you could send me -- what I would
139. like is the proposal that has to be
140. finalized -- not the proposal. Everything that
141. you want to be heard, that list that you're
142. circulating.
143. What is that date?
144. JUDICIAL ASSISTANT: It's Tuesday.
145. THE COURT: Can you get that list to my
146. J.A. by Monday?
147. MR. ROSE: Sure.
148. THE COURT: So I can be educated and I
149. can -- do you know what I mean? So I can look
150. at some of this. Because I didn't realize
151. there were two separate cases. I saw Ted
152. Bernstein and Estate of -- but now I have a
153. better idea. I wondered why I got two stacks.
154. But then I was looking seeing the same
155. objections. So this way I can get up to speed
156. a little more.
157. MR. ROSE: I will also provide you with a
158. status report before that, our view of the case
159. and issues, in addition to the list.
160. THE COURT: Everybody can. If you all get
161. that to me Monday.
162. Here's my one thing. It can only be --
163. keep it to two double-spaced pages each. If
164. you can't tell me in two double page -- don't
165. get into all the minutia. I cannot have ten
166. pages from each person to be reading, and have
167. a hundred pages to be reading. Do you know
168. what I am saying? Give me the nutshell, so
169. that I'll read the nutshell. Direct me to for
170. more information. Okay? Is that fair?
171. MR. ROSE: This is the most important
172. thing, though, if we did not get anything to
173. you, is this case has been going -- we have a
174. 2011 and 2012 estate. This has been a circus.
175. It was a circus in front of the Judge Colin.
176. We came up and we got Judge Phillips as our
177. fourth judge and we regained order. We have a
178. procedure, we have judgments, we have rulings
179. of who has standing.
180. I mean, to some extent you're like a
181. substitute teacher that's coming into the case,
182. and now last night we got 400 pages from
183. Mr. Bernstein filed in violation of those two
184. orders. Mr. Feaman --
185. THE COURT: I'm going to read that order
186. before we come back, trust me.
187. MR. ROSE: You can keep those copies.
188. THE COURT: That's very good.
189. MR. ROSE: If you read the final judgment,
190. Your Honor, that's probably all I need to tell
191. you.
192. THE COURT: One second, Mr. Bernstein.
193. MR. ELIOT BERNSTEIN: Your Honor.
194. THE COURT: One second, Mr. Bernstein.
195. Yes.
196. MR. FEAMAN: Understood, Your Honor, and
197. agreed.
198. THE COURT: Okay. Thank you.
199. Now, of your documents, I'm going to
200. read -- I have the trustee motion to approve
201. compromised settlement. I have the order
202. determining he lacks standing. I have the
203. order successor.
204. Is there -- you'll also give me the two
205. pages. Perfect.
206. Anything else we didn't get to speak on?
207. MR. FEAMAN: Nothing further, Your Honor.
208. Thank you.
209. THE COURT: Okay. So we'll see you
210. November 29th at 9:30.
211. Mr. Bernstein, keep in mind I have an
212. order that says you have no standing. So
213. you've got two minutes.
214. MR. ELIOT BERNSTEIN: Okay.
215. Your Honor, that order is only for the
216. Shirley trust construction case and the
217. Oppenheimer case, which isn't a part of this
218. hearing today. There is no order issued for
219. standing in the Shirley Bernstein estate or
220. trust case. So that's a misrepresentation
221. material to the Court today by Mr. Rose.
222. Also, there's no guardianship orders
223. issued in the Shirley Bernstein estate or
224. Shirley Bernstein trust. And, therefore, the
225. guardian consenting to anything in the Simon
226. Bernstein estate or Shirley Bernstein estate is
227. outright criminal is the answer.
228. THE COURT: We're not going to make that
229. kind of allegation, so move forward.
230. MR. ELIOT BERNSTEIN: Okay. Further, in
231. the Shirley trust case, we've learned from
232. Mr. Rose that I have sued as trustee via the
233. Simon Bernstein trust dated 9/13/2012. That
234. trust does not exist according to his own
235. admission.
236. THE COURT: Okay. We're not having this
237. discussion now. All right, sir. Thank you
238. very much.
239. MR. ELIOT BERNSTEIN: Wait. There was one
240. last point. I have a medical order to not be
241. under stress until December 15, until further
242. order of the doctor. Mr. Rose is fully aware
243. of that, Mr. Feaman and Mr. Morrissey.
244. Everybody has been served it several times. I
245. put it in my pleading last night.
246. THE COURT: I have no idea what you're
247. talking about, your pleading last night.
248. MR. ELIOT BERNSTEIN: Okay. I filed a
249. motion in opposition that Mr. Rose just
250. mentioned that you'll have time to review
251. before the next hearing.
252. But in it is a medical doctor issued
253. statement that I shouldn't be under stress
254. until after December 15th. It could kill me.
255. And they both know this. And they shouldn't
256. have, you know, scheduled today's hearing
257. without me or consulting with me as I do have
258. standing in both the Shirley and Simon estate
259. cases.
260. And so, you know, it's putting me under a
261. lot of pressure here and it could kill me.
262. THE COURT: All right, sir. Sir.
263. MR. ELIOT BERNSTEIN: So not be heard
264. until after December 15th based on these
265. doctor's orders, a neurologist.
266. THE COURT: I'm only having a scheduling
267. conference on November 29th. You appeared
268. today. You can appear -- I am unsure at this
269. exact moment what your status is. So I'm going
270. forward with the November 29th hearing at 9:30.
271. Thank you very much for your appearance
272. today, sir.
273. All right. Next case.
274. (Thereupon, the hearing was concluded at 25 9:30 a.m.)



* 1. CERTIFICATE OF REPORTER
  2. STATE OF FLORIDA
  3. COUNTY OF PALM BEACH
  4. I, KIMBERLEY A. ROSS, Florida Professional
  5. Reporter, certify that I was authorized to and did
  6. stenographically report the hearing before the
  7. Honorable Rosemarie Scher, pages 1 through 18; and
  8. that the transcript is a true record of my
  9. stenographic notes.
  10. I further certify that I am not a relative,
  11. employee, attorney, or counsel of any of the parties,
  12. nor am I a relative or employee of any of the parties'
  13. attorneys or counsel connected with the action, nor am
  14. I financially interested in the action.
  15. Dated this 6th day of December, 2016. 16

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KIMBERLEY A. ROSS, FPR

1. Notary Public, State of Florida Commission # FF 950475
2. Expires: January 27, 2020 22

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