

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.

_____/

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:

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(Via telephone)

1 APPEARANCES (CONT.):

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PROCEEDINGS

THE COURT: And I know that we have
Mr. Bernstein on the phone.

MR. ELIOT BERNSTEIN: Correct. I'm
present, Your Honor.

THE COURT: All right.

MR. ROSE: Morning, Your Honor.

May I approach?

THE COURT: Yes. Tell me what you're
approaching with.

MR. ROSE: This is Alan Rose. I
represent -- we're here really in the --
there's two or three related matters that
involve Simon and Shirley Bernstein, but we are
here on the Simon Bernstein estate and Shirley
Bernstein matter to approve a settlement. It's
essentially uncontested.

And after that -- may I?

And after that we wanted to approach you
because there's a number of open issues that we
need to address, having a status conference to
figure how best to -- we have a myriad of
motions.

May I approach? This is the motion to
approve, and attached are two orders that I

1 tabbed.

2 The gentleman on the telephone is Eliot
3 Bernstein.

4 Judge --

5 THE COURT: Let me stop you one second.

6 I didn't have this last night. I had a
7 bunch of stuff. But please make sure I get
8 anything you want me to read before. So let me
9 read this a second.

10 Settlement is effective immediately and
11 continued only upon the affirmment of the Fourth
12 of the pending appeal.

13 MR. ROSE: Correct.

14 THE COURT: We'll go there in a second.

15 MR. ROSE: Okay.

16 THE COURT: And then I'm going to ask
17 everybody who's here, just tell me why they're
18 here.

19 Okay. Okay, Mr. Rose.

20 MR. FEAMAN: May I make an appearance?

21 THE COURT: That's what I said. I want
22 everyone who is here.

23 MR. FEAMAN: Sorry. I didn't hear. Thank
24 you.

25 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

1 Bernstein children, Joshua, Jake, and Daniel.

2 THE COURT: Thank you.

3 MR. ROSE: Mr. O'Connell might be on the
4 phone also.

5 Okay.

6 So this is the first time we've been
7 before Your Honor. This case has been in front
8 of four judges previously. French, Colin,
9 Coates, Judge Phillips. We finally started
10 making progress with Judge Phillips. He
11 conducted a trial last December and determined
12 who the beneficiaries are of the estate. He
13 then entered two further orders, which I
14 provided to you, that state that Eliot
15 Bernstein, the gentleman on the phone, lacks
16 standing and is no longer able to participate
17 in these proceedings, is not allowed to file
18 any papers.

19 So I expected this motion -- we're trying
20 to approve a settlement. It was entered into
21 at mediation. There's a guardian that
22 represents three of the children. And we're --
23 it's uncontested, the settlement, with anyone
24 that has standing to contest it.

25 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

1 Simon Bernstein has well less than a million
2 dollars. And we're burning the money every
3 time we do things. So we got it to a
4 mediation. And we have a mediation settlement
5 agreement that --

6 THE COURT: Let's start -- okay. So
7 there's a mediation settlement agreement --

8 MR. ROSE: Yes.

9 THE COURT: -- in the Estate of Simon
10 Bernstein.

11 MR. ROSE: Well, it was a global
12 mediation. So what we did was we entered the
13 settlement agreement. And I have --

14 THE COURT: And you see me shaking my
15 head. The only reason I'm shaking my head
16 is --

17 MR. ROSE: There are three pending
18 matters. We went to mediation on all three and
19 we resolved all three. So the settlement
20 agreement has the style of two of the cases.

21 THE COURT: Got it. Thank you.

22 MR. ROSE: I have a motion. I have the
23 same motion filed in the --

24 THE COURT: In the other case.

25 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

1 we're going to set everything that we need to
2 set, and figure out how we're going to proceed
3 forward in the case.

4 Does that works for you?

5 MR. ROSE: That works. But one of our
6 hopes, though, was if we could find some block
7 of time to have -- you know, they're all
8 related matters, rather have six hearings of
9 15 minutes each.

10 THE COURT: That's something to talk about
11 too.

12 MR. ROSE: That's fine.

13 THE COURT: Hear these three together.
14 Everybody agree to hear these three together.
15 But if you don't, on November 29th you're going
16 to say, we think they should all be heard
17 together. We think -- but then see something
18 like the compromise and settlement, approve
19 that, that might be something that you want to
20 have heard first.

21 MR. ROSE: I understand. That's part of
22 why we're here, to find out how you want to
23 proceed.

24 THE COURT: I really appreciate it. I
25 don't want you to take anything -- it's good.

1 I'm meeting everybody. I'm getting to see all
2 the players, what we have going on, and then we
3 can proceed forward.

4 And since I don't feel horrible, since
5 it's only postponing it a week. So then we can
6 actually have the time just with you all versus
7 in motion calendar, you know, the last one
8 essentially before Thanksgiving where I have a
9 whole crew in here, and I don't feel I can give
10 you proper time.

11 And also, in the meantime, I would like to
12 understand a little more of what I'm looking
13 at. So if you could send me -- what I would
14 like is the proposal that has to be
15 finalized -- not the proposal. Everything that
16 you want to be heard, that list that you're
17 circulating.

18 What is that date?

19 JUDICIAL ASSISTANT: It's Tuesday.

20 THE COURT: Can you get that list to my
21 J.A. by Monday?

22 MR. ROSE: Sure.

23 THE COURT: So I can be educated and I
24 can -- do you know what I mean? So I can look
25 at some of this. Because I didn't realize

1 there were two separate cases. I saw Ted
2 Bernstein and Estate of -- but now I have a
3 better idea. I wondered why I got two stacks.
4 But then I was looking seeing the same
5 objections. So this way I can get up to speed
6 a little more.

7 MR. ROSE: I will also provide you with a
8 status report before that, our view of the case
9 and issues, in addition to the list.

10 THE COURT: Everybody can. If you all get
11 that to me Monday.

12 Here's my one thing. It can only be --
13 keep it to two double-spaced pages each. If
14 you can't tell me in two double page -- don't
15 get into all the minutia. I cannot have ten
16 pages from each person to be reading, and have
17 a hundred pages to be reading. Do you know
18 what I am saying? Give me the nutshell, so
19 that I'll read the nutshell. Direct me to for
20 more information. Okay? Is that fair?

21 MR. ROSE: This is the most important
22 thing, though, if we did not get anything to
23 you, is this case has been going -- we have a
24 2011 and 2012 estate. This has been a circus.
25 It was a circus in front of the Judge Colin.

1 We came up and we got Judge Phillips as our
2 fourth judge and we regained order. We have a
3 procedure, we have judgments, we have rulings
4 of who has standing.

5 I mean, to some extent you're like a
6 substitute teacher that's coming into the case,
7 and now last night we got 400 pages from
8 Mr. Bernstein filed in violation of those two
9 orders. Mr. Feaman --

10 THE COURT: I'm going to read that order
11 before we come back, trust me.

12 MR. ROSE: You can keep those copies.

13 THE COURT: That's very good.

14 MR. ROSE: If you read the final judgment,
15 Your Honor, that's probably all I need to tell
16 you.

17 THE COURT: One second, Mr. Bernstein.

18 MR. ELIOT BERNSTEIN: Your Honor.

19 THE COURT: One second, Mr. Bernstein.

20 Yes.

21 MR. FEAMAN: Understood, Your Honor, and
22 agreed.

23 THE COURT: Okay. Thank you.

24 Now, of your documents, I'm going to
25 read -- I have the trustee motion to approve

1 compromised settlement. I have the order
2 determining he lacks standing. I have the
3 order successor.

4 Is there -- you'll also give me the two
5 pages. Perfect.

6 Anything else we didn't get to speak on?

7 MR. FEAMAN: Nothing further, Your Honor.
8 Thank you.

9 THE COURT: Okay. So we'll see you
10 November 29th at 9:30.

11 Mr. Bernstein, keep in mind I have an
12 order that says you have no standing. So
13 you've got two minutes.

14 MR. ELIOT BERNSTEIN: Okay.

15 Your Honor, that order is only for the
16 Shirley trust construction case and the
17 Oppenheimer case, which isn't a part of this
18 hearing today. There is no order issued for
19 standing in the Shirley Bernstein estate or
20 trust case. So that's a misrepresentation
21 material to the Court today by Mr. Rose.

22 Also, there's no guardianship orders
23 issued in the Shirley Bernstein estate or
24 Shirley Bernstein trust. And, therefore, the
25 guardian consenting to anything in the Simon

1 Bernstein estate or Shirley Bernstein estate is
2 outright criminal is the answer.

3 THE COURT: We're not going to make that
4 kind of allegation, so move forward.

5 MR. ELIOT BERNSTEIN: Okay. Further, in
6 the Shirley trust case, we've learned from
7 Mr. Rose that I have sued as trustee via the
8 Simon Bernstein trust dated 9/13/2012. That
9 trust does not exist according to his own
10 admission.

11 THE COURT: Okay. We're not having this
12 discussion now. All right, sir. Thank you
13 very much.

14 MR. ELIOT BERNSTEIN: Wait. There was one
15 last point. I have a medical order to not be
16 under stress until December 15, until further
17 order of the doctor. Mr. Rose is fully aware
18 of that, Mr. Feaman and Mr. Morrissey.
19 Everybody has been served it several times. I
20 put it in my pleading last night.

21 THE COURT: I have no idea what you're
22 talking about, your pleading last night.

23 MR. ELIOT BERNSTEIN: Okay. I filed a
24 motion in opposition that Mr. Rose just
25 mentioned that you'll have time to review

1 before the next hearing.

2 But in it is a medical doctor issued
3 statement that I shouldn't be under stress
4 until after December 15th. It could kill me.
5 And they both know this. And they shouldn't
6 have, you know, scheduled today's hearing
7 without me or consulting with me as I do have
8 standing in both the Shirley and Simon estate
9 cases.

10 And so, you know, it's putting me under a
11 lot of pressure here and it could kill me.

12 THE COURT: All right, sir. Sir.

13 MR. ELIOT BERNSTEIN: So not be heard
14 until after December 15th based on these
15 doctor's orders, a neurologist.

16 THE COURT: I'm only having a scheduling
17 conference on November 29th. You appeared
18 today. You can appear -- I am unsure at this
19 exact moment what your status is. So I'm going
20 forward with the November 29th hearing at 9:30.

21 Thank you very much for your appearance
22 today, sir.

23 All right. Next case.

24 (Thereupon, the hearing was concluded at
25 9:30 a.m.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA

COUNTY OF PALM BEACH

I, KIMBERLEY A. ROSS, Florida Professional Reporter, certify that I was authorized to and did stenographically report the hearing before the Honorable Rosemarie Scher, pages 1 through 18; and that the transcript is a true record of my stenographic notes.

I further certify that I am not a relative, employee, attorney, or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorneys or counsel connected with the action, nor am I financially interested in the action.

Dated this 6th day of December, 2016.



KIMBERLEY A. ROSS, FPR
Notary Public, State of Florida
Commission # FF 950475
Expires: January 27, 2020

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