

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 AN

Plaintiff,

vs.

ESTATE OF SIMON L. BERNSTEIN and
BERNSTEIN FAMILY REALTY, LLC,

Defendants.

**DEFENDANT'S, ESTATE OF SIMON BERNSTEIN, MOTION FOR PARTIAL
SUMMARY JUDGMENT ON ALL CLAIMS FOR FRAUDULENT TRANSFER,
CONSTRUCTIVE TRUST, EQUITABLE LIEN, AND OTHER RELIEF AGAINST
THE ESTATE RELATING TO BERNSTEIN FAMILY REALTY, LLC AND
FOR DISMISSAL WITH PREJUDICE OF ALL CLAIMS AGAINST BFR**

Defendant, Estate of Simon L. Bernstein (the "Estate"), moves for partial summary judgment against Plaintiff, William E. Stansbury ("Stansbury"), on all claims for fraudulent transfer, constructive trust, equitable lien, or otherwise directed against the Estate and/or Bernstein Family Realty, LLC ("BFR"), based upon the assertion that there was a fraudulent or inappropriate transfer of assets to BFR, and states:

1. This is an action by Stansbury against the Estate seeking damages against Simon Bernstein individually, for pre-death alleged misconduct, and has resulted in this independent action against Simon's Estate.

2. Included within the Second Amended Complaint ("SAC") are certain counts based upon a theory that Simon Bernstein fraudulently transferred or otherwise diverted funds to the entity

known as Bernstein Family Realty, LLC ("BFR") and to certain trusts.¹ At the time these claims initially were filed, it is possible that Stansbury was unaware of all of the relevant facts. However, by the time of filing the SAC, and certainly by now, Stansbury is aware Simon Bernstein did not fraudulently transfer assets to BFR. Indeed, it is established without doubt and without genuine issue of material fact that BFR has no assets that were *fraudulently* transferred to it by Simon. Instead, BFR acquired real property from Walter Sahm and his wife, in exchange for a purchase money mortgage in the reasonable equivalent value in favor of the Sahms. Although it appears Simon Bernstein provided BFR with the balance of the purchase price, this was not a fraudulent transfer or gratuity/gift. Instead, in exchange for the monies provided by Simon Bernstein, BFR granted to Simon Bernstein a second mortgage in the amount of \$365,000. (SAC, ¶45(e).) That second mortgage was for reasonably equivalent value and in exchange for a valid outstanding obligation to BFR, which is and remains as asset of Simon's Estate.

3. It is axiomatic that a loan in exchange for a fully executed and recorded mortgage on real property for the reasonable equivalent value cannot possibly constitute a fraudulent transfer, a gift, or any other form of actionable transfer. Stansbury has not provided any evidence that Simon Bernstein executed the second mortgage to BFR for less than equivalent value. See *Rodriguez v. Nieves*, 75 So. 3d 339, 340 (Fla. 3d DCA 20110 (affirming the dismissal of plaintiff's fraudulent transfer suit because plaintiff did not prove that Mortgagor executed the note and mortgage for less than equivalent value); § 726.105(1)(b), Fla. Stat. (2016)(plaintiff must prove that the debtor did not

¹ All claims against the trust created by the Shirley Bernstein Trust Agreement dated May 20, 2008, have been dismissed with prejudice. See DE 212: Plaintiff's Notice of Dropping Party Ted S. Bernstein and the Shirley Bernstein Trust as Parties; DE 213: Stipulation for Dropping Parties and Dismissal with Prejudice of Certain Claims and Counterclaims; and DE 214: Order of Dismissal With Prejudice of Certain Parties and Claims.

receive "reasonably equivalent value" in exchange for the transferred property). Thus, all claims in this action against Estate predicated on the assertion of a fraudulent transfer, and all claims seeking to impose a constructive trust, equitable lien or otherwise attach or encumber the assets of BFR, have no merit. Summary judgment should be granted and all such claims dismissed with prejudice. There is no legal theory upon which BFR can be liable to Stansbury because BFR engaged in a business transaction where it provided reasonably equivalent value – a loan of money in exchange for a promissory note secured by a mortgage on valuable real estate.

4. Movant has attached as Exhibit A to this motion, an affidavit² of Janet Craig, the former manager of BFR, confirming that BFR has no assets other than the real property encumbered by the Sahm mortgage and the Estate's mortgage. There is no evidence that Simon Bernstein made any other fraudulent or improper transfers to BFR of any kind. Therefore, this Court should grant summary judgment against Stansbury on all such claims.

5. Based upon the Craig Affidavit, BFR has no assets other than bare legal title to one residential property, which is subject to a purchase money mortgage and a second mortgage in favor of the Estate. In the unlikely event Stansbury ultimately prevails in this case, he then would have a claim against the Estate. The second mortgage in question is property of the Estate, and would be available to satisfy all or part of Stansbury's claim. In addition to lacking merit, the fraudulent transfer claims in this case are unnecessary and superfluous.³

² The affidavit inadvertently references an Exhibit "B."

³ It is possible Stansbury is claiming that Simon Bernstein improperly transferred monies to or for the benefit of his son Eliot Ivan Bernstein or any members of Eliot's family, without receiving reasonably equivalent value. If that is the case, Stansbury should file a fraudulent transfer action against those parties separate from this case. The "transfer claims" which have been included in the SAC have no place in this case.

6. In making this Motion, the Estate intends to rely on the (i) Second Amended Complaint [DE 154]; (ii) the Answer [DE 277]; and (iii) the Craig Affidavit.

7. Here, as provided in Rule 1.510, summary judgment should be rendered forthwith because the pleadings, affidavits, and other materials admissible in evidence which are on file in this record show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

WHEREFORE, the Estate requests that this Court enter a partial summary judgment against Stansbury on all claims based upon alleged fraudulent transfer, constructive trust, equitable lien, or otherwise against the Estate and/or BFR, and for the dismissal of all such claims against BFR, which will greatly simplify the issues for trial.

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 22nd day of December, 2016.

MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, P.A.
505 South Flagler Drive, Suite 600
West Palm Beach, Florida 33401
(561) 655-2250 Telephone
(561) 655-5537 Facsimile
Email: arose@mrachek-law.com; mchandler@mrachek-law.com
Counsel for Estate of Simon L. Bernstein

By: /s/ Alan B. Rose
Alan B. Rose (Florida Bar No. 961825)

SERVICE LIST - CASE NO. 502012CA013933XXXXMBAN

Bernstein Family Realty, LLC
c/o Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
(561) 734-5554 - Facsimile
Email: service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

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 AN

Plaintiff,

vs.

ESTATE OF SIMON L. BERNSTEIN and
BERNSTEIN FAMILY REALTY, LLC,

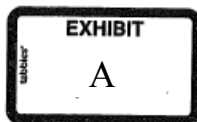
Defendants.

AFFIDAVIT OF JANET CRAIG

STATE OF DELAWARE)
)
COUNTY OF NEW CASTLE)

BEFORE ME, the undersigned authority, personally appeared Janet Craig, who was duly sworn, deposes and says:

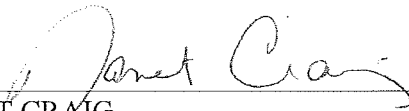
1. I am over 18 years of age, *sui juris*, and have personal knowledge of the facts and matters contained herein.
2. I am an officer of Oppenheimer Trust Company of Delaware ("Oppenheimer Trust").
3. In its capacity as trustee of three irrevocable trusts created by the late Simon Bernstein for the benefit of his grandchildren, Joshua, Jake and Daniel Bernstein on September 7, 2006 (the "Grandchildren Trusts"), Oppenheimer Trust maintained trust accounts for Daniel, Jacob and Joshua Bernstein. Also in its capacity as trustee of the Grandchildren Trusts, Oppenheimer Trust served as Manager of Bernstein Family Realty, LLC ("BFR"), an entity in which the Grandchildren Trusts collectively owned a 100% interest.
4. Oppenheimer Trust has since resigned as trustee of the Grandchildren Trusts and as Manager of BFR, and pursuant to the attached Final Judgment (Exhibit "A"), the ownership interest in BFR were transferred to Eliot and Candice Bernstein, as natural guardians of Jake, Joshua and Daniel Bernstein. *See* Exhibit "B."
5. As part of Oppenheimer Trust's resignation, it provided accountings and supplements to the Court, which were approved and ratified by the Court. Based upon all



information available to me, in my capacity as an officer of Oppenheimer Trust and administrator of the Grandchildren Trust accounts, the only assets of BFR were, prior to the above transfer to Eliot and Candice Bernstein: (i) title to the home of Eliot and Candice Bernstein, to wit: real property located at 2753 NW 34th Street, Boca Raton, FL 33434 (the "Real Property"), encumbered by two liens against the Real Property and (ii) a small cash account which received funds from the Grandchildren Trusts to pay bills associated with the Real Property (the "BFR Account"). The final cash balance of the BFR Account in the amount of \$5,377.32 was sent to the Palm Beach County Tax Collector on July 7, 2016 to pay down delinquent real estate taxes pursuant to Final Judgement dated June 6, 2016 (Exhibit "A").

6. Other than those assets identified above, I am not aware of any other assets (including, but not limited to, real property, personal property, cash, marketable securities or anything else of value) that were owned, directly or indirectly, by BFR at any time during Oppenheimer Trust's tenure as trustee of the Grandchildren Trusts or Manager of BFR.

FURTHER, AFFIANT SAYETH NOT.

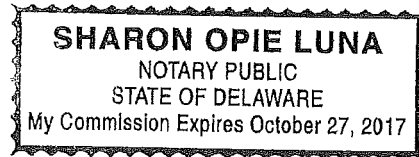


JANET CRAIG

Subscribed and sworn to before me this 19th day of December, 2016 by **JANET CRAIG**
 who is personally known to me or who has produced _____ as
identification, and who did (~~did not~~) take an oath.



NOTARY PUBLIC
My Commission Expires:



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

PROBATE DIVISION

CASE NO.: 502014CP002815XXXXNB (IH)

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,

Petitioner,

vs.

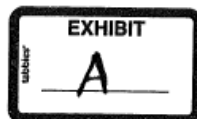
ELIOT AND CANDICE BERNSTEIN,
in their capacity as parents and natural
guardians of JOSHUA, JAKE AND
DANIEL BERNSTEIN, minors,

Respondents.

FINAL JUDGMENT

THIS CAUSE came before the Court upon the Motion For Entry Of Final Judgment (the “Motion”) filed by Petitioner, Oppenheimer Trust Company Of Delaware (“Oppenheimer”), in its capacity as the resigned trustee of three irrevocable trusts settled by Simon Bernstein on September 7, 2006 for the benefit of his grandchildren, Joshua, Jake and Daniel Bernstein (the “Grandchildren Trusts”). Having considered the Motion, the May 11, 2016 Report and Recommendation of the grandchildren’s Guardian *Ad Litem*, Diana Lewis (the “GAL”), and being otherwise duly advised in the premises, it is hereupon

ORDERED AND ADJUDGED as follows:



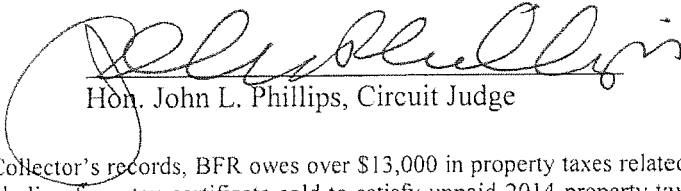
1. Final judgment is hereby entered in Oppenheimer's favor as to Count I of its Petition For Instructions, Approval Of Final Accounting, Release And Discharge ("Petition"). The Grandchildren Trusts are hereby terminated and, as proposed by Oppenheimer in its Plan of Distribution of Trust Assets, Oppenheimer shall distribute the liquid assets of the Grandchildren Trusts (approximately \$6,500) to the Palm Beach County Tax Collector to partially pay the property taxes due on the real property owned by Bernstein Family Realty, LLC ("BFR"), an asset wholly owned by the Grandchildren Trusts.¹ Oppenheimer shall distribute the remainder of the assets (the Grandchildren Trusts' interests in BFR and LIC Holdings, Inc.) as follows:

*to exist + Candice Bernstein
as natural guardian of
the children*

2. Final judgment is hereby entered in Oppenheimer's favor as to Count II of its Petition. Oppenheimer's accountings, as supplemented and amended, are approved in full. Oppenheimer and its former and current agents, employees and attorneys, together with Oppenheimer's parent and subsidiary companies, and all of their successors and assigns, are hereby released and discharged of all duties, claims, demands and liabilities arising out of or related to the Grandchildren Trusts or their assets.

DONE AND ORDERED in Chambers, Palm Beach County, Florida on

6-7-16, 2016.


Hon. John L. Phillips, Circuit Judge

¹ According to the Palm Beach County Tax Collector's records, BFR owes over \$13,000 in property taxes related to the home occupied by the grandchildren, including for a tax certificate sold to satisfy unpaid 2014 property taxes. The assets of the trust are insufficient to pay the property taxes in full.

Copies furnished to:

Oppenheimer Trust Company of Delaware
c/o Steven A. Lessne, Esq.
Gunster, Yoakley & Stewart, P.A.
4855 Technology Way, Suite 630
Boca Raton, FL 33431

Joshua, Jacob (Jake) and Daniel Bernstein
c/o Diana Lewis, their Guardian *Ad Litem*
ADR & Mediation Services, LLC
2765 Tecumseh Drive
West Palm Beach, FL 33409

Eliot Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434

Candice Bernstein
2753 N.W. 34th Street
Boca Raton, FL 33434