

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

WILLIAM E. STANSBURY,
Plaintiff,

CASE NO.: 502012CA013933XXXXMB
DIVISION: AA

v.

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

**PLAINTIFF'S RESPONSE TO 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
BERNSTEIN FAMILY REALTY, LLC**

Plaintiff, William E. Stansbury (hereinafter "Stansbury"), by and through his undersigned counsel, hereby files his Response in Opposition to Defendant, Estate of Simon Bernstein's 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 Bernstein Family Realty, LLC, and states as follows:

I. Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A. and attorney Alan Rose cannot represent Bernstein Family Realty, LLC because MFRKTW is not the attorney of record for Bernstein Family Realty, LLC

1. The Motion for Partial Summary Judgment must be denied because MFRKTW is not record counsel for Defendant, Bernstein Family Realty, LLC ("BFR").

2. Per Fla. Jud. Admin. Rule 2.505(e), to represent BFR in this matter, MFRKTA must first file a Notice of Appearance on the corporation's behalf or be properly substituted in as

counsel per appropriate Order. MFRKTA has failed to do so and therefore the firm cannot represent BFR in this litigation, seek any appropriate relief on its behalf, including arguing the motion for partial summary judgment. *Id.*

II. As a corporation, BFR can only be represented by its duly appointed counsel (if any) in this Florida court

3. It is well-established under Florida law that a corporation must be represented by counsel in Florida court proceedings. *Daytona Migi Corp. v. Daytona Automotive Fiberglass, Inc.*, 417 So. 2d 272 (Fla. 5th DCA 1982). A limited liability corporation is a Florida corporation and bound by this rule of law. *Id.*

4. Here, BFR does not currently have any counsel of record to represent it in this cause. Accordingly, it does not have any legal representative to seek any relief or properly raise any defense in this proceeding. Accordingly, MFRKTW's attempt to obtain partial summary judgment on behalf of BFR is impermissible and the Court should not entertain the motion.

III. BFR's Affidavit is Insufficient as a Matter of Law as it fails to demonstrate that the second mortgage provided to Mr. Bernstein by BFR constitutes reasonably equivalent value

5. In its motion for partial summary judgment, BFR asserts that it acquired real property from Walter Sahn and his wife in exchange for a purchase money mortgage (the "Sahn mortgage"). In exchange for the balance of the purchase price allegedly paid by Simon Bernstein for the real property, BFR granted to Mr. Bernstein a second mortgage in the amount of \$365,000. BFR contends that the loan by Mr. Bernstein in exchange for a fully executed and recorded mortgage on the real property for the reasonable equivalent value cannot possibly constitute a fraudulent transfer, a gift, or any other form of actionable transfer.

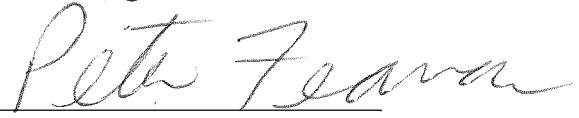
BFR has offered the affidavit of Janet Craig in support of its motion for partial summary judgment. Ms. Craig is an officer of the Oppenheimer Trust Company

("Oppenheimer"). Oppenheimer was manager of BFR and the trustee of three irrevocable trusts created by Mr. Bernstein for the benefit of his three grandchildren. Ms. Craig's affidavit is bereft of any opinion testimony that the second mortgage in the amount of \$365,000 constitutes a reasonably equivalent value. Indeed, Ms. Craig simply opines that BRF has no assets other than the real property encumbered by the Sahn mortgage and the second mortgage in favor of Mr. Bernstein. Accordingly, Ms. Craig's affidavit is insufficient to demonstrate that the second mortgage given to Mr. Bernstein by BFR was for reasonably equivalent value and the motion should be denied as there are issues of material facts on this particular issue that preclude the entry of partial summary judgment. *See Estepa v. Jordan*, 678 So. 2d 876 (Fla. 5th DCA 1996). Additionally, or alternatively, partial summary judgment should also be denied on the grounds that there is no expert opinion testimony and other record evidence that the second mortgage in favor of Mr. Bernstein was for reasonably equivalent value as contemplated by § 726.105(1)(b) Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by electronic service through the E-filing Portal to Email: Brian M. O'Connell, Esq. (*Personal Representative of the Defendant, Estate of Simon L. Bernstein*) 515 North Flagler Drive, 20th Floor, West Palm Beach, FL 33401, Email: boconnell@ciklinlubitz.com; service@ciklinlubitz.com; Alan Rose, Esq. (*Counsel for Defendant, Estate of Simon L. Bernstein*), PAGE, MRACHEK, 505 So. Flagler Drive, Suite 600, West Palm Beach, FL 33401, arose@pm-law.com and mchandler@pm-law.com; and, Eliot and Candice Bernstein, as parents and natural guardians of Joshua, Jake and Daniel Bernstein (*for Defendant, Bernstein Family Realty, LLC*) 2753 Northwest 34th Street, Boca Raton, FL 33434, Email: ivewit@ivewit.tv; ivewit@gmail.com; tourcandy@gmail.com, on this 14th day of February, 2017.

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