

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

CASE NO.: 502012CP004391XXXXNB IH

CERTIFIED COPY

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

TRANSCRIPT OF PROCEEDINGS BEFORE
HONORABLE JOHN L. PHILLIPS

DATE: September 1, 2016

TIME: 8:44 a.m. - 8:50 a.m.

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APPEARING ON BEHALF OF WILLIAM E. STANSBURY:

PETER M. FEAMAN, P.A.
3695 BOYNTON BEACH BOULEVARD, SUITE 9
BOYNTON BEACH, FL 33436
By: PETER M. FEAMAN, ESQ.

APPEARING ON BEHALF OF TED BERNSTEIN:

PAGE, MRACHEK, FITZGERALD ROSE
KONOPKA & DOW, P.A.
505 SOUTH FLAGLER DRIVE, SUITE 600
WEST PALM BEACH, FL 33401
By: ALAN B. ROSE, ESQ.

BE IT REMEMBERED, that the following
proceedings were taken in the above-styled cause before
the Honorable JOHN L. PHILLIPS, at the Palm Beach County
Courthouse, 3188 PGA Boulevard, Courtroom 3, in the City
of Palm Beach Gardens, County of Palm Beach, State of
Florida, on September 1, 2016, to wit:

1 P-R-O-C-E-E-D-I-N-G-S

2 - - - -

3 THE COURT: Good morning.

4 MR. ROSE: Mr. O'Connell is not here, but
5 he's in agreement on the two motions that I filed.

6 THE COURT: All right. So these are agreed
7 orders?

8 MR. ROSE: No, Mr. Feaman has objections, I
9 think.

10 THE COURT: All right. Well, let me take a
11 look at what the motions are and I'll figure out
12 what to do.

13 MR. ROSE: Okay. The easier one first.

14 THE COURT: Easy is good.

15 MR. ROSE: There's two trusts and two
16 estates. We sold some real estate. And there was
17 some personal property in the house -- in the
18 condo when it was sold. Technically, it was owned
19 by the Estate of Simon Bernstein, even though it
20 was in the house that was in the trust -- just
21 because of the way it was set up. So the deal was
22 we could sell it and we would even up later. So
23 we had everything appraised. And we have a motion
24 that Mr. O'Connell, the PR, and Mr. Bernstein, as
25 the trustee, have agreed to on the amount of the

1 even up. So we have a motion in both cases to
2 even up and pay \$12,704 from the Shirley Bernstein
3 trust to the Simon Bernstein estate.

4 THE COURT: Okay. Let me take a look at what
5 you've got, and then I'll hear from the other
6 side.

7 MR. ROSE: Okay. This is the motion and the
8 order in the trust. And Mr. O'Connell suggested
9 we file the same motion with the same order in
10 estate so we have covered both sides.

11 THE COURT: Okay. And what objection is
12 there to the proposed order that would even up the
13 distribution from the sale?

14 MR. FEAMAN: Good morning, Your Honor. Peter
15 Feaman on behalf of William Stansbury.
16 Mr. Stansbury is a claimant against the estate.
17 You may recall he has a separate action pending in
18 division AA against the estate for a significant
19 claim.

20 We are glad, Your Honor, that this
21 additional money is coming into the estate.

22 THE COURT: There you go.

23 MR. FEAMAN: Because that helps our position.
24 And we're sorry, however, that the personal
25 representative's representative is not here

1 because there are continuing issues about missing
2 property in this estate, not just jewelry, that I
3 mentioned last week. But the property that was in
4 the condo was insured at the time of Shirley
5 Bernstein's death for a hundred thousand dollars.

6 THE COURT: So you think that the personal
7 representative may have ripped the place off?

8 MR. FEAMAN: Well, it was a previous
9 representative. You heard Mr. Spalina testify in
10 your court in a previous case in December, and
11 Mr. Tescher, they had to resign as personal
12 representatives. And Mr. O'Connell, who is the
13 successor personal representative. So he wasn't
14 around when all of this --

15 THE COURT: Can I ask you this?

16 MR. FEAMAN: Yes, sir.

17 THE COURT: Sounds like you think that
18 somebody has been playing with the assets of the
19 estates.

20 MR. FEAMAN: Yes, sir.

21 THE COURT: And diminishing the value of the
22 estate that's available for your claim?

23 MR. FEAMAN: Yes, sir.

24 THE COURT: What does that have to do with
25 the even-up order that I'm being asked to do today

1 which deals with whatever there was in the estate
2 when the property was sold and the distribution to
3 even things up was made? What does that have to
4 do with this?

5 MR. FEAMAN: Yeah, that's why we're gratified
6 that this money is coming. At least this part is
7 coming into the estate.

8 THE COURT: Sounds like you've got something
9 else you want to do to pursue your thoughts that
10 there might have been fraud earlier. But does
11 that have anything to do with this? Or are you
12 okay with me signing this?

13 MR. FEAMAN: Not directly.

14 THE COURT: So you're okay with me signing
15 this?

16 MR. FEAMAN: Yes, sir.

17 THE COURT: Okay. So we're good.

18 MR. ROSE: We're good. Ms. Lewis, we're
19 good?

20 Well, this is easier than I thought.

21 Okay. Well, thanks.

22 It will be interesting to see how that
23 other issue works out. I mean, I understand
24 your concerns about other things. But as far
25 as the even up goes, we'll -- everybody will be

1 happily approving that.

2 MR. FEAMAN: I have not -- don't think I've
3 seen the order that you're signing, but...

4 THE COURT: Here's what it says: The motion
5 is granted. The Shirley trust will pay the
6 personal representative of Simon's estate \$12,457
7 for the sold personal property. And there will be
8 no further or outstanding obligations between
9 these parties.

10 Then the other -- kind of a mirror image
11 of what I just read. The motion is granted;
12 the Shirley trust will pay the personal
13 representative of Simon's estate \$12,457 for
14 the sold personal property. And there will be
15 no further or outstanding obligations between
16 those parties.

17 MR. FEAMAN: Yes, sir.

18 THE COURT: So that leaves open the issues
19 that you're concerned about.

20 MR. FEAMAN: Okay. Very good. Thank you.

21 THE COURT: Okay. Great. Good luck,
22 everybody.

23 MR. ROSE: We had one other motion that -- I
24 don't know -- again, limited opposition. Here's
25 the motion and the order. But I can tell you in

1 30 seconds the motion.

2 Mr. Feaman's client has a lawsuit against
3 the estate. The personal representative,
4 Mr. O'Connell, has decided he wanted to retain
5 my law firm because I've handled this
6 litigation for a year and a half before his
7 appointment. And he also wanted to appoint my
8 client, Ted Bernstein, who's the trustee in the
9 beneficiary of his estate as the administrator
10 ad litem to oversee the defense of the case to
11 save money. Because Ted will do it for free.
12 He was an officer of the company. He's been
13 defending the case when he was a party,
14 although he's been released. And we're very
15 concerned with the cost and expense. So having
16 Mr. Bernstein serve as the administrator, he's
17 the logical person to do it since he was a
18 party. He was a partner in the business. He
19 is the trustee of the --

20 THE COURT: Well, what's the problem?

21 MR. ROSE: Mr. Feaman's objecting to it. He
22 wants to choose who defends the company against
23 the claim -- who defends the estate in the claim
24 that his client has brought against the estate.
25 Mr. O'Connell and all the beneficiaries want it to

1 be as we've put it in the motion.

2 THE COURT: Okay. So what's the objection?

3 MR. FEAMAN: My position is being
4 misrepresented, respectfully, by opposing counsel.

5 THE COURT: Okay.

6 MR. FEAMAN: My client does not want to
7 choose who comes in as administrator ad litem. My
8 client objects to the particular individual of Ted
9 Bernstein coming in as administrator ad litem.

10 THE COURT: This is an evidentiary matter.
11 So just set it for an evidentiary hearing and
12 we'll figure it out. Or somebody else will figure
13 it out.

14 MR. FEAMAN: Yes, sir.

15 MR. ROSE: Can we agree that the part that's
16 unopposed would be that our firm can be retained
17 by the estate? Because we want to get the
18 litigation moving. And then we would defer the
19 other part for an evidentiary hearing.

20 THE COURT: Is that okay?

21 MR. FEAMAN: I don't think, honestly, Your
22 Honor, in candor with the court, that
23 Mr. Stansbury could be in a position to take a
24 position on that one way or the other as to who
25 the estate wants to pick as counsel to defend them

1 in that lawsuit.

2 THE COURT: I agree with you. I agree with
3 you.

4 MR. ROSE: The only other thing, unless
5 Mr. O'Connell, who is not here, has any objection
6 to that, I'll submit -- I'll revise the order and
7 submit it to you.

8 THE COURT: Let me give this back to you so I
9 don't get it mixed up and accidentally sign it. If
10 you would send it in with just a short
11 recollection letter so I won't forget.

12 MR. ROSE: And I'll circulate the proposed
13 order that covers that to everybody before I
14 submit it to Your Honor.

15 THE COURT: Okay. All right. Well, good
16 luck.

17 MR. FEAMAN: Thank you, Your Honor.

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21 (Thereupon, the proceedings were
22 concluded at 8:50 a.m.)

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C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, DAVID L. MARSAA, Professional Reporter,
State of Florida at large, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a
true and complete record of my stenographic notes.

Dated this 7th day of September, 2016.



DAVID L. MARSAA, COURT REPORTER

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