

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

CASE NO. 502012CP004391XXXXNB (IH)

IN RE: ESTATE OF SIMON L.
BERNSTEIN,

Deceased.

**MOTION FOR SUMMARY JUDGMENT DENYING TED S. BERNSTEIN'S
MOTION TO RATIFY AND CONFIRM APPOINTMENT OF
TED S. BERNSTEIN AS SUCCESSOR TRUSTEE OF TRUST, WHICH IS SOLE
BENEFICIARY OF THIS ESTATE (D.E. 473)**

COMES NOW William Stansbury ("Stansbury"), claimant and interested person of the Estate of Simon L. Bernstein, by and through his undersigned attorney, and moves this Court to enter Summary Judgment denying the Motion of Ted Bernstein to Ratify and Confirm his appointment as Successor Trustee of the Trust (D.E. 473), and as grounds therefor would show unto the Court as follows:

1. After a series of hearings held on February 16, 2017, March 2, 2017 and March 16, 2017, this Court entered its "Order Denying Motion to Vacate and Denying Motion to Disqualify for Inappropriate Jurisdiction, Alternatively, Denying on its Merits, and Order Denying Appointment of Ted Bernstein as Administrator Ad Litem," rendered on April 27, 2017 (D.E. 611).
2. In paragraph 32 of that Order, the Court made the specific finding that "...the Estate and Ted are adverse in the Illinois lawsuit."
3. The Court determined that Ted Bernstein is currently the Plaintiff in the "Illinois action" and as long as that action is still pending, Ted Bernstein remains adverse to this Estate.

4. Florida Statute 736.0802, Fla. Stat. (2016) states that the primary duty of a Trustee is:

736.0802 Duty of Loyalty.

(1) As between the trustee and the beneficiaries a trustee shall administer the trust solely in the interest of the beneficiaries.
(emphasis supplied).

5. Ted, by holding his position adverse to the Estate, violates his duty of loyalty to the beneficiaries of the Trust, because as the Court found in paragraph 10 of its Order, the Trust is “the primary beneficiary of the estate via a pourover will” and “The beneficiaries of the trust are Simon’s ten grandchildren.”

6. If Ted Bernstein and the other Plaintiffs prevail in the Illinois insurance litigation, the life insurance proceeds will not go to the Estate and ultimately not to the Trust and Simon’s ten grandchildren. Rather, the proceeds would be paid to Simon Bernstein’s children, contrary to his intention as expressed in his Last Will and Testament and his Trust.

7. As a result of Ted Bernstein’s prosecution of the Illinois insurance litigation, Ted is seeking to deprive the Estate of \$1.7 million in life insurance proceeds, and ultimately the Trust will be deprived of the life insurance proceeds. The conflict of interest is obvious and should disqualify Ted Bernstein from serving in any fiduciary capacity in the Estate or the Trust as long as he is adverse to the Estate.

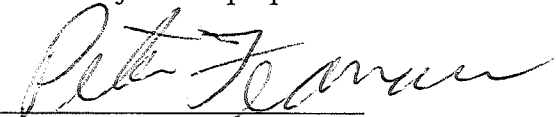
8. Also, in accordance with Florida Statute §736.0706(1), Fla. Stat., (2016), “...a trustee may be removed by the court on the court’s own initiative ...” independent of any particular motion.

WHEREFORE, William Stansbury requests this Honorable Court to find:

1. The Successor Trustee Ted Bernstein holds a position adverse to the Trust;
2. Ted Bernstein is facially unqualified to perform his duties as Successor Trustee

because of his adverse position to the Trust; and

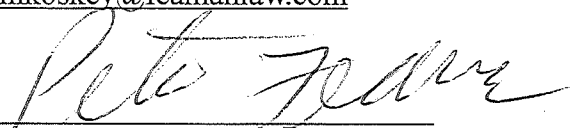
To enter an Order of Summary Judgment holding that Ted Bernstein be removed as Successor Trustee together with any other relief this Court deems just and proper.


Peter M. Feaman

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above and foregoing has been forwarded via e-mail service through the Florida E-portal system to those listed on the attached service list, on this 5th day of May, 2017.

PETER M. FEAMAN, P.A.
3695 West Boynton Beach Blvd., #9
Boynton Beach, FL 33436
Telephone: (561) 734-5552
Facsimile: (561) 734-5554
Service: service@feamanlaw.com
mkoskey@feamanlaw.com

By: 
Peter M. Feaman
Florida Bar No. 0260347

SERVICE LIST

Alan Rose, Esq.
Mrachek, Fitzgerald Rose
505 S. Flagler Drive, #600
West Palm Beach, FL 33401
Counsel for Ted Bernstein
arose@pm-law.com and
mchandler@pm-law.com

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
iviewit@iviewit.tv

Brian O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens &
O'Connell
515 N. Flagler Drive, 20 Flr.
West Palm Beach, FL 33401
Personal Representative
boconnell@ciklinlubitz.com
service@ciklinlubitz.com

*Lisa Friedstein and
Carley Friedstein, Minors
c/o Jeffrey and Lisa Friedstein
Parent and natural Guardian*
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com
lisa.friedstein@gmail.com

*Joshua , Jacob and Daniel
Bernstein,*
c/o Guardian Ad Litem
Ret. Judge Diana Lewis
2765 Tecumseh Drive
West Palm Beach, FL 33409
dzlewis@aol.com

Gary Shendell, Esq.
Shendell & Pollock, P.L.
2700 N. Military Tr., Ste. 150
Boca Raton, FL 33431
*Counsel for Donald R. Tescher
& Robert L. Spallina*
gary@shendellpollock.com
ken@shendellpollock.com
matt@shendellpollock.com
estella@shendellpollock.com
britt@shendellpollock.com
grs@shendellpollock.com
robyne@shendellpollock.com

Pamela Beth Simon
950 N. Michigan Ave., #2603
Chicago, IL 60611
psimon@stpcorp.com

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
*Counsel for Molly Simon,
Alexandra Bernstein,
Eric Bernstein, Michael
Bernstein*
john@jmorrisseylaw.com