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

IN RE: Case No. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,

 Deceased.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**ESTATE BENEFICIARY WITH STANDING AND INTERESTED PERSON ELIOT I. BERNSTEIN’S OPPOSITION AND RESPONSE TO TRUSTEE'S MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND MOTION FOR STAY OF FURTHER PROCEEDINGS UNTIL DISCOVERY COMPLIANCE, DEPOSITIONS AND CONFLICTS OF INTEREST DETERMINED**.

COMES NOW ELIOT I. BERNSTEIN and in OPPOSITION AND RESPONSE to the Motion for Approval of Settlement Agreement, states as follows:

1. I am Eliot Bernstein pro se, a Beneficiary of the Estate of Simon Bernstein with standing and an interested party herein.
2. This matter should be Stayed at this time and adjourned pending outcome of future hearings and the sorting out of conflicts of interest and correction of the multiple and various frauds upon the Court, Fraud Upon the Beneficiaries and Interested Parties and until such time as the Court performs its mandatory obligations under law to address the frauds which this Court of Judge Scher has now personally witnessed in these cases involving Ted Bernstein, Alan Rose and at minimum the tacit complicity of PR Brian O’Connell, frauds that have gone on for over a year and which have directly denied Eliot’s Constitutionally Protected Due Process and Procedure rights in these matters and impacted other proceedings and litigation similarly including but not limited to federal litigation in the Northern District of Illinois in certain Life Insurance matters and now pending at the US Court of Appeals for the 7th Circuit.
3. Part of these conflicts of interest and the need for the Courts to use its Inherent powers is set out in the federal litigation in Illinois and I have attached as Exhibits filings before the US 7th Circuit Court of Appeals and a Motion for an Injunction filed in the US District Court under the All Writs Act which is also the subject of appeal at the 7th Circuit which not only highlights the conflicts but further provides grounds for this Court to Stay proceedings and use injunctive powers clearly demonstrating “Missing Millions”, “Missing Originals”, “Missing Witnessses” and related conflicts. See Exhibit 1 Motion to Accept Late Filing at US 7th Circuit; Exhibit 2 Jurisdictional Statement at US 7th Circuit, Exhibit 3, All Writs Act Injunction at US District Court.
4. The Conflicts of interest in this case, however, go deeper as thus far Claimant Stansbury has “settled” with Ted Bernstein in an Undisclosed Settlement not approved by any Court which has improperly allowed Ted Bernstein to settle out “indivdually” claims against himself made by Stansbury while also simultaneously acting in the role as Trustee of the Shirley Trust and PR of the Shirley Estate and further on behalf of other corporate entities thus shifting the burden of liability to the Estate of Simon Bernstein where there has been no production of Records from the Corporate entities and no Hearings on Accountings from the Shirley Bernstein Trust or Estate or any Hearings on Objections to Accountings in the Simon Trust or Estate.
5. The Conflicts are more exaggerated when contemplating that William Stansbury himself is and was at all relevant times the “Trust Protector” for substantial investments at Wilmington Trust which according to Account statements in August of 2012 just weeks before Simon’s death reflected approximately $2.8 Million for Simon Bernstein’s 49% share in BFI ( Bernstein Family Investments ) which remains wholly unaccounted for and missing.
6. This is even more exaggerated by the suggestion of William Stansbury that it was likely that Shirley Bernstein’s 49% in BFI also had holdings with Wilmington Trust which could make this nearly $6 Million Unaccounted for yet there are no Accountings or Hearings thus far granted by this Court despite these parties and this Court being aware of these actions for more than an adequate period of time, exceeding months at this point.
7. It is anticipated that William Stansbury will continue to cooperate with myself and will provide further Sworn Statements in these proceedings highlighting his knowledge of improprieties, fraud and further that Stansbury has indicated his Counsel Peter Feaman will voluntarily agree to a Deposition statement on his knowledge of fraud and procedural and substantive improprieties including in leading up to the Validity Trial itself and the parties simply need to gather a date for such Deposition which should be timely held as this will also impact the ongoing Illinois litigation.
**THIS COURT, JUDGE SCHER PRESIDING, HAVING PERSONALLY WITNESSED AND REVIEWED FRAUD UPON THE COURT INVOLVING TED BERNSTEIN AND HIS ATTORNEY ALAN ROSE SHALL PERFORM MANDATORY OBLIGATIONS, ADDRESS CONFLICTS OF INTEREST; STAY PROCEEDINGS, ORDER DISCOVERY AND DISCOVERY COMPLIANCE PENDING FURTHER HEARINGS TO BE SCHEDULED**
8. Judge Scher has Witnessed and has knowledge of proven Fraud before this Court by Ted Bernstein and Alan Rose which has at least been tacitly permitted by PR Brian O’Connell and has gone on for over a year and impacted multiple proceedings.
9. Judge Scher is obligated under law to Order appropriate Discovery to correct these frauds and held proper evidentiary hearings. Part of the fraud to be addressed herein as set out to the US District Court and 7th Circuit is Tescher and Spallina being “orchestrated out” of liability in the Insurance case in Illinois while now being likewise “settled out” by the same conflicted Fiduciaries and thus must be stayed until the fraud is resolved.
10. This Court’s Order of April 27, 2017 confirms in part one avenue of the Fraud whereby Ted Bernstein and Alan Rose have falsely put forth a scheme to deny Eliot Bernstein standing and fair opportunities to be heard in the proceedings on the grounds he was not a Beneficiary “of anything” and not a beneficiary in the Estate of Simon Bernstein.
11. This Court of Judge Scher has or should have actual direct knowledge having had sufficient time to review the Records of proceedings on file with the 15th Judicial and the filings of the parties to know and actually know there has been NO CONSTRUCTION HEARING on the Operative Testamentary documents, No Notice of any such hearing and no hearing in fact occurring and that this fraud directly spills over to the entire Shirley Bernstein Trust and Estate case and all matters should be stayed.
12. The Transcripts show PR O’Connell can not point to any Construction Hearing held with Due Process Notice and attorney Peter Feaman should be able to verify this fact which is also obvious from the face of the records.
13. This thus takes the entire fraud into the Shirley Bernstein Estate and Shirley Bernstein Trust and this Court has an absolute obligation to Stay any further matters until addressing this Fraud or face mandatory Disqualification.
14. This Court’s Order approving any Settlement by Ted Bernstein and the Shirley Bernstein Trust and or Estate should be vacated at this time.
15. This Court will see and should see that the fraud that kept Eliot Bernstein improperly out of the Estate of Simon Bernstein was furthered in the Shirley Bernstein Trust case.
16. There is no Order of the 4th DCA that controls or addresses these matters and any Order by Judge Phillips is an interlocutory Order which is not Final and subject to correction upon fraud and related grounds.
17. There is no Proper consent in the Record of adult children Josh and Jake Bernstein who have not been Noticed or Summoned to these proceedings.
18. Eliot Bernstein is a named Beneficiary in the Shirley Trust and a beneficiary in the Shirley Estate where direct frauds by Tescher and Spallina have occurred.
19. Eliot Bernstein should have full access to the alleged Settlement agreement and terms before the Court goes further.
20. There is ample evidence to show by clear and convincing standards that the Trustee and his attorney Alan Rose began ( or continued ) a fraudulent scheme set in motion and continued after the Validity Trial to fraudulently and wrongfully deny Eliot Bernsteint “standing” and the “opportunity to be heard” in the proceedings leading up to the Order and after.
21. As this Court has repeatedly held, “the beneficiary’s interest vested upon the death of the decedent, when the trust became irrevocable.” See, Hilgendorf v. ESTATE OF THELMA COLEMAN and JENNILYNN K. SMITH, No. 4D15-4870 ( 4th DCA Oct. 2016 ).
22. Eliot Bernstein’s interest as a beneficiary of the Shirley Bernstein Trust vested when Shirley Bernstein passed in Dec. of 2010.
23. A beneficiary’s interest in a trust vests upon the death of the settlor. Sorrels v. McNally, 89 Fla. 457, 105 So. 106, 107 (Fla.1925).
24. As set out in this 4th DCA’s 2014 decision in DORIS RICH CORYA, as Trustee of the Sanders Trust, et al v. Roy Sanders, Nos. 4D12-3067 and 4D12-3926 ( 4th DCA Nov. 2014, “Failure to prepare an accounting is a breach of trust by a trustee. § 736.1001(1), Fla. Stat. (2008). The failure is also referred to as a breach of fiduciary duty. McCormick v. Cox, 118 So. 3d 980, 986-87 (Fla. 3d DCA 2013) (holding that evidence that trustee filed no annual accounting was
competent substantial evidence of a breach of fiduciary duty). A breach of trust or fiduciary duty is the equivalent of at least a negligent tort, and, under certain facts, may be an intentional tort. The breach may result in an award of damages against the trustee personally. §§ 736.1002(1), 736.1013(2), Fla. Stat. (2008).” See, DORIS RICH CORYA, as Trustee of the Sanders Trust, et al v. Roy Sanders, Nos. 4D12-3067 and 4D12-3926 ( 4th DCA Nov. 2014),
25. Eliot Bernstein has properly shown this Court “missing millions” by these fiduciaries and this Court is well aware that there have been no Hearings on Accounting Objections and in many instances No Accountings filed for months beyond proper times, there have been No construction hearings.
26. Judge Scher has personally heard PR O’Connell and others dodge and not have any of the records such as the LIC records or know what he has seen and this pattern repeats in each instance to all the fiduciaries such that this Court must now act to correct the frauds and conflicts of interest or face mandatory Disqualification.
27. Further, the Successor Trustee of the Simon Bernstein Amended and Restated Trust Agreement dated July 25, 2012, Ted S. Bernstein, on May 8, 2017, noticed for hearing his "Trustee's Motion to (i) approve Compromise and Settlement, (ii) Appoint a Trustee for the Trusts Created for D.B., JA.B. and JO.B, and (iii) Determine Compensation for Guardian ad Litem."
28. On May 5, 2017, William Stansbury served his Motion for Summary Judgment on the Successor Trustee's Motion to be Ratified as Successor Trustee, Filing # 56054058 E-Filed 05/05/2017 12:18:17 PM, pointing out that the Court had determined that there is a conflict between Ted Bernstein and the Estate of Simon Bernstein and that Ted Bernstein is adverse to the Estate of Simon Bernstein in connection with the pending litigation in Illinois.
29. In light of the finding by the Court that a conflict exists between Ted Bernstein and the Estate of Simon Bernstein, Eliot respectfully requests this Court to defer ruling on any Motions by the purported Successor Trustee Ted Bernstein concerning the Simon Bernstein Amended and Restated Trust until such time as the Court determines the propriety of Ted Bernstein serving as Successor Trustee.
30. Moreover, the Trustee's Motion to approve Compromise and Settlement is governed by§ 733.708, Fla. Stat., which provides that a Court may enter an order authorizing a compromise only if the Court is "satisfied that the compromise will be for the best interest of the interested parties."
31. The alleged Successor Trustee's Motion to approve Compromise and Settlement also asserts that the settlement is confidential and offers to provide the Court with an in camera review of it. However, unless all interested parties, including Stansbury, as well as the Court, know the details of the settlement, it is impossible to determine whether such compromise is in "the best interest of the interested persons," as required under§ 733.708, Fla. Stat.
32. Therefore, any hearing on the Successor Trustee's Motion to approve and Compromise and Settlement should be scheduled only after full disclosure of the settlement details to all interested parties (including Eliot and Creditor William Stansbury), resolution of all conflicts of interests and adverse interests of Ted Bernstein acting as Trustee and resolution and reporting of all frauds this Court has now become aware of.
33. WHEREFORE, in light of the finding by the Court and Stansbury's Motion for Summary Judgment, Eliot respectfully requests this Court to defer ruling on any Motions by the Successor Trustee concerning the Simon Bernstein Amended and Restated Trust until such time as the Court determines the propriety of Ted Bernstein serving as Successor Trustee, with full disclosure of the details of the proposed settlement to all interested persons, resolve all conflicts and adverse interests of Ted Bernstein, resolve all fraud through correction of pleadings and orders gained through fraudulent pleadings and testimony and notification to the proper tribunals and authorities affected by the fraud and stay such matters until Discovery is properly completed and further hearings held and such other relief as this Court deems just and proper. ·

Respectfully submitted,

Dated: June 28, 2017

 **/s/ Eliot Ivan Bernstein**
 Eliot Ivan Bernstein

 2753 NW 34th St.

 Boca Raton, FL 33434

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the within has been served upon all parties on the attached Service List by E-Mail Electronic Transmission and/or Court ECF on this 28th day of June, 2017.

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**EXHIBIT 1**

**EXHIBIT 2**

**EXHIBIT 3**