

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

CASE NO. 502012CP004391XXXXNBIH
CP - Probate

IN RE:

ESTATE OF SIMON L. BERNSTEIN,
_____ /

**TRUSTEES RESPONSE IN OPPOSITION TO STANSBURY'S AMENDED
MOTION TO SPECIALLY SEQUENCE HEARINGS, INCLUDING REQUEST TO
EXPEDITE APPROVAL HEARING, AND REQUEST TO STRIKE
STANSBURY'S IMPROPER MOTION AND ANY HEARING ON DE 533**

Trustee, Ted S. Bernstein ("Trustee"), files his Response in Opposition to Stansbury's *Amended Motion to Specially Sequence Hearings* set for UMC on August 22, 2017, and requests this Court Strike any Hearing set on Stansbury's Request for Court Intervention Under Section 736.0706(1) (D.E. 533), and states:

Summary of Positions and Relief Sought

1. On February 15, 2017, potential claimant in the Estate, William Stansbury ("Stansbury"), mailed this Court a copy of the Request for Court Intervention under Section 736.0706(1), Fla. Stat. [D.E. 533] and a proposed Order Setting Hearing on that Motion.

2. Stansbury, through section 736.0706(1), Fla. Stat. seeks to remove Trustee. This fails for three reasons. First, Stansbury lacks standing to remove the Trustee – **an issue already decided in this case**. See DE 244 "(Stansbury is a claimant to Decedent's Estate. He is not a beneficiary and thus lacks standing to bring an action for removal of Trustee. F.S. 736.0706(1)". This latest request simply is an attempted backdoor to get around this Court prior – and correct – ruling.

3. Second, none of the parties who have standing to remove Trustee desire to remove Trustee. To the contrary, everyone with standing has ratified Ted's appointment and/or requested the Court appoint Ted as provided in their Settlement Agreement dated November 2, 2016 (still awaiting court approval). The parties to the agreement include all trustees and the guardian ad litem, representing the ten trusts which are beneficiaries of the Simon Trust.

4. Third, Stansbury's Request for Court Intervention under Section 736.0706(1), Fla. Stat. is counterintuitive to all common sense. It is inappropriate to move the court to do something "on its own initiative." Upon the request, it is no longer on the Court's own initiative. Given Stansbury's lack of standing and the agreement by the people with standing, there is no reason for this Court should consider Stansbury's Request for Court Intervention. The Request and any hearing should be stricken.

5. Finally, as to the sequencing of hearings, the Illinois settlement approval should be heard first, and soon, to prevent undue delay in that trial awaiting this Court's approval. Stansbury has advised the PR he takes no position on the settlement. Eliot has no standing as beneficiary of the Simon Trust, and only a tiny interest in the Estate. Thus, the approval could occur at UMC or a short special set hearing. Eliot should not longer be allowed to derail these proceedings and exponentially increase the fiduciaries' legal fees.

Argument

Section 736.0706(1), Fla. Stat. reads, "The settlor, a cotrustee, or a beneficiary may request the court to remove a trustee, **or a trustee may be removed by the court's own initiative.**" Stansbury is not a settlor, cotrustee or beneficiary, and he already has tried and failed to remove Ted as Trustee. (See DE 244, as explained in ¶2 above)

Stansbury lacks standing to remove Trustee under section 736.0706(1) Fla. Stat. Additionally, none of the parties listed in section 736.0706(1) seek to remove Trustee. The settlor is deceased, there are no co-trustees, and none of the beneficiaries seek to remove Trustee. All beneficiaries agree that Trustee is acting in their best interest and should continue to serve as trustee.

Recognizing that he lacks standing to remove Trustee, Stansbury improperly requests this Court remove Trustee "on its own initiative" as stated in Section 736.0706(1). Common sense says that Stansbury cannot request this Court to "act on its own initiative." Oxford Dictionary defines "on one's own initiative" as "without being prompted by others."

Stansbury's request for this Court to act is prompting this Court to act. Section 736.0706(1) clearly lists parties who can request the court to remove a trustee. Stansbury cannot circumvent this statute by requesting this Court to act on its own initiative. If such were the case, anyone could request that the court act on its own initiative to remove a trustee, and there would be no purpose for listing the individuals with standing to remove a trustee.

Trawick, Fla. Prac. & Proc. § 9:1 states, "The court acts on its own initiative by taking some action, but no motion is made or filed." *Trawick, Fla. Prac. & Proc. § 9:1* (2016-2017 ed.). "Motions are used to obtain court action." *Id.* Stansbury's Request for Court Intervention is really a motion because the "request" seeks the court to act and remove Trustee.

WHEREFORE, Trustee requests that this Court: deny Stansbury's Amended Motion for Sequencing Hearings; strike the Request for Court Intervention [DE 533]; strike any hearing set on that Request; set the Illinois approval hearing as soon as practical within the Court's schedule; and grant such other relief this Court deems appropriate.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by: Facsimile **and** U.S. Mail; U.S. Mail; E-mail Electronic Transmission; FedEx; Hand Delivery this 8th day of August, 2017.

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