

U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA

RE: BERNSTEIN FAMILY REALTY, LLC.  
CASE NO.: 22-13009  
DATE: June 8, 2022

THE HONORABLE ERIK P. KIMBALL, PRESIDING

APPEARANCES:

HEIDI A. FEINMAN, ESQ.  
For: US Trustee

ALLEN ROSE, ESQ.  
For: Ted Bernstein

INGRID GARCIA, ESQ.  
For: Daniel Bernstein, Jacob Bernstein & Joshua  
Bernstein

BRAD SCHRABERG, ESQ.  
For: Patricia Saum

DAVID BROWN, ESQ.  
Officer of the Court

CANDICE BERNSTEIN, PRO SE

ELLIOTT BERNSTEIN, PRO SE

DANIEL BERNSTEIN, PRO SE

CYNTHIA MISSOD, PRO SE

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1 THE COURT: The next matter I have is  
2 Bernstein Family Realty, LLC. I have a large list,  
3 forgive me if I just take them in the order that I  
4 have them listed. Ms. Feinman.

5 MS. FEINMAN: Good afternoon, Your Honor,  
6 Heidi Feinman for the US Trustee.

7 THE COURT: Mr. Rose.

8 MR. ROSE: Good afternoon, Your Honor. Allen  
9 Rose for Ted S. Bernstein as successor trustee of the  
10 Simon L. Bernstein amended and restated trust.

11 THE COURT: Let's see, Ingrid Garcia.

12 MS. GARCIA: Good afternoon, Your Honor.  
13 Ingrid Garcia, I'm here for Daniel, Jacob and Josh  
14 Bernstein.

15 THE COURT: Thank you. Brad Schraberg  
16 (phonetic).

17 MR. SCHRABERG: Good afternoon, Your Honor,  
18 Brad Schraberg on behalf of secured creditor, Patricia  
19 Saum (phonetic).

20 THE COURT: David Brown.

21 MR. BROWN: Good afternoon, Your Honor. David  
22 Marshal Brown appearing as an officer of the court.

1 THE COURT: Candice - that's an interesting  
2 introduction in this case. Candice Bernstein.

3 MS. BERNSTEIN: Hello, yes, Your Honor,  
4 Candace Bernstein.

5 THE COURT: Elliott Bernstein.

6 MR. ELLIOTT BERNSTEIN: Yes, Your Honor. Hi,  
7 I'm here appearing as an interested person and newly  
8 appointed manager of BFR.

9 THE COURT: Okay. Daniel Bernstein.

10 MR. DANIEL BERNSTEIN: Good afternoon, Your  
11 Honor. Daniel Bernstein.

12 THE COURT: Jacob Bernstein.

13 MR. JACOB BERNSTEIN: Hello, Your Honor, yes,  
14 I'm here.

15 THE COURT: Joshua Bernstein.

16 MR. JOSHUA BERNSTEIN: Hello, Your Honor, I'm  
17 here.

18 THE COURT: Louisa Esposito. I have Cynthia  
19 Missod (phonetic).

20 MS. MISSOD: Yes, Your Honor.

21 THE COURT: Gloria Helman.

22 MS. MISSOD: Yes, Your Honor, yes.

1 THE COURT: Good, that was Cynthia Missod.  
2 Good morning or afternoon. Gloria Helman. Robert Sahan  
3 (phonetic). Is there anyone else who would like to  
4 appear on the Bernstein Family Realty, LLC case? All  
5 right. Ms. Feinman, I have your motion to dismiss and  
6 then there's a joinder which asks for, I believe  
7 that's Mr. Schraberg's client or clients ask instead  
8 that the case be converted. Ms. Feinman.

9 MS. FEINMAN: Yes, Your Honor, good  
10 afternoon. It is the US Trustee's emergency motion to  
11 dismiss or convert this case to Chapter 7, so there is  
12 an option for either avenue. Your Honor, I filed this  
13 on June 4th. The court set the notice of hearing was  
14 docketed on Monday and we, the US Trustee did send by  
15 overnight mail and regular mail to the Bernsteins and  
16 the debtor the notice of hearing in the motion, so I  
17 do know that it's been received. Your Honor, as you  
18 recall this is an involuntary Chapter 11 case that was  
19 filed on April 19th, 2022. The court entered the order  
20 granting the involuntary relief on May 23rd, 2022. It's  
21 the US Trustee's understanding that amongst other  
22 assets the debtor does own real property located at

1 2753 Northwest 34th Street in Boca Raton.

2 THE COURT: Hold on a moment. If you are not  
3 speaking, can you please put yourself on mute, because  
4 I'm hearing some background noise. Thank you very much  
5 everyone. Ms. Feinman.

6 MS. FEINMAN: Thank you. Your Honor, you set  
7 a status conference on the involuntary petition for  
8 May 25th, especially in light of the fact that this is  
9 a debtor that is an entity that did not have counsel  
10 and at that status conference the Bernsteins did  
11 appear with Ms. Garcia, who is the individual  
12 Bernstein, I believe children's counsel and at that  
13 time you indicated that the debtor did need to get  
14 representation and you continued the matter to June  
15 1st, which was last week to give the debtor time to  
16 find additional counsel. At that hearing, Mr. Brown  
17 appeared as proposed counsel for the debtor and asked  
18 for certain extensions of time. One of the things  
19 again at that hearing that you raised and that the US  
20 Trustee was concerned about was that there was no  
21 matrix, a creditor matrix and that was in essence  
22 having a secret bankruptcy case because no creditors

1 or parties in interest had knowledge other than Mr.  
2 Rose and Mr. Schraberg on behalf of their clients. I  
3 also raised the fact that we had begun hurricane  
4 season and we needed proof of insurance because there  
5 was real property. That's where we left it last week.  
6 I believe Mr. Brown had asked for an extension of time  
7 to file the plan - to file, excuse me, the schedules,  
8 but the court did enter an order granting that  
9 2016 disclosure of compensation by proposed counsel  
10 and application to be employed. Those three things had  
11 to be filed by June 3rd and that order further stated  
12 that the failure to comply with the terms of the order  
13 may result in a dismissal or conversion of the case  
14 without further notice or hearing. Separately, I did  
15 require, and I sent Mr. Brown an email asking for  
16 proof of insurance. Mr. Brown said the debtor had it,  
17 but then around 4 o'clock on June 3rd, I received a  
18 call from Mr. Brown saying he did not have the 2  
19 appropriate information to file with the court. So, I  
20 waited until Saturday, the 4th and I filed this  
21 emergency motion.  
22 Your Honor, as we sit here today which is

1 now the 8th, I still do not have proof of insurance. We  
2 did go through as the court is well aware a tropical  
3 storm on Friday with very heavy rain at times. Without  
4 insurance I do not know if the house has been  
5 protected. I do not know if there's any damage. Again,  
6 we still have no matrix. Mr. Brown did not file an  
7 application to be employed. There's been no retainer  
8 agreement. There's been nothing. So, as we sit here  
9 today, we still have an entity that is not represented  
10 by counsel. We have property that we know of, that the  
11 US Trustee knows of, this is real property, but I do  
12 not know what other property is out there and I do not  
13 know who the creditors are. We cannot schedule a 341  
14 Meeting. We cannot move forward. Your Honor, this is a  
15 case in which there are - Mr. Schraberg represents  
16 creditors who I believe are judgment creditors. They  
17 are not protected as far as I could tell with respect  
18 to this property and they have a right to be and if  
19 this debtor is going to reorganize it should have  
20 taken the steps that it needed to reorganize, so Your  
21 Honor, under the various sections of 1112B4, I ask  
22 this court to dismiss or convert the case, since Mr.



1 Schraberg is a creditor that I know of that is most -  
2 potentially his client is the most potentially harmed,  
3 I would leave it to him to decide how he feels best  
4 protected or his clients and he has filed a joinder in  
5 the motion and ask the court to convert the case. I  
6 have no basis not to agree with him at this point. If  
7 there's property of this estate that can be marketed  
8 and sold to pay creditors then that should happen,  
9 Your Honor, and so therefore under 1112B4H and  
10 1112B4C, I would ask that this court convert the case  
11 to Chapter 7. The failure to also to maintain  
12 insurance under 1112B4B to me is an indication of a  
13 gross mismanagement and that is inappropriate for any  
14 debtor to be in this Chapter 11. So again, Your Honor,  
15 I would agree with Mr. Schraberg if this is what he  
16 would like to do on behalf of his clients to convert  
17 the case, this case should be converted to Chapter 7.  
18 Thank you.

19 THE COURT: Mr. Schraberg.

20 MR. SCHRABERG: Thank you, Your Honor. As Ms.

21 Feinman stated we join this motion for the reasons she  
22 stated as well as the reasons we set forth in our

1 joinder. We believe that it should be converted as  
2 opposed to dismiss and its primarily due to what we  
3 believe is litigation gamesmanship. This bankruptcy  
4 was filed as an involuntary by the three beneficiaries  
5 of the trust that own this on the eve of a foreclosure  
6 sale. We have a final judgment of foreclosure. This  
7 debtor has not appealed it, though I believe Mr.  
8 Bernstein, Elliott Bernstein has filed an appeal, but  
9 the actual debtor has not. The time to appeal has long  
10 since ran and on the eve of a foreclosure because they  
11 don't have the corporate authority to file a voluntary  
12 bankruptcy, they orchestrated an involuntary  
13 bankruptcy by three parties that we do not believe are  
14 creditors, they're equity holders. They're beneficial  
15 interest in the equity holder. It is for this reason  
16 that we need the independent trustee to come in, sell  
17 the property and use those proceeds to pay the  
18 creditors of this estate. I know Mr. Rose's clients is  
19 a creditor that would be in second position and if  
20 there is equity from a sale then the beneficiaries of  
21 these trusts will receive the distribution, but the  
22 gamesmanship needs to need and we're requesting that

1 this case be converted so a trustee can sell it.

2 THE COURT: Before I go to Mr. Brown, anybody

3 else wish to be heard on the motion in joinder. Mr.

4 Rose. You're no mute, Mr. Rose.

5 MR. ROSE: Thank you, Your Honor. Good

6 afternoon. I don't know how much detail you want or

7 need about this, but I do want to make a few points. I

8 am the person with the most historical knowledge

9 because I've been in this case since 2014. Mr.

10 Schraberg only got involved after the Chapter 11

11 involuntary proceeding was commenced as well as Ms.

12 Feinman. So, stop me if I'm boring you, stop me if you

13 don't want the detail. If two weeks ago Mr. Schraberg

14 made what we both acknowledge was a practical

15 consideration of giving the debtor some time to get

16 its feet under it and in the past two weeks nothing

17 has happened that would compel anything other than a

18 conversion to a Chapter 7. Ms. Feinman had said that,

19 you know, amongst other assets, because she does not

20 know whether or not there are other assets, but I

21 believe I do from eight years of being involved in

22 this case and this entity is a single purpose entity

1 that owns one piece of property, it's a residence in  
2 Boca. The residence is occupied by the children of  
3 Simon Bernstein, Elliott, his wife and three children,  
4 essentially rent free for eight years. Mr. Schraberg's  
5 client has the first mortgage, it's a purchased money  
6 mortgage that currently stands with a \$353,000 final  
7 judgment that is no longer appealable. It was not  
8 appealed by the BFR Entity. It was appealed by Mr.  
9 Elliott Bernstein who is I guess a tenant or an  
10 occupant of the property, he appealed it, but the  
11 deadline to appeal has long since passed, so Mr.  
12 Schraberg's client is sitting there with a \$353,000  
13 first mortgage reduced to a judgment accruing interest  
14 at 18 percent plus attorneys fees in state court, and  
15 the state court judgment includes his past - the taxes  
16 that were paid by his client for the past six or seven  
17 of the past eight years and all the interest its  
18 accrued. My client holds a recorded second mortgage.  
19 We don't even show up in the creditor matrix, well not  
20 that - in the creditor list that was submitted by the  
21 alleged debtor, or now the Chapter 11 debtor. We have  
22 a \$365,000 mortgage on top of Mr. Schraberg's

1 mortgage, and we would be entitled in state court to  
2 petition for the surplus if there were any and we  
3 would be entitled in this court to litigate whether  
4 our mortgage is valid. I don't think we need to debate  
5 today, but ours is of record. Mr. Bernstein would tell  
6 you that it's invalid, it was not intended to be a  
7 real mortgage and that they, you know, but that's not  
8 we have a single asset, a house in suburban Boca Raton  
9 at the height of the boom and I think we all know the  
10 boom some day will end and if it hasn't already ended  
11 it may end, you know, very soon and we would like to  
12 get this property sold. I would prefer it, you know,  
13 we're not in state court where everything is in favor  
14 of the defendant and the debtor. We're in Bankruptcy  
15 Court now at their choice and in Bankruptcy Court the  
16 priority is on the creditors of the debtor, and I  
17 think the creditors of the debtor including equity are  
18 better served with a very swift sale through a 363-  
19 process commenced by a Chapter 7 trustee. It's much  
20 preferable than a state court online auction. Now, we  
21 were, you know, less than 12 hours or 18 hours from a  
22 state court online auction when this case was

1 commenced, so that's my client's general position. I  
2 have a lot to say about the - I don't know what the  
3 debtor's position is. I have a lot to say about why  
4 this could never be a Chapter 11, including the fact  
5 that they have to petition a state court to allow for  
6 some of the \$300,000 that is in the registry of the  
7 court for the benefit of three children that's Daniel,  
8 Jacob and Joshua to use and what they have proposed is  
9 something like \$75,000 or 25 percent of it for the  
10 professionals to run through a Chapter 11 proceeding  
11 and this is a little bit out. It's not in your record,  
12 Your Honor, but it's in my record and - but the point  
13 being, you don't need \$75,000 worth of professionals  
14 to sell a single-family home in suburban Boca Raton  
15 and so I don't think there's any possibility that a  
16 Chapter 11 would work. I don't believe a dismissal is  
17 in the best interest of the creditors or even the  
18 equity considering how far along we are in this  
19 court, and you could appoint a Chapter 7 trustee and  
20 that would be the most beneficial part. I can talk  
21 about the property values, you know, for years I  
22 thought our second mortgage was, you know, very under

1 water. It's come to life a bit with this surge, but we  
2 don't know how long the surge is going to last. I  
3 could talk about if you have any questions about the  
4 way this property has been run for the past eight  
5 years, I would be glad to tell you, but I don't think  
6 there's ever been insurance on the property. The debts  
7 have - the taxes have been mostly paid with the  
8 exception of last year by Mr. Saum and there's never  
9 been, you know, anything other than Mr. Bernstein and  
10 his family staying in the house as long as possible  
11 until it gets foreclosed. There was some talk about -  
12 I don't know if you want me to talk about why the 11  
13 wouldn't work, if we're beyond that -

14 THE COURT: No, unless you feel it's relevant  
15 to one of the standards that Ms. Feinman cited. I  
16 think she actually left out 1112B4E, which is failure  
17 to comply with an order of the court, although that is  
18 raised in her motion.

19 MR. ROSE: I'll save any comment on why an 11  
20 wouldn't work, but it's between a 7 or a dismissal. I  
21 think Mr. Schraberg's client as the primary secured  
22 judgment creditor, his say should be the most

1 important and the second position regardless of the  
2 alleged validity or invalidity of the mortgage that's  
3 recorded, we would prefer a Chapter 7, I think that  
4 would be the fastest way to justice and the fastest  
5 way to protect whatever value is in this property for  
6 whomever is entitled to it and I'd answer any  
7 questions or if there's anything that's said that I  
8 might need to respond to, but otherwise thank you for  
9 your time.

10 THE COURT: Thank you. Mr. Brown, I'm going  
11 to start with a question for you. What is your role at  
12 this point? You did not file a disclosure of  
13 compensation, nor is there an application to retain  
14 you. I noticed in the beginning you did not introduce  
15 yourself as proposed counsel to the debtor.

16 MR. BROWN: That was intentional, Your Honor.  
17 Everything is prepared. I have the matrix. I have the  
18 affidavit. I have the application, but what I  
19 didn't have was the actual retainer. So, I called Ms.  
20 Feinman immediately once the deadline ran as a  
21 courtesy, professional courtesy because we go back  
22 decades.



1 THE COURT: Okay. Are you taking - are you  
2 going to take a position on behalf of the debtor at  
3 this hearing?

4 MR. BROWN: I'm kind of in an ethical  
5 quandary. I would only say that in the interest of  
6 judicial economy, just turning this over to a 7  
7 trustee who then turns it back over to the creditor is  
8 kind of a waste of time. I would just ask for a  
9 dismissal.

10 THE COURT: Would anybody else like to be  
11 heard?

12 MS. GARCIA: Yes, Your Honor.

13 THE COURT: Ms. Garcia.

14 MS. GARCIA: Hi, Your Honor. Thank you. I  
15 don't know what to say except I'm a little bit shocked  
16 at what's being represented to the court. I'm so sorry  
17 because I completely respect the court system and all  
20 the attorneys and I'm fairly new to the case, but I  
21 can say this. Under 11USC305, I'm requesting the court  
22 to do what's in the best interest of the creditors and

1 the debtors. Now, I did send the trustee just prior to  
2 the hearing a copy of the insurance that proves this  
3 property is insured. They did insure it timely, but it  
4 wasn't titled correctly, so I got the properly titled  
5 correctly insurance today, so this property is not at  
6 risk. Number two, this joinder that was filed for  
7 Walter Saum and Patricia Saum was filed with a dead  
8 man and at the last hearing counsel represented that  
9 Walter Saum just passed away recently. I have the  
10 death certificate and I provided it also to the  
11 trustee that he died 18 months ago. The final judgment  
12 was done in the name of a dead man. I plan on going  
13 back to the state court to Judge Castranacis  
14 (phonetic) who I respect because he was my professor  
15 in law school, got me my first job with the State  
16 Attorney Janet Reno. He's an incredible judge. He was  
17 misled in the court, and I want to go back to that  
18 court and correct his final judgment, but in the  
19 meanwhile, Judge, I'm asking don't convert it to a 7.  
20 There's many issues. There's an investment trust that  
21 spawns this property. Mr. Rose knows, him and I have  
22 been going back and forth that I'm trying to get

1 \$300,000 release to pay Mr. Marshal to defend his case  
2 if needed. So, to me, I'm sorry, Judge, I'm very sad  
3 and very upset after 30 years of practicing law that  
4 these people come in here and tell you the best  
5 interest is a Chapter 7, when it's a dismissal without  
6 prejudice. Give us a chance to get the money from the  
7 attorney who are filing for dead people and who  
8 control money that are preventing us from paying this  
9 mortgage and let our clients do this correctly, so  
10 please do not convert this to a Chapter 7 and hurt  
11 this client. This is their family home for years.  
12 These are three young teenagers who are trying to do  
13 the best they can. So, I'm asking this court to please  
14 consider the best interest of the creditors and the  
15 debtors. They are not being hurt by going back to the  
16 state court. We can go right back to the state court.  
17 They didn't file a release of stay within days, they  
18 could have done that. They set for six weeks  
19 themselves. They could have filed a motion for relief  
20 from stay and gone back to the state court themselves,  
21 but they didn't, because they want to take this  
22 property from these children. So, I'm asking you,

1 please, Your Honor, from the interest of justice to  
2 dismiss it without prejudice, let's go back to the  
3 state court and if we need to come back to this court  
4 we will with counsel and do it properly.

5 THE COURT: Ms. Feinman, would you like to  
6 respond to that?

7 MS. FEINMAN: Your Honor, yes, Your Honor.  
8 First and foremost, I have no proof of insurance. Ms.  
9 Garcia never sent me any insurance. She did not send  
10 me insurance at her email at 1 o'clock this afternoon  
11 before the hearing, so as I sit here today, I have no  
12 insurance, but mostly and more importantly, Your Honor  
13 and you're right, I missed 1112B4E, it is in my  
14 motion. The debtor failed to comply with the court  
15 order. That in and of itself is enough for this court  
16 to do something. We have an entity that cannot be  
17 represented - well, can be represented, but is not  
18 represented and we have a situation where the largest  
19 creditor, which appears to be the largest creditor,  
20 Mr. Schraberg's client would like the case to be  
21 converted. I see no other reason not to do that, Your  
22 Honor. Mr. Schraberg can speak to the fact that Mr.

1 Saum has passed away, but I think those are legal  
2 issues that he can address if the court would like,  
3 but at this point we are in a situation where we  
4 cannot let this case continue on the way it is. The  
5 debtors had significant time and has done nothing and  
6 so, Your Honor, if during the Chapter 7 the trustee  
7 and the debtor can reach some agreement to have a case  
8 dismissed that can always happen, but this case cannot  
9 consider - be considered in an 11 at this point, so I  
10 would continue with my request that the case be  
11 converted to a Chapter 7. Thank you.

12 THE COURT: Mr. Schraberg, at a recent  
13 hearing you suggested that your two clients were joint  
14 owners of the claim and when Mr. Saum died the other  
15 person became the sole owner of the claim. Would you  
16 like to add anything to that on that particular issue?

17 MR. SCHRABERG: Yes. May I say that's what  
18 happened. They were owners of this mortgage entity and  
19 by the entities at the time of his death, Patricia  
20 Saum became the 100 percent owner of the mortgage.  
21 There isn't going to be an issue with regard to our  
22 judgment. I want to - so there's - that is a red

1 herring. The best interest of the creditors, there's  
2 nothing that Ms. Garcia said that can't be handled in  
3 this bankruptcy proceeding. What can't happen if this  
4 goes back to state court is a quick sale of this  
5 property at the height of this market where interest  
6 rates are rising, and nobody knows what's going to  
7 happen tomorrow in the market. Bankruptcy offers the  
8 ability to sell the property -

9 THE COURT: Let me short circuit this. Ms.

10 Garcia's entire argument is based on the best interest  
11 of the indirect equity owners of the debtor, which is  
12 not what Section 1112 talks about, so you don't need  
13 to go any further with that. Ms. Garcia, were you  
14 representing the individuals who signed the  
15 involuntary petition at the time that it was filed?

16 MS. GARCIA: No, Your Honor.

17 THE COURT: It seems like a very creative  
18 solution to file an involuntary petition under  
19 circumstances where an entity has no manager who could  
20 sign a voluntary petition. I wonder whether there was  
21 somebody who advised them on that particular issue.

22 MS. GARCIA: Your Honor, all I can address on

1 that issue is that in the underlying case this entity  
2 is part of the final judgment as it exists and nobody  
3 brought up to that point either, so I think Judge  
4 Castranacis needs to be informed of what's really  
5 going on so he can void the final judgment adnitio  
6 (phoenetic)fraud on the court.

7 THE COURT: Doesn't it seem like if your  
8 clients really wanted to continue litigating in the  
9 state court, they could have done that rather than  
10 commence this apparently ill-advised involuntary,  
11 which now they'd like to withdraw.

12 MS. GARCIA: I think it's in the best  
13 interest of everyone including the creditors to  
14 withdraw this, allow us to go back to state court and  
15 if the state court wants to set the sale, they can set  
16 the sale. In the meanwhile, it gives me an opportunity  
17 to do the right thing as an attorney for the children  
18 who this is their home for what, 20 plus years, this  
19 family, and there's a lot of issues, Your Honor.  
20 There's a lot of money that could have been used to  
21 pay. There's a trust fund that I need to seek  
22 accountants for to prove that there's millions of

1 dollars that could have paid this judgment. So, we're  
2 being held back by creditors who have access to funds  
3 who are contesting access to funds for our clients to  
4 pay this. So, it's kind of a situation that's very  
5 unique and I just firmly believe this should be  
6 dismissed and allow us to go back to state court and  
7 to correct it there.

8 THE COURT: Let me start my ruling on  
9 something that isn't addressed in Section 1112. It's  
10 fairly basic. When an involuntary petition is filed,  
11 that is a very significant act. It is a significant  
12 act when an entity such as this files a voluntary  
13 petition, that exercises broad based powers that are  
14 available only to a person or entity that is involved  
15 in the Title 11 proceeding. An involuntary is  
16 typically used in order to attempt to collect on a  
17 debt from an entity where the creditors generally  
18 would benefit from a bankruptcy proceeding. It is  
19 extremely unusual, and the code is set up in such a  
20 way that if you file one and it was a very bad idea  
21 you could be held liable for that. This is not  
22 something that should be used lightly and here it



1 looks like it was used strategically, but that has  
2 nothing to do with the court's analysis today nor Mr.  
3 Rose, and I don't mean to suggest any displeasure at  
4 all with your presentation, nor do a lot of the  
5 substantive issues that you reference have any impact  
6 on the court's decision. There is obviously cause  
7 under Section 1112B here and there are at least three.  
8 I'm going to leave off the fourth one, Ms. Feinman,  
9 because that usually requires presentation of  
10 independent evidence. After a hearing at which  
11 deadlines were specifically discussed, I entered an  
12 order requiring that certain things be done by a  
13 particular date and none of those things happened,  
14 there is therefore cause under Section 1112B4E,  
15 because the debtors failed to comply with an order of  
16 the court, an order which I note threatened conversion  
17 or dismissal without any further hearing and I'm  
18 having this hearing because Ms. Feinman filed a motion  
19 and I thought it better to hear the arguments and more  
20 importantly see whether the debtor actually had  
21 counsel who appeared with an application and had been  
22 paid a retainer which counsel is entitled to, that

1 didn't happen. In addition, the United States Trustee  
2 is requesting information that has not been received.  
3 This is not a surprise, that was discussed at the last  
4 hearing. That is also independent cause under 1112B4H  
5 and finally, it is very important, and we are in the  
6 hurricane season and apparently the debtor's sole  
7 asset is a piece of real estate with a building on it.  
8 When the US Trustee asked for proof of insurance and  
9 it's not tendered, that means that I'm allowed to  
10 conclude that there isn't any that's adequate under  
11 the circumstances, that would also be cause under  
12 1112B4C. I'm not going to address the gross  
13 mismanagement argument, because again, that would  
14 require usually separate evidence. Each of those  
15 findings by itself would be sufficient to cause the  
16 court to determine that the case should be dismissed  
17 or converted. The only argument in favor of dismissal  
18 is that the debtors indirect equity owners who filed  
19 the voluntary petition ill advisably apparently in  
20 order to avoid a foreclosure because the entity was  
21 unable to file a voluntary. That it would be in their  
22 interest for me to dismiss the case and let them go

1 back to state court and do battle. No one else has  
2 weighed in on that side. The standard for the court is  
3 what's in the best interest of creditors in the estate  
4 and I'm confident that the estate and creditors are  
5 best served by conversion of this case so that an  
6 independent trustee can ascertain what should happen  
7 with the underlying property and so I will enter that  
8 order and Ms. Feinman would you like -

9 MR. ELLIOTT BERNSTEIN: Your Honor -

10 THE COURT: Hold on a moment. Would you like  
11 to tender -

12 MR. ELLIOTT BERNSTEIN: Your Honor -

13 THE COURT: Hold on a moment.

14 MR. ELLIOTT BERNSTEIN: Okay.

15 THE COURT: Would you like to tender it, or  
16 would you prefer that the court do its own order?  
17 Sometimes the US Trustee likes to tender the order.

18 MS. FEINMAN: I'm happy to tender the order,  
19 Your Honor.

20 THE COURT: Was that Mr. Elliott Bernstein, I  
21 believe speaking?

22 MR. ELLIOTT BERNSTEIN: That is, sir. First,

1 just because I might - I'm on a lot of medicine and I  
2 have a 250 over 150 blood pressure and I'm in need of  
3 a bypass that I'm holding off to help out with my kids  
4 who just elected me, but just a few matters. I just  
5 heard counsel for the boys say that she sent the  
6 trustee the proof of insurance, so unless an officer  
7 of the court is lying to you, we do have proof of  
8 insurance, it is named in the trustee the way they  
9 wanted it with the address, etcetera. So, I'm not sure  
10 why she didn't get that email or why she's challenging  
11 that Ms. Garcia is a liar.

12 THE COURT: Mr. Bernstein, Mr. Bernstein,  
13 apparently the attempt to do that was today. It's  
14 late.

15 MR. ELLIOTT BERNSTEIN: It was done.

16 THE COURT: Okay. Mr. Bernstein, I've already  
17 ruled.

18 MR. ELLIOTT BERNSTEIN: Okay.

19 THE COURT: You can ask a question.

20 MR. ELLIOTT BERNSTEIN: Can I also put on the  
21 record - I also want to ask a question.

22 THE COURT: You get two sentences, Mr. Bernstein

1 MR. ELLIOTT BERNSTEIN: Yeah, just for appeal  
2 and what not. I just need to know how did Walter Saum  
3 file a notice of hearing in this case when he's been  
4 dead for over a year and a half.

5 THE COURT: Mr. Bernstein, that had nothing  
6 to do with my ruling, literally nothing.

7 MR. ELLIOTT BERNSTEIN: No, I'm just asking -

8 THE COURT: Do you have anything else you'd  
9 like to ask? I'm going to give you one sentence.

10 MR. ELLIOTT BERNSTEIN: Yes. How did that  
11 dead man file a motion and why -

12 THE COURT: That's enough. I just muted Mr.  
13 Bernstein. All right. Does anybody else wish to be  
14 heard? Okay. Ms. Feinman, if you can please tender the  
15 order.

16 MS. FEINMAN: I will. Thank you, Your Honor.

17 THE COURT: Good afternoon, everyone.

18 MR. SCHRABERG: Thank you, Your Honor.

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(WHEREUPON THE RECORDING WAS CONCLUDED)

\* \* \* \* \*

CERTIFICATE

I, KELLY SELLERS, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my ability.

Signed this 5th day of July, 2022.



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Kelly Sellers, AD/T 544

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