

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO.: 15-81298-CV-MARRA-MATTHEWMAN**

JULIAN BIVINS, as Personal Representative
of the ancillary Estate of Oliver Wilson Bivins,

Plaintiff,

vs.

CURTIS CAHALLONER ROGERS, JR.,
as former guardian, STEPHEN M. KELLY,
as successor guardian, BRIAN M. O'CONNELL,
ASHLEY N. CRISPIN, CIKLIN LUBITZ &
O'CONNELL, KEITH B. STEIN,
BEYS LISTON MOBARGHA & BERLAND, LLP
f/k/a BEYS STEIN MOBARGHA & BERLAND, LLP,
and LAW OFFICES OF KEITH B. STEIN, PLLC,
n/k/a STEIN LAW, PLLC,
Defendants.

AMENDED COMPLAINT

COMES NOW the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, by and through his undersigned counsel, and sues CURTIS CAHALLONER ROGERS, JR., the former guardian of Oliver Bivins (the "Ward"), STEPHEN M. KELLY, as successor guardian of the Ward, BRIAN M. O'CONNELL, ASHLEY N. CRISPIN, CIKLIN LUBITZ & O'CONNELL, KEITH B. STEIN, BEYS LISTON MOBARGHA & BERLAND, LLP f/k/a BEYS STEIN MOBARGHA & BERLAND, LLP, and LAW OFFICES OF KEITH B. STEIN, PLLC, n/k/a STEIN LAW, PLLC, and says:

JURISDICTION AND VENUE

1. The Ward, Oliver Wilson Bivins, died on March 2, 2015. The Ward was a citizen of, and domiciled in, Amarillo, Potter County, Texas on the date of his death.

2. Julian Bivins (hereinafter, "Julian") is the Personal Representative of the ancillary Estate of the deceased Ward in Palm Beach County, Florida (the "Deceased Ward").

3. Curtis Rogers (hereinafter, "Rogers") is the former guardian of the Deceased Ward. Rogers is a citizen of, and domiciled in, Palm Beach County, Florida.

4. Stephen M. Kelly (hereinafter, "Kelly") is the successor guardian of the Deceased Ward. Kelly is a citizen of, and domiciled in Boynton Beach, Palm Beach County, Florida.

5. Brian M. O'Connell (hereinafter, "O'Connell") is a citizen of, and domiciled in Palm Beach County, Florida.

6. Ashley N. Crispin (hereinafter, "Crispin") is a citizen of, and domiciled in Palm Beach County, Florida.

7. Ciklin Lubitz & O'Connell (hereinafter, "Ciklin") is general partnership organized under the laws of the State of Florida with its principal place of business in Palm Beach County, Florida. The partners of Ciklin are the following: Dean Vegosen, P.L., Phil D. O'Connell, JR., P.A., Brian B. Joslyn, P.A., Jason S. Heselkorn, P.A., John D. Boykin, P.A., Jerald S. Beer, P.A., Bruce G. Alexander, P.A., Alan J. Ciklin, P.A., and Robert L. Crane, P.A.

8. Dean Vogeson (hereinafter, "Vogeson"), is the sole member of Dean Vogeson P.L. and is a citizen of and domiciled in Palm Beach County, Florida. Dean Vogeson P.L. is a Florida professional liability association organized under the laws of the State of Florida with its principal place of business is in Palm Beach County, Florida.

9. Phil D. O'Connell, (hereinafter, "Phil O'Connell"), is the sole shareholder of Phil D. O'Connell Jr., P.A. and is a citizen of and domiciled in Palm Beach County, Florida. D Phil D. O'Connell Jr., P.A. is a professional association organized under the laws of the State of Florida with its principal place of business is in Palm Beach County, Florida.

10. Brian B. Joslyn, (hereinafter, "Joslyn"), is the sole shareholder of Brian B. Joslyn, P.A. and is a citizen of and domiciled in Palm Beach County, Florida. Brian B. Joslyn, P.A. is a professional association organized under the laws of the State of Florida with its principal place of business is in Palm Beach County, Florida.

11. Jason S. Haselkorn, (hereinafter, "Haselkorn"), is the sole shareholder of Jason S. Haselkorn, P.A. and is a citizen of and domiciled in Palm Beach County, Florida. Jason S. Haselkorn, P.A. is a professional association organized under the laws of the State of Florida with its principal place of business is in Palm Beach County, Florida. .

12. John D. Boykin, (hereinafter, "Boykin"), is the sole shareholder of John D. Boykin, P.A. and is a citizen of and domiciled in Palm Beach County, Florida. John D. Boykin, P.A. is a professional association organized under the laws of the State of Florida with its principal place of business is in Palm Beach County, Florida. .

13. Jerald S. Beer, (hereinafter, "Beer"), is the sole shareholder of Jerald S. Beer, P.A. and is a citizen of and domiciled in Palm Beach County, Florida. Jerald S. Beer, P.A. is a professional association organized under the laws of the State of Florida with its principal place of business is in Palm Beach County, Florida.

14. Bruce G. Alexander, (hereinafter, "Alexander"), is the sole shareholder of Bruce G. Alexander, P.A. and is a citizen of and domiciled in Palm Beach County, Florida. Bruce G.

Alexander, P.A. is a professional association organized under the laws of the State of Florida with its principal place of business is in Palm Beach County, Florida. .

15. Alan. J. Ciklin, (hereinafter, "Alan Ciklin"), is the sole shareholder of Alan. J. Ciklin, P.A. and is a citizen of and domiciled in Palm Beach County, Florida. Alan. J. Ciklin, P.A. is a professional association organized under the laws of the State of Florida with its principal place of business is in Palm Beach County, Florida.

16. Robert L. Crane, (hereinafter, "Crane"), is the sole shareholder of Robert L. Crane, P.A. and is a citizen of and domiciled in Palm Beach County, Florida. Robert L. Crane, P.A. is a professional association organized under the laws of the State of Florida with its principal place of business is in Palm Beach County, Florida.

17. Keith B. Stein (hereinafter, "Stein") is a citizen of and domiciled in New York, but does business in Palm Beach County, Florida.

18. Beys Liston Mobargha & Berland, LLP f/k/a Beys Stein Mobargha & Berland, LLP (hereinafter, "Beys") is a limited liability partnership doing business in Palm Beach County, Florida with its principal place of business in New York. The partners of Beys are the following: Jason H. Berland, Michael P. Beys, Joshua D. Liston, and Nader Mobargha. Keith B. Stein was a partner of the former iteration of Beys: Beys Stein Mobargha & Berland, LLP.

19. Jason H. Berland (hereinafter, "Berland") is a citizen of and domiciled in New York.

20. Michael P. Beys (hereinafter, "Michael Beys") is a citizen of and domiciled in New York.

21. Joshua D. Liston (hereinafter, "Liston") is a citizen of and domiciled in New York.

22. Nader Mobargha (hereinafter, "Mobargha") is a citizen of and domiciled in New York.

23. The Law Offices of Keith B. Stein, PLLC n/k/a Stein Law, PLLC (hereinafter, "Stein Law Firm") is a professional limited liability company doing business in Palm Beach County, Florida with its principal place of business in New York. Keith B. Stein is the sole member of the Stein Law Firm.

24. Stein, Beys, and Stein Law Firm committed tortious acts in Palm Beach County, Florida which resulted in the causes of actions under this complaint causing injury to the Estate of the Deceased Ward in Palm Beach County, Florida. Stein, Beys, and the Stein Law Firm expected or should reasonably have expected to have consequences in Palm Beach County, Florida because they each derived substantial revenue from the legal services they provided Rogers and Kelly from New York to Florida.

25. Plaintiff is a deemed a citizen of the State of Texas, the same state as the decedent under 28 U.S.C. § 1332 (c)(2).

26. Defendants are all citizens of states other than Texas for purposes of 28 U.S.C. §1332.

27. This is an action for money damages that exceed \$75,000.00, exclusive of interest, attorney's fees and costs.

28. Accordingly, this is a civil action which falls within the Court's original jurisdiction under 28 U.S.C. § 1332 (diversity of citizenship).

GENERAL ALLEGATIONS

29. Oliver Bivins' (hereinafter, "Oliver Sr.") first marriage was to Dorothy Bivins, and they had a child, Julian Bivins.

30. In 1961, Oliver Sr. married Lorna Bivins (hereinafter, "Lorna"), a woman 25 years younger from New York.

31. In approximately 1990, when Oliver Sr. was approximately 70 years old, he and Lorna adopted a child together, Oliver Bivins, Jr. (hereinafter "Oliver Jr.").

32. At all material times during the marriage, Oliver Sr. lived in Amarillo, Texas and Lorna and Oliver Jr. lived in New York, New York at 67th Street, although for intermittent periods of time, Lorna and Oliver Jr. resided in Palm Beach, Florida at Lorna and Oliver Sr.'s condominium.

33. On March 5, 1992, Oliver Sr. created a joint trust with Lorna to which he transferred family owned oil and mineral rights in Amarillo, Texas (hereinafter the "Joint Trust").

34. In addition to the oil and mineral rights in Amarillo, Texas, the couple owned four properties. Lorna owned a property located at 82 Portland Place in London, England (hereinafter "London Property") and a property at 67th Street in New York, New York (hereinafter "67th Street"), and Lorna and Oliver Sr. owned together, as tenants by the entirety, properties at 808 Lexington Avenue, New York, New York (hereinafter "808 Lexington") and 330 South Ocean Blvd., Palm Beach, Florida (hereinafter "Ocean Blvd"). (The properties identified in this paragraph will be collectively referred to herein as "The Properties".)

35. On April 12, 2010, Oliver Sr. filed for divorce from Lorna in Amarillo, Texas seeking to dissolve the marriage and terminate the Joint Trust.

36. On July 28, 2010, the Court entered a Final Decree of Divorce and an Order Terminating the Joint Trust.

37. In the divorce, Oliver Sr. received everything, including the oil and mineral rights in Amarillo, Texas.

38. The Texas Court presiding over the divorce made no provision in its order, however, with respect to the Properties and no Guardian or other Defendant made any effort to re-open the Texas divorce proceeding to address the property rights of the parties pertaining to the Properties.

39. Lorna continued to hold the London and 67th Street properties in her name alone, although Oliver Sr. funded these properties to the extent not covered by tenants renting the properties. As for the the properties at 808 Lexington Avenue and 330 Ocean Boulevard, which were held as tenants by the entirety prior to the divorce, became held by Lorna and Oliver Sr. as tenants in common.

40. Following the divorce, Oliver Sr. transferred to Julian interests owned by Oliver Sr. in several parcels of real property, including the oil and mineral rights in Amarillo, Texas and a condominium in Amarillo, Texas.

41. On or about January 5, 2011, petitions to determine incapacity for both Oliver Sr. and Lorna were filed in Florida and an emergency temporary guardian, Stephen Kelly, was appointed over their person and property.

42. Lorna passed away in February 2011, shortly after the temporary guardianship was established.

43. Oliver Jr. was appointed the personal representative of the estate of Lorna Bivins.

44. On or about May 10, 2011, the Court appointed Rogers as the limited guardian of the person and property of Oliver Sr.

Texas Settlement

45. Rogers' first order of business was to seek an ex parte emergency order preventing Oliver Sr., who was in Florida temporarily from his long time home in Texas, from leaving Florida. He then began an investigation into the transfers of real property from Oliver Sr. to Julian and sought approval from the Florida guardianship court to bring an action against Julian and Julian simultaneously filed an action in Texas to validate the transfers.

46. The Florida guardianship court entered an order permitting Rogers to retain counsel on a contingency basis to prosecute and defend the actions involving the transfers.

47. Rogers, with a Texas supervising guardian, thereafter obtained an appointment as the Texas guardian over Oliver Sr.'s property in Texas.

48. The Texas litigation sought to undo all of the transfers that Oliver Sr. had made to Julian in Texas. The attorneys hired in Texas, pursuant to the contingency fee agreement, were entitled to 25% of the entire estate that was transferred back to Oliver Sr., even if Julian agreed to do it the very next day.

49. On or about February 27, 2013, Julian and Rogers entered into a settlement agreement as to the Texas proceedings (hereinafter "Texas Settlement").

50. The Properties were not the subject of the Texas lawsuit and the Texas Settlement made no provision for them.

51. As part of the Texas Settlement, Julian was required to transfer back to Oliver Sr. all of the Texas real property previously transferred to Julian, except that Julian was permitted to

keep the Ranch and all interim distributions and other proceeds Julian had already received from the real property.

52. The Texas properties were transferred to a trust for the benefit of Julian and Oliver Sr. (hereinafter the "Texas Trust") with Julian having a 37% interest in the Texas Trust and Oliver Sr. having a 63% interest in the Texas Trust.

53. As a major consideration for Julian entering into the Texas Settlement, Rogers was to resign as guardian of Oliver Sr. in Texas and Florida within thirty (30) days of court approval of the Texas settlement, and Steve Kelly was to serve as successor guardian.

54. Rogers was required to, but did not, submit a final accounting and documents necessary to obtain an order of discharge from the Texas and Florida guardianships within 30 days of the approval of the Texas settlement by the Texas and Florida guardianship courts.

55. As part of the Texas Settlement, Rogers was released from liabilities for his errors and omissions and other breaches of his fiduciary obligation, by Julian in his capacity as an interested party and sole beneficiary of Oliver Sr.'s only known will, only through the date of the Texas Settlement. This release was not made on behalf of the Ward, and could not be, whereas Oliver Sr. was alive, and Julian was not and had no authority to release Rogers on behalf of Oliver Sr.

56. The Florida guardianship court approved the settlement on April 1, 2013.

New York Settlement

57. In November 2012, Rogers entered into a contingency fee/hybrid agreement with Ciklin to initiate an action in Florida requesting that the Court presiding over the Lorna estate (the "Lorna Court") give no full faith and credit to the Texas Divorce Decree, so that the Lorna Court

would deem the Properties to pass to Oliver Sr. as though he were still married to Lorna at the time of her death. (“Florida Beneficiary Petition”).

58. In or about October 2012, Rogers also engaged Keith Stein of Beys to partition the 808 Lexington property (“New York litigation”).

59. Prior to initiating the partition action of 808 Lexington, Stein, who was not a litigator, had only prepared, at best, one prior partition action in the course of his more than two decades of practice.

60. At the time of the partition action, and for several years prior, 808 Lexington was encumbered by a mortgage in the original principal sum of \$850,000.00 (“808 Mortgage”).

61. By the time of the partition action, the balance of the mortgage was approximately \$387,000.00, while the value of 808 Lexington was in excess of \$4,000,000.

62. Prior to, and following the date of the Texas Settlement, Rogers failed to take any action to pay, monitor, negotiate, or prevent default, acceleration, or negative consequences to the Ward in connection with the 808 Mortgage.

63. On or about October 5, 2012, unbeknownst to Julian, and presumably because Rogers had not taken any action to manage the 808 Lexington asset or liabilities and the 808 Mortgage was in default, the son of the paralegal of Oliver Jr.’s attorney (who was also a close friend of Oliver Jr.) formed a corporation known as Beachton Tuxedo, LLC (“Beachton”) and surreptitiously acquired the 808 Mortgage via an Assignment of Mortgage (“Assignment”) for the outstanding balance owed on the mortgage.

64. As of the date of the Assignment, the notes secured by the Mortgage were in default, had been accelerated, and gave Beachton the immediate right to foreclose on 808 Lexington. The default interest rate on the Beachton mortgage was 17%.

65. As further consideration for Beachton to acquire the 808 Mortgage and not foreclose on it, Oliver Jr., individually, and as personal representative of the Estate of Lorna, assigned to Beachton a 40% of his and/or the Estate of Lorna's equity interest in 808 Lexington, which, at a bare minimum, gave Beachton an immediate return on its \$387,000 mortgage of far in excess of one million dollars, yet Beachton did not provide a satisfaction of mortgage in exchange for the interest and also continued to charge interest at the maximum rate allowable under the 808 Mortgage.

66. Accordingly, the assignment by Oliver Jr. resulted in a satisfaction of the 808 Mortgage, or alternatively a usurious rate of interest being charged by Beachton on the 808 Mortgage.

67. In July 2013, Rogers, as guardian for Oliver Sr., Oliver Jr., individually and as personal representative of the Estate of Lorna, and Beachton entered into a settlement agreement to settle the Florida Beneficiary Petition and the New York Litigation (hereinafter referred to as the "New York Settlement." A true and correct copy of the New York Settlement Agreement is attached hereto as Exhibit "A" and incorporated herein by reference.

68. Pursuant to the New York Settlement, Oliver Jr. agreed to immediately transfer to Oliver Sr. the 50% interest of the Estate of Lorna in 808 Lexington and Ocean Boulevard, such that as a result of such transfers, Oliver Sr. would own 100% fee simple interest in 808 Lexington and Ocean Boulevard.

69. The Estate of Lorna was required to satisfy all real estate taxes and related charges through May 8, 2013, and one-half of the real estate taxes and related charges from May 9, 2013, through the date immediately prior to the closing date.

70. Additionally, in connection with the New York Settlement, Oliver Jr. and Beachton agreed that the 40% interest in the 808 Lexington that Oliver Jr. had assigned to Beachton when it took over the 808 Mortgage, would be transferred to a 20% interest in the 67th Street property, which continued to amount to an interest by Beachton of well over a million dollars at minimum. (The percentage change in the transfer was due to the fact that the value of the 67th Street property was significantly higher than the value of 808 Lexington.)

71. Notwithstanding Beachton's acceptance of the 20% interest in 67th Street, Beachton continued to charge the maximum interest rate allowable under the 808 Mortgage, plus late fees, which combined with the 20% interest in 67th Street, constituted a satisfaction of the 808 Mortgage, or alternatively, a usurious rate of interest.

72. The closing date under the New York Settlement was to occur within ten (10) business days of the date upon which all approvals have been received from the Florida court, and each such other court. No other such court approval was required to approve the New York Settlement besides the Florida Court, which did so on September 17, 2013. Accordingly, the closing date was October 1, 2013 ("Closing Date").

73. Under the terms of the New York Settlement, Rogers, acting as guardian for Oliver Sr., agreed to waive and/or relinquish in favor of the Estate of Lorna any and all right, title, and interest in and to 67th Street and the London Property.

74. The New York Settlement required Rogers, as guardian of Oliver Sr., to pay the Beachton mortgage debt in full on or before August 31, 2013, and in exchange, Beachton agreed to continue to forebear from taking action based on the purported failure to make payments under the 808 Mortgage that Beachton purchased, including foreclosure.

75. On or about November, 2014, 67th Street sold for \$22.5 million. Accordingly, Beachton's 20% interest in the 67th Street property was worth \$4.5 million.

76. Any claim by Beachton that an outstanding balance was due on the Beachton mortgage was usurious as Beachton became entitled to receive, via its 20% equity interest in 67th Street, more than five (5) times the outstanding balance owed on the 808 Mortgage.

77. Neither Rogers nor his counsel took any action to have a Court declare the 808 Mortgage acquired by Beachton as having been satisfied or otherwise usurious.

78. Moreover, despite representations to the Florida guardianship Court that they would do so, Rogers neither made any genuine efforts to procure substitute financing for the Beachton mortgage at a lower interest rate than the default rate Beachton mortgage was charging, nor undertook any action to remove the Beachton lien from the 808 property due to it being usurious or satisfied, or undertook any action to bring the note current to avoid the default interest being charged.

79. The terms of the New York Settlement, to which Julian, as an interested person and sole beneficiary to Oliver Sr.'s only known will, persistently objected, provided that all interest on the mortgage debt accruing after June 30, 2013, but on or before the date the Beachton mortgage debt is paid in full, was to be payable 50% by the Estate of Lorna and 50% by Rogers, as guardian of Oliver Sr.

80. Moreover, the New York Settlement agreement provides that if "any party fails to comply with any of the party's obligations set forth in Section 2 or 3 of this Agreement, the party to whom the obligation is owed shall have the right to enforce the terms set forth therein and the legal fees and costs incurred by the aggrieved party in enforcing such terms shall be paid by the Party found to be in breach of such terms."

808 Lexington Management

81. Despite the terms of the Texas Settlement and the consideration provided thereunder, Rogers remained in office as guardian for Oliver Sr. until April 23, 2014, when Kelly was appointed by the Court as successor guardian of Oliver Sr.

82. From April 1, 2013 (the date of the Florida Court's approval of the Texas Settlement) until Rogers was discharged by the Court in April 2014, as Florida guardian for Oliver Sr. (the "Interim Guardianship"), Rogers had a duty to properly manage 808 Lexington as a rental property.

83. From April 23, 2014 (the date Kelly was appointed by the Court as successor guardian of Oliver Sr.) until the closing of the sale of 808 Lexington by Kelly, as guardian of Oliver Sr., Kelly had a duty to properly manage 808 Lexington as a rental property.

84. The 808 Lexington Property consisted of four floors. The first floor was rented out by a restaurant, Fig and Olive, which generated approximately \$23,500 per month in rent. The lease for Fig and Olive was set to expire in November 2014.

85. The second floor of 808 Lexington was leased out to Pinafore Nursery and generated approximately \$3,500 per month in rent, which was considerably below market. The lease for Pinafore Nursery expired on December 31, 2010, and there was no new written lease entered into by Pinafore Nursery. Following the expiration of the lease with Pinafore Nursery, it continued to pay a monthly rent of \$3,500, notwithstanding that it was a holdover tenant without a lease.

86. The fourth floor apartment had been rented out to Kimberly Beamis for \$2,300 per month, but she vacated the premises prior to January 1, 2013 due to the failure of Rogers to maintain the unit. Thereafter, fourth floor apartment became occupied by a person related to one

of the owners of Beachton for \$1,500 per month, which amount was paid directly to Oliver Jr. and nothing to the Rogers or Kelly on behalf of the Ward. The \$1500, to the extent it was paid, was well below market value, no lease was in place, and Rogers or Kelly failed to investigate, participate, or take any action for the benefit of the Ward pertaining to this unit.

87. The third floor tenant was evicted in either 2012 or 2013. Neither Rogers nor Kelly undertook any efforts to re-rent this unit, which had a monthly rental value of several thousand dollars.

88. Prior to the New York Settlement, Rogers should have been collecting 50% of the rental income from 808 Lexington, and should have made efforts to obtain full market rent on the second, third, and fourth floor units.

89. Following the Court's approval of the New York Settlement, Rogers should have been collecting all of the rental income from 808 Lexington. Yet, during the period of Interim Guardianship, Rogers only passively collected 50% of the rental income from Fig and Olive. Rogers and Kelly ignored the remaining rent that Oliver Jr. was collecting on the other 50% of the rental income from Fig and Olive and ignored any effort to obtain any rental income from the other units or tenants.

90. Following his appointment as successor guardian, Kelly should have been collecting all of the rental income from 808 Lexington. Yet, until the sale of 808 Lexington, he only passively collected 50% of the rental income from Fig and Olive. Kelly ignored the remaining rent that Oliver Jr. was collecting on the other 50% of the rental income from Fig and Olive and ignored any effort to obtain any rental income from the other units or tenants.

91. Until recent efforts undertaken mainly by Julian at his own expense, Oliver Jr. had not paid any money to the State of New York or to Rogers or Kelly for any past due property taxes

pursuant to the New York Settlement, or for the amount of property taxes on 808 Lexington from May 9, 2013, to the date immediately prior to the Closing Date.

92. Until recent efforts undertaken mainly by Julian at his own expense, Oliver Jr. had not paid any of the interest that accrued on the 808 Mortgage from June 30, 2013, until it was paid in full.

93. During the period of Interim Guardianship, Rogers also failed to take actions for the benefit of the Ward, including, but not limited to, the following acts with respect to 808 Lexington:

- a. Enter into discussions with Fig and Olive regarding renewing its lease or increasing the monthly rental payments;
- b. Enter into discussions with Pinafore Nursery to sign a new lease and increase its rent from the monthly rent it was paying for the previous four years;
- c. Take any action to market the third or fourth floor apartments;
- d. Take any action with respect to repairing, renovating, or maintaining 808 Lexington, including, but not limited to, its common areas, to obtain the highest and best rental values for the property;
- e. Collect the appropriate rental income due Oliver Sr. from the lease of 808 Lexington;
- f. Pursue an action against Oliver Jr. to force Oliver Jr. to use the rental income from 808 Lexington to pay down the Beachton mortgage and to enforce the New York Settlement;
- g. Bring an action against Beachton for usury or satisfaction based upon the interest it received in 808 Lexington and thereafter 67th Street; and

- h. Obtain commercial financing to pay off the 808 Mortgage assigned to Beachton to avoid the default interest rate it was accruing against 808 Lexington.

94. After his appointment as successor guardian of Oliver Sr. on April 23, 2014, Kelly also failed to take actions for the benefit of the Ward, including, but not limited to, the following acts with respect to 808 Lexington:

- a. Enter into discussions with Fig and Olive regarding renewing its lease or increasing the monthly rental payments;
- b. Enter into discussions with Pinafore Nursery to sign a new lease and increase its rent from the monthly rent it was paying for the previous four years;
- c. Take any action to market the third or fourth floor apartments;
- d. Take any action with respect to repairing, renovating, or maintaining 808 Lexington, including, but not limited to, its common areas, to obtain the highest and best rental values for the property;
- e. Collect the appropriate rental income due Oliver Sr. from the lease of 808 Lexington;
- f. Properly pursue an action against Oliver Jr. to force Oliver Jr. to use the rental income from 808 Lexington to pay down the Beachton mortgage and to enforce the New York Settlement;
- g. Bring an action against Beachton for usury or satisfaction based upon the interest it received in 808 Lexington and thereafter 67th Street; and
- h. Obtain commercial financing to pay off the 808 Mortgage assigned to Beachton to avoid the default interest rate it was accruing against 808 Lexington.

Due Diligence as to New York Settlement

95. Prior to entering into the New York Settlement, Rogers failed to do any type of due diligence as to the true fair market value of 808 Lexington and 67th Street, including, but not limited to, obtaining appraisals of the properties. Yet, Rogers and his counsel represented to the Florida Court that the New York Settlement was in the best interests of Oliver Sr. and that the properties were approximately equal in value.

96. On or about the Closing Date, the fair market value of 808 Lexington was approximately \$5 million and the true fair market value of 67th Street was more than \$22.5 million.

97. The fair market value of the London property has never been addressed other than in a cursory fashion by Rogers or the attorneys he hired to protect the Ward's interest, despite the property being located in the most exclusive and high priced rental district in London and documents within the Guardians possession indicating that it had a value far in excess of the Ocean Boulevard property.

98. As a result, contrary to what was represented by Rogers and his counsel to the guardianship court to obtain approval for the settlement, the estate of Oliver Sr. received assets from the New York Settlement with a value substantially less than those received by the Estate of Lorna.

COUNT I

Breach of Fiduciary Duty Against Defendants Rogers, O'Connell, Crispin, Ciklin, Stein, Beys, and Stein Law Firm

99. Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, hereby re-alleges and adopts by reference all allegations contained in paragraphs 1 through 98, *supra*, as if fully set forth herein.

100. During the period of the Interim Guardianship, Rogers had a fiduciary duty to Oliver Sr. to act in his best interest until Rogers was discharged as guardian, including, among other things, a duty of loyalty.

101. O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm ("Counsel for Rogers") represented Rogers, in his capacity as guardian for Oliver Sr., in connection with the New York Settlement and thereafter.

102. Counsel for Rogers, while he was acting as guardian for Oliver Sr., owed similar duties to Oliver Sr. and were fully aware that the work they were doing for Rogers, as guardian of Oliver Sr., was for the benefit of Oliver Sr.

103. Rogers, as guardian of Oliver Sr., and Counsel for Rogers were negligent and reckless in the exercise of their fiduciary duties to Oliver Sr., resulting in damages to him.

104. By failing to take actions for the benefit of the Ward, including, but not limited to, failing to, (a) properly manage 808 Lexington, (b) perform proper due diligence of the value of 808 Lexington, 67th Street, Ocean Boulevard, or the London Property to properly evaluate the fairness of the New York Settlement, (c) take prompt or appropriate action against Oliver Jr. to collect rents and taxes owed by the Estate of Lorna or Oliver Jr., (d) failing to ensure that rental income from 808 Lexington was used to pay down the Beachton mortgage, (e) arrange for commercially reasonable substitute financing for the Beachton mortgage, and (f) failing to pursue action against Beachton to have its mortgage deemed satisfied or released, Rogers damaged the Estate of Oliver Sr. in contravention of his fiduciary duties to Oliver Sr.

105. At all material times, Counsel for Rogers, as guardian of Oliver Sr., owed fiduciary duties to Oliver Sr. and were involved and participated in Rogers' actions or inactions, resulting in the above described damage.

106. Plaintiff was required to retain the Bleakley Bovol Law Firm to mitigate the damages to the Estate of Oliver Sr. and is required to pay it a reasonable fee for its services.

WHEREFORE, the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, requests the Court award damages against Defendants Rogers, O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm and such other relief as the Court deems just and proper, including an award of attorneys' fees and costs against Defendants.

COUNT II
Breach of Fiduciary Duty Against Defendants Kelly,
O'Connell, Crispin, Ciklin, Stein, Beys, and Stein Law Firm

107. Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, hereby re-alleges and adopts by reference all allegations contained in paragraphs 1 through 98, supra, as if fully set forth herein.

108. Following his appointment as successor guardian of Oliver Sr. on April 23, 2014, Kelly had a fiduciary duty to Oliver Sr. to act in his best interest until Kelly was discharged as guardian, including, among other things, a duty of loyalty.

109. O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm represented Kelly ("Counsel for Kelly"), in his capacity as successor guardian for Oliver Sr.

110. Counsel for Kelly, while he was acting as guardian for Oliver Sr., owed similar duties to Oliver Sr. and were fully aware that the work they were doing for Kelly, as successor guardian of Oliver Sr., was for the benefit of Oliver Sr.

111. Kelly, as guardian of Oliver Sr., and Counsel for Kelly were negligent and reckless in the exercise of their fiduciary duties to Oliver Sr., resulting in damages to him.

112. By failing to take actions for the benefit of the Ward, including, but not limited to, failing to (a) properly manage 808 Lexington, (b) take prompt or appropriate action against Oliver Jr. to collect rents and taxes owed by the Estate of Lorna or Oliver Jr., (c) failing to ensure that rental income from 808 Lexington was used to pay down the Beachton mortgage, (d) arrange for commercially reasonable substitute financing for the Beachton mortgage, (e) entering into an unreasonable exclusive sales agreement with Lipa Lieberman, and (f) failing to pursue action against Beachton to have its mortgage deemed satisfied or released, Kelly damaged the Estate of Oliver Sr. in contravention of Defendants' fiduciary duties.

113. At all material times, Counsel for Kelly, as successor guardian of Oliver Sr., owed fiduciary duties to Oliver Sr. and were involved and participated in Kelly's actions or inactions, resulting in the above described damage.

114. Plaintiff was required to retain the Bleakley Bovol Law Firm to mitigate the damages to the Estate of Oliver Sr. and is required to pay it a reasonable fee for its services.

115. WHEREFORE, the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, requests the Court award damages against Defendants Kelly, O'Connell, Crispin, Ciklin, Stein, Beys, and the Stein Law Firm and such other relief as the Court deems just and proper, including an award of attorneys' fees and costs against Defendants.

COUNT III
Negligence Against Defendant Rogers

116. Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, hereby re-alleges and adopts by reference all allegations contained in paragraphs 1 through 98, *supra*, as if fully set forth herein.

117. Defendant Rogers had a duty to the Ward to administer the guardianship observing

a standard in dealing with guardianship property that would be observed by a prudent person dealing with the property of another, in the best interest of the ward, using such special skills and/or expertise to the extent that any such representation was made as to the special skills or expertise of the guardian.

118. Defendant Rogers, as guardian of the Ward, negligently administered the guardianship by failing to discharge his duties as guardian and by wasting and mismanaging the Ward's property.

119. Defendant Rogers was negligent in the following ways:

- (a) By failing to properly manage 808 Lexington;
- (b) By failing to perform proper due diligence of the value of 808 Lexington and 67th Street to properly evaluate the fairness of the New York Settlement;
- (c) By failing to take action against Oliver Jr. to collect rents and taxes owed by the Estate of Lorna or Oliver Jr.;
- (d) By failing to ensure that rental income from 808 Lexington was used to pay down the Beachton mortgage;
- (e) By failing to arrange for commercially reasonable substitute financing for the Beachton mortgage;
- (f) By failing to pursue action against Beachton to have its mortgage deemed satisfied or released;
- (g) By permitting Beachton to collect usurious interest on the 808 Lexington mortgage;
- (h) By permitting the guardianship attorney's to collect unnecessary and excessive fees;
- (i) By failing to monitor or challenge excessive hourly attorney's fees charged by the guardianship attorneys;

- (j) By failing to prepare or implement a guardianship plan;
- (k) By failing to prepare accurate annual reports regarding the guardianship assets;
- (l) By failing to maintain guardianship financial records to accurately track and recover guardianship assets;
- (m) By pursuing needless and wasteful litigation against the Ward's heir;
- (n) By failing to take action against the Ward's former wife, Lorna Bivins, to recover contribution for unpaid taxes; and
- (o) By charging the Ward excessive guardian fees;

120. As a direct and proximate result of the negligence of Defendant Rogers as set forth above, the Ward has suffered damages.

WHEREFORE, the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, requests the Court award damages against Defendant Rogers and such other relief as the Court deems just and proper, including an award of attorneys' fees and costs against Defendants.

COUNT IV
Negligence Against Defendant Kelly

1121. Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, hereby re-alleges and adopts by reference all allegations contained in paragraphs 1 through 98, *supra*, as if fully set forth herein.

122. Defendant Kelly had a duty to the Ward to manage the guardianship observing a standard in dealing with guardianship property that would be observed by a prudent person dealing with the property of another, in the best interest of the ward, using such special skills and/or expertise to the extent that any such representation was made as to the special skills or expertise of the guardian.

123. Defendant Kelly, as guardian of the Ward, negligently administered the guardianship by failing to discharge his duties as guardian and by wasting and mismanaging the Ward's property.

124. Defendant Kelly was negligent in the following ways:

- (a) By failing to properly manage 808 Lexington;
- (b) By failing to take action against Oliver Jr. to collect rents and taxes owed by the Estate of Lorna or Oliver Jr.;
- (c) By failing to ensure that rental income from 808 Lexington was used to pay down the Beachton mortgage;
- (d) By failing to arrange for commercially reasonable substitute financing for the Beachton mortgage;
- (e) By failing to pursue action against Beachton to have its mortgage deemed satisfied or released;
- (f) By permitting Beachton to collect usurious interest on the 808 Lexington mortgage;
- (g) By failing to monitor or challenge excessive hourly attorney's fees charged by the guardianship attorneys;
- (h) By failing to prepare or implement a guardianship plan;
- (i) By failing to prepare accurate annual reports regarding the guardianship assets; and
- (j) By failing to maintain guardianship financial records to accurately track and recover guardianship assets.
- (k) By charging the Ward excessive guardian fees;

125. As a direct and proximate result of the negligence of Defendant Kelly as set forth above, the Ward has suffered damages.

WHEREFORE, the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, requests the Court award damages against Defendant O'Connell and such other relief as the Court deems just and proper, including an award of attorneys' fees and costs against Defendants.

COUNT V
Professional Negligence Against Defendant O'Connell

126. Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, hereby re-alleges and adopts by reference all allegations contained in paragraphs 1 through 98, supra, as if fully set forth herein.

127. O'Connell represented both Rogers and Kelly in their capacity guardians for Oliver Sr.

128. During the guardianship, O'Connell undertook to provide legal services to the guardianship, with the full knowledge that Oliver Sr. was an intended beneficiary of his legal services. At all times O'Connell held himself out as competent in the areas of law for which he was retained to provide representation.

129. O'Connell was required to exercise the same legal skill as a reasonably competent attorney and to use reasonable care in determining and implementing a strategy to be followed to achieve the guardianship's goals, or alternatively goals that were in the best interest of Oliver Sr.

130. In the course of handling legal matters for the guardianship, O'Connell negligently failed to act with the degree of competence generally possessed by attorneys in the State of Florida who handle similar matters. Oliver Sr., through his guardians was forced to pay O'Connell a substantial amount of money for his representation.

131. O'Connell was negligent and/or committed malpractice in the following ways:

- (a) By failing to perform proper due diligence of the value of 808 Lexington and 67th Street, or Ocean Boulevard or the London Property to properly evaluate the fairness of the New York Settlement;
- (b) By failing to advise the guardianship regarding the clear discrepancy in the values of the properties involving in the New York Settlement;
- (c) By advising the client to enter into the New York settlement against the best interest of the guardianship and encouraging settlement to obtain fees rather than benefit Oliver Sr.;
- (d) By failing to advise the guardianship to take action against Oliver Jr. to collect rents and taxes owed by the Estate of Lorna or Oliver Jr.;
- (e) By failing to advise the guardianship to ensure that rental income from 808 Lexington was used to pay down the Beachton mortgage;
- (f) By failing to advise the guardianship to arrange for commercial reasonable substitute financing for the Beachton mortgage;
- (g) By failing to pursue action against Beachton to have its mortgage deemed satisfied or released;
- (h) By failing to advise the guardianship regarding the usurious interest charged by Beachton;
- (i) By charging and taking from the guardianship excessive attorney's fees; and by failing to prevent Lipa Lieberman from obtaining an exclusive sales agreement or excessive fees because Lieberman had helped O'Connell bolster his fee claim under the hybrid contingency fee claim;
- (j) By failing to properly prosecute claim against Oliver Jr. under Global Settlement and trying to settle for low amount solely to obtain fees as opposed to acting in best interest of

Oliver Sr. and/ or his estate, and engaging in acts constituting a conflict of interest by seeking to avoid recoupment against Oliver Jr. unless she could obtain a release from Julian as to the Guardian; and

(k) By failing to account to the Court or Julian that he and his firm had failed to comply with the Global Settlement Order by improperly holding back several hundred thousand dollars from the proceeds of the sale of 808 Lexington in the firm's trust account.

132. As a direct and proximate result of O'Connell's negligence and/or malpractice, the Ward sustained damages.

133. Ciklin Lubitz & O'Connell is vicariously liable for the negligence of its attorneys including O'Connell.

WHEREFORE, the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, requests the Court award damages against Defendant O'Connell and Ciklin Lubitz & O'Connell and such other relief as the Court deems just and proper, including an award of attorneys' fees and costs against Defendants.

COUNT VI
Professional Negligence Against Defendant Crispin

134. Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, hereby re-alleges and adopts by reference all allegations contained in paragraphs 1 through 98, supra, as if fully set forth herein.

135. Crispin represented both Rogers and Kelly in their capacity guardians for Oliver Sr.

136. During the guardianship, Crispin undertook to provide legal services to the guardianship, with the full knowledge that Oliver Sr. was an intended beneficiary of his legal

services. At all times Crispin held herself out as competent in the areas of law for which she was retained to provide representation.

137. Crispin was required to exercise the same legal skill as a reasonably competent attorney and to use reasonable care in determining and implementing a strategy to be followed to achieve the guardianship's goals, or alternatively goals that were in the best interest of Oliver Sr.

138. In the course of handling legal matters for the guardianship, Crispin negligently failed to act with the degree of competence generally possessed by attorneys in the State of Florida who handle similar matters. Oliver Sr., through his guardians was forced to pay Crispin a substantial amount of money for her representation.

139. Crispin was negligent and/or committed malpractice in the following ways:

- (a) By failing to perform proper due diligence of the value of 808 Lexington and 67th, or Ocean Boulevard or the London Property Street to properly evaluate the fairness of the New York Settlement;
- (b) By failing to advise the guardianship regarding the clear discrepancy in the values of the properties involving in the New York Settlement;
- (c) By advising the client to enter into the New York settlement against the best interest of the guardianship and encouraging settlement to obtain fees rather than benefit Oliver Sr.;
- (d) By failing to advise the guardianship to take action against Oliver Jr. to collect rents and taxes owed by the Estate of Lorna or Oliver Jr.;
- (e) By failing to advise the guardianship to ensure that rental income from 808 Lexington was used to pay down the Beachton mortgage;
- (f) By failing to advise the guardianship to seek substitute financing for the Beachton mortgage;

(g) By failing to pursue action against Beachton to have its mortgage deemed satisfied or released;

(h) By failing to advise the guardianship regarding the usurious interest charged by Beachton;

(i) By charging and taking from the guardianship excessive attorney's fees and by failing to prevent Lipa Lieberman from obtaining an exclusive sales agreement or excessive fees because Lieberman had helped Crispin's firm bolster their fee claim under the hybrid contingency fee claim;

(j) By failing to properly prosecute claim against Oliver Jr. under Global Settlement and trying to settle for low amount solely to obtain fees as opposed to acting in best interest of Oliver Sr. and/ or his estate, and engaging in acts constituting a conflict of interest by seeking to avoid recoupment against Oliver Jr. unless she could obtain a release from Julian as to the Guardian; and

(k) By failing to account to the Court or Julian that she and her firm had failed to comply with the Global Settlement Order by improperly holding back several hundred thousand dollars from the proceeds of the sale of 808 Lexington in the firm's trust account.

140. As a direct and proximate result of Crispin's negligence and/or malpractice, the Ward sustained damages.

141. Ciklin Lubitz & O'Connell is vicariously liable for the negligence of its attorneys including Crispin.

WHEREFORE, the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, requests the Court award damages against Defendant

Crispin and Ciklin Lubitz & O'Connell and such other relief as the Court deems just and proper, including an award of attorneys' fees and costs against Defendants.

COUNT VII
Professional Negligence Against Defendant Stein

142. Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, hereby re-alleges and adopts by reference all allegations contained in paragraphs 1 through 98, supra, as if fully set forth herein.

143. Stein represented both Rogers and Kelly in their capacity guardians for Oliver Sr. with the full knowledge and understanding that Oliver Sr. was the intended beneficiary of his legal services.

144. During the guardianship, Stein undertook to provide legal services to the guardianship. At all times Stein held himself out as competent in the areas of law for which he was retained to provide representation.

145. Stein was required to exercise the same legal skill as a reasonably competent attorney and to use reasonable care in determining and implementing a strategy to be followed to achieve the guardianship's goals.

146. In the course of handling legal matters for the guardianship, Stein negligently failed to act with the degree of competence generally possessed by attorneys in the State of Florida who handle similar matters. The guardianship paid Stein a substantial amount of money for the sole purpose of representing the guardianship.

147. Stein was negligent and/or committed malpractice in the following ways:

(a) By failing to perform proper due diligence of the value of 808 Lexington and 67th Street, Ocean Boulevard or the London Property to properly evaluate the fairness of the New York Settlement;

- (b) By failing to advise the guardianship regarding the clear discrepancy in the values of the properties involving in the New York Settlement;
- (c) By advising the client to enter into the New York settlement against the best interest of the guardianship;
- (d) By failing to advise the guardianship to take action against Oliver Jr. to collect rents and taxes owed by the Estate of Lorna or Oliver Jr.;
- (e) By failing to advise the guardianship to ensure that rental income from 808 Lexington was used to pay down the Beachton mortgage;
- (f) By failing to arrange for commercially reasonable substitute financing for the Beachton mortgage, as opposed to preventing such an alternative unless it also included financing to cover attorney's fees for himself, his firm, and the guardians and their other counsel;
- (g) By failing to pursue action against Beachton to have its mortgage deemed satisfied or released;
- (h) By failing to advise the guardianship regarding the usurious interest charged by Beachton;
- (i) By charging and taking from the guardianship excessive attorney's fees;
- (j) By taking large sums of money under the guise of retainers without accounting or documentation therefore; and
- (k) By failing to account to the Court or to Julian regarding the failure to comply with the terms of the Global Settlement Agreement as the closing agent.

148. As a direct and proximate result of Stein's negligence and/or malpractice, the Ward sustained damages.

149. Beys Liston Mobargha & Berland, LLP f/k/a Beys Stein Mobargha & Berland, LLP and The Law Offices of Keith B. Stein, PLLC n/k/a Stein Law, PLLC are vicariously liable for the negligence of their attorneys including Stein.

WHEREFORE, the Plaintiff, JULIAN BIVINS, as Personal Representative of the ancillary Estate of Oliver Wilson Bivins, deceased, requests the Court award damages against Defendants Stein, Beys, and the Stein Law Firm and such other relief as the Court deems just and proper, including an award of attorneys' fees and costs against Defendants.

Jury Demand

Plaintiff demands a trial by jury on all issues so triable.

Dated: January 8, 2016.

Respectfully Submitted,

/s/ J. Ronald Denman

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