Hearing TO REMOVE TED SIMON TRUST

**INITIAL STATEMENTS**

1. That Eliot gives no credence or attests to the legal validity of any of the dispositive documents used in these hearings and reserves his rights to challenge them and appeal any/all decisions depending on the outcome of the hearings to determine the validity of the documents being used in these proceedings at this time. This is due to ongoing investigations of the dispositive documents and prior fraud and forgery in the Estates and Trusts of Simon and Shirley committed by Counsel and Fiduciaries in these matters.
2. Note to court that Judge John Robert Blakey son to father of RICO law has taken over Il insurance litigation case.

**Motion to Dismiss**

1. First, the Complaint contains a misjoinder of causes of action, because Eliot has filed suit in numerous independent capacities. Under Rule 1.110(g), Fla. R. Civ.P., "[a] pleader may set up in the same action as many claims or causes of action or defenses in the same right as the pleader has, and claims for relief may be stated in the alternative if separate items make up the cause of action, or if 2 or more causes of action are joined." A complaint shall state all causes of action held by the plaintiff in one capacity, but in this case, Eliot improperly has included separate claims held by Eliot Bernstein in many different capacities, including individually and in a representative capacity. See Fla. R. Civ. P. 1.110(g); General Dynamics Corp. v. Hewitt, 225 So. 2d 561, 563 (Fla. 3d DCA 1969); County of Sarasota v. Wall, 403 So. 2d 500 (Fla. 2d DCA 1981) (must file a separate suit as to an action brought in a representative capacity); 1 Am.Jur.2d Actions § 94 (1994) (“One cannot in the same action sue in more than one distinct right or capacity." This is not merely a semantic difference in this case, because there are clear and distinct issues and conflicts between the claims attempted to be raised by Eliot individually as opposed to by his children.
   1. Due to the fact that it is unknown who the beneficiaries of this Trust are at this time and if the document is legally binding, Eliot was forced to file in the various capacities, individually and on behalf of his children. Since Eliot and his children have the same interest in determining if Ted is qualified and a legal trustee and this does not involve distribution of assets then Eliot should be able to pursue the action on behalf of either himself as prior beneficiary and a possible future beneficiary of the Simon Trust or for his children as their guardian or both.
   2. If true court can decide who can argue Eliot or Eliot on behalf of children.
2. PG 1
   1. Eliot has standing.
   2. The Court already determined that Eliot served all parties
3. PG 2
   1. First off Ted is considered predeceased for ALL purposes of the Shirley Trust dispositions and distributions by the language in the trust.
   2. Second, even if Ted were mistakenly named by Shirley in contradiction to his being dead and unable to make dispositions and distributions in the trust, Eliot alleges he is not now a qualified Trustee for serious breaches of fiduciary duties, civil torts against beneficiaries and alleged and under investigation criminal acts against beneficiaries and this Court.
   3. The document is being challenged as fraud and this must be completed to see if Ted truly is named as Trustee, as there is evidence that will show that the document is improperly constructed and contradictory in nature indicating alleged fraud and possible forgery.
   4. Even if Ted is named as Trustee he would be unable to make dispositions under the trust because he is expressly precluded by the document. Shirley was aware that she was disinheriting Ted and did not want him to be involved in a fiduciary capacity and why she expressly stated such. Further, Simon’s recently unearthed 2008 Trust that Tescher claimed in deposition was identically “mirrored” to Shirley’s names William Stansbury as the Successor Trustee to Simon, NOT TED and why would there be a difference. The fact that the 2008 Will was secreted by Tescher and Spallina until their court ordered production yielded it, will be alleged to be to hide this fact and fraudulently insert Ted as the Successor to Simon in Shirley’s Trust at the hearing to remove Ted.
4. PG 3
   1. The Court has long ago decided that we needed to hear the Motions and Petitions to remove Ted prior to hearing other pleadings of Ted, as he may not be NOW qualified to act as a fiduciary and thus his pleadings would be MOOT.
   2. The Court did not decide that we hear Count 1 of the Trust Construction first before hearing the Motion to Remove Ted as it would be a waste of time to hear that construction case if it is later determined that it was pled by a Trustee who not qualified and may have been fraudulently inserted into the document.
   3. Even if the trust construction is to be heard, Ted cannot plead the case because he has direct conflict in the outcome, because if he is not successful in proving his points, his family receives nothing from the Trust and if he were to be successful he would receive approximately 30% of the trust. This causes conflict and adversity with beneficiaries that prejudice his ability as a fiduciary to move this issue and should have called for an independent party to move the matter as required by statute when a fiduciary has a conflict. This will be a further reason presented at the hearing to Remove Ted as reason to remove Ted.
5. PG 4
   1. Eliot does state legal claims to remove Ted for serious breaches of fiduciary duties and civil torts and criminal acts.
   2. Eliot does not claim he disagrees with everything Ted does and Ted has done ABSOLUTELY NOTHING according trust code statutes to properly and legally administer the trust. The only thing Ted has done is misuse trust assets, make illegal distributions to improper parties and then pay with trust funds for the defense of these acts.
   3. Eliot is not disinherited in Shirley’s Trust and as it stands he is a 1/3rd beneficiary or his children are 50% beneficiaries. The only people disinherited from Shirley’s Trust entirely are Ted and his sister Pam and their children may or may not be depending on the interpretation of the documents due to the frauds committed by Ted’s counsel Spallina and Tescher that were to directly benefit their client and bedfellow Ted.
6. PG 5
   1. This paragraph is wholly a fraud on the court as it attempts to use language from an alleged Trust Simon signed 48 days prior to his death (that is challenged) and helps prove to this court that this Motion to Dismiss is a sham filing knowingly constructed with fraudulent intent.
   2. The first problem is that the language cited from Simon’s alleged Trust has absolutely no bearing on the IRREVOCABLE Shirley Trust where the beneficiary class was defined and closed upon her death and cannot be changed by Simon to add or subtract beneficiaries.
   3. Then Eliot is a beneficiary of Simon’s estate of tangible properties and if the documents allegedly signed amending the original 2008 trust do not prevail, Eliot’s family is a 1/3 beneficiary of the Simon Estate and Simon Trust. Note the Governor Rick Scott’s Notary Public division has already investigated and determined the trusts are improperly notarized, so as to be unable to prove that Simon was actually present at the signing of the document. There are other defects that will be addressed later.
   4. Eliot is a beneficiary of Shirley’s Estate and Shirley’s trust as so stated in the trust.
   5. The only people again who are entirely disinherited from any beneficiary scenario in Simon and Shirley’s estates and trusts are Ted and Pam and again their children possibly depending on determinations relating to the frauds committed by Tescher and Spallina et al.
   6. Eliot is a beneficiary under FL statute as so defined and in all cases is at minimum a future beneficiary if the documents attempting to convert the assets are stricken.
7. PG 6
   1. If this argument that Eliot is conflicted with his children were to hold it would also conflict Ted not only with his children but with other beneficiaries and preclude his acting as a fiduciary and pleading this toxic frivolous motion and any others.
   2. The Oppenheimer case is wholly different and the conflicts are caused by the frauds in both cases and thus Eliot must be able to argue for both he and his children. Since Eliot did retain counsel for his children in instances where conflict would arise, mention Yates situation, it can be assumed that where there may be conflict he will argue on behalf of either he or his children’s behalf.
   3. Since both Eliot and his children have similar interest in determining if Ted is qualified as Trustee and knowing the truth, Eliot can argue the Motion free of conflict as removing Ted does not disadvantage either party, only enables them to have a qualified fiduciary to work with to determine next who are the beneficiaries and if the documents stand.
   4. To later learn after hearing motions of Ted that he was not qualified and breached will only be a further waste, fraud and abuse on this court, the beneficiaries, creditors and others and thus Eliot and his children have similar interest to make sure Ted is qualified. If the other side feels so strongly about Ted being a qualified fiduciary why are they so afraid and fighting this hearing using toxic pleadings like this motion to dismiss that are void of legal arguments and more.
   5. The Court already has ruled in Oppenheimer that NO GUARDIAN is needed for Eliot and Candice as they are qualified guardians fit to represent their children in the matter. This insertion of the Oppenheimer nonsense is nonsense.
8. PG 7
   1. Eliot does state several qualified reasons to remove Ted under 736.0706.
   2. Eliot does intend to prove and has claimed clear abuse and wrongdoing, both civil and criminal in Ted’s administration of the Estate and Trusts.
   3. Eliot has not claimed he is hostile towards Ted, in fact, in Ted’s own testimony at an evidentiary hearing the Court will recall that Ted and Alan had conspired to use a strategy of force and aggression against Eliot and his family. HAVE EXHIBIT TED TESTIMONY.
   4. Ted is so conflicted and adverse due to his potential loss of everything if he is not successful in his pleadings and thus is using his ALLEGED fiduciary title to attempt to gain his family 1/3 of a trust that he was cut out of, ENTER TO EVIDENCE PD REPORT, showing Ted acted against the advice of his Counsel ROBERT SPALLINA and DONALD TESCHER according to their statements to make distributions to improper parties.
   5. Ted due to these factors is conflicted and adverse and also is fighting for his life in criminal investigations of certain of he and his former counsel that he is prejudiced against certain beneficiaries and will do anything to prevent administration to properly proceed that could land him and his lawyer friends in prison for a long time with a subsequent loss of their personal wealth.
   6. Ted brought Spallina and Tescher his business associates and lawyers into the Bernstein family.
   7. Ted according to PBSO stated that he only followed orders of Tescher and Spallina his counsel and had not even fully read the Dispositive Documents he was operating under.
   8. Ted alleged he was Successor Trustee of Shirley’s trust days after Simon died and thus was acting as Successor Trustee when the admitted altered document of Spallina was done and thus this claim is also frivolous, toxic and untrue.
   9. Ted acted as PR prior to being appointed by Court in selling the home and signed a Florida Tax form as PR during the time he was not appointed and the estate of Shirley had been closed fraudulently by Tescher and Spallina using a dead Simon to close it. Because of the fraud on the court in closing the estate no successor was chosen until a year after Simon died so all of Ted’s action with Estate items was illegal.
   10. Spallina admitted that he fraudulently altered a Shirley Trust document that benefited Ted’s family by including them into the Shirley Trust through a fraudulent amendment.
   11. Ted did participate in the fraudulent activity and in fact made fraudulent distributions to improper parties and according to Spallina statements to PBSO he did this against the advice of his counsel Tescher and Spallina.
   12. Ted did not take immediate actions to prosecute or expose Tescher and Spallina’s acts or their notary public Kimberly Moran and in fact wrote a letter expressing his anger at Eliot for so exposing his friends. HAVE LETTER FOR EVIDENCE
   13. Ted has tried to further cover up and misuse his fiduciary powers to do so the documents and evidence against Tescher and Spallina. Ted has no right to bring actions against them as he worked in concert with them. The only person who does not remember how Ted and Spallina came to this Court and defended the fraudulent documents and lied to the court again and again in so doing is Alan Rose and so he now tries to commit fraud on the court to make claims that Ted and his friends and business associates Tescher and Spallina are not working together in the conspiracy to commit fraud on the court and beneficiaries and creditors.
   14. Eliot is certain administration has been difficult for Ted and his counsel since Eliot is the one who uncovered their frauds and filed criminal and civil charges against him. This is even more reason Ted and his former and CURRENT counsel are conflicted and adverse with Eliot and his family.
   15. Eliot is not blocking having distributions made, he just won’t participate in illegal distributions to improper parties knowingly and give any form of implied consent to the furtherance of criminal acts, despite how hard Ted and his Counsel try to force Eliot to take the improper distributions. Keep in mind that before having these matters of construction etc made, Ted and his siblings knowingly took the distributions before having the matters heard and now want to try and reconstruct the trust to fit their crimes.
   16. The closing statement is reason to have the Petitions to remove Ted heard as they claim Eliot’s petitions will be “shown to lack factual or legal merit” therefore there must be a hearing for them to attempt to show this before dismissal.

**Motion to Strike**

1. PG 1
   1. The Court denied Ted as Curator, see Order.
   2. Ted withdrew his Petition to then become PR when the Court advised him thrice to reconsider his Petition as it would not serve to have Ted as Successor PR in Simon as it would hamstring and delay administration due to the inherent problems caused by Ted and his counsel and thus O’Connell was chosen instead to get a “neutral person” involved. The trustee here admits that Ted is not neutral and thus why the Court swayed him and his counsel to withdraw their Petition while standing at the podium and they did.
2. PG 2
   1. Ted was never appointed Trustee of the Shirley Trust and acted as such fiduciary days after Simon passed. He has failed as Trustee to notify and account to beneficiaries as required by statute. Therefore all references to Spallina and Tescher et al should stand and further are highly relevant to the removal of Ted.
3. PG 3
   1. The failure to account in Simon’s trust according to statute is highly relevant to Ted’s qualifications under Shirley. Eliot has standing or Eliot’s kids have standing this has been hashed about already.
4. PG 4
   1. There is nothing in the Court’s order regarding the privileged document that precludes Eliot from referencing the document. Further, Eliot is using Ted’s testimony before the Court under oath regarding the document, which of course is usable and the Court order does not reference the use of Ted’s statements under oath.
   2. These statements are highly relevant and prove Ted is conflicted and adverse.
5. PG 5
   1. Eliot has included reference to John and Jane Does as Eliot has pleadings submitted to this Court that may implicate these matters as part of an ongoing RICO action in the Southern District that has thousands of lawyers as defendants and where relations will be shown that may make many of the criminal acts and civil torts in the Estates and Trusts of Simon, committed by attorneys and fiduciaries part of the larger RICO and additional predicate acts for rehearing the RICO claims in light of these acts.

**MOTION TO STAY**

1. PG 1
   1. The Court would err in staying the Motion to Remove Ted and allowing Ted to continue to plead when his pleadings may all be ruled to have occurred while he acted in bad faith with unclean hands. If this stay were enacted and trust construction was heard and even ruled in Ted’s favor and then the motion to remove Ted was heard and it found Ted acted in bad faith and was unqualified to plead as a fiduciary then everyone will have wasted time while Ted perpetrated further fraud, waste and abuse.
   2. Again, Ted cannot argue the Trust Construction case because of his conflicts and adverse interests with beneficiaries.

**Motion for Settlement with Creditor**

1. According to Feeman filing Eliot and/or his children as beneficiaries do not have standing to raise objections.
2. AFTER RULING ON THE CASE ADD THIS --- As such, Eliot and his children have sought no counsel to interpret the settlement but feel that Stansbury should be settled as after reviewing the lawsuit Eliot believes that Ted Bernstein did in fact steal monies and commit fraud against Stansbury causing him the loss of millions of dollars in monies that were rightfully due him. Eliot further states that the estate has also been informed that monies taken went 100% to Ted Bernstein and not Simon and that Simon is alleged to have felt that Ted may have stolen a similar sum of money from him.