

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

TED BERNSTEIN, as Trustee  
of the Shirley Bernstein Trust Agreement  
dated May 20, 2008, as amended,

Probate Division  
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;  
MICHAEL BERNSTEIN; MOLLY SIMON;  
PAMELA B. SIMON, Individually and as Trustee  
f/b/o Molly Simon under the Simon L. Bernstein  
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,  
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the  
Simon L. Bernstein Trust Dtd 9/13/12, and on  
behalf of his minor children D.B., Ja. B. and Jo. B.;  
JILL IANTONI, Individually, as Trustee f/b/o J.I.  
under the Simon L. Bernstein Trust Dtd 9/13/12, and  
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;  
LISA FRIEDSTEIN, Individually, as Trustee f/b/o  
Max Friedstein and C.F., under the Simon L.  
Bernstein Trust Dtd 9/13/12, and on behalf of her  
minor child, C.F.,

Defendants.

**MOTION TO MODIFY FINAL ORDER APPROVING SALE  
DATED MAY 6, 2015 AND FOR FURTHER INJUNCTIVE RELIEF**

Plaintiff, Ted S. Bernstein (the "Trustee"), as Successor Trustee, moves for entry of an Order modifying in part the *Final Order Granting Successor Trustee's Motion to Approve Sale of Trust Property* dated May 6, 2015 (the "Sale Order"), and for further injunctive relief, and states:

1. On May 6, 2015, this Court approved the Trustee's Motion to sell the Trust's property located within the St. Andrews Country Club community in Boca Raton. The sale was initially scheduled to close on or before March 31, 2015, in an all cash transaction, with the buyer accepting

the property "as is." The urgency was created because the St. Andrews Country Club was raising the required equity membership fee from \$95,000 to \$125,000, an increase of \$30,000. Upon learning of the possible sale, Eliot Bernstein objected to it and threatened to file a lis pendens.

2. This Court held a hearing on the Trustee's motion to approve sale on March 25, at uniform motion calendar. Based upon Eliot Bernstein's objections, the Court deferred ruling and scheduled an evidentiary hearing for the next day. At the evidentiary hearing, the Trustee and the Trustee's licensed realtor testified as to: the lengthy marketing process that had been undertaken in an effort to sell this property; the listing was more than 1,000 days old; the offer received was by far the highest and best received to date and likely in the near future; the offer was consistent with an appraisal, which was admitted into evidence; there were extensive carry costs associated with the property; and the announced \$30,000 increase in the club equity membership contribution was a significant factor in this deal. After hearing this testimony, and again based upon Eliot Bernstein's objections and request for time to obtain counter-evidence, the trial court denied the Motion to Approve the Sale on an emergency basis, and deferred the ruling pending a second evidentiary hearing.

3. At an evidentiary hearing held on May 6, 2015, the Court afforded Eliot Bernstein the opportunity to present evidence, through documents or testimony. Despite already having delayed the sale for more than five weeks, Eliot Bernstein presented no witnesses at the evidentiary hearing. Nor did he testify himself. Further, Eliot Bernstein produced no documentary evidence to refute the testimony of the Trustee's licensed real estate agent or the appraisal that was in evidence. Eliot did present a single piece of paper printed off the internet, purporting to be from the Zillow website. The trial court sustained the Trustee's objection to this document. At the conclusion of the

hearing on May 6, the trial court entered the Sale Order, a final order approving the sale of the property and authorizing the Trustee to take all reasonable steps to conclude the transaction. Eliot has never appealed the Sale Order, but he did file a Petition for All Writs with the Florida Supreme Court prior to the closing, which prevented the title company from issuing clear title until that appeal was resolved.

4. As part of the Sale Order, Judge Colin required the Trustee to provide all beneficiaries with a copy of the closing statement and bank records confirming the receipt of funds, and ordered the Trustee's counsel to hold the funds in a separate escrow account. By this Motion, the Trustee seeks to modify the Sale Order with regard to these requirements.

5. First, it is impractical and of no benefit to the trust to require counsel to open a separate escrow account to hold these sale proceeds. Having conferred with the undersigned's bank, the interest to be earned on the monies if placed in a separate account outside of the law firm's IOTA account is 0.15%. Over the course of a year, assuming all of the net sales proceeds sat in that account for a full year, the interest to be earned would be \$500. It is anticipated the funds will not sit in the account for anywhere near a year, meaning there will be virtually no benefit to the estate from imposing this requirement on the Trustee's counsel, and there will be expense incurred by the Trustee's counsel in setting up and maintaining a separate escrow account. Thus, the Trustee requests that the Court modify the Order to allow the proceeds to remain in the law firm's IOTA account until such time as the Court orders their release and disbursement to the Trustee, to be held with the other assets of the Trust.

6. Second, the Sale Order requires the funds be held pending further order of the Court. Now that the sale is concluded, and once the Trustee has provided the beneficiaries documents

relating to the transaction, there is no reason for the funds to be segregated away from the general trust assets.

7. Third, to conclude this sale the Trust was forced to incur substantial attorneys' fees, solely as a result of the obstructionist and delay tactics of Eliot Bernstein. The Trustee and the Trustee's counsel request permission to have those legal fees paid from the sale proceeds. In total, the Trustee incurred more than \$50,000 in attorneys' fees alone to conclude the transaction, including four hearing and appellate work; working with the title company; dealings and interactions with the buyer caused by Eliot's filings which continually delayed potential closing; and advising and representing the Trustee. The Trustee has reviewed the invoices submitted by counsel and believes the time and expense are reasonable, valuable and provided a substantial benefit to the Trust. The Trustee requests permission to pay the sum of \$40,000 immediately from the sale proceeds, which the law firm has agreed to accept if the matter is resolved without the need for an extensive evidentiary hearing or retention of experts. These fees should be approved. If there is an objection of Eliot Bernstein, which might necessitate an evidentiary hearing, the Trust and its counsel will incur additional attorneys' fees, negating the opportunity for a discount.

8. Fourth, while the Trustee has no opposition to providing a copy of the HUD-1 and proof of receipt of funds to all beneficiaries, these documents are personal, private and confidential, and should not be shared with anyone in the world. In particular, these documents should not be posted on the internet. The buyer is a private citizen which entered into an arms length contract to purchase property the Trust was anxiously trying to sell for more than three years. The buyer now owns Fee Simple Title, which is both marketable and insurable, as evidenced by the title insurance policy purchased by seller as part of the closing of the transaction. Further, as a condition of buyer

closing, seller was required to escrow \$25,000 as a limited indemnity fund, in the event that buyer is subjected to any litigation or harassment by Eliot Bernstein, as defined in the sale contract. Notwithstanding his disappointment over being disinherited by his parents and his apparent disappointment with the sale amount, there is no legitimate reason why Eliot Bernstein should have any further involvement with this property, contact with the buyer, or interference with the buyer's quiet and peaceful enjoyment of the property. In the Sale Order, Judge Colin provided the following:

All beneficiaries and persons subject to the jurisdiction of this Court, including Eliot Bernstein, are ordered to take no action to interfere with or otherwise hinder or delay the sale of the House.

9. The buyer has witnessed firsthand the devastating attacks by Eliot Bernstein through the internet on his brother (the Trustee) and others. As part of the final closing negotiations, once Eliot had exhausted all of his extraordinary writ and appellate maneuvers, buyer and its counsel insisted on a limited indemnity<sup>1</sup> to protect the buyer from litigation, interference or harassment by Eliot Bernstein. To assuage concerns of the buyer and induce it to close, the Sale Contract was amended to include the following:

INJUNCTIVE PROTECTION AND/OR LIMITED INDEMNITY FOR ATTORNEYS' FEES. Seller agrees to file a motion, and participate in any hearing set by the Court, at Seller's sole expense, seeking a permanent injunction after the closing to bar and prevent Eliot Bernstein and those acting in concert with him from having any contact of any kind with the Buyers, including no contact by mail, email or telephone; to forbid Eliot from attempting to learn their identities; to forbid Eliot from publishing or publicizing their identities anywhere in the world, including online or anywhere on any internet website, webpage, blog or otherwise; and to enjoin Eliot from filing any action against Buyers anywhere in the world (the "Injunction"). If successful, thereafter upon request of Buyer, Seller will take necessary and reasonable action to enforce the Injunction.

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<sup>1</sup> The indemnity is limited to \$25,000 to pay legal expenses incurred by buyer dealing with any Eliot issue. This money is held in escrow, but is able to be released immediately to the Trustee upon entry of an injunctive relief order.

The Trustee requests the Court enter an Order enjoining all beneficiaries and Eliot Bernstein, over whom this Court has jurisdiction, together with all persons acting in concert with them, from doing any of the above described actions or taking any action against the buyer. The Trustee believes that paragraph 3 of the Sale Order covers this, but so there is clarity and lack of any possible confusion, the Trustee requests that the Court enter the additional injunctive relief sought herein.<sup>2</sup>

10. Finally, to the extent that the Trustee provides an accounting, copies of the HUD-1 and bank records, the Trustee requests that those documents be ordered to remain confidential and to not be shared with anyone, and be subject to the same injunctive relief entered above. Eliot's delay tactics in this particular instance were financially devastating to the Trust. In addition to the extra \$30,000 club membership that Trust was required to pay when the closing was delayed past March 31, the Trust incurred substantial additional expenses and fees between March 31 and the final closing date of January 15, 2016. In particular, the Trust received reduced proceeds and incurred additional expenses totaling more than \$230,000 as shown in Appendix A.

11. Because Eliot is not individually a beneficiary, it is unclear whether these amounts could be surcharged against Eliot (who is indigent according to all of his court filings) or surcharged

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<sup>2</sup> In between the evidentiary hearings from March 25 to May 6, and beyond, Eliot published a number of inflammatory articles on the internet which list the address of the property with the heading "buyer beware." These tactics were designed to prevent the sale or discourage any potential buyers from having interest in the property. This information serves no public purpose, and only could cause harm or embarrassment to the Trustee or to the buyer. In addition, now that the buyer has paid its money, there is no reason to allow materials to be on the internet which could impair the buyer's ability to sell the property to someone else, at present or in the future. The Court has afforded Eliot due process, and should enforce its orders and prevent further tactics designed to thwart those valid, final and non-appealable orders. Thus, the Trustee requests that the Court order Eliot Bernstein to remove all materials from the internet that reference the address of this property or otherwise mention it in any way, shape or form.

against the interest of Eliot's minor children, for whom he purported to serve as guardian. Because the Trustee does not believe Eliot is a suitable or competent guardian to represent the interest of his children, which is the subject of an evidentiary hearing to be held on February 25, 2016, the Trustee believes it will be appropriate to defer making any decision on a surcharge action until after the Court decides whether or not to appoint a guardian ad litem for Eliot's children.

12. Moving forward, however, there is no reason to allow Eliot Bernstein to burn additional Trust assets by harassing the buyers or trying to educate the world on the "alleged fraud" that has occurred within this Court system. No one, and certainly not the buyer, has any interest in this matter becoming public, as it was the subject of multiple evidentiary hearings in the trial court and full appellate review to the extent such was sought. In other words, Eliot Bernstein has received all the process he is due with regard to the Sale Order, which is now final and non-appealable, and that should be the end of it for all time. To the extent Eliot does action calculated and virtually guaranteed to cost the Trust \$25,000, the Court should hold him accountable and the Trustee certainly reserves the right to seek surcharge against the inheritance of the minors for whom he purports to serve as guardian.

WHEREFORE, the Trustee requests that the trial court modify the Sale Order and enter additional injunctive relief as requested in this Motion.

CERTIFICATE OF SERVICE

I CERTIFY that a copy of the foregoing has been furnished to parties listed on attached Service List by:  Facsimile **and**  U.S. Mail;  U.S. Mail;  Email Electronic Transmission;  FedEx;  Hand Delivery this 28th day of January, 2016.

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By: /s/ Alan B. Rose  
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**SERVICE LIST Case No.: 502014CP003698XXXXNBIJ**

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and Eliot and Candice Bernstein,  
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Appendix A

<b>Description</b>	<b>Amount</b>
Increased Club equity contribution	\$30,000.00
Additional interest on Trust's secured line of credit	\$28,332.45
Additional property taxes	\$16,062.76
Additional insurance	\$19,162.40
Mandatory club dues and expenses	\$26,151.14
Mandatory HOA Fees	\$10,005.55
Utilities and maintenance	\$5,317.98
Repair costs <sup>3</sup>	\$31,902.50
Legal fees: Buyer	\$15,000.00
Legal fees: Seller	\$50,000.00
<b>TOTAL</b>	<b>\$231,934.78</b>

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<sup>3</sup> Although the original contract was scheduled to close "as is, where is," the buyers had the right to inspect the property before closing. In the extended gap between the original closing date and late summer, serious additional issues were discovered with the house. These issues, again, are of no concern to anyone other than the buyer, and the issues should remain confidential subject to injunctive relief to prevent Eliot Bernstein from publicizing them on the internet.