

Hon. Martin Colin - 08/19/2014  
Estate of Simon Bernstein

<p>10:09:28-10:10:03 Page 6</p> <p>1 to get counsel. What happened with that? 2 <b>MR. ELIOT BERNSTEIN:</b> You don't want to 3 know. 4 <b>THE COURT:</b> Okay. 5 <b>MR. ELIOT BERNSTEIN:</b> But it hasn't 6 matured into counsel. 7 <b>THE COURT:</b> Okay. All right. Okay. 8 So -- 9 <b>MR. FEAMAN:</b> We also thought that delaying 10 it would be -- 11 <b>THE COURT:</b> The creditor and Eliot have 12 companion petitions to remove Ted, correct? 13 <b>MR. FEAMAN:</b> Correct. 14 <b>THE COURT:</b> All right. Is that the 15 status? 16 <b>MR. PANKAUSKI:</b> That is the status, Your 17 Honor. 18 <b>THE COURT:</b> Okay. So what's the issue 19 then, a hearing date or how long or what's? 20 <b>MR. PANKAUSKI:</b> No. We oppose 21 Mr. Feaman's client, who is a creditor of the 22 estate, from trying to remove a trustee in 23 probate court. 24 <b>THE COURT:</b> Okay. All right. Let me deal 25 with Eliot's first because Eliot's was set</p>	<p>10:11:08-10:11:49 Page 8</p> <p>1 creditor, Mr. Stansbury, he doesn't have 2 standing to remove a trustee -- to remove Ted 3 as trustee. 4 <b>THE COURT:</b> Okay. You agree, depending 5 upon where it's filed, that Eliot does have 6 standing? 7 <b>MR. PANKAUSKI:</b> Eliot has standing to seek 8 Ted's removal, yes. 9 <b>THE COURT:</b> Okay. 10 <b>MR. ELIOT BERNSTEIN:</b> And, Your Honor, I 11 put in a motion to respond to their contempt 12 nonsense and -- 13 <b>THE COURT:</b> I didn't get the last thing 14 you said. 15 <b>MR. ELIOT BERNSTEIN:</b> I put in a motion to 16 respond to their contempt motion they put in 17 here today. 18 <b>THE COURT:</b> I didn't see that. 19 <b>MR. ELIOT BERNSTEIN:</b> Okay. In that 20 motion in case Mr. Feaman somehow isn't, you 21 know, allowed to argue, the law says that you 22 on your own initiative based on review of a 23 trustee's conduct can under I think it's 24 736.0201, blah, blah, blah, is able to make 25 that decision on your own. And right now we</p>
<p>10:10:12-10:10:57 Page 7</p> <p>1 earlier but we delayed that, correct? 2 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 3 <b>THE COURT:</b> Okay. So his matter needs to 4 get set. 5 <b>MR. PANKAUSKI:</b> Well -- 6 <b>THE COURT:</b> Or not. 7 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 8 <b>THE COURT:</b> Okay. 9 <b>MR. PANKAUSKI:</b> If Eliot wants to be heard 10 on it, that's correct. I mean, we would argue 11 that he has to file a complaint under 736.0201. 12 We don't have jurisdiction. And the trust code 13 is pretty clear, he needs to go file a separate 14 civil action. 15 <b>THE COURT:</b> Okay. I haven't looked at his 16 pleadings, and I don't know where they are. So 17 these, both Eliot's and the creditor's 18 petitions are set in the probate case, correct? 19 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 20 <b>THE COURT:</b> So is the issue whether a 21 petition to remove a trustee can take place in 22 the estate case or needs to be filed by 23 separate action in civil court? 24 <b>MR. PANKAUSKI:</b> That is one of the issues. 25 And regarding Mr. Feaman's client, the</p>	<p>10:11:59-10:13:40 Page 9</p> <p>1 have got evidence that assets are missing that 2 they told you -- 3 <b>THE COURT:</b> Hold on. This is UMC time. I 4 don't want to start getting into that. I am 5 trying to get you hearing times now, so. 6 <b>MR. ELIOT BERNSTEIN:</b> Okay. I am sorry. 7 <b>THE COURT:</b> So let me deal with that 8 first. Okay. So the first question is it's 9 not so much a hearing time on Mr. Feaman's 10 client but whether -- it's actually a request 11 to dismiss his petition, correct? 12 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 13 <b>THE COURT:</b> For lack of standing? 14 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 15 <b>THE COURT:</b> Have you filed any pleading 16 directed to that? 17 <b>MR. PANKAUSKI:</b> Yes, Your Honor. 18 <b>THE COURT:</b> Okay. Can I see it? 19 <b>MR. PANKAUSKI:</b> Yes. May I approach? 20 <b>THE COURT:</b> Sure. 21 <b>MR. PANKAUSKI:</b> So this is trustee's 22 motion to dismiss petition to remove Ted S. 23 Bernstein as trustee. Thank you. 24 <b>THE COURT:</b> Okay. Mr. Feaman, I will let 25 you be heard on the standing issue.</p>