

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

CASE NO.: 502012CP004391XXXXSB

IN RE:

ESTATE OF SIMON L. BERNSTEIN,

Deceased.

ELIOT IVAN BERNSTEIN, PRO SE

Petitioner(s),

vs.

TESCHER & SPALLINA, P.A., (and all
parties associated and of counsel);
ROBERT L. SPALLINA (both personally
and professionally); DONALD R. TESCHER
(both personally and professionally);
THEODORE STUART BERNSTEIN (as alleged
personal representative, trustee, successor
trustee) (both personally and professionally);
et al.,

Respondent(s).

TRANSCRIPT OF PROCEEDINGS BEFORE

HONORABLE MARTIN COLIN

DATE: January 8, 2015

TIME: 9:17 a.m. - 9:58 a.m.

1 APPEARING ON BEHALF OF WILLIAM E. STANSBURY:

2 PETER M. FEAMAN, P.A.
3 3615 W. BOYNTON BEACH BOULEVARD
4 BOYNTON BEACH, FL 33436
By: PETER M. FEAMAN, ESQ.
JEFFREY ROYER, ESQ.

5 APPEARING ON BEHALF OF TED BERNSTEIN:

6 PAGE, MRACHEK, FITZGERALD ROSE
7 KONOPKA & DOW, P.A.
8 505 SOUTH FLAGLER DRIVE, SUITE 600
WEST PALM BEACH, FL 33401
By: ALAN B. ROSE, ESQ.

9 APPEARING ON BEHALF OF THE PR:

10 CIKLIN LUBITZ
11 515 N. FLALGER DRIVE, 20TH FLOOR
12 WEST PALM BEACH, FL 33401
By: BRIAN M. O'CONNELL, ESQ.

13 APPEARING ON BEHALF OF MOLLY SIMON, ET AL:

14 JOHN P. MORRISSEY, ESQ.
15 330 CLEMATIS STREET, SUITE 213
WEST PALM BEACH, FL 33401

16 ELIOT I. BERNSTEIN, Pro se

17 ALSO PRESENT: CANDICE BERNSTEIN

18

19 BE IT REMEMBERED, that the following
20 proceedings were taken in the above-styled cause before
21 the Honorable MARTIN COLIN, at the Palm Beach County
22 Courthouse, 200 West Atlantic Avenue, Room 8, in the City
23 of Delray Beach, County of Palm Beach, State of Florida,
24 on January 8, 2015, to wit:

25

1 P-R-O-C-E-E-D-I-N-G-S

2 - - - -

3 THE COURT: Mr. Bernstein, do you want to do
4 what you're doing at 8:45 or do you want to wait
5 until 9:30?

6 MR. ELIOT BERNSTEIN: You mean me?

7 THE COURT: I mean, whoever has --

8 MR. FEAMAN: I have an 8:45, Your Honor.

9 THE COURT: And you would not normally be
10 here for the 9:30?

11 MR. FEAMAN: That's correct.

12 THE COURT: All right. Okay. All right.
13 Okay. We'll take it.

14 MR. FEAMAN: Thank you, Your Honor.

15 May it please the court.

16 THE COURT: I don't have any paperwork, so...

17 MR. FEAMAN: May I approach, Your Honor?

18 THE COURT: Sure. Okay.

19 MR. FEAMAN: Peter Feaman, Your Honor, on
20 behalf of William Stansbury in the Estate of Simon
21 Bernstein.

22 This is a motion, Your Honor, to relieve
23 Mr. Stansbury of further responsibility of
24 funding what we call the Chicago insurance
25 litigation. Your Honor may recall that while

1 Mr. Tescher and Spalina were the personal
2 representatives, there was this case going on
3 in Chicago involving \$1.7 million of life
4 insurance. They, for reasons unknown as yet to
5 the court, did not get the estate involved.

6 Mr. Stansbury, as you know, is a creditor
7 of the estate. And so he's looking for ways --
8 a substantial creditor, 2.5 million is the
9 claim -- he's looking for ways to get money
10 into the estate, sees that there's this
11 litigation going on in Chicago which could
12 result in all that money coming into the
13 estate.

14 THE COURT: I remember.

15 MR. FEAMAN: Okay. And so at this point,
16 Your Honor, the mission has been accomplished, in
17 the sense that the estate was allowed -- has been
18 allowed to intervene, discovery is ongoing. In
19 fact, there is a deposition this week up in
20 Chicago, and the attorneys up in Chicago
21 representing the estate have now said, you know,
22 we'll even take this case on a contingency to
23 benefit the estate, or even a modified
24 contingency, like reduced hourly.

25 THE COURT: What was Mr. Stansbury -- what

1 was the nature of what he was paying?

2 MR. FEAMAN: Just a straight hourly.

3 THE COURT: To the Chicago lawyers?

4 MR. FEAMAN: Yes, Your Honor.

5 And now we think we've got the --

6 THE COURT: What's the status of the case up
7 there?

8 MR. FEAMAN: Discovery is ongoing. Not yet
9 set for trial.

10 In discussing this with Mr. O'Connell,
11 who's here, now the full-fledged PR. When we
12 first did this, Ben Brown was the curator,
13 authority is limited.

14 So in discussing this with Mr. O'Connell,
15 he agrees. He thinks that they can now go
16 forward without --

17 THE COURT: Did I hear something that you
18 settled?

19 MR. FEAMAN: We have a signed settlement
20 agreement that Mr. Stansbury has signed.

21 Mr. O'Connell will be coming before the court
22 after notice to every interested party.

23 Mr. O'Connell --

24 THE COURT: Is everyone on board on the
25 settlement?

1 MR. O'CONNELL: I'm not sure, Your Honor.

2 Mr. Rose negotiated with Mr. Feaman --

3 THE COURT: You on board, Mr. Bernstein?

4 MR. ELIOT BERNSTEIN: I haven't seen anything
5 yet.

6 THE COURT: Oh, you haven't seen it yet.

7 Okay. So you say okay to let him off?

8 MR. O'CONNELL: Let him off because, Your
9 Honor, the solution is this: If we get the
10 settlement agreement approved, hopefully we can --

11 THE COURT: Okay.

12 MR. O'CONNELL: -- then that litigation,
13 basically, will go away so some bells and whistles
14 in terms of --

15 THE COURT: The litigation in --

16 MR. O'CONNELL: In Chicago.

17 THE COURT: Meaning, they're going -- the
18 insurance case is going to settle?

19 MR. O'CONNELL: Well, it can, in this sense.
20 The real need for it, the driver, at least for me,
21 as the fiduciary, is the fact that it's been
22 mentioned, is a claim against the estate that
23 exceeds the existing assets. Ergo, I can't just
24 turn my back on the fact that there's a potential
25 amount of money to come into the estate. But if

1 we get the settlement done with Mr. Stansbury,
2 then based on what I've seen, there aren't any
3 other claims that really need attention in that
4 sense. And if I need money, there's a clause in
5 the trust that I can get money from the trust. So
6 I'm pretty much covered in that respect. So
7 that's why I wanted to point out to the court the
8 real solution to this --

9 THE COURT: Are they still going to pursue
10 the 1.7 million in Chicago?

11 MR. O'CONNELL: On that, I think I can deal
12 with Mr. Rose, and I can deal with Mr. Morrissey
13 and come up with a way, based on how all this
14 would shake out, and Eliot as well. We might be
15 able to get rid of that litigation.

16 THE COURT: Okay.

17 MR. O'CONNELL: I know it's a little
18 complicated, but it has to do, Judge, with who
19 would sort of get what based on how that
20 litigation turns out. But I think we would be in
21 a much better position, we would have advanced the
22 ball if we can get that accomplished.

23 THE COURT: Eliot, what do you say of
24 Mr. Stansbury's request?

25 ELIOT BERNSTEIN: I haven't seen anything.

1 THE COURT: No, the --

2 ELIOT BERNSTEIN: Be paid by the estate,
3 yeah.

4 THE COURT: Mr. Rose?

5 MR. ROSE: We have the same concerns that
6 we've had from the beginning, which is to not be
7 spending estate assets on this litigation. We
8 had, you know, if you recall, a lengthy hearing
9 and discussion about it. The concern is it's a
10 case where we don't believe the estate has a
11 strong case. And our concern was that you expend
12 estate assets to do it.

13 THE COURT: Now, I hear that the lawyers up
14 there will do it on a contingency fee for the rest
15 of the case.

16 MR. ROSE: That's actually something Your
17 Honor raised at the last hearing, which is concern
18 that if you take 40 percent of the money, you
19 know, and give it to lawyers, you're taking it out
20 of the family. If you get rid of Mr. Stansbury --

21 THE COURT: Mr. Stansbury kind of did this
22 semi-gratuitously to keep the litigation alive.
23 He may have had a personal financial interest, but
24 if he's settling the case and getting out, how can
25 I keep him in paying for that Chicago litigation?

1 MR. ROSE: That was -- I agree with you. My
2 suggestion is that you would almost defer this
3 until we have the hearing on the approval of the
4 settlement. If the settlement is approved, I
5 agree, Mr. Stansbury should be out completely.
6 And then, as Mr. O'Connell says, if you do the
7 math, if you're going to hire a lawyer on a
8 contingency fee with -- if Mr. Stansbury is out of
9 the picture, if you hire a lawyer on contingency
10 fee and give up 40 percent of the money, or a
11 third of the money, to a lawyer, then no matter
12 how you do the math, it ends up -- everyone ends
13 up worse off. Every single person that is a
14 potential beneficiary --

15 THE COURT: I obviously would do a
16 contingency fee because the estate and those
17 interested persons don't want to pay hourly. And
18 so it's one or the other, or drop the suit. And
19 drop the suit doesn't seem to be what we want to
20 do at this point. So, you know, if --

21 MR. ROSE: Our suggestion --

22 THE COURT: -- the interested people who
23 would have, you know, which are the Bernsteins and
24 Mr. O'Connell, you know, don't want to pay hourly
25 because they don't want to continue to diminish,

1 you know, the value of the estate, then
2 contingency is what's left.

3 MR. ROSE: Mr. Morrissey represents four of
4 the individual creditors.

5 MR. MORRISSEY: Judge, John Morrissey here on
6 behalf of the four adult grandchildren. And if I
7 may approach, I'll provide Your Honor with a copy
8 of the excerpts from a hearing that we had wherein
9 Ben Brown was initially appointed, and Your Honor
10 allowed him to go forward with the Illinois
11 litigation on behalf of the estate.

12 ELIOT BERNSTEIN: Can I have a copy of that?

13 MR. MORRISSEY: I just have this.

14 At that hearing -- that hearing was on
15 November 23rd. Your Honor made it absolutely
16 clear that under no circumstances was the
17 estate to pay. And I've highlighted various
18 portions. Your Honor indicates that Mr. Feaman
19 says that his client will not seek fees for his
20 role as administrator ad litem unless and until
21 recovery might take place, and then he'll make
22 application to the funds available.

23 That was what the deal was, essentially.

24 And if Your Honor will look then on the
25 bottom of Page 34, top of Page 35, I make

1 inquiry. We're now talking about having to
2 pay, you know, from my client's prospective
3 profits -- pockets -- Mr. Brown's fees, an
4 attorney up in Illinois. And Your Honor says,
5 I just said that won't be the case. It would
6 only be the case if there was a recovery for
7 the estate to which then Mr. Stansbury would
8 say, under the statute, I performed a benefit
9 to the estate. Your Honor then says there is
10 not a dollar coming out of the estate unless
11 there is a recovery, basically. And then the
12 recovery would take place. And he, meaning
13 Mr. Stansbury, would seek some recovery of
14 fees.

15 So at that May 23rd hearing --

16 THE COURT: That was before we had a PR and,
17 you know, while we had a curator. Now
18 Mr. Stansbury is getting out. So what are you
19 suggesting we do?

20 MR. MORRISSEY: Well, I mean, either you
21 don't let Mr. Stansbury get out, or, if you do --

22 THE COURT: So hold it. Time out. Your
23 position on behalf of your clients is that
24 Mr. Stansbury purportedly is going to settle the
25 case and he should still pay for the fees up

1 there? Is that what you're telling me?

2 MR. MORRISSEY: No. We don't agree with this
3 purported settlement. That's another issue.

4 THE COURT: I didn't know that.

5 MR. MORRISSEY: This purported settlement is
6 something that we disagree with.

7 THE COURT: All right.

8 MR. MORRISSEY: We vehemently oppose. So my
9 client's position is, we oppose the settlement
10 agreement. Mr. Stansbury represented to the court
11 that, yes, he would go forward and intervene to
12 the conclusion of this litigation. Now, at
13 midstream, he's backing out.

14 THE COURT: He's not really backing out.
15 He's saying I'm settling. I'm getting out. I
16 shouldn't continue to pay. That sounds logical.
17 If that happens.

18 MR. MORRISSEY: He's not settling, though.

19 THE COURT: But until you just told me that,
20 this side of the room said that there was a
21 settlement agreement that's going to be
22 circulated -- I understand not everyone saw it. I
23 didn't even know there was opposition, at least in
24 principal. So you're the first voice that I've
25 heard that you're opposing it. So, you know, I

1 mean --

2 MR. MORRISSEY: Judge, there are two things
3 that before Your Honor rules on this motion and
4 allows Mr. Stansbury to withdraw, essentially, in
5 terms of paying fees, there are two things that
6 should happen. Number one, as Mr. Rose said, Your
7 Honor should hear, you know, this settlement
8 issue, and hear the objections to it and determine
9 whether the settlement should go forward. But
10 even before that, Your Honor should hear the
11 Count II of a complaint that Mr. Rose filed. And
12 that is as to the validity of the documents -- the
13 underlying documents themselves.

14 If I may provide Your Honor --

15 THE COURT: The underlying documents, which
16 documents are you talking about?

17 MR. MORRISSEY: All of them. The last will
18 and testament of Shirley Bernstein.

19 THE COURT: How does that help me decide what
20 to do with this?

21 MR. MORRISSEY: Well, essentially, everything
22 falls into place after that. Why? Because we
23 don't even know who, ultimately, the beneficiaries
24 are.

25 So in terms of a settlement, Mr. O'Connell

1 has filed a motion to approve a settlement.
2 It's theoretically possible that after Your
3 Honor determines the validity of these various
4 documents, my clients might not be
5 beneficiaries. So Your Honor would want to
6 make the determination who's the beneficiaries
7 before Your Honor hears a motion to approve a
8 settlement and knows who can object to that
9 settlement, or agree to it.

10 And if I may provide Your Honor with a
11 copy of the -- Your Honor's order and the
12 notice of trial that has been filed by
13 Mr. Rose.

14 Mr. Rose filed a two-count complaint. And
15 that the second count, if you look at Your
16 Honor's order, and specifically Paragraph 3 of
17 that order, says that upon the filing of the
18 answers to Count II -- Count II relates to the
19 validity of the documents themselves -- the
20 court severs Count II --

21 THE COURT: Okay. I got it. So
22 Mr. O'Connell, do I have to decide Count II in the
23 amended complaint before you have a clear sense of
24 how to deal with the potential settlement of Mr.
25 Stansbury?

1 MR. O'CONNELL: I don't think so, Your Honor.
2 And here's why. Because I'm happy to have Mr.
3 Morrissey advocate -- now I'm hearing -- against
4 the settlement because I think that's, frankly,
5 good for the court to hear all sides of this. So
6 if there is some concerns that he has that the
7 court may find valid, that's fine. I don't think
8 there are.

9 THE COURT: I don't adjudicate sides of
10 settlements. Settlements are outside --

11 MR. O'CONNELL: I guess whatever his
12 objections are.

13 THE COURT: But those are private to you.
14 And I think Mr. Feaman agrees with that, correct?

15 MR. FEAMAN: Yes.

16 THE COURT: I mean, I can't -- I'm not going
17 to have a hearing on that.

18 What about the point that is made that
19 assuming you do have a draft of a settlement
20 agreement that appears to be appropriate.
21 Mr. Morrissey is saying until Count II is
22 adjudicated, you don't even know who the
23 parties are to the settlement who would be in a
24 position to either agree or not agree with it.

25 MR. O'CONNELL: Actually, we know who the

1 parties are, Your Honor, because it would be we
2 have Mr. Stansbury as the claimant and then
3 myself as the defendant.

4 THE COURT: Estate.

5 MR. O'CONNELL: Right. Those are the
6 parties. And then --

7 THE COURT: Then you have interested people
8 who may or may not agree?

9 MR. O'CONNELL: Right. Who are here.

10 THE COURT: Who may or may not be interested,
11 depending on Count II, according to what
12 Mr. Morrissey says.

13 MR. O'CONNELL: I think it's important
14 enough, Your Honor, just from the standpoint of
15 getting this estate moving towards a conclusion.

16 THE COURT: Right. True.

17 MR. FEAMAN: That settlement really does
18 handle a number of important matters.

19 THE COURT: All right. Here's how I'm going
20 to do this. Is the settlement between the estate
21 and Mr. Stansbury in a final form yet?

22 MR. O'CONNELL: It is. We just need some
23 hearing time, Your Honor.

24 THE COURT: It's circulated --

25 MR. O'CONNELL: It's signed by Mr. Stansbury,

1 Your Honor.

2 THE COURT: And signed by you, Mr. O'Connell,
3 or will be?

4 MR. O'CONNELL: Will be, once it's approved.

5 THE COURT: So --

6 MR. O'CONNELL: And drafted by Mr. Rose.

7 THE COURT: You two are the two main parties
8 to the settlement, correct?

9 MR. O'CONNELL: Yes. And it was drafted by
10 Mr. Rose, Your Honor.

11 THE COURT: Hold on. Let me finish what I'm
12 going to say. And so there will be a motion to
13 approve the settlement. Okay. Notice will go to
14 all interested persons, who are here. And they
15 have a right then to tell me if they object. And
16 I can hear whether or not I think they have
17 standing to object, and all those other things
18 that I normally hear at a hearing like that?

19 Yes, Eliot?

20 ELIOT BERNSTEIN: If I'm going to be asked to
21 accept or deny that --

22 THE COURT: You get service.

23 MR. O'CONNELL: He will.

24 ELIOT BERNSTEIN: I think it's between the
25 other --

1 THE COURT: Yeah, they're the main parties,
2 but they'll serve you with --

3 ELIOT BERNSTEIN: If I have to do that, I
4 have children that have a conflict of my interests
5 versus theirs and that. They would need
6 representative counsel to sign off on it.

7 THE COURT: You have a conflict with your
8 children on that?

9 ELIOT BERNSTEIN: On that particular issue.

10 THE COURT: I don't know, you know, so --

11 ELIOT BERNSTEIN: So they would need counsel
12 and I don't -- I would ask the estate to provide
13 that if they're asking us to sign off.

14 MR. FEAMAN: If I may, Your Honor. There is
15 a whole issue as to whether the children even have
16 standing before this court because, as Mr. Rose
17 has alleged, the trustee, his client, is the sole
18 beneficiary of the estate.

19 THE COURT: I got that part. Okay. So
20 here's the way that works. I mean, anyone can
21 appear who says they are interested at the hearing
22 on the motion to approve settlement. You know,
23 they can appear pro se or through counsel.
24 Whoever shows up, I determine who are you, do you
25 have standing. And then if there is standing,

1 then I'll hear what the basis of the objection is.
2 So the children can -- if you say are -- if you
3 think they are independently interested persons,
4 they can hire counsel.

5 ELIOT BERNSTEIN: They're minors.

6 THE COURT: They can appear themselves. If
7 they want to take that position. But I can't, at
8 8:45 today, direct the estate to pay for their
9 lawyer. I can't do that. I mean, that's beyond
10 what I'm allowed to do.

11 ELIOT BERNSTEIN: I'll check with the estate.

12 THE COURT: You can talk to counsel about
13 that.

14 All right. Then -- so how quickly can
15 that be done?

16 MR. O'CONNELL: Today, I can circulate it.

17 THE COURT: Okay. So I'm going to make this
18 a priority matter and I'm going to give you a
19 hearing time on a motion to approve.

20 And then what I'll do is, depending upon
21 that hearing, which I'm going to have right
22 away, I'll deal with the issue of
23 Mr. Stansbury's request to be discharged.

24 And I'm not saying, though, that his
25 discharge is solely tied into whether the

1 settlement is accepted.

2 MR. FEAMAN: That's correct, Your Honor.

3 THE COURT: I have to independently decide
4 whether I think it's appropriate that he continue
5 to fund the litigation. It's never -- never like
6 a life jail sentence type of thing, you know,
7 there's always -- it's an interlocutory order that
8 could be modified.

9 MR. FEAMAN: Right.

10 THE COURT: I mean, let's, you know, keep in
11 mind what I'm thinking. Okay.

12 MR. FEAMAN: Yeah, because I --

13 THE COURT: How much time do you think you
14 need? I got it.

15 MR. FEAMAN: I respectfully suggest to the
16 court that there is no compulsion for
17 Mr. Stansbury to do anything with regard to the
18 Chicago litigation.

19 THE COURT: Okay. We'll take a look. I
20 mean, I've got a grasp of what's going on.

21 How much time do you think you need,
22 collectively, to have a hearing?

23 MR. MORRISSEY: To approve the settlement.

24 THE COURT: I mean, if there's going to be
25 standing and/or substantive objections, I need

1 time to be able to hear that.

2 MR. ROSE: I'm not going to shed a brief
3 light on that. They said that I drafted the
4 agreement. I did actually, on behalf of the --
5 Ted, as trustee, I explored settlement with
6 Mr. Stansbury to the point of you need to know
7 what the number is so you can go to the
8 beneficiaries and sort of take their pulse. If
9 it's a dollar, it's one thing. If it's two
10 billion dollars --

11 THE COURT: Whoever did the drafting of it
12 doesn't matter to me.

13 MR. ROSE: My point to you was, though, I did
14 get a sense that at least seven of the
15 beneficiaries are theoretically against the
16 settlement.

17 THE COURT: Okay.

18 MR. ROSE: So I didn't proceed forward with
19 the settlement. And I didn't have a chance to
20 speak to Mr. Eliot Bernstein about his position,
21 but he's been opposed to many things, but...

22 THE COURT: No, Eliot doesn't do that. He
23 rarely opposes anything. That's my recollection
24 of it.

25 ELIOT BERNSTEIN: Last hearing I didn't

1 object to it.

2 THE COURT: Eliot has turned a new leaf,
3 haven't you noticed?

4 MR. ROSE: I haven't, unfortunately.

5 THE COURT: I have.

6 MR. ROSE: Seven out of ten are opposed so I
7 think you may get some -- you may get a
8 significant amount of objection to the settlement.

9 THE COURT: I just need to know how much
10 time. How much time?

11 MR. ROSE: Ninety minutes, maybe.

12 MR. O'CONNELL: Hour and a half, John?

13 THE COURT: Hold on. I'm filling up this
14 week very quickly. We want to do this right away,
15 so let's take a look here. I mean, can you be
16 ready by the 27th? I can give you two hours. And
17 you probably heard, I gave three dates to that
18 other case ahead of you, I'll just take away the
19 date that I give you folks.

20 MR. O'CONNELL: 27th is fine for me, Your
21 Honor.

22 THE COURT: Three to five. I'll give you two
23 hours. Take a look at your calenders, see if that
24 works.

25 MR. FEAMAN: We're fine.

1 MR. ROSE: I can be there.

2 MR. MORRISSEY: I think so. I don't have my
3 calendar, but I'm pretty sure I can.

4 THE COURT: All right. So you folks have
5 that. All right. So I got to -- okay. So you
6 have that on the -- and I'm going to call it
7 motion for settlement.

8 MR. O'CONNELL: Sure.

9 THE COURT: Do a notice of hearing 3:00 to
10 5:00, January 27th. Okay. And let me just make a
11 note for the other case now. Hold on.

12 Okay. Yes.

13 MR. ROSE: Just briefly. To follow up with
14 what Mr. Morrissey said, though, his count --

15 THE COURT: I'm not --

16 MR. ROSE: I was going to mention
17 Mr. O'Connell and I've discussed the issue. He's,
18 I think, of the opinion it's important to get a
19 resolution on the validity of the documents,
20 although it doesn't have to be tied to the
21 Stansbury motion. I just wanted to point out,
22 I've actually discussed the issue with Mr.
23 O'Connell.

24 THE COURT: So we need to give a trial date
25 on Count II?

1 MR. O'CONNELL: Yes. And I agree with that,
2 Your Honor. That's correct.

3 THE COURT: How much time?

4 ELIOT BERNSTEIN: What case is that in?

5 THE COURT: What case is that in? It's in
6 14CP3698.

7 ELIOT BERNSTEIN: That's a separate case,
8 right?

9 THE COURT: Yeah.

10 ELIOT BERNSTEIN: Than what we're here for.
11 We're here on Simon.

12 THE COURT: Let's see.

13 MR. ROSE: It's technically a trust
14 construction case.

15 ELIOT BERNSTEIN: I'm not ready for that yet
16 because we have to see if the trustee is fit to
17 argue that case first.

18 THE COURT: I'm just trying --

19 ELIOT BERNSTEIN: We should have that first
20 like we've been trying to.

21 THE COURT: But we have hearing dates on
22 other things. But let me ask you this. How much
23 time do you need for the trial on that?

24 MR. ROSE: Half a day, at most, because there
25 is no evidence. You know, if he has to present

1 evidence that the documents are invalid --

2 THE COURT: All right. So --

3 MR. ROSE: And it is a pretty important
4 threshold issue.

5 THE COURT: It's at issue?

6 MR. ROSE: It's at issue.

7 THE COURT: Ready for trial?

8 MR. ROSE: Ready for trial. We noticed it
9 for trial.

10 THE COURT: Well, I know that. But ready --
11 you can notice something ready for trial -- is it
12 ready now for trial? All the reasonable discovery
13 that has to be made has been made?

14 MR. ROSE: I'm prepared to try the case. I
15 don't know how much Mr. Bernstein --

16 THE COURT: So who are the other parties in
17 that case?

18 MR. ROSE: Mr. O'Connell would like to
19 intervene in the case solely because he's the
20 personal representative of the estate. And this
21 will decide who the beneficiaries are of the
22 estate. So he has an interest in it. But he's
23 indicated that he wants to -- he wants to be
24 involved, but he's not going to necessarily be
25 actively litigating it.

1 THE COURT: So who else --

2 MR. O'CONNELL: Correct.

3 THE COURT: So these -- let me look at the
4 defendants. Looks like a bunch of children. So
5 is that -- Mr. Morrissey, are you the defendant's.

6 MR. MORRISSEY: For four of those. Molly --

7 THE COURT: And some of these, are they
8 Eliot's children?

9 ELIOT BERNSTEIN: Minors. Who are
10 unrepresented.

11 THE COURT: Okay. And then your clients?

12 MR. MORRISSEY: Four.

13 THE COURT: And then who are the other
14 children?

15 MR. ROSE: Everyone else defaulted. They
16 defaulted in the sense that they're not taking a
17 position that they're going to rely on what Your
18 Honor rules. So it's technically, I think, at
19 issue. And it would go a long way to resolving a
20 lot of issues, like, who has standing to do
21 various things.

22 THE COURT: So tell me this. What hearings,
23 other than the one set for -- one second. So let
24 me ask you this. Today's 9:30 on the motion for
25 instructions, what's that about? That's the

1 estate case, correct?

2 MR. O'CONNELL: It is.

3 THE COURT: Is that related to this, or not?

4 MR. O'CONNELL: The estate, but not to the
5 litigation, Your Honor. But we need to hear it
6 later.

7 THE COURT: So what hearings do we have that
8 are special set now coming up?

9 ELIOT BERNSTEIN: We need the hearing to
10 remove Ted first.

11 THE COURT: There is no date for that?

12 ELIOT BERNSTEIN: Still serving the
13 complaint.

14 THE COURT: Because there was an amendment
15 on the complaint.

16 ELIOT BERNSTEIN: So there's -- then
17 there's -- still serving two of the parties.

18 THE COURT: So is there a -- is there a
19 removal action to remove Ted as trustee of
20 Shirley's trust?

21 ELIOT BERNSTEIN: Yes.

22 THE COURT: That's been pending for a while?

23 ELIOT BERNSTEIN: Yeah, we can hear that.

24 THE COURT: There's been amendments to that.

25 MR. ROSE: There was actually a recent filing

1 of a -- there's been a motion to dismiss served
2 directed to it. He hasn't served all the other
3 people. It's not at issue and it's not going to
4 be at issue for a significant period of time. I
5 think what Mr. O'Connell feels, and what I feel,
6 and what Mr. Morrissey feels, and the other
7 beneficiaries are, that -- first of all, if you
8 rule that the documents are invalid, then you
9 don't have to remove Ted because he doesn't ever
10 get appointed if the documents go away. So
11 that's, you know, sort of the cart before the
12 horse. And the other thing is, you need to get a
13 ruling on the validity of these five documents
14 that are being challenged, only by Eliot, as to
15 the validity, and, I assume, testamentary
16 capacity. And whether Ted is the trustee or --
17 then you have Mr. O'Connell -- that needs to be
18 tried.

19 THE COURT: I got it. I understand. Okay.

20 MR. ROSE: And then the removal can happen in
21 its ordinary course.

22 THE COURT: Go ahead.

23 ELIOT BERNSTEIN: The problem is that you
24 have to have the hearing to remove Ted as
25 successor because then he can't argue that case.

1 And somebody will have to be appointed to come in
2 and argue these things that only these guys seem
3 to want to argue. So if Ted doesn't survive, then
4 a qualified trustee, somebody else will be
5 appointed who will then decide if we're going to
6 have this or if they're going to concede the
7 documents are a fraud.

8 THE COURT: If it's a hearing to decide
9 validity of documents, and everyone else is going
10 to be participating, including yourself, I don't
11 see why I can't have that hearing.

12 ELIOT BERNSTEIN: Because Ted -- we can have
13 it, but they shouldn't be allowed to -- Ted has
14 conflicting interests in the outcome of this.

15 THE COURT: You know, I can take that into
16 consideration at the hearing.

17 ELIOT BERNSTEIN: Okay. That's fine. I'm
18 good with that.

19 THE COURT: I do all that. That's part of
20 what I'll -- you know, it's not only what's said,
21 but who says it, and what --

22 ELIOT BERNSTEIN: So, yeah, then let's have
23 that hearing to remove Ted.

24 THE COURT: Because here's what I want to do.
25 I want to start giving hearing dates that are --

1 where we can get some orders and move this estate
2 along. Because I think that's important. Okay.
3 So --

4 ELIOT BERNSTEIN: In the last hearing you
5 said you would hear the petition to remove Ted.
6 You ordered it, actually.

7 THE COURT: I wanted that heard a while
8 ago --

9 ELIOT BERNSTEIN: Then we'll hear the
10 document stuff, if he survives?

11 THE COURT: Yeah, but here's the thing, your
12 case got -- I thought I had given a hearing date
13 on that petition to remove and then you amended, I
14 think, isn't that what happened?

15 ELIOT BERNSTEIN: No.

16 MR. ROSE: You denied the petition because it
17 was improperly filed. He just started a complaint
18 in which there are --

19 THE COURT: Don't talk over each other.

20 ELIOT BERNSTEIN: Okay.

21 MR. ROSE: He's just filed a new complaint.
22 We have just filed motions to dismiss. There's
23 other parties that haven't been served. And I
24 think Mr. O'Connell is involved in --

25 ELIOT BERNSTEIN: That's in Sy.

1 MR. ROSE: Mr. O'Connell is involved in --

2 ELIOT BERNSTEIN: That's in Sy, not Shirley.

3 THE COURT: All right. Here's what I'm
4 doing. I'm going to give you your half a day
5 trial date on Count II in this 3698 case. I mean,
6 I'm not going to give it to you now, I'll have my
7 assistant look at my calendar and give you a half
8 a day. Eliot

9 MR. ROSE: That's fine.

10 THE COURT: Eliot, as soon as you're able to
11 serve and do what you can in Shirley --

12 ELIOT BERNSTEIN: I'm ready.

13 THE COURT: -- you get on whatever you file
14 in any of the cases --

15 ELIOT BERNSTEIN: On Sy. Okay. But on
16 Shirley I'm ready to have the petition heard.

17 THE COURT: Is that ready to be heard, the
18 petition in the Shirley case?

19 ELIOT BERNSTEIN: Let's have it heard the
20 same day.

21 MR. ROSE: There's a motion to dismiss
22 directed to that.

23 THE COURT: Well, then get that set for
24 hearing. Okay. I mean, let me start hearing,
25 knocking out the things --

1 ELIOT BERNSTEIN: That's the order you
2 wanted. That's the order you ordered.

3 THE COURT: The hearing date on a motion to
4 dismiss is easier to get than a half-day trial
5 date. So it will work out.

6 ELIOT BERNSTEIN: Okay.

7 THE COURT: Any objection to the PR
8 intervening in this 3698 case, which is Ted versus
9 the children?

10 ELIOT BERNSTEIN: I haven't even read this
11 thing. I just got it. Did you send this out
12 prior to this?

13 MR. O'CONNELL: I believe we did.

14 ELIOT BERNSTEIN: We got a notice for the
15 hearing. We didn't get the document attached with
16 it.

17 THE COURT: You want -- tell you what. You
18 want, like, I'm going to take some other people,
19 you want to look at it?

20 ELIOT BERNSTEIN: Actually, I do, because we
21 don't know what it was.

22 MR. ROSE: Our position, just for the record
23 is --

24 THE COURT: Are you okay with him
25 intervening?

1 MR. ROSE: If I can -- I have discussed the
2 issue with Mr. O'Connell. I'm concerned that, you
3 know, a lot of estate resources not be expended --
4 I discussed with Mr. O'Connell. He's intervening
5 because he wants to protect his right as PR
6 because he needs to know who the beneficiaries
7 are.

8 THE COURT: Okay.

9 MR. ROSE: So if he's not going to be
10 spending a lot of money on the thing to be
11 involved in it, we have no objection on that
12 basis.

13 THE COURT: Okay. Mr. Morrissey, you okay
14 with that?

15 MR. MORRISSEY: The objection -- my objection
16 would have been the same. I haven't spoken with
17 Mr. O'Connell, but to the extent that -- all
18 beneficiaries are going to be presumably arguing
19 in the clause, and so everyone -- every
20 beneficiary's rights are represented. I don't
21 know that we need extra resources.

22 THE COURT: I'm going to let him intervene,
23 subject to Eliot saying no. So talk to him about
24 that.

25 MR. O'CONNELL: Sure.

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C E R T I F I C A T E

THE STATE OF FLORIDA
COUNTY OF PALM BEACH.

I, DAVID L. MARSAA, Professional Reporter,
State of Florida at large, certify that I was
authorized to and did stenographically report the
foregoing proceedings and that the transcript is a
true and complete record of my stenographic notes.

Dated this 21st day of January, 2015.

DAVID L. MARSAA, COURT REPORTER

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