

IN THE FIFTEENTH JUDICIAL CIRCUIT COURT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CASE NO: 502012CP4391XXXXNB

IN RE: ESTATE OF SIMON L. BERNSTEIN

Deceased.

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PROCEEDINGS BEFORE
HONORABLE JOHN PHILLIPS

DATE: September 15, 2015

TIME: 9:27 a.m. to 10:32 a.m.

1 APPEARANCES:

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3 APPEARING ON BEHALF OF THE PERSONAL REPRESENTATIVE:

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11 APPEARING ON BEHALF OF MOLLY SIMON, et al:

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15 APPEARING ON BEHALF OF TED S. BERNSTEIN:

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19 APPEARING ON BEHALF OF TESCHER & SPALLINA:

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23

24 ALSO PRESENT: Eliot Bernstein

25

1 BE IT REMEMBERED, that the following
2 proceedings were taken in the above-styled cause
3 before Honorable JOHN PHILLIPS, at the Palm Beach
4 County Courthouse, 3188 PGA Blvd., Palm Beach
5 Gardens, County of Palm Beach, State of Florida, on
6 Tuesday, the 15th day of September, 2015, to wit:

7

8 THE COURT: We're here on the Simon
9 Bernstein case; is that right?

10 MS. FOGLIETTA: Yes, Judge.

11 THE COURT: This ended up in this division
12 of the Court because of a recusal from somebody
13 else in another division of the Court, right?

14 MR. FEAMAN: That raises an interesting
15 point. Peter Feaman on behalf of William
16 Stansbury, a creditor of the estate. I was
17 late coming in. Mr. O'Connell is late. All
18 the attorneys and the litigants are either in
19 West Palm or south. I respectfully don't
20 understand how we ended up here in the north
21 branch. Should we set it back to the main
22 branch?

23 THE COURT: No. That would be judge
24 shopping. When somebody recuses themselves
25 then it's randomly reassigned. I was verifying

1 this isn't a case that started out with me.
2 It's a case that started out with somebody
3 else.

4 MR. FEAMAN: Judge Colin, actually,
5 specifically said in his recusal order north
6 branch, which I didn't understand.

7 THE COURT: That's what the 4th DCA is
8 for. I'm not here to question some other
9 judge's order. You won't have me saying he was
10 wrong. I'm not the appellate judge. If
11 somebody made a mistake and you all think
12 there's relief that should be granted to
13 correct his mistake that's what the 4th is for.
14 Please have a seat.

15 We're here because somebody else is not
16 the judge in the case anymore and I am, right?

17 MR. FEAMAN: Right.

18 THE COURT: We'll go to the next step.
19 This is a case management conference. What is
20 it that I need to do to manage the case? I
21 received the trustees' status report which is
22 lengthy and comprehensive. I've read that.

23 Other than being brought up to speed by
24 having read that report what else needs to be
25 resolved to get this case done?

1 MR. ROSE: Good morning. I'm Alan Rose.
2 Can I speak from here?

3 THE COURT: You can.

4 MR. ROSE: I'm not planning on doing the
5 whole hearing, but briefly there are,
6 technically, four other cases that all were
7 assigned. I think we've noticed a status
8 conference in all four cases.

9 There are two estates. The Simon
10 Bernstein that Your Honor mentioned, he died in
11 2012.

12 THE COURT: Then there's the wife who
13 pre-deceased him, has a case, and I've been
14 asked to consider -- one of the things that
15 needs to be done is the closing of that estate.

16 MR. ROSE: Correct. She died in 2010.
17 Each of those estates builds into a trust, so
18 there's technically four pieces of pending
19 litigation; an estate of Shirley, a Shirley
20 trust construction, and an estate of Simon and
21 claim in the Simon trusts for the removal of my
22 client. Those are the four separate matters.
23 And then we came before you -- when Judge Colin
24 recused himself there were pending motions
25 counsel thought best to come and get some sort

1 of order.

2 The one thing that we believe, at least
3 which was in the status report which should be
4 addressed fairly early on, is whether we're
5 going to have a guardian ad litem for the three
6 minor children that are represented by Eliot
7 Bernstein, and try to bring some order to this
8 case which I think was a little bit out of
9 control in Judge Colin's courtroom.

10 THE COURT: Is there a motion for
11 appointment of a GAL? Has a motion been filed
12 by someone?

13 MR. ROSE: I think the -- my understanding
14 is the beneficiaries were about to file one. I
15 don't think they filed yet. There is a pending
16 motion to appoint an attorney for the children.
17 It's sort of a similar issue. Maybe
18 Mr. O'Connell can -- it's on one of his lists
19 of motions.

20 And then there's -- I think the main thing
21 we need to discuss is what order we're going to
22 do the hearings in because along with the
23 guardian ad litem it's our position the first
24 thing we should decide, since almost every
25 motion you're going to hear on Mr. O'Connell's

1 list is filed by Eliot Bernstein, is he's not a
2 beneficiary. We have a one-count complaint to
3 determine the validity of the documents. And
4 under the documents, as drafted, he's
5 disinherited. He's not a beneficiary under any
6 way and if you remove his standing then I
7 believe we can go to mediation and resolve
8 almost all of these motions without taking up,
9 probably, two or three weeks of the Court's
10 time.

11 THE COURT: Well, I noticed in the
12 trustee's status report that there was
13 mentioned several times that he's not a
14 beneficiary. So has there been an order that
15 establishes that or is that just the position
16 that's being argued by the --

17 MR. ROSE: Well, the documents themselves,
18 the operative document, for example, Simon
19 Bernstein's will -- the sole beneficiary is the
20 trust. Simon Bernstein's trust the soul
21 beneficiaries are his ten grandchildren.
22 Shirley Bernstein's will, the sole beneficiary
23 is her trust. Shirley Bernstein's trust gave
24 Simon Bernstein the power of appointment to
25 appoint and he appointed to his grandchildren.

1 So what we filed was a one-count complaint to
2 determine those documents. We actually filed a
3 trust construction action. Judge Colin advised
4 us to file -- to add a count. We added one
5 count to determine the validity of those
6 documents. It's been answered by everybody,
7 and what Judge Colin did was he severed that
8 one count from everything else and he stayed
9 everything else until we resolved that one
10 count. That's the issue that we believe, if
11 you resolve that issue first, a lot of the
12 stuff would go away and that was part of the
13 purpose of the status conference. The parties
14 can't, among themselves, agree what issues
15 should be heard first. If you did that issue,
16 either if he has standing or he doesn't, if he
17 doesn't have standing we'll good through
18 hundreds of thousands of dollars of legal fees
19 resolving motions that he filed if he lacked
20 standing.

21 I think if you couple it with a motion for
22 a guardian ad litem there is a motion pending
23 in a fifth case, the Oppenheimer case, that's
24 also before you, not today, for a guardian ad
25 litem. Judge Colin deferred on that. I

1 believe Mr. Morrissey's clients are going to
2 move for a guardian ad litem. I believe Mr.
3 Eliot Bernstein, in his papers, has indicated
4 that he has a conflict with his children and
5 they should have a lawyer and a guardian
6 representing them. He can speak for himself to
7 that point.

8 Those are the two issues we think should
9 go first. If it happens first this case would
10 become much more manageable and can even be
11 resolved because, as we indicated in our
12 report, these are relatively small estates.

13 There was a belief that's driving this
14 that there was \$100 million left behind but
15 they left behind modest estates. Over time
16 we've been trying to sell property and trying
17 to narrow things and all we've been doing is
18 spending attorneys' fees between a curator --

19 THE COURT: I just want to figure out
20 what's on the judicial plate that needs to be
21 addressed.

22 MR. ROSE: That's what we think should
23 happen first, those two issues, and everything
24 else will fall into place.

25 THE COURT: What is the name or where is

1 the document to be found that has this single
2 count for determination of validity of estate
3 documents or trust documents that was severed
4 out by Judge Colin?

5 MR. ROSE: It's in case 5020143698 --

6 THE COURT: What are the two letters in
7 between the 14 and the 36 --

8 MR. ROSE: I'm sorry, CP003698XXX and now
9 --

10 THE COURT: I don't need that stuff.
11 What's the docket entry number?

12 MS. FOGLIETTA: The filing number?

13 THE COURT: I want to know where to find
14 this thing that seems to be one of the first
15 things --

16 MS. FOGLIETTA: Are you talking about the
17 amended complaint? I have a copy.

18 MR. ROSE: Just the docket entry, if you
19 don't mind.

20 THE COURT: I have a computer here so
21 don't think I'm being rude if I look away from
22 you all.

23 MR. ROSE: It was filed October 3, 2013.

24 MS. FOGLIETTA: I have a copy.

25 MR. ELIOT BERNSTEIN: Can I make an

1 objection?

2 THE COURT: Who are you?

3 MR. ELIOT BERNSTEIN: I'm Eliot Bernstein.

4 THE COURT: You can't object yet.

5 MR. ELIOT BERNSTEIN: Can I make a
6 statement?

7 THE COURT: Not yet. I'm looking at this
8 computer screen trying to find the docket.
9 Everybody, please be seated. You're making me
10 nervous.

11 I'm just scrolling through the attorneys.
12 I haven't even gotten to the pleadings yet.
13 I'm looking for a pleading or an order entered
14 October 3rd.

15 MR. ROSE: An amended complaint.

16 THE COURT: I have an amended complaint by
17 Ted Bernstein.

18 MR. ROSE: Yes.

19 THE COURT: And in that amended complaint
20 is the count that was referred to. It's Count
21 II?

22 MR. ROSE: I believe it is, Sir.

23 THE COURT: All right.

24 MR. ROSE: Page 13 is the actual -- the
25 count itself incorporates the allegations and

1 the documents.

2 THE COURT: All right. Count II starts at
3 Paragraph 79 of the document?

4 MR. ROSE: Yes, sir.

5 THE COURT: All right. And then at some
6 point in time you say Judge Colin severed out
7 this count and said it should be heard
8 separately. Is that --

9 MR. ROSE: He severed it and stayed --

10 THE COURT: Do you know when the order was
11 entered on that?

12 MR. ROSE: 10-6 according to the chart
13 from --

14 THE COURT: 10-6-14?

15 MR. ROSE: Yes. It says order on
16 amendments to pleadings. There might be an
17 order that predates that.

18 MS. FOGLIETTA: I do have a copy of it.

19 THE COURT: The other is almost the very
20 next docket entry. The amended petition is
21 Docket Entry 26. The order is Docket Entry 27.

22 MR. ROSE: Specifically Paragraph 3 on
23 Page 2.

24 THE COURT: There was a response filed by
25 Mr. Bernstein and the other defendants. Are

1 those things that happened?

2 MR. ELIOT BERNSTEIN: What case? Is this
3 Shirley Bernstein --

4 THE COURT: Case Number 14CP3698.

5 MR. ROSE: Everyone has either answered or
6 been defaulted and I noticed the case for
7 trial.

8 MR. ELIOT BERNSTEIN: Are we here for
9 Simon Bernstein? I'm confused. I'm not
10 prepared for Shirley Bernstein's case today.
11 Can I raise another point, Your Honor?

12 THE COURT: I only do one thing at a time.
13 You must stop.

14 MR. ELIOT BERNSTEIN: What?

15 THE COURT: You must stop. I do one thing
16 at a time. You're not that thing yet.

17 MR. ELIOT BERNSTEIN: Okay.

18 THE COURT: This is a case management
19 conference. I'm not deciding anything. I do
20 decide that I'm the one that runs this
21 courtroom so I don't have people jumping up and
22 blurting things out. That doesn't help me
23 orderly go through figuring out what the
24 problem is and how to attack and resolve the
25 problem. My specialty is wrestling stuff to

1 the ground and resolving it. That's what I'm
2 going to do in this case and that's what I do
3 in every case. This is a bigger one to wrestle
4 to the ground than some other ones but there's
5 no octopus case that I've ever met that I
6 haven't been able to figure out sooner or
7 later. The only way I can do that is talk to
8 one person at a time. We'll figure out one
9 thing at a time. I'm not a smart guy but I'm
10 persistent. All these guys know me. I'm
11 looking you in the eye because you haven't met
12 me before, right? Sir, yes, you haven't met
13 me?

14 MR. ELIOT BERNSTEIN: Yes, sir.

15 THE COURT: Okay. So you don't know me.
16 These other attorneys do because they're in
17 court in front of me on other cases where I've
18 done the same thing. I'm too stupid to --
19 well, I'm stupid. I take one thing at a time
20 and I make sure I know what I'm doing and I go
21 to the next thing. I try to be courteous to
22 everybody. I try to make sure everybody is
23 heard. I demand that people be courteous to me
24 in return. I don't take any crap. In that
25 method of proceeding we get through whatever is

1 uncomfortable, whatever is messed up, whatever
2 is complex. We simplify it down enough for me
3 to understand it and then we resolve it.

4 That's what is going to happen in this case.

5 MR. ELIOT BERNSTEIN: So my question is --

6 THE COURT: I told you I'm not talking to
7 you yet. I was talking to you to tell you what
8 I'm doing so you're not mystified, but now you
9 sit silently until it's my time to talk to you.
10 Right now I'm talking to some other people.

11 Okay, so --

12 MR. ROSE: May I approach --

13 THE COURT: -- the trustees believe the
14 first thing that needs to be done is the
15 resolution of this order that was entered by
16 Judge Colin severing out the count and the
17 amended complaint that deals with the validity
18 of the testamentary documents, correct?

19 MR. ROSE: Yes, sir.

20 THE COURT: All right. Does anybody
21 object to that issue being resolved first in
22 the order of events in this sequence of cases?

23 MR. O'CONNELL: Are you ready for me?

24 THE COURT: Yeah, I just want to know if
25 there's any objection to having that issue

1 heard and resolved first. That's the issue
2 that I'm chewing on right now.

3 MR. O'CONNELL: Okay. I wouldn't call it
4 an objection, but I'd like to be able to
5 explain my role in it and these other motions.

6 THE COURT: Well, first I want to know if
7 there's any reason I should attack this as the
8 first order of business in setting a trial or
9 hearing to have it resolved. Do you have any
10 objection?

11 MR. O'CONNELL: I wouldn't object to that.

12 THE COURT: All right. Does anybody else
13 seated at the tables have any objection?

14 MR. FEAMAN: May it please the Court.
15 Peter Feaman on behalf of William Stansbury.
16 He's a \$2.5 million creditor of the estate of
17 Simon Bernstein.

18 We're here in the estate of Simon
19 Bernstein and it's the position of
20 Mr. Stansbury that a removal of Ted Bernstein
21 as successor trustee should be heard first.

22 THE COURT: Okay. Why?

23 MR. FEAMAN: The reason for that is if
24 that issue is determined one way or the other
25 we believe that is the linchpin to then

1 resolving probably all the other issues in this
2 case.

3 THE COURT: The trustee believes the issue
4 to resolving many of the issues is to determine
5 whether Eliot -- I'm using first names, I'm
6 sorry. Is it Mr. Bernstein, Eliot Bernstein?

7 MR. ELIOT BERNSTEIN: You can call me
8 Eliot.

9 THE COURT: Okay. I don't mean to be
10 disrespectful. I don't want to do that.

11 The trustee's thought is that resolving
12 whether Eliot has any standing to be involved
13 in the litigation is key. You're saying that's
14 not key, it's something else that's key? What
15 else is it that you're suggesting is the key
16 issue to be resolved?

17 MR. FEAMAN: Because that's the Shirley
18 Bernstein trust. The matter that is before
19 Your Honor today is the estate of Simon
20 Bernstein, and Simon Bernstein had a separate
21 trust which was different from the Shirley
22 Bernstein trust and the -- most of the assets
23 are in the Simon Bernstein trust which then had
24 the pour-over will into -- most of the assets
25 are in the Simon Bernstein estate and then had

1 the pour-over will into the trust and that's --
2 that's the matter that is the most significant,
3 in my humble opinion, that is before Your Honor
4 is the Simon Bernstein estate and the Simon
5 Bernstein trust. It's the opinion of
6 Mr. Stansbury that Mr. Ted Bernstein, as a
7 successor trustee to the Simon Bernstein trust,
8 should be heard first.

9 THE COURT: Let me ask this: How is it
10 that there is an order by Judge Colin severing
11 out this count about the validity of some
12 estate documents in the Simon Bernstein case if
13 the documents in question were filed in a
14 different estate? Maybe the trustee can
15 address that.

16 MR. ROSE: Sure.

17 THE COURT: What's up with that?

18 MR. ROSE: We have a trust construction
19 count that was to determine the validity and
20 then the construction of the Shirley Bernstein
21 trust. Within that claim, because there's an
22 overlap of issues there, the standing issue is
23 the same in both. What Judge Colin ordered me
24 to do was to file an additional count into that
25 complaint. Everyone was properly noticed. We

1 already had the jurisdiction over all the
2 beneficiaries, those that answered, those that
3 did not. Nobody moved to dismiss upon the
4 ground that it's not properly in one case, and
5 so because there's a direct overlap between
6 documents that were executed and the validity
7 of those documents, and the validity of the
8 will of Simon directly relates to the validity
9 of the exercise of power of appointment because
10 he exercised his power through his will. So
11 what Judge Colin did was he ordered me to file
12 a simple one-count complaint, as simple as it
13 could be, list the four documents and allege
14 that they're all valid and enforceable. In the
15 context of trying that issue you will decide
16 whether, for example, Simon Bernstein was
17 unduly influenced, if that's an allegation, to
18 execute the power of appointment. The power of
19 appointment is what deprives Mr. Eliot
20 Bernstein of standing. Judge Colin ordered us
21 all put it all in this count. He then stayed
22 everything else and severed that and we're
23 supposed to try that and we get bogged down
24 constantly in --

25 THE COURT: Don't get sidetracked or I'll

1 get confused and disaster happens.

2 Mr. Bernstein, Eliot Bernstein, you've got
3 an objection to the trial of the issue about
4 the validity of the estate documents that's
5 just been discussed?

6 MR. ELIOT BERNSTEIN: Yes, sir.

7 THE COURT: What's your objection?

8 MR. ELIOT BERNSTEIN: Several, with that
9 being the first thing. The first part is that
10 Mr. O'Connell has filed with the court in the
11 Simon Bernstein estate nothing to be done with
12 Ted Bernstein as trustee because Mr. O'Connell
13 and Mr. Feaman, two prominent lawyers that you
14 know, have claimed that the document itself
15 that they're operating under precludes Ted
16 Bernstein from being a trustee. The language
17 says he can't be a related party --

18 THE COURT: You got to get back to my
19 question.

20 MR. ELIOT BERNSTEIN: Here's the problem
21 --

22 THE COURT: No. I'm the one that's
23 telling you the question I'd like you to
24 answer. Remember I told you I chew on one tiny
25 thing at a time. I don't want to get confused.

1 I might make a mistake if I get confused.

2 This is the thing I'm trying to establish
3 in my mind now: What is your objection to
4 trying the issue about the validity of the
5 estate documents that are found in Count II of
6 the amended petition, Docket Entry Number 26?

7 MR. ELIOT BERNSTEIN: My problem is is
8 that if Ted is not a trustee properly serving,
9 and a fraudulent trustee as they're claiming
10 and he's acting improperly, to have a hearing
11 where Ted's arguing validity where he's
12 conflicted, I mean if he doesn't argue
13 successfully, his entire family and children
14 are cut out of everything. So he's got a
15 conflict in arguing a construction --

16 THE COURT: You're not even addressing my
17 question. Thank you. Please be seated.

18 MR. ELIOT BERNSTEIN: I did answer your
19 question because how can we have -- how can we
20 hear his --

21 THE COURT: You're asking me a question.
22 Your question started with how do we do
23 something. I don't know.

24 MR. ELIOT BERNSTEIN: I'm saying we can't
25 hear --

1 THE COURT: Stop. Please be seated. You
2 failed to answer my question. You got
3 something else on your mind that doesn't
4 address what I'm trying to figure out.

5 Is it true that Judge Colin issued a stay
6 order on the other parts of the litigation and
7 it intended -- somehow he manifested an
8 intention to resolve the validity of the estate
9 documents? Is there an order that says that
10 somewhere?

11 MR. ROSE: I think that goes too far.
12 There are multiple proceedings. He severed
13 this count --

14 THE COURT: I got that.

15 MR. ROSE: It's our view that that should
16 be what is decided --

17 THE COURT: I know. But you said a minute
18 ago that he stayed other proceedings. Is there
19 an order that says that? Where do I find that
20 order?

21 MR. ROSE: It's the one that you looked
22 at, October 6th. It stays the rest of the
23 proceedings inside the Shirley Bernstein trust
24 construction case. It doesn't stay everything
25 in the Simon Bernstein side.

1 THE COURT: Okay.

2 MR. ROSE: That's what I was clarifying.

3 THE COURT: Okay. You've been living with
4 these cases for several years.

5 MR. ROSE: Yes.

6 THE COURT: I've been living with them for
7 30 minutes so I'm not as intimately familiar
8 with the ins and outs of what's going on here.
9 I'm not even familiar with everybody's names,
10 so I apologize to you for that.

11 Well, then there's no reason for me not to
12 set a trial on that Count II of the amended
13 complaint, right? I'll do that whether
14 everybody wants me to do or not that way I'll
15 get something done and that way we'll move down
16 the road. That will be done. Court to order
17 set. How much time you think we need to try
18 that?

19 MR. ROSE: Normally I would think we can
20 try the case within a day.

21 THE COURT: Okay. Anybody think we need a
22 different amount of time?

23 MR. ELIOT BERNSTEIN: Yeah. I think it
24 will take several days.

25 THE COURT: Why?

1 MR. ELIOT BERNSTEIN: Well, you're going
2 to have to first start with is Ted Bernstein a
3 valid trustee to argue the case. So that's --

4 THE COURT: No, I won't have to decide
5 that.

6 MR. ELIOT BERNSTEIN: You want somebody to
7 argue who's not valid --

8 THE COURT: What else? Any other issue?
9 Is there any other issue that's going to take
10 more than a day?

11 MR. ELIOT BERNSTEIN: Well, it's very
12 complicated.

13 THE COURT: No, this isn't going to be
14 complicated.

15 MR. ELIOT BERNSTEIN: Okay.

16 THE COURT: It's not. There's documents,
17 pieces of paper that somebody claims were
18 executed or not executed.

19 MR. ELIOT BERNSTEIN: There's been fraud
20 in the document.

21 THE COURT: I was explaining to you
22 something. If you interrupt me you can be held
23 in contempt. If I interrupt you I'm keeping
24 order in my courtroom. You see the difference
25 there? This is not a conversation. Okay. No

1 need for me to explain anything further. I
2 intend to set this for trial. I intend to set
3 it for a day. I intend that issue of the
4 validity of the estate documents will be
5 resolved in that trial. Is there any reason to
6 not think I can do that in a day other than
7 what Mr. Eliot Bernstein has mentioned?

8 MR. FEAMAN: On behalf of Mr. Stansbury we
9 have no involvement in the Shirley Bernstein
10 estate.

11 THE COURT: So you don't care what I do.

12 MR. ROSE: Mr. O'Connell is a party, he's
13 intervening because of the overlap of the power
14 of appointment. I can't speak for him but I
15 want to make sure he agrees that a day is
16 enough. We are all bad estimators.

17 THE COURT: I asked this question to the
18 entire courtroom. If anybody thinks
19 differently then what I'm getting ready to do
20 you're supposed to say something. He hasn't
21 said anything.

22 MR. MORRISSEY: Judge, John Morrissey. I
23 represent four of the adult grandchildren who
24 will ultimately be beneficiaries under the
25 trust document.

1 THE COURT: Okay.

2 MR. MORRISSEY: So certainly my clients
3 have an interest here in what's going on. I
4 just want to let Your Honor know, because I
5 don't think -- I hope Mr. Feaman is not
6 misleading the Court. On two occasions so far
7 he said that he represents a creditor of the
8 estate, that's incorrect.

9 THE COURT: William Stansbury.

10 MR. MORRISSEY: Correct. William
11 Stansbury is not a creditor of the estate.
12 He's someone who filed a claim in the estate.
13 An objection was filed by the personal
14 representative, or counsel for the personal
15 representative, which means that Mr. Stansbury
16 had 30 days to run off and file his lawsuit
17 which he's done. He's not done anything with
18 that separate civil litigation. It's not been
19 reduced to a judgment. He is not a creditor,
20 therefore, Judge, he does not have standing not
21 only with respect to the validity of the
22 documents but with respect to anything else in
23 these various litigations.

24 THE COURT: That's not helping me figure
25 out how much time I need to set aside for this

1 trial.

2 MR. MORRISSEY: I'm sorry.

3 THE COURT: When I'm telling you I'm a
4 simple guy I'm not being modest. I'm just
5 being truthful. That's where I'm at. I'm
6 going to write down what I do next when I leave
7 this room. What I do next when I leave this
8 room is tell my judicial assistant to reserve a
9 day, set this trial date, send you notices.
10 Bang. That thing is done. So that's why I
11 want to stick with this. Do you have any
12 objection to that?

13 MR. MORRISSEY: No.

14 THE COURT: Okay. Great. This is the way
15 I intend to proceed -- I love Marty Colin.
16 This guy is a judge that's been around a long
17 time. I know him. He's an entirely different
18 guy than me. I expect that your experience
19 with Judge Colin has been different than
20 sitting here with me. Am I right? I never
21 appeared in front of him as a judge -- I never
22 appeared in front of him while he's a judge and
23 while I was a lawyer. He appeared in front of
24 me while he was a lawyer and I was a judge. I
25 don't know how he is as a judge but I am pretty

1 sure he's a different guy than me. Nice guy.
2 I like him. But we're different judges. Your
3 experiences with Judge Colin, put them aside.
4 You're having an experience with me now. We
5 have to do it the way I do it or else I'll mess
6 up.

7 The second thing I have on my list of
8 things to ask you about that I've been jotting
9 down here is this request for guardian ad
10 litem. I think I remember asking and being
11 told that no one has filed a formal request for
12 appointment of a guardian ad litem; is that
13 correct?

14 MR. O'CONNELL: Correct.

15 MR. ROSE: In these four cases no one has
16 done that yet.

17 THE COURT: Okay. Am I going to?

18 MR. ELIOT BERNSTEIN: I believe they have,
19 actually.

20 THE COURT: When was it filed? What
21 docket entry?

22 MR. ELIOT BERNSTEIN: I don't know. It
23 was denied a long time ago by Tescher and
24 Spallina, the guys that were removed for fraud
25 in the court. They tried to put guardians on

1 --

2 THE COURT: No, no, no. You see I don't
3 want all the other baggage. I just want the
4 answer to that question. When was it filed?

5 MR. ELIOT BERNSTEIN: I don't know. At
6 the beginning.

7 THE COURT: At the beginning. That takes
8 me to the bottom. That slows down progress on
9 our case management conference. I will go
10 through it. What was the title of the
11 pleading?

12 MR. ELIOT BERNSTEIN: I don't know. I
13 don't think Joy's records went back that far.

14 MS. FOGLIETTA: We pulled things that were
15 pending, Judge. I don't have that.

16 MR. MORRISSEY: On behalf of the four
17 adult grandchildren it's our intention to file
18 one. We were hoping to file one before today's
19 hearing.

20 THE COURT: Okay. Since that hasn't been
21 filed then I'm not taking action on it. That's
22 my practice. If there's something filed I'll
23 move towards getting it resolved. If it's not
24 been filed and it's just in somebody's mind I
25 find that it's difficult to take any action.

1 I'm crossing that off my list.

2 There's a pending motion to appoint
3 attorneys -- an attorney for the children. Is
4 that an attorney ad litem?

5 MR. ELIOT BERNSTEIN: An attorney for my
6 children.

7 THE COURT: Who filed that motion?

8 MR. ELIOT BERNSTEIN: Me.

9 THE COURT: When did you file?

10 MR. ELIOT BERNSTEIN: Just to pay the fees
11 for counsel for my children.

12 THE COURT: When did you file it is what
13 I'm trying to figure it out.

14 MR. ELIOT BERNSTEIN: A while ago.

15 THE COURT: Any closer estimate than that?

16 MR. ELIOT BERNSTEIN: I've been filing
17 that since the first petition in this case in
18 May of 2013 which still isn't heard.

19 THE COURT: May of 2013 is when you filed
20 it?

21 MR. ELIOT BERNSTEIN: Yeah.

22 MR. O'CONNELL: We think we found one
23 August 28, 2014 in the Simon Bernstein estate.

24 THE COURT: The Simon Bernstein estate is
25 the only one I got up on the computer. The

1 only thing that happened on August 20th is an
2 order by Judge Colin maybe.

3 MR. O'CONNELL: 28th, sorry, Your Honor,
4 2-8.

5 THE COURT: Okay. I just got my trifocals
6 reissued. These are the old ones so an 8 and a
7 0 look alike. I'm moving my head and trying to
8 focus. Bear with me a second.

9 I don't see anything anywhere near the
10 28th of August of '14. Is that the year, '14?

11 MR. O'CONNELL: Yes. It says, "Motion to
12 compel estates of Simon and Shirley to pay
13 counsel for Eliot and his minor children."

14 MS. FOGLIETTA: That's in case number --

15 THE COURT: Well, I don't see any motion
16 with that description. Perhaps the Court
17 doesn't have it scanned in or something. Who
18 knows. Anybody have a paper copy of it that I
19 can look at?

20 MS. FOGLIETTA: I do.

21 THE COURT: I wouldn't mind looking at a
22 paper copy if you got one handy.

23 MR. O'CONNELL: Sure.

24 THE COURT: And was there a ruling on this
25 motion for having the estate pay for attorneys

1 for Eliot and his minor children? Has there
2 been an order on this?

3 MR. O'CONNELL: Not that I'm aware of,
4 Your Honor.

5 THE COURT: Was there ever a hearing?

6 MR. ROSE: I don't believe it was set for
7 hearing. That was alluded to that
8 Mr. Bernstein had requested an attorney for his
9 children and I would suggest that -- subject
10 to -- I don't think there was an objection from
11 anyone -- it's not appropriate to appoint an
12 attorney for his children. If you appoint a
13 guardian ad litem to represent his children
14 then the guardian ad litem has the power to go
15 out and retain counsel and to accomplish the
16 relief that's sought. We don't believe it's
17 appropriate though for Mr. Bernstein himself,
18 but certainly his children who are
19 beneficiaries should have --

20 THE COURT: All right. It looks like this
21 motion just asks for money. It's not asking
22 for the appointment of counsel. Mr. Eliot is
23 seeking the issuance of money from the trust
24 for the estate. He alludes to the children
25 needing an attorney but he doesn't ask for one

1 to be appointed. He asks if he can be given
2 money.

3 There's an order I see, Docket Entry 24,
4 where Judge Colin prohibits any new filings.
5 I've not read the order yet but I see the title
6 of the order takes up 20 lines of docket entry
7 here in our computer program. I hope the order
8 is shorter than the title.

9 MR. O'CONNELL: We got it for Your Honor.

10 (Handing)

11 THE COURT: Now are these copies ones I
12 should return to you all or can I keep these?

13 MS. FOGLIETTA: You can keep them.

14 THE COURT: Thanks. Judge Colin had a
15 case management conference. It's a case
16 management order. How about that. It's a
17 great order. He must have been having problems
18 with the progress of this case to issue an
19 order like that. That was at Docket Entry
20 Number 24 which leads me to ask this question,
21 perhaps foolishly, and that's the question if
22 this order was entered by Judge Colin in
23 September of 2014 at Docket Entry Number 24 how
24 come we're up to 82 docket entries and other
25 petitions and things and stuff being filed?

1 Did he disregard the order, because I think
2 it's a great order, or did something else
3 happen that I don't know about that changed the
4 order, or did he retract the order?

5 MR. O'CONNELL: Let me try to help there.
6 Just so you can get my position in all this, I
7 want to explain. I am a successor personal
8 representative in the Simon Bernstein estate,
9 so that's my universe in terms of this matter.
10 I got over a year at this point that I've been
11 involved in that capacity. With regard to that
12 particular order the way everyone has
13 interpreted it is it has to do with anyone to
14 institute new litigation, a new adversary
15 matter they would have to go before Judge
16 Colin, because we certainly have filed, on an
17 administrative level, a number of motions of
18 things that needed to happen.

19 THE COURT: Administrative stuff is
20 allowed to happen.

21 MR. O'CONNELL: To go to your good
22 question, well, why are there so many items,
23 not that we filed a ton of motions and
24 petitions but certainly, on my behalf, there
25 are definitely some that we have filed.

1 THE COURT: Docket Entry Number 41 there
2 is a petition to remove Theodore Stuart
3 Bernstein as alleged successor trustee filed by
4 Eliot Bernstein. How did that get filed? Did
5 Judge Colin approved that?

6 MR. ELIOT BERNSTEIN: He directed that.

7 THE COURT: Say that again?

8 MR. ELIOT BERNSTEIN: He directed that.

9 THE COURT: So there was a hearing that he
10 authorized this petition to be filed?

11 MR. ELIOT BERNSTEIN: Yes. And then a new
12 case was started. He ordered a new case to
13 remove Ted and we're in the middle of that.
14 That's one of the cases.

15 Just to clarify something, I'm still
16 confused, the first part about the hearing
17 you're ordering, that's not --

18 THE COURT: We're not on that subject.

19 MR. ELIOT BERNSTEIN: Are we on Simon's
20 case or Shirley's case? I'm confused by that.

21 THE COURT: I'm confused too. Welcome to
22 my world.

23 MR. ELIOT BERNSTEIN: Welcome to mine.

24 THE COURT: We're going to eliminate some
25 of the confusion by trying some of these things

1 pled in this case and one of them that's been
2 pled is Count II of the amended petition of
3 Docket Entry 26 that Judge Colin severed out
4 and said is going to be tried separately.

5 MR. ELIOT BERNSTEIN: That's in Shirley.

6 THE COURT: I'm telling you what I'm
7 doing. You asked me what I'm doing, to clarify
8 what I'm doing. I just told you.

9 MR. ELIOT BERNSTEIN: Okay.

10 MR. ROSE: If I can, just briefly with
11 that, what Judge Colin was doing is you can fax
12 him the motion or bring it to his attention --

13 THE COURT: He uses fax? Okay. He is a
14 dinosaur.

15 MR. ROSE: He would give permission that
16 something could be filed or not filed. We had
17 to go through the extra step of sending him in
18 advance, or asking permission if I wanted to
19 file a motion to approve a sale or whatever we
20 had to get his permission in advance.

21 THE COURT: Okay. Thank you. I find
22 there's no pending motion for appointment of
23 attorneys for the children so I'm striking that
24 off my list.

25 Now back to the William Stansbury claim

1 regarding the estate of Simon Bernstein. What
2 is the pleading that sets up any claim that
3 needs to be adjudicated in that case that was
4 not already set? It's the one thing that
5 you're not involved in. What about the claim
6 you said that William Stansbury has?

7 MR. FEAMAN: That's a separate action that
8 was filed and is pending before Judge Blanc in
9 the general jurisdiction division.

10 THE COURT: Okay. So Blanc will figure
11 that one out, right?

12 MR. FEAMAN: And the estate is a
13 defendant.

14 THE COURT: I'm trying to figure out what
15 I have to set. Blanc has that one, right?

16 MR. FEAMAN: Yes, yes, Your Honor.

17 The only thing, with regard to
18 Mr. Stansbury, I believe, is Mr. Stansbury has
19 filed a motion to discharge him from
20 responsibility for funding the estate's
21 participation in some Chicago litigation, and
22 that should be borne by the estate, but that's
23 already set before Your Honor on October 20th
24 in the special set hearing.

25 THE COURT: When was that set? When did

1 the document hit the court records when --
2 setting that hearing?

3 MR. FEAMAN: I'd say ten days ago. It was
4 set for the day after tomorrow and it had to be
5 reset at my request due to a conflict, and then
6 it was set October 20, 2015 pursuant to a
7 notice of hearing I believe our office sent
8 out, I believe, ten days ago, approximately.

9 THE COURT: That would be in case number
10 what?

11 MR. FEAMAN: That would be case Number
12 124391CP -- 12 -- 2012CP4391.

13 THE COURT: Okay. So that's a different
14 case than I have on the computer screen. Let
15 me get that one up.

16 MR. FEAMAN: That's the case number that
17 actually brings us here today pursuant to
18 notice of hearing filed by Mr. O'Connell, the
19 personal representative of the estate.

20 THE COURT: Just a second. I've been
21 looking at, apparently, the trust case,
22 14CP3698.

23 MS. FOGLIETTA: Judge, that's the Shirley
24 trust.

25 THE COURT: Did you ever see Colin use a

1 computer in court?

2 MR. O'CONNELL: Not really.

3 THE COURT: That's why I call him a
4 dinosaur. I'd say it to his face trying to get
5 him to be more tech savvy.

6 I'm scrolling, okay. You see me scrolling
7 with my finger. I've scrolled through all the
8 attorneys. This is more like it. We're up to
9 386, and roughly ten days ago there was some
10 sort of hearing set. A re-notice of hearing.

11 MR. ELIOT BERNSTEIN: That was an
12 objection to an accounting that I filed timely.

13 THE COURT: The notice of hearing,
14 Mr. Feaman, that you scheduled, or you sent out
15 that I'm referring to is called the fifth
16 re-notice of hearing and it sets hearing on the
17 motion of creditor William Stansbury for a
18 hearing on October 20.

19 MR. FEAMAN: Yes, Your Honor.

20 THE COURT: You set aside a 15-minute
21 period of time for that. Judge Blanc has got
22 the litigation that you referred to in his
23 court and he'll figure that out.

24 MR. FEAMAN: Correct.

25 THE COURT: All right.

1 MR. FEAMAN: But there's also, with
2 regard, if I may, Your Honor, to
3 Mr. Stansbury's claim, Mr. O'Connell has also
4 filed a motion to enter and approve a
5 settlement agreement between the estate and
6 Mr. Stansbury which is still out there. But
7 related to that is a motion by Mr. O'Connell
8 filed on 7-20-2015 to have Simon Bernstein
9 declared the beneficiary of the JP Morgan IRA
10 account, and the reason it relates to
11 Mr. Stansbury is because the settlement money
12 contemplated to be paid to Mr. Stansbury would
13 come out of that account and there's a question
14 whether that is actually money that should be
15 part of the estate or not so before we actually
16 wanted to fund the settlement we wanted to -- I
17 don't mean to speak for Mr. O'Connell -- we
18 wanted to make sure that that would be
19 appropriate source of funds to fund the
20 settlement so there would be no clawback claims
21 either against Mr. Stansbury or the estate
22 subsequent to the consummation of the
23 settlement.

24 THE COURT: Is that petition at issue?

25 MR. FEAMAN: It -- Mr. O'Connell?

1 MR. O'CONNELL: I don't think it was filed
2 as an adversary matter. It's a free-standing
3 petition.

4 THE COURT: Okay.

5 MR. O'CONNELL: Everybody has been served
6 with it.

7 MR. ROSE: For the record we have no
8 objection to that motion being granted. I
9 don't know if anybody objects to the motion.
10 That's certainly something that should be heard
11 if it's objected to very early.

12 THE COURT: Unless somebody notices it up
13 for hearing, get ready for that.

14 We've used up all the time I set aside for
15 the Bernstein case. It would sure be nice to
16 spend the rest of my career talking to you
17 about this but I have other people scheduled at
18 10:30 and I must see them now. Thanks a lot.
19 I'll do my work on setting the trial on the one
20 thing we got and we'll see what happens next.

21 MR. O'CONNELL: Thank you.

22 THE COURT: It was fun and look forward to
23 a long list of hearings as well.

24 (Whereupon, the hearing is concluded at 10:32 a.m.)

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CERTIFICATE OF COURT REPORTER

I, JULIE ANDOLPHO, do hereby certify that the foregoing transcript of the proceedings, consisting of pages numbered 1 through 42, inclusive, is a true and correct transcript of the proceedings taken by me before the Honorable JOHN PHILLIPS, on September 15, 2015.

I further certify that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested, directly or indirectly, in this action.

The certification does not apply to any reproduction of the same by any means unless under direct control and/or direction of the reporter.

Dated this 12th day of October, 2015.

Julie Andolpho, FPR

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