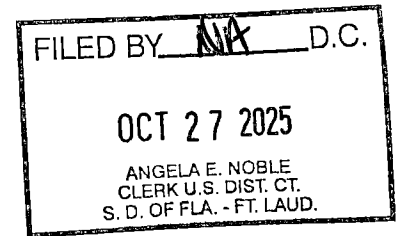


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION



Eliot Ivan Bernstein,
Appellant,

V.

Case No. 0:25-CV-61397-AHS

Charles Revard,
as Guardian of the Ward of Patricia Sahm,
Appellee.

**APPELLANT-DEBTOR'S OPPOSITION TO MOTION TO DISMISS THE
APPEAL**

Eliot Bernstein, the Appellant -Debtor herein, respectfully shows this Court as follows:

1. I am the Appellant-Debtor Pro Se.
2. I file this opposition to the Appellee's motion to dismiss the appeal based upon alleged errors in filing the Initial Brief.
3. This motion should be denied entirely and seems close to sanctionable.
4. The motion is not filed by attorney Brad Shraiberg who is alleged to be in fraud and there is no statement or affidavit from Mr. Shraiberg in the motion.
5. The basis for dismissal seems to be claimed errors in filing the initial brief by not including an Appendix.

6. However, paragraph 5 of the Motion to Accept the Initial Brief on Appeal clearly showed “5.The brief should be accepted without an Addendum under Rule8018(e) as the Clerk submitted the Original Record to the District Court.” See Page 1 of 4 Case 0:25-cv-61397-AHS Document 23 filed September 19, 2025.
7. My motion was filed September 19, 2025 the same day I received US mail granting an extension to file the brief.
8. The motion to accept the Brief and the Brief were both filed September 19, 2025 under DE No. 23 and DE No. 24.
9. The Appellees receive ECF Service.
10. The motion under DE No. 23 was Docketed by the Clerk on September 22, 2025 and Appellees should have received the motion and brief at least by that date.
11. I believe the standard motion time is 14 days which would have meant Appellees had until October 6, 2025 to file any opposition to my motion to accept the Brief.
12. By the next day October 7, 2025 this Honorable Court granted the motion to accept the brief by Order under DE No. 25.

13. From what I can see the Appellee filed the motion to dismiss the brief 2 days after the Order accepting the Brief and filed October 9, 2025 under DE No. 26 and served me by US Mail.
14. Under the Local Rules and Rules I understand I have 14 days to file Opposition and 3 days are added for Service by mail so this opposition is timely being filed the first business day after the due date of October 26, 2025 which was yesterday and a Sunday.
15. I am not sure the Appellee's motion would be procedurally proper since this Court issued an Order accepting the brief and the motion should be one to vacate or modify the Order but appears simply based on a claim there was no Appendix and a Transcript was missing when the motion to accept the brief expressly stated it was without an Appendix because the Clerk Transmitted the Records to the District Court.
16. The Clerk's Transmissions to the District Court are as follows: 07/28/2025
- 13 Bankruptcy Transmittal of re 1 Bankruptcy Appeal filed by Eliot I. Bernstein (Attachments: # 1 Docket Sheet, # 2 Designation, # 3 Designation, # 4 Designation, # 5 Designation, # 6 Designation, # 7 Designation, # 8 Designation, # 9 Designation, # 10 Designation, # 11 Designation, # 12 Designation)(tgs1) (Entered: 07/28/2025) and Supplemental Transmission to the District Court on 08/28/2025
- 16 Bankruptcy Transmittal of

Designated Record to District Court re 1 Bankruptcy Appeal filed by Eliot I. Bernstein (Attachments: # 1 Docket Sheet, # 2 Designation, # 3 Designation, # 4 Designation)(tgs1) (Entered: 08/28/2025).

17. Mr. Prendergast and Shraiberg for the Appellees are disingenuous about the June 2, 2025 Transcript as it was attached to a Motion for Reconsideration filed in the Bankruptcy Court on July 10 2025 after being properly Ordered according to the available Bankruptcy Transcript forms. See Case 25-14028-PDR Doc 45 Filed 07/10/25 Page 1 of 28.
18. So the Appellees have always had the June 2, 2025 Transcript at their review even before the Initial Brief was filed actually over 2 months.
19. Yet Mr. Shraiberg did not file to support the motion to dismiss and he was personally present in open Court at the June 2, 2025 non evidentiary hearing.
20. I will admit to the Court and acknowledge the format in which the Clerk has uploaded or Transmitted the requested Records to the District Court is confusing but this was not my action and if this District Court would like an easier record submission to review such as an Appendix I would seek leave to submit but the Court did accept and Order my Initial Brief to be accepted under the Rule and this should not be a basis for Dismissal.

21. I timely filed my Designation of issues and contents of the record on July 24, 2025 under DE No. 54 although because the Transcript was already filed under DE No. 45 it was not separately designated.
22. I filed a Supplemental designation on August 27, 2025 under DE No. 57 although it does not appear that the Clerk transmitted all the Transcripts requested at that time.
23. I would seek leave to take any action necessary with the Clerk on an Appendix that this District Court wants but this is not a proper basis for Dismissal of a meritorious appeal at this stage.
24. It should be noted once again Mr. Shraiberg and Prendergast try to obscure the name of the Whistleblower Inger Garcia who is a former Intern Prosecutor which seems odd as in my 2023 case she was mentioned by names in motions and according to Ms. Garcia she knows Brad Shraiberg professionally for years so not sure why her name is obscured from the proceedings.
25. I do not control Ms. Garcia nor do I know what her evidence will fully be but I do know some areas she is familiar with and her text messages making it clear she specifically wanted to come forward to report fraud are already in the Record.

26. I do know she specifically has stated there is fraud in the Guardianship proceeding with the only real Secured Creditor Patricia Sahm Sr., she has told the Foreclosure Court I and my family are the innocent parties there and I am waiting for her to come forward in that proceeding and specifically know she knows about the concealed Federal Bankruptcy Stay violation in the 2022 case with my sons and their company BFR, LLC relating to Judge Kastranakes in the State Court violating the Bankruptcy stay by dismissing motions showing fraud in the state Court in May of 2023 while that 2022 Bankruptcy was ongoing yet no one including attorney Alan Rose and Mr. Shraiberg informed Bankruptcy Judge Kimball of this Bankruptcy Stay violation which was concealed like the death of Walt Sahm was concealed for over a year in the foreclosure court.
27. I know other areas Ms. Garcia can speak to but this does not seem proper as this motion to dismiss seems improper.
28. The Appellees wholly failed to address that proper parties were not Served or heard on motions to lift stay nor the many meritorious issues of due process were addressed even though the Appellees have the Transcript.
29. The Appellees misstate the facts to this Court on the DC contact as i did not state he used Signal Intelligence to get into Federal Judges Chambers I

simply stated he has had access to SigInt and also has been seen bypassing normal security. That does not mean there was no security.

30. I know multiple witnesses that can speak about this contact as there was a group of "related" cases in the federal Courts in NY related to a federal Whistleblower case.

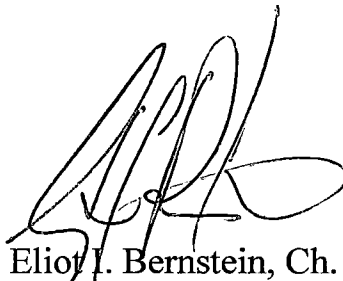
31. The Southern District has already addressed some of the fraud cases I cited from the US Supreme Court in the record before the Bankruptcy Court such as in *In re Baron's Stores, Inc.*, 390 BR 734 - Bankr. Court, SD Florida 2008.

32. "Generally speaking, only the most egregious conduct, such as ... the fabrication of evidence ... in which an attorney is implicated, will constitute fraud on the court." *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1338 (5th Cir.1978). In *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), the seminal case involving fabrication of evidence, the Supreme Court found that an attorney was a direct participant in a deliberate plan conceived for the purpose of defrauding the opposing party, the patent office, and the Court of Appeals. *Securities & Exch. Comm'n v. ESM Group. Inc.*, 835 F.2d 270, 274 (11th Cir.1988)." See *In re Baron's Stores, Inc.*, 390 BR 734 - Bankr. Court, SD Florida 2008.

33. The motion to dismiss should be denied and leave granted if necessary to submit an Appendix if desired or leave granted for any alleged error to be corrected.

WHEREFORE, it is respectfully prayed for an Order denying the motion to dismiss and continuing the briefing schedule and granting leave if necessary to amend or correct any alleged error and for such other and further relief as is just and proper.

Date: October 27, 2025

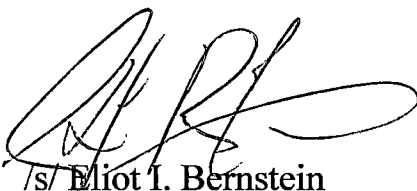


Eliot I. Bernstein, Ch. 13 Debtor Pro Se
2753 NW 34th Street
Boca Raton, FL 33434
561-886-7628
~~iviesit@gmail.com~~
iviesit@gmail.com

CERTIFICATE OF SERVICE

I certify that I served by electronic mail the US Trustee and Mr. Shraiberg and other parties required for Service as known on this day.

Dated: October 27, 2025



/s/ Eliot I. Bernstein
Eliot I. Bernstein, Ch. 13 Debtor Pro Se
2753 NW 34th Street

Boca Raton, Fl 33434
561-886-7628
iviewit@gmail.com

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
FORT LAUDERDALE DIVISION

FILED-USBC FLS-FTL
25 JUL 10 2025

In Re:

Case No. **25-14028-PDR**

Ch. 13

Eliot Bernstein,

FILED-USBC FLS-FTL
25 JUL 10 2025

Debtor,

EMERGENCY
SUBMITTAL BY DEBTOR

**DEBTOR'S MOTION ON RECONSIDERATION TO VACATE DE NO. 43,
NO. 35, NO. 37, NO. 38 TO VACATE ALL JUDGMENTS AND ORDERS OF
HON. JUDGE RUSSIN UPON MANDATORY DISQUALIFICATION AND
REINSTATE THE AUTOMATIC STAY PENDING NEW TRIAL AND
HEARING AND OTHER RELIEF UNDER FEDERAL RULES OF
BANKRUPTCY PROCEDURE 9023 AND 9024**

1. I am the Debtor Pro Se.
2. I am still under Emergency Medical Treatment outlined in my prior request for an Extension filed under DE No. 15 and granted by this Court and other filings and notice to this Court.
3. According to Govinfo Title 18 USC Sec. 3507 became effective as of January 2023 before any Bankruptcy filing by myself as the Debtor.
4. 18 U.S. Code § 3057 - Bankruptcy investigations provides in part "(a)Any judge, receiver, or trustee having reasonable grounds for believing that any

violation under chapter 9 of this title or other laws of the United States relating to insolvent debtors, receiverships or reorganization plans has been committed, or that an investigation should be had in connection therewith, shall report to the appropriate United States attorney all the facts and circumstances of the case, the names of the witnesses and the offense or offenses believed to have been committed. Where one of such officers has made such report, the others need not do so.” (emphasis added)

5. This Court of Hon. Judge Russin and likely his Law Clerk as stated on the Record on June 2, 2025 as being the one to “write” Orders in this case after Trustee Weiner announced on the Record that day that the Court should issue the Order denying my motion for a reasonable continuance and Evidentiary Hearing and other relief under DE No. 29 has now issued an Order under DE No. 43 that continues to violate 18 USC Sec. 3507 as has been violated since at least June 2, 2025 and has gone even further by issuing an Order that is predominantly false, like a false official document by knowingly denying items in the Record and even denying the conduct of the June 2, 2025 as if it did not occur and is now directly adverse, hostile and prejudicial to Debtor and also being a Witness to what occurred June 2, 2025 together with Trustee Weiner, her Assistant attorney present, Mr. Shraiberg and the Courtroom Deputy at minimum.

6. Trustee Weiner and this Court know and have actual knowledge of the attempt to have Whistleblower protection afforded to licensed Florida attorney former Intern Prosecutor Inger Garcia to report Fraud specifically in the Bankruptcy proceedings and specifically involving at least Brad Shraiberg as both the Trustee and this Court received actual and true images and copies of direct texts from Inger Garcia in the Trustee letter that was attached as an Exhibit to DE NO. 29 and also referenced in other filings specifically in the main document.
7. Both Judge Russin from prior appearance and ruling in the 2023 BK and Brad Shraiberg know Inger Garcia's name and Mr. Shraiberg allegedly has know Inger for many years according to Ms. Garcia yet Judge Russin and Mr. Shraiberg despite having her name all over the papers and notice that she sought to Whistleblow on Fraud in these very proceedings and related bankruptcies specifically acted to not mention her by name and never once acknowledged the attempt to Report Fraud and then Judge Russin went one step further in retaliation by specifically cutting me off as a Debtor as soon as I mentioned the whistleblower on the Record on June 2, 2025.
8. See Brad Shraiberg Page 14 Official Transcript Lines 3-5 MR.
"SHRAIBERG: The difference is the last one was done by -- with the help of an attorney. This one was filed pro se."

9. It is crystal clear from the Official Transcript of June 2, 2025 that Judge Russin directly cut me off and denied all motions as soon as I announced the Whistleblower on the Record.
10. Page 15 lines 2-11 "MR. BERNSTEIN: Well, there's a whistleblower who's a former intern prosecutor for Janet Reno and a licensed Florida attorney - THE COURT: All right. So denied. I'm granting your motion, Mr. Shraiberg. Please get me the order. Mr. Bernstein - MR. BERNSTEIN: Yeah? THE COURT: -- this is a - MR. BERNSTEIN: We'll sit down. THE COURT: -- an abusive process, so --"
See Transcript Exhibit 1.
11. Contrary to the knowingly false information filed by Judge Russin and likely his clerk in DE No. 43, my prior submissions were directly based off of the Official Audio Transcript where Judge Russin's Court Deputy was aware I had purchased and Ordered this the same day June 2, 2025 and did have quotations and specific evidence in the prior motion to Vacate the Orders.
12. The prior submissions gave many examples of outside influence surrounding the case and neither the Docket of this case nor the 2023 Bankruptcy Docket have any indication of how Judge Russin was even assigned the Case as in this Case it was last assigned to Judge Mindy Mora

but nowhere is it assigned to Judge Russin by any Order or Transfer of
Record.

13. See, DE No. 8, 9:

8		<p>Order Transferring Case. Involvement of Erik P. Kimball Terminated.</p> <p>(Fleurimond, Lucie) (Entered: 04/16/2025)</p>
9		<p>***Disregard; Entered in error.*** Notice of Reassignment. Judge Mindy A Mora</p> <p>Assigned to Case. Judge Erik P Kimball Removed from Case. (Fleurimond,</p> <p>Lucie) Modified on 4/16/2025 - edited text, no notice served (Cradic, Cameron).</p> <p>(Entered: 04/16/2025)</p>

14. More egregiously and supporting the mandatory Disqualification of Judge Russin and Transfer of my case as **nowhere in DE No. 43 does Judge Russin even mention the Whistleblower or that Fraud was Reported or being attempted to be Reported.**
15. I am not in control of Inger Garcia.
16. I took all reasonable steps to notify the Trustee and Court that she wanted whistleblower protection.
17. That alone from a former Intern Prosecutor shows ‘something’ amiss an external influence in the case.
18. The pleadings showed efforts with the FBI by Inger Garcia, my Car bombing with Ted Bernstein refusing to speak to the FBI, my ongoing contacts with a DC person with access to Signal Intelligence “SigInt” who has been seeing passing by Security in Federal Courthouses and going into Federal Judge’s Chambers, my efforts with the USPTO where a federal investigation of the Patent Bar has stopped and stalled then restarted then stalled and goes on where my Patents remain Suspended by the USPTO.
19. The Court disregarded all statutory obligations of the Trustee in DE No. 43, disregarded my Plan, disregarded my addendums of specific Trusts and areas where accountancy are needed.

20. This Court specifically disregarded the Affidavit of Pat Sahm Sr of April 19, 2023 in this Record as an Exhibit under DE No. 29 that specifically counters any claim of Bad faith, shows she did not ask Brad Shraiberg to take actions in the prior 2023 case and other relevant information but was wholly disregarded and denied even though admissible under the Federal Rules of Evidence.
21. Same for William Stansbury who is still available as a Live Witness.
22. Even in the 11th Circuit case cited in DE No. 43 it shows "Section 455 of Title 28 of the U.S. Code creates two conditions for recusal. *United States v. Patti*, 337 F.3d 1317, 1321 (11th Cir.2003). First, **§ 455(a) provides that a judge shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned. 28 U.S.C. § 455(a).** Under § 455(a), recusal is appropriate only if "an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge's impartiality." *Patti*, 337 F.3d at 1321 (citation omitted). And "judicial rulings alone almost never constitute a valid basis for a bias or partiality motion." *Liteky v. United States*, 510 U.S. 540, 555, 114 S.Ct. 1147, 1157, 127 L.Ed.2d 474 (1994) (citation omitted)."

23. **The language of the case say “almost never” provide a basis but does not say “never”.**


24. This Court appears in most parts to be directly involved in the Fraud at this stage as the Court has been provided with multiple opportunities to address the fraud and evidentiary issues but acts “officially” as if these items do not exist.

25. Since the Court has never even heard from the Whistleblower nor the Trustee neither could have formed any reasonable determination which violates 18 USC 3057.

26. For these reasons and the pervasive bias shown and direct factual and legal issues knowingly disregarded all Orders must be vacated, the case transferred and Stay reinstated.

WHEREFORE, it is respectfully prayed for an Order vacating Orders DE No. 43, 35, 37, 38 upon mandatory disqualification of Judge Russin and for appropriate Transfer of my case and reinstating the automatic Stay and for such other and further relief as may be just and proper.

Dated: July 10, 2025

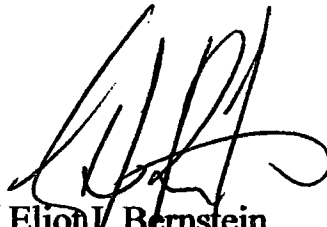

Eliot I. Bernstein, Ch. 13 Debtor Pro Se
2753 NW 34th Street
Boca Raton, Fl 33434
561-886-7628

iviesit@gmail.com

CERTIFICATE OF SERVICE

I certify that I served by electronic mail the US Trustee and Mr. Shraiberg
and other parties required for Service as known on this day.

Dated: July 10, 2025



/s/ Eliot I. Bernstein
Eliot I. Bernstein, Ch. 13 Debtor Pro Se
2753 NW 34th Street
Boca Raton, FL 33434
561-886-7628
iviewit@gmail.com

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

IN RE:)
ELIOT IVAN BERNSTEIN,)
Debtor,) CASE No. 25-14028-PDR
) Chapter 13

BANKRUPTCY MOTION HEARING
BEFORE THE HONORABLE PETER D. RUSSIN
JUNE 2, 2025

REPORTED BY:

Melva Weldon, CRD

TRANSCRIBED BY:

Kimberly Jones, CET

AAERT-1411

A P P E A R A N C E S

ON BEHALF OF DEBTOR:

ELIOT IVAN BERNSTEIN, PRO SE

2753 NW 34th Street

Boca Raton, Florida 33434

(561) 886-7628

ON BEHALF OF GUARDIAN, CHARLES REVARD:

BRADLEY S. SHRAIBERG, ESQUIRE

SHAIBERG PAGE, P.A.

2385 NW Executive Center Drive

Suite 300

Boca Raton, Florida 33431

bss@slp.law

(561) 443-0801

ON BEHALF OF THE DEPARTMENT OF JUSTICE:

ROBIN R. WEINER, TRUSTEE

MATTHEW GIRARDI, STAFF ATTORNEY, TRUSTEE

Office of the U.S. Trustee

P.O. BOX 559007

Fort Lauderdale, Florida 33355

trustee@chl3weiner.com

(954) 382-2001

P R O C E E D I N G S

MS. WEINER: The next matter is also on my regular page 18, Case No. 25-14028, Eliot Bernstein. On the regular calendar at 10:00, there is an Amended Motion for Relief from Stay filed by a creditor. I don't have who that is.

MR. SCHRAIBERG: Charles Revard (ph) as guardian of the ward of Patricia Sahm.

THE COURT: Let's get appearances first.

MR. SHRAIBERG: Brad Schraiberg, spelled S-H-R-A-I-B-E-R-G, on behalf of Mr. Revard as guardian of the ward of Patricia Sahm. And, I apologize, I'm just getting over some laryngitis, so --

THE COURT: No problem.

MS. WEINER: That is our -- oh, state your name.

MR. BERNSTEIN: Good morning, Your Honor. Eliot Bernstein, E-L-I-O-T, Bernstein, B-E-R-N-S-T-E-I-N. I'm the debtor.

THE COURT: And --

MS. WEINER: That --

THE COURT: -- you're representing yourself.

MR. BERNSTEIN: I am for today, Your Honor.

THE COURT: Okay. Thank you, Mr. Bernstein.

MS. WEINER: That's on the 10:00 calendar, and on the 10:30 calendar, we have Docket 29 and Docket 19, if

1 I'm correct. This is Docket -- oh, no, 19 is on both.

2 Okay.

3 MR. BERNSTEIN: They were changed.

4 MR. SHRAIBERG: Your Honor, there was an amended
5 notice of hearing moving this to the 10:30 docket.

6 MS. WEINER: So then 19 is off.

7 THE COURT: We've got docket entry 19, which is
8 an Amended --

9 MS. WEINER: Right.

10 THE COURT: -- Motion for Stay of Relief, Mr.
11 Shraiberg, by your client.

12 MR. SHRAIBERG: Yes.

13 THE COURT: And then we've got the Debtor's
14 Emergency Submittal for Temporary Stay or Continuance of
15 Hearing at docket entry 29. And that's what we have,
16 right?

17 MR. SHRAIBERG: Yes, Your Honor.

18 THE COURT: Okay. So tell me -- tell me about
19 your Motion for Stay of Relief, Mr. Schraiberg.

20 MR. SHRAIBERG: Thank you, Your Honor.

21 This is a Motion for Stay of Relief pursuant to
22 Sections 362(d)(1), (d)(2), 362(d)(4)(B), and Federal Rule
23 of Bankruptcy Procedure 4001(a)(3). Today we are going to
24 be asking the Court to lift the automatic stay to permit
25 litigation against and involving the debtor including an

1 appending state court matter and including with regard to
2 the prosecution, defense, and litigation of three pending
3 appellate cases, and, once again, terminating the
4 automatic stay prospectively for two years with respect to
5 any act against the real property at issue in this case
6 or, in the alternative, for straight-up stay relief.
7 Modifying the automatic stay as to actions against the
8 real property and --

9 THE COURT: Well, tell me about -- I don't know
10 much about this. So tell me about the real property.
11 What's, what's the background?

12 MR. SHRAIBERG: Yes. This is the -- round three
13 of a third bankruptcy that has been filed. The first two
14 have been filed in bad faith -- I'm sorry -- were
15 dismissed in bad faith. The easiest part of my argument
16 today is that Mr. Bernstein's last Chapter 13, the -- my
17 client received *In Rem Stay Relief* against --

18 THE COURT: Your client is the lender --

19 MR. SHRAIBERG: Correct.

20 THE COURT: -- first position mortgage holder?

21 MR. SHRAIBERG: Yes. And has a judgment of
22 foreclosure. The filing of this bankruptcy for the third
23 time stopped the foreclosure sale of the property. This
24 case --

25 THE COURT: Okay. And how much is your judgment

1 for?

2 MR. SHRAIBERG: The judgment, I believe, is for
3 in excess of \$500,000.

4 THE COURT: Okay. And this is homestead
5 property?

6 MR. SHRAIBERG: It, I believe, is. Mr. Bernstein
7 is a tenant. This is just another --

8 THE COURT: Oh, is a tenant.

9 MR. SHRAIBERG: Correct. The owner of the
10 property is Bernstein Family Realty, LLC. They filed --
11 let me get back to that just to give the 30,000-foot --
12 Mr. Bernstein's last Chapter 13, we were -- in that case,
13 my client received *In Rem Stay of Relief* against this
14 property for two years. This case was filed one day
15 before that two-year period lapsed. Now the overall
16 background of --

17 THE COURT: Have stay of relief automatically as
18 to the property.

19 MR. SHRAIBERG: Correct. But we wanted to get a
20 --

21 THE COURT: You wanted an order so the --

22 MR. SHRAIBERG: -- comfort order.

23 THE COURT: -- state court knows you have a stay
24 of relief.

25 MR. SHRAIBERG: Correct.

1 THE COURT: Okay.

2 MR. SHRAIBERG: The first bankruptcy was filed by
3 the Bernstein Family Realty, LLC. It was filed as an
4 involuntary bankruptcy against itself. The three members
5 of the Bernstein Family Realty, which are Mr. Bernstein's
6 three children, filed an involuntary against themselves.
7 We suspect that the reason why they did that was because
8 it was a manager-less LLC. Regardless, it was heard by
9 Judge Kimball originally and a detailed order was entered
10 finding that that bankruptcy was filed in bad faith and --

11 THE COURT: It's also filed on the eve of the
12 foreclosure sale?

13 MR. SHRAIBERG: Correct, Your Honor.

14 THE COURT: Okay.

15 MR. SHRAIBERG: Then, when we went back to state
16 court and got a new sale date, the -- sorry -- on April 3,
17 2023, this debtor filed a voluntary Chapter 13 petition
18 case in front of Your Honor. Immediately thereafter, the
19 debtor filed a Suggestion of Bankruptcy in the state court
20 case wherein the debtor, even though he was not the owner
21 of the real property --

22 THE COURT: Was he even a party to the case?

23 MR. SHRAIBERG: As an unknown tenant.

24 THE COURT: Okay.

25 MR. SHRAIBERG: -- falsely stated that the real

1 property is property of the Chapter 13 estate and falsely
2 implied, in his Chapter 13 bankruptcy case, would somehow
3 result in a discharge of the foreclosure judgment or
4 otherwise release the real property from the foreclosure
5 judgment. And we have that as an exhibit to this motion.
6 After the debtor's filing of the previous Suggestion of
7 Bankruptcy, the state court canceled that hearing. In
8 response, the secured -- my client's predecessor --

9 THE COURT: (Indiscernible) sale.

10 MR. SHRAIBERG: I'm sorry?

11 THE COURT: Canceled the sale?

12 MR. SHRAIBERG: -- canceled the sale.

13 THE COURT: Sale. Not a hearing?

14 MR. SHRAIBERG: Sorry. Correct. Yes.

15 THE COURT: Okay.

16 MR. SHRAIBERG: Following a motion -- our Motion
17 for Relief from Stay in the prior Chapter 13 filed by Mr.
18 Bernstein, on April 13, 2023, this Court made the
19 following findings: a) The real --

20 THE COURT: This Court?

21 MR. SHRAIBERG: Your Honor, yourself. Yes.

22 THE COURT: Moi?

23 MR. SHRAIBERG: Moi.

24 THE COURT: Okay.

25 MR. SHRAIBERG: The real property is owned by the

1 family -- the Bernstein Family Realty, LLC. The secured
2 creditors' predecessor in interest is the holder of a
3 final foreclosure judgment with respect to the real
4 property of my client. The April 3, 2023, Suggestion of
5 Bankruptcy filed by the debtor in the state court was,
6 quote, factually false and legally incorrect, and was
7 designed to mislead the state court and/or the clerk of
8 the state court into cancelling the April 4, 2023,
9 foreclosure sale of the real property. Because the
10 Suggestion of Bankruptcy stated that this action is
11 founded on a claim from which a discharge would be a
12 release of that seeks to impose a charge on the property
13 of the estate. The debtor's purpose -- this is also a
14 finding. The debtor's purpose in filing the voluntary
15 Chapter 13 petition was not to reorganize or confirm a
16 plan but, instead, quote, was to obtain the cancelation of
17 the April 4, 2023, foreclosure sale of the real property
18 as part of a continuing bad faith scheme to delay and
19 hinder the movants with respect to the foreclosure action
20 against the real property. This order is found at docket
21 entry 22 in the case 23-12630 that was before Your Honor,
22 and it's attached as Exhibit B to this motion.

23 THE COURT: Okay.

24 MR. SHRAIBERG: And having so found that the
25 bankruptcy court ordered, pursuant to 11 U.S.C.

1 362(d)(4)(B), that the automatic stay, quote, is modified
2 so that for the next two years from the date of this,
3 which was April 14, 2023, order, no voluntary or
4 involuntary petition filed under Title 11 of the United
5 States Code shall operate as a stay of any act against the
6 real property.

7 THE COURT: What's happened in the two years?
8 You weren't able to get a sale scheduled and completed?

9 MR. SHRAIBERG: There were numerous -- this
10 foreclosure started in 2018. There were numerous,
11 respectfully, what we call, frivolous defenses raised
12 throughout this entire case.

13 THE COURT: Weren't you post-judgment?

14 MR. SHRAIBERG: No. They --

15 THE COURT: I'm just asking a simple question.

16 MR. SHRAIBERG: Yes. Yes.

17 THE COURT: What happened between the order that
18 I entered and why didn't the sale actually happen?

19 MR. SHRAIBERG: Mr. Bernstein filed various
20 pleadings state -- post-judgment stating that there wasn't
21 authority to obtain the foreclosure judgment.

22 THE COURT: Okay. And those were all denied and
23 are set -- a sale was reset?

24 MR. SHRAIBERG: That is correct, Your Honor.

25 THE COURT: Okay.

1 MR. SHRAIBERG: And Mr. --

2 THE COURT: For what date?

3 MR. SHRAIBERG: It was set for, I believe, the
4 day of the filing.

5 THE COURT: Okay. And that's why this case was -
6 - this most recent case was filed, to stay that sale.

7 MR. SHRAIBERG: Correct.

8 THE COURT: Okay. All right. So all that's been
9 adjudicated, state court has reset the sale, and then this
10 filed. And you're obviously asserting that this was a bad
11 faith filing and that it was filed and should have been
12 accepted -- or has no -- the stay -- you want to confirm
13 that the stay is not in effect.

14 MR. SHRAIBERG: Correct.

15 THE COURT: Okay.

16 MR. SHRAIBERG: As well as we want a new two-year
17 period to be added. This debtor has no income. This
18 debtor filed this case -- has filed the plan that calls
19 for no distribution to unsecured creditors, claims under
20 penalty of perjury on his schedules that we are over-
21 secured, and even with that, they are making no payments
22 pursuant to the proposed plan, have made to date no
23 payments into his plan --

24 THE COURT: Okay. I understand.

25 MR. SHRAIBERG: Yes.

1 THE COURT: Anything else?

2 MR. SHRAIBERG: This debtor filed almost -- or a
3 very similar Suggestion of Bankruptcy in the state court
4 that's --

5 THE COURT: As he did the last time.

6 MR. SHRAIBERG: Exactly, Your Honor.

7 THE COURT: All right.

8 MR. SHRAIBERG: The difference is the last one
9 was done by -- with the help of an attorney. This one was
10 filed pro se.

11 THE COURT: Okay.

12 MR. SHRAIBERG: And we've attached that
13 Suggestion of Bankruptcy to our exhibits.

14 THE COURT: All right. Mr. Bernstein?

15 MR. BERNSTEIN: Thank you, Your Honor. I'm still
16 under medication, as my motions show. Heart and oral. I
17 showed cause why my papers in opposition should be
18 considered, even if deemed late, but Mr. Shraiberg also
19 did not proper notice under the rules. The hearing should
20 be continued, as my emergency motion shows. There should
21 be an evidentiary hearing under local rule 4001-1, as
22 requested, as Mr. Shraiberg did not attach documents to
23 his motion on the debt and property under the local
24 guidelines. There are multiple witnesses who should be
25 heard at the evidentiary hearing.

1 THE COURT: Why? If there's a judgment that's
2 been entered and a foreclosure sale set, there's no --
3 there's no issue that I will adjudicate that the state
4 court hasn't already adjudicated.

5 MR. BERNSTEIN: Well, there's a whistleblower
6 who's a former intern prosecutor for Janet Reno and a
7 licensed Florida attorney --

8 THE COURT: All right. So denied. I'm granting
9 your motion, Mr. Shraiberg. Please get me the order.

10 Mr. Bernstein --

11 MR. BERNSTEIN: Yeah?

12 THE COURT: -- this is a --

13 MR. BERNSTEIN: We'll sit down.

14 THE COURT: -- an abusive process, so --

15 MS. WEINER: Excuse me, Your Honor?

16 THE COURT: What's that?

17 MS. WEINER: I'm going to call the federal
18 marshals. He just called you an abusive process.

19 THE COURT: Well, I said it was an abusive
20 process.

21 MS. WEINER: He called you, as he was walking
22 out.

23 THE COURT: I've been called worse.

24 MS. WEINER: Okay.

25 THE COURT: Probably will be called worse --

1 MS. WEINER: Just saying.

2 THE COURT: -- you know, many times in the
3 future. It is part of the job.

4 MS. WEINER: Your Honor, may I ask what the
5 status of this case is going to be, because I believe we
6 have a motion -- could Mr. Girardi (ph) come --

7 THE COURT: I think stay of relief.

8 MS. WEINER: -- forward --

9 THE COURT: So -- and I'm granting the two-year
10 prejudice period.

11 MS. WEINER: So, therefore, anything we have
12 pending will be moot then?

13 THE COURT: I don't know what you have pending,
14 but it seems to me that the only reason this was filed was
15 to stop the foreclosure sale, and now the foreclosure sale
16 will not be stopped and I'm granting stay of relief. File
17 whatever you need to file to dispose of the case, I
18 suppose.

19 MR. GIRARDI: Precisely, Your Honor. And Matt
20 Girardi with the Trustee's Office. We filed a request for
21 dismissal on May 23rd for no money. It's a 341. I
22 believe that would just then get entered once the motion
23 for relief is resolved.

24 THE COURT: Okay. Got it. Yeah, that was
25 holding it up, the fact that it was pending. Okay.

1 MS. WEINER: Then I'm going to ask Your Honor
2 that you draft your own order with regard to denying Mr.
3 Bernstein's motions and maybe Mr. Shraiberg could upload
4 an order or -- I don't know if the Court's inclined to do
5 both?

6 THE COURT: Well, we'll draft the order.

7 MS. WEINER: Okay.

8 THE COURT: Not a problem. Mr. Kline (ph.) is
9 very good at that.

10 MS. WEINER: And he was sending me all kinds of
11 stuff and I had no -- and making allegations against me,
12 and I had nothing to do with anything he was saying.
13 Okay. Thank you, Your Honor.

14 THE COURT: Madam Trustee, we've all been there.
15 It's --

16 MS. WEINER: It's not the first.

17 THE COURT: Listen, I -- and I'm not taking this
18 lightly. You know, these folks are desperate. They are
19 losing their roof over their head, so they take desperate
20 action, and it is what it is, and, you know, we know it
21 when we see it, and I've ruled, and it'll be what it'll
22 be.

23 MS. WEINER: We did have one matter, but it's
24 going to take more than the two minutes you have left, so
25 could we say 1:00? Do you think 1:00 would be too early

1 for Your Honor?

2 THE COURT: What matter is that?

3 MS. WEINER: One -- you had said, originally, one
4 -- oh, we have people coming back at 1:30? All right.
5 So, Your Honor, may I continue doing what I need to do and
6 we'll see you at 1:30?

7 THE COURT: Absolutely. Thank you, all.

8 MR. SHRAIBERG: Your Honor -- I apologize -- am I
9 submitting the order or is -- are -- you entering the
10 order?

11 THE COURT: You're submitting an order on your
12 motion --

13 MR. SHRAIBERG: Great.

14 THE COURT: -- and we will be entering an order
15 on the debtor's objection or whatever -- we will be
16 entering an order on -- hold on a second -- on docket
17 entry 29, which is the Debtor's Emergency Submittal under
18 11 U.S.C. 105(a) for Temporary Stay, denying it.

19 MR. SHRAIBERG: Yeah. I'm just wondering,
20 because they are serial filers, can I at least make a
21 finding that this was filed in bad faith?

22 THE COURT: Yes.

23 MR. SHRAIBERG: Okay.

24 THE COURT: It was filed in bad faith.

25 MR. SHRAIBERG: I understand.

1 THE COURT: Okay. All right.

2 MS. WEINER: Thank you, Your Honor.

3 THE COURT: Thank you, all.

4 MR. SHRAIBERG: Thank you, Your Honor. Your
5 Honor, I apologize, because I don't -- I want to make sure
6 things are on the record with this debtor. Can it also
7 re-state the finding that was in the prior order that the
8 Suggestion of Bankruptcy was filed to mislead the state
9 court?

10 THE COURT: Is that attached to your motion?

11 MR. SHRAIBERG: It's Exhibit C -- you know what,
12 let me make sure I'm right. Nope, it's not. It is
13 Exhibit D, found at page 24 of 29. And it could be found
14 -- he bolded the misrepresentation.

15 THE COURT: So this did not act as an automatic
16 stay.

17 MR. SHRAIBERG: It was filed within the two years
18 --

19 THE COURT: It's within the two years. And that
20 date, April 14th -- and tell me how you calculate the
21 other date.

22 MR. SHRAIBERG: It falls within one day.

23 THE COURT: Okay.

24 MR. SHRAIBERG: We believe -- and we've set forth
25 in our motion that --

1 THE COURT: Okay. You can include that finding.

2 MR. SHRAIBERG: Thank you, Your Honor.

3 THE COURT: All right.

4 MS. WEINER: Thank you, Your Honor.

5 THE COURT: Thank you, all.

6 (End of proceedings)

C E R T I F I C A T E

I, KIMBERLY JONES, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

KIMBERLY JONES

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