

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)
and ELIOT BERNSTEIN)
)
Third-Party Defendants.)
)
)
ELIOT IVAN BERNSTEIN,)
)
)
Cross-Plaintiff)
)
)
v.)
)
)
TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)
)
)
Cross-Defendant)
)
and,)
)
)
PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)
)
Third-Party Defendants.)
)

NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, and Co-Plaintiffs, Ted Bernstein, individually, Pamela Simon, Jill Iantoni, Lisa Friedstein, by and through their undersigned counsel, and states as their response in opposition to Intervenor's emergency motion for additional time to take the deposition of Ted Bernstein as follows:

INTRODUCTION

Intervenor's latest motion for yet more time to take the deposition of Ted Bernstein should be denied. In filing the motion, Intervenor once again attempts to delay proceedings solely to save itself from the time, expense and inconvenience required to litigate a case in which it voluntarily inserted itself. Once again, Intervenor's motion is devoid of any of the procedural history necessary for the court to make an informed decision.

The sum total of Intervenor's efforts in this case consists of taking one deposition and filing multiple motions for extensions of time. After intervening, Intervenor provided no documentation in response to Rule 26 disclosure requirements because it admittedly has no affirmative evidence that it is the beneficiary of the Policy Proceeds at issue.

On the other hand, Plaintiffs' counsel delivered a compact disc to Intervenor's counsel in August of 2014 containing all of the documents exchanged up to that date by all parties. Intervenor's repeated assertion that it does not intend to delay the proceedings is completely contradicted by the docket in this case which shows that stalling has been the extent of Intervenor's efforts to date.

ARGUMENT

Two years ago, Plaintiffs originally brought an action against Heritage Union Life Insurance Company seeking payment of proceeds from a life insurance policy issued on the life of Simon Bernstein, as Insured. Simon Bernstein passed away in September of 2012. Heritage Union removed the action to the Northern District, and filed an interpleader action serving potential competing claimants to the Policy Proceeds. Heritage Union did not serve the Estate of Simon Bernstein as a potential claimant or name the Estate in the interpleader litigation.

In 2013, William Stansbury, a potential creditor of the Estate of Simon Bernstein sought to intervene in the instant litigation, and Plaintiffs opposed that motion to intervene. On January 14, 2014, this court entered an Order denying the motion to intervene of William Stansbury. In so doing, the court found that allowing Stansbury to intervene would (i) “not serve the interests of judicial economy and would unduly prejudice the present parties to this lawsuit”, and (ii) “unduly delay the determination of the beneficiaries of the life insurance policy at issue in this lawsuit.”

Five to six months later, Stansbury took a second bite at the apple by filing a petition in the Probate Court in Florida to have an administrator ad litem appointed on behalf of the Estate of Simon Bernstein to intervene in the instant litigation. At the conclusion of the hearing, the Florida Court ultimately appointed Benjamin Brown to act as administrator ad litem and specifically ordered that the legal fees and costs be borne not by the Estate but by William Stansbury. (*See Dkt. #154, Probate Court Order attached as Ex. 1 to Intervenor’s Motion to Stay*). .

Before the Estate intervened, Judge St. Eve had set a fact discovery deadline of June 13, 2014 [**Dkt. #96**]. After Judge St. Eve granted Intervenor’s motion to intervene, she extended the fact discovery deadline until January 9, 2015 and set a deadline for filing dispositive motions on March 6, 2015. [**Dkt. #123**].

In December of 2014 and again in early 2015, Plaintiffs were asked by Intervenor to provide dates for Ted Bernstein's deposition. Plaintiffs' provided Intervenor with dates for Ted's deposition in December of 2014, prior to the New Year Holiday Season, and again in January of 2015, shortly after the New Year.

Intervenor chose not to notice up or take Ted's deposition on either occasion despite an impended discovery deadline. The fact discovery deadline set by Judge St. Eve passed on January 9, 2015. In March of 2015, Intervenor filed an untimely motion to stay discovery, and this court denied it because the fact discovery deadline had passed. (**Dkt. #158**).

The parties appeared for an initial status date before Judge Blakey on April 13, 2015. At the status, the court set a briefing schedule for Plaintiff's motion for summary judgment. (**Dkt. #162**).

At the status date of April 13th, the Court also granted Intervenor's and Eliot Bernstein's oral motion for more time to take depositions over Plaintiffs objection and despite having denied Intervenor's prior motion to stay discovery. Since that date, neither Eliot nor Intervenor have sent notices or subpoenas for the depositions they requested.

Since the status date of April 13th, Eliot Bernstein filed a request for additional time for briefing of the summary judgment motion. The court promptly granted Eliot's motion but admonished the parties that no further extensions would likely be granted. (**Dkt. #166**). Now Intervenor requests a matching briefing schedule to Eliot's, and Plaintiffs will consent provided - - IF AND ONLY IF -- it does not result in any further delay or extension of time for the deposition of Ted Bernstein.

The very next day following the April 13th status, Plaintiff's counsel sent Intervenor's counsel an email with multiple dates during both the week of April 13th and the week of April 20th

upon which Ted Bernstein would be available to appear for his deposition. Intervenor sent no notice of deposition for Ted's deposition during the dates provided for the week of April 13th.

Intervenor's counsel also suggested that the deposition be taken during evening hours to facilitate travel and trial schedules. Ted Bernstein accommodated by providing dates during both day or evening hours in which a deposition could be taken in compliance with the court's order.

On April 17, 2015, Intervenor's counsel asked Plaintiff's counsel to confirm that Ted Bernstein would remain available on the dates provided during the week of April 20th, and Plaintiff's confirmed that Ted kept those dates open for his deposition.

On April 20 and April 21, the Estate sent no notice of deposition, and instead asked for Plaintiff's consent to yet another extension of time for the deposition of Ted Bernstein. Plaintiff's counsel has provided dates for Ted Bernstein's deposition to Intervenor on at least three occasions, all of which complied with the court's discovery schedule then in effect. On all three occasions, Intervenor failed to notice or take the deposition.

On this third and most recent occasion, instead of assigning one of the two other qualified attorneys at the firm of Stamos and Trucco that are listed on the docket of this case as counsel for Intervenor to take the deposition of Ted Bernstein in order to comply with the extended schedule generously granted by the Court, Intervenor cites a trial it knew was coming as an excuse for delay yet again.

If the court grants additional time as requested it is inevitable that either the Estate or Eliot Bernstein, or more likely both, will again ask the court for extensions because of a need for more time with the Ted Bernstein deposition transcript.

Plaintiffs' implore the Court to put an immediate end to Eliot's and Intervenor's blatant tag-team delay tactics. Both Eliot's and Intervenor's multiple motions for extensions have already prejudiced Plaintiffs by causing delay and needless added expense in pleading these motions.

It is also critical to note that the situation Intervenor finds itself in was self-inflicted as a result of Intervenor's prior neglect. If Intervenor had put forth the time, effort and expense to litigate this case in the first instance, Intervenor would not be in the position of having to file this so-called "emergency motion".

Intervenor's continued requests to have his court facilitate its own time-frame, expense account, and attorney availability totally disregards and prejudices the rights of the true beneficiaries of the Policy whom have been waiting over two years to obtain what is rightfully theirs. This is all the more true, in this instance, where (i) Intervenor voluntarily interjected itself in this litigation and (ii) Intervenor, by its own admission, does not possess an affirmative claim to the Policy Proceeds.

CONCLUSION

For all of the foregoing reasons, Intervenor's motion for additional time to take the deposition of Ted Bernstein should be denied.

Dated: April 22, 2015

Respectfully Submitted,

/s/ Adam M. Simon
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