

IN THE CIRCUIT COURT OF THE FIFTEEN JUDICIAL CIRCUIT IN AND FOR PALM
BEACH COUNTY, FLORIDA PROBATE/GUARDIANSHIP DIVISION "IY"

IN RE: THE ESTATE OF

CASE NO. 502011CP00653XXXXSB

SHIRLEY BERNSTEIN,

Deceased

ELIOT IVAN BERNSTEIN, PRO SE

PETITIONER,

V.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,
ASSOCIATES AND OF COUNSEL), ROBERT L.
SPALLINA (BOTH PERSONALLY & PROFESSIONALLY),
DONALD R. TESCHER (BOTH PERSONALLY &
PROFESSIONALLY), THEODORE STUART BERNSTEIN,
AS PERSONAL REPRESENTATIVES ET AL., TRUSTEES,
SUCCESSOR TRUSTEES AND ESTATE COUNSEL AND
JOHN AND JANE DOES,

RESPONDENTS.

**MOTION TO: CONSIDER IN ORDINARY COURSE THE EMERGENCY PETITION
TO FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES,
INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS
COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT
BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE FILED BY
PETITIONER**

PLEASE TAKE NOTICE that upon the accompanying affirmation; Pro Se Petitioner Eliot Ivan Bernstein will move this Court before the Honorable Judge Martin H. Colin, Circuit Judge, at The Fifteenth Judicial Circuit at 200 West Atlantic Ave. Delray Beach, FL 33444, at a date and

time to be determined by the Court, for an order to consider in ordinary course the Renewed Emergency Petition filed on May 29th 2013, Docket # 37 by the Petitioner to freeze Estate Assets, appoint new personal representatives, investigate forged and fraudulent documents submitted to the court and other interested parties, rescind signature of Eliot Bernstein in Estate of Shirley and more and for such other relief as the Court may find just and proper.

Dated: Palm Beach County, FL

_____, 2013

X _____
Eliot I. Bernstein
2753 NW 34th St.
Boca Raton, FL 33434
(561) 245-8588

To: Respondents
Served Priority Mail to:

Respondents

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Donald Tescher, Esq.
Teschner & Spallina, P.A.
Boca Village Corporate Center I
4855 Technology Way
Suite 720
Boca Raton, FL 33431

Theodore Stuart Bernstein
880 Berkley Street
Boca Raton, FL 33487

Interested Parties and Trustees for Beneficiaries

Lisa Sue Friedstein
2142 Churchill Lane
Highland Park IL 60035

Jill Marla Iantoni
2101 Magnolia Lane
Highland Park, IL 60035

Pamela Beth Simon
950 North Michigan Avenue
Suite 2603
Chicago, IL 60611

Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434

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**MOTION TO: CONSIDER IN ORDINARY COURSE THE EMERGENCY PETITION
TO FREEZE ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES,
INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED TO THIS
COURT AND OTHER INTERESTED PARTIES, RESCIND SIGNATURE OF ELIOT
BERNSTEIN IN ESTATE OF SHIRLEY BERNSTEIN AND MORE FILED BY
PETITIONER**

I, Eliot I. Bernstein, make the following affirmation under penalties of perjury:

I, Eliot I. Bernstein, am the pro se petitioner in the above entitled action, and respectfully move
this court to issue an order to consider in ordinary course the Renewed Emergency Petition filed

by the Petitioner to freeze Estate Assets, appoint new personal representatives, investigate forged and fraudulent documents submitted to the court and other interested parties, rescind signature of Eliot Bernstein in Estate of Shirley and more and for such other relief as the Court may find just and proper.

The reasons why I am entitled to the relief I seek are the following:

I. INTRODUCTION:

1. That on May 29th 2013, Docket # 37 this Petitioner had filed a Renewed Emergency Petition to freeze Estate Assets, appoint new personal representatives, investigate forged and fraudulent documents submitted to the court and other interested parties, rescind signature of Eliot Bernstein in Estate of Shirley and more.
2. That on 31st May 2013, the Honorable Judge Martin H. Colin gave a judgment on the Emergency Petition stating “Renewed Emergency Petition is hereby denied as an emergency. This matter may be set in the ordinary course”- **Exhibit 1**

II. ARGUMENT:

1. To consider the Renewed Emergency Petition filed by Petitioner in ordinary course:

As per order of Court this Petitioner intends to proceed with the petition in ordinary course and requests this court to consider the Renewed Emergency Petition in ordinary course.

2. To construe this Pro Se motion liberally:

i. Relevant Law:

Judiciary Act of September 24, 1789, Section 342, FIRST CONGRESS, Sess. 1, ch.20, 1789 states that:

“Pleadings of the Plaintiff SHALL NOT BE dismissed for lack of form or failure of process. All the pleadings are as any reasonable man/woman would understand, and:
“And be it further enacted. That no summons, writ, declaration, return, process, judgment, or other proceedings in civil cases in any of the courts or the United States, shall be abated, arrested, quashed or reversed, for any defect or want of form, but the said courts respectively shall proceed and give judgment according as the right of the cause and matter in law shall appear unto them, without regarding any imperfections, defects or want of form in such writ, declaration, or other pleading, returns process, judgment, or course of proceeding whatsoever, except those only in cases of demurrer, which the party demurring shall specially sit down and express together with his demurrer as the cause thereof. And the said courtsively shall and may, by virtue of this act, from time to time, amend all and every such imperfections, defects and wants of form, other than those only which the party demurring shall express as aforesaid, and may at any, time, permit either of the parties to amend any defect in the process of pleadings upon such conditions as the said courts respectively shall in their discretion, and by their rules prescribe (a)”

Court errs if court dismisses pro se litigant without instructions of how pleadings are deficient and how to repair pleadings. *Plaskey v CIA*, 953 F.2nd 25

It is settled law that the allegations of such a complaint, "however inartfully pleaded" are held "to less stringent standards than formal pleadings drafted by lawyers, see *Haines v. Kerner*, 404 U.S. 519, 520 (1972). See also *Maclin v. Paulson*, 627 F.2d 83, 86 (CA7 1980); *French v. Heyne*, 547 F.2d 994, 996 (CA7 1976); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976). Such a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.

Haines, *supra*, at 520-521. And, of course, the allegations of the complaint are generally taken as true for purposes of a motion to dismiss. *Cruz v. Beto*, 405 U.S. 319, 322 (1972).

Recognizing that transsubstantive pleading standards do not sufficiently account for the capability differential between represented and unrepresented litigants, the Supreme Court fashioned a rule of special solicitude for pro se pleadings. See Robert Bacharach & Lyn Entzeroth, Judicial Advocacy in Pro Se Litigation: A Return to Neutrality, 42 IND. L.REV. 19, 22-26 (2009)

The Court granted such leniency, or “liberal construction,” to pro se pleadings against the backdrop of *Conley v. Gibson*’s undemanding “no set of facts” standard. See *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957) “[A] complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.”, abrogated by *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 561-63 (2007). This standard epitomized the notice-pleading regime envisioned by the drafters of the Federal Rules, who emphasized discovery as the stage at which a claim’s true merit would come to light, rather than pleading. See *Christopher M. Fairman*, The Myth of Notice Pleading, 45 ARIZ. L. REV. 987, 990 (2003).

ii. Discussion:

In this action, the Petitioner appears Pro se. Hence, this motion should be construed liberally. It should not be dismissed for failure to state a claim. It should be decided on true merit, rather than pleading.

III. Prayer for Relief

WHEREFORE, for the reasons set forth in detail herein, Petitioner respectfully requests that this Court in the interest of justice consider in ordinary course the Renewed Emergency Petition filed by the Petitioner to freeze Estate Assets, appoint new personal representatives, investigate forged and fraudulent documents submitted to the court and other interested parties, rescind signature of Eliot Bernstein in Estate of Shirley and more and grant such other relief as the Court may find just and proper.

Respectfully submitted,

Dated: Palm Beach County, FL

_____, 2013

Eliot I. Bernstein
2753 NW 34th St.
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(561) 245-8588

Exhibit 1

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
PROBATE /GUARDIANSHIP DIVISION "IY"

CASE NO. 502011CP000653XXXXSB

IN RE: THE ESTATE OF
SHIRLEY BERNSTEIN,
Deceased

13 MAY 31 AM 9:53
SHARON R. BOCK, CLERK
PALM BEACH COUNTY, FL
SOUTH CITY BRANCH-FILED

ELIOT IVAN BERNSTEIN, PRO SE
Petitioner,

v.

TESCHER & SPALLINA, P.A., (AND ALL PARTNERS,
ASSOCIATES AND OF COUNSEL), ROBERT L. SPALLINA
(BOTH PERSONALLY & PROFESSIONALLY), DONALD R.
TESCHER (BOTH PERSONALLY & PROFESSIONALLY),
THEODORE STUART BERSTEIN, AS PERSONAL
REPRESENTATIVES ET AL., TRUSTEES, SUCCESSOR
TRUSTEES AND ESTATE COUNSEL AND JOHN AND JANE
DOES,

Respondents.

ORDER DENYING RENEWED EMERGENCY PETITION TO: FREEZE
ESTATE ASSETS, APPOINT NEW PERSONAL REPRESENTATIVES,
INVESTIGATE FORGED AND FRAUDULENT DOCUMENTS SUBMITTED
TO THIS COURT AND OTHER INTERESTED PARTIES, RESCIND
SIGNATURE OF ELIOT BERNSTEIN IN ESTATE OF SHIRLEY AND MORE-
PROOF OF SERVICE TO ALL INTERESTED PARTIES SERVED IN
ACCORDANCE WITH THIS COURT ORDER

UPON CONSIDERATION of the Renewed Emergency Petition to: Freeze
Estate Assets, Apportion New Personal Representatives, Investigate Forged and
Fraudulent Documents Submitted to this Court and Other Interested Parties, Rescind
Signature of Eliot Bernstein in Estate of Shirley and More-Proof of Service to all
Interested Parties Served in Accordance with this Court Order, it is hereby

ORDERED AND ADJUDGED that Renewed Emergency Petition is hereby

Received
6/1/13
6/13/13

Denied as an emergency. This matter may be set in the ordinary course.

DONE AND ORDERED in chambers, at Delray Beach, Palm Beach County, Florida this 31st day of May, 2013.



MARTIN H. COLIN
Circuit Court Judge

Copies furnished:

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