

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

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95,

Plaintiff,

v.

HERITAGE UNION LIFE INSURANCE
COMPANY,

Defendant,

HERITAGE UNION LIFE INSURANCE
COMPANY

Counter-Plaintiff

v.

SIMON BERNSTEIN IRREVOCABLE
INSURANCE TRUST DTD 6/21/95

Counter-Defendant

and,

FIRST ARLINGTON NATIONAL BANK
as Trustee of S.B. Lexington, Inc. Employee
Death Benefit Trust, et al.

Third-Party Defendants,

and

ELIOT IVAN BERNSTEIN,

Cross-Plaintiff

v.

TED BERNSTEIN, individually et al.

Case No. 13 cv 3643

Honorable John Robert Blakey

Magistrate Mary M. Rowland

**MOTION IN OPPOSITION TO
SUMMARY JUDGEMENT**

Filers:

Eliot Ivan Bernstein, Third-Party Defendant
and Counter-Plaintiff.



Third-Party Defendants__)
)
BRIAN M. O'CONNELL, as Personal)
Representative of the Estate of)
Simon L. Bernstein,)
)
Intervenor.)
/

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COMES NOW Eliot Ivan Bernstein ("Eliot"), a Third Party Defendant, Pro Se and files this "Motion in Opposition to Summary Judgement" and states under information and belief as follows:

Because there are multiple genuine issues of material fact as to virtually every material fact alleged by Plaintiffs, Plaintiffs motion for Summary judgment must be denied. There is a genuine dispute on material issues of fact rendering summary judgement for Plaintiff's improper at this time. In some instances, it is asserted that Plaintiffs' statement of facts are fraudulent and Plaintiffs have withheld material facts and information from this Court and thus, Plaintiffs should be subject to Federal Rule 11 or appropriate sanctions. Summary Judgement to Plaintiffs must be denied at this stage of litigation and further Discovery proceedings scheduled together with a hearing on sanctions and such other and further relief as to this Court may be just and proper.

DISPUTED FACTS

1. The fact is there is no actual insurance contract comprising a bona fide policy produced by Plaintiffs and thus the contract or alleged "Policy" at the heart of this breach of contract lawsuit is disputed as to its very existence and has not been proven as to its terms, conditions, history, amount, ownership, beneficiaries including both primary and contingent,

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and thus there are genuine issues and disputes of material facts as to the underlying claims by Plaintiffs and fundamental existence of said contract and thus these issues are in genuine dispute at this stage of litigation.

2. All references by Plaintiffs to the "Policy" are improper as a policy has not been produced or proven and therefore all references are disputed as to all terms and conditions as these come from a general generic "Specimen Policy" not the actual contract of the deceased Simon Bernstein with the actual provisions specifically for Simon Bernstein provided, proven or produced and thus again all these material issues relating to the "Policy" are in genuine dispute. .
3. Summary Judgement is inappropriate at this stage of litigation as further Discovery needs to be ordered and expanded to find the actual policy, Trusts and records of deceased Simon Bernstein ("Simon") including but not limited to further document and record production from Heritage Union Life Insurance Company ("HERITAGE"), Jackson National Life Insurance Company ("JACKSON"), LaSalle National Trust, NA ("LASALLE") in the entirety as ironically the Plaintiffs and those acting in concert with Plaintiffs have failed to contact and bring in records from LASALLE which should be a glaring genuine issue of material fact and area of inquiry for this Court, and further ordering a continued EBT of Theodore Stuart Bernstein ("TED"), EBTs of Pamela Beth Simon ("PAM"), David Simon ("D. SIMON"), Robert L. Spallina, Esq. ("SPALLINA"), Donald R. Tescher, Esq. ("TESCHER") and Don Sanders ("SANDERS") at minimum.
4. It is noted for this Court that Judge Martin Colin ("COLIN") of the Florida Palm Beach County probate court was moved for Disqualification as a necessary material fact witness in numerous instances of document fraud and fraud upon that court at minimum involving the

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Office of attorneys TESCHER and SPALLINA and there is evidence of coordinated action between those attorneys and the Plaintiffs and filings in this case thereby intertwining the scheme of fraud between both this Court and the Florida probate court cases involving Simon Bernstein.

5. Further, that despite the detailed motion for Disqualification of Judge Colin as a material fact witness, Judge Colin initially entered a Denial saying the motion was “legally insufficient” but within 24 hours thereafter entered a Recusal Order recusing himself from all related cases wherein such Order by its own terms shows COLIN spoke about the case to the other local judges who declined to take the case resulting in the case being assigned and recommended by COLIN to a different court with Judge Coates (“COATES”) where it is now on the calendar for June 4th, 2015.
6. The Disqualification motion¹ in Florida demonstrates the level to which the attorneys and parties have engaged in fraud in these matters which itself raises questions of material fact in these proceeding due to proven coordination and collusion of the parties.
7. Plaintiffs have moved for Summary Judgment on an alleged insurance policy which has not been produced further claiming that a Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95” (“95 Legally Nonexistent Unexecuted Trust”) which also has not been produced or proven is a contingent beneficiary of the unproven policy such that proceeds should be paid to Plaintiffs, all material facts of which are in genuine dispute.

¹ COLIN Disqualification Motion

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

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8. The fact is there is no executed "Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95" document provided by Plaintiffs nor is there any draft of such trust document performed by any law firm that has been provided by Plaintiffs and the parole evidence provided is insufficient in the first instance, suspect based upon conflicts of interests and other factors and appears fraudulent in many respects and thus all such involved facts are material and genuinely disputed.
9. What the Court has been provided by Plaintiffs at this stage is two varied alleged drafts of the 95 Legally Nonexistent Unexecuted Trust wholly blank and unexecuted with differing terms that was not produced for over a year after filing of the lawsuit. Therefore, all claims regarding the 95 Legally Nonexistent Unexecuted Trust are disputed as there is no legally executed document.
10. The fact is that even if Plaintiffs could prove the 95 Legally Nonexistent Unexecuted Trust to be a qualified CONTINGENT BENEFICIARY of a policy, by the Plaintiffs own admissions and document submissions before this Court, there is a PRIMARY BENEFICIARY, LaSalle National Trust, NA that is undisputed at this time and the existence of this Primary Beneficiary negates any payment to the Contingent Beneficiary at least not at this stage of litigation and is a basis to deny Plaintiffs' Summary Judgment itself at this time. See Plaintiffs' Summary Judgement Motion page 456 document dated April 23, 2010 by Heritage Life demonstrating LaSalle National Trust, NA as the Primary beneficiary again by Plaintiffs' own document submissions.
11. It is undisputed that such Primary Beneficiary LASALLE, demonstrated by Plaintiffs' own document submissions have not been brought in as a party in these proceedings by Plaintiffs

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nor is there any statement or affidavits from any authorized representative of LASALLE and this itself creates sufficient issues of material facts to deny Summary Judgement at this time.

12. The fact is that TED, himself, is disputed as an alleged Trustee of the unexecuted 95 Legally Nonexistent Unexecuted Trust and it is alleged that TED therefore has no legal standing to bring an action under an unexecuted legally nonexistent trust with no legal standing.
13. That within the first 30 days after the death of Simon Bernstein and prior to this action being filed where Plaintiff TED was making statements immediately prior to his father's death at the Hospital² and immediately after the time of death suspecting murder and seeking an autopsy and subsequently reported same to the Palm Beach County Sheriffs who responded to the home the morning Simon died to investigate the possible murder claims on the night in question, TED'S friend, business associate and attorney at law SPALLINA is already acting illegally and fraudulently by communicating with the insurance carrier as Trustee of LASALLE and trying to get funds and properties of Simon Bernstein illegally transferred despite having no authority to act for LASALLE whatsoever.
14. The office of Spallina & Tescher then begin a pattern and practice of filing fraudulent documents in the Florida probate court of COLIN on or about Oct. 2012 before this action was filed where subsequently major frauds go unchecked for nearly 2.5 years in that court until COLIN just recently Sua Sponte "recuses" after being faced with a detailed, specific Disqualification motion showing COLIN and at least certain court Officers as material fact

² Simon Hospital Records from Date of Death September 13, 2012 Pages 2-3

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150113%20Simon%20Bernstein%20Hospital%20Medical%20Records.pdf>

witnesses to the frauds committed by TESCHER and SPALLINA'S law offices and ongoing since at least Oct. 2012. See, Colin Disqualification Motion already exhibited herein and COLIN Recusal Order³.

15. Attorney SPALLINA then diverts from acting illegally as the Trustee of LASALLE and now acting as the Trustee of the 95 Legally Non Existent Trust proceeds to sign a death benefit claim⁴ in such capacity with the HERITAGE weeks before TED filed this lawsuit claiming that instead of SPALLINA, he, TED, was now the "Trustee" of the 95 Legally Nonexistent Unexecuted Trust.
16. TED acts as the Successor Trustee to SPALLINA of the Legally Nonexistent Trust for the instant legal lawsuit ("Action") filed for breach of contract and the Action is based on the carrier denial⁵ of the death benefit claim filed by the law firm Tescher & Spallina PA, with SPALLINA acting as Trustee and the denial was based on the failure to produce an executed legally valid trust to pay a claim on.
17. That in documents alleged to be drafts of the 95 Legally Nonexistent Unexecuted Trust submitted by Plaintiffs over a year after filing this Action there is no mention of SPALLINA

³ COLIN Recusal Order

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

⁴ Heritage Union Claim Form - Page 6 - SPALLINA signs as Trustee of 95 Legally Nonexistent Unexecuted Trust

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121101%20Heritage%20Claim%20Form%20Spallina%20Insurance%20Fraud.pdf>

⁵ Reassure America Life Insurance Company Decline Letter

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20130108%20Reassure%20America%20Life%20Insurance%20Company%20letter%20to%20Spallina%20re%20court%20order.pdf>

as a Trustee and thus it appears from Plaintiff's own account, that SPALLINA acted fraudulently in attempting to make the claim to HERITAGE acting as Trustee.

18. TED is conflicted in these matters and can't be Trustee for this litigation if there were a trust as TED stands to get 20% of any settled amount through this Action as an alleged beneficiary of the 95 Legally Nonexistent Unexecuted Trust and simultaneously TED is acting as Trustee for a Simon Bernstein Trust in Florida where he gets 0% if the benefits go to the Estate of Simon and rolls over into the Florida Simon Trust where TED is considered predeceased for all purposes of that Florida Simon Trust.
19. TED has already acted in conflict in this lawsuit and filed opposition pleadings to preclude the Estate / Trust from intervening in this lawsuit to the detriment of the Estate / Trust beneficiaries that TED alleges to be a fiduciary for in those matters. This self dealing in conflict breaches TED'S alleged fiduciary duties to parties in this lawsuit and to parties in the Florida Simon Trust action. Removal and Sanctions are warranted.
20. The fact is there is a Primary Beneficiary in existence LASALLE that SPALLINA also fraudulently misrepresented himself for months to HERITAGE acting as Trustee for LASALLE when filing his death benefit claim⁶, while also falsely misrepresenting to HERITAGE that he was Trustee for the 95 Legally Nonexistent Unexecuted Trust, a capacity he signed the death benefit claim form under.
21. In this insurance fraud scheme, where HERITAGES records produced to this Court allege that the Primary Beneficiary was LASALLE and Plaintiff's allege the Contingent

⁶ HERITAGE Letters to Spallina Addressed as Trustee of LaSalle National Trust, NA, the Primary Beneficiary

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20121009%20Heritage%20Union%20to%20Spallina%20as%20Trustee%20of%20LaSalle%20National%20Trust.pdf>

- Beneficiary is the 95 Legally Nonexistent Unexecuted Trust (where HERITAGE'S records produced contradict that claim and state the Contingent Beneficiary is the Simon Bernstein Trust, NA), SPALLINA had two bases covered for attempting to claim the Policy by acting as the Trustee for LASALLE and as Trustee for 95 Legally Nonexistent Unexecuted Trust.
22. There is also the fact that there is a fully executed 2000 Life Insurance Trust done by Proskauer Rose, LLP⁷ that supersedes the alleged 95 Legally Nonexistent Unexecuted Trust and where the Proskauer Trust is funded by the HERITAGE/Capitol Bankers (original issuer) missing policy contract and this too contradicts Plaintiff's claim that the Contingent Beneficiary is the 95 Legally Nonexistent Unexecuted Trust and therefore the Contingent Beneficiary is challenged on this ground and disputed.
23. Genuine issues of material fact are present and the need for further Discovery demonstrated by the coordinated and collusive actions of SPALLINA and the Plaintiffs by secreting and withholding from this Court and the insurance carrier the 2000 Proskauer Trust⁸ and sanctions or a sanctions hearing should be granted and further Discovery allowed.
24. That fact that insurance company records produced list the Contingent Beneficiary in 2010 and at the time of Simon's death as the Simon Bernstein Trust, NA (See Movant Exhibit 36) contradicts Plaintiff's claims that the 95 Legally Nonexistent Unexecuted Trust is the

⁷ 2000 Simon Bernstein Life Insurance Trust - Proskauer

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20000815%20Proskauer%20Insurance%20Trust.pdf>

⁸ TED'S Deposition - Exhibits 1, 2 and 23 and Testimony Pages 37-53. 82-87 Regarding Secreting the 2000 Insurance Trust

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

Contingent Beneficiary at the time of Simon's death and therefore their claim is challenged on this ground and disputed.

25. The fact that insurance company records are directly contradictory to evidence submitted by Plaintiffs such as Movant Exhibit 36 of their Summary Judgement, which claims as of the April 23, 2010 that the Primary Beneficiary is LASALLE and Movant Exhibit 29, Affidavit of Don Sanders, VP Jackson National, Paragraph #62, that claims at time of death the Primary Beneficiary was,

“After reviewing Jackson's records on the Policy, I can confirm on behalf of Jackson that on the date of death of Simon Bernstein, the Owner of the Policy was Simon Bernstein, **the primary beneficiary was designated as LaSalle National Trust, N.A. [emphasis added]** as Successor Trustee...”

and thus this creates further genuine dispute of material facts to prevent Summary Judgment as the contingent beneficiary cannot be paid when there is a primary beneficiary in existence at time of death.

26. That if Simon was the owner of the policy at the time of death the 95 Legally Nonexistent Trust would not be a qualified Contingent Beneficiary as the incident of ownership would make it legally invalid as a qualified trust and the Estate would be the beneficiary.
27. There are serious new changes in the Florida Estate and Trust cases regarding Simon and Shirley Bernstein due to the recent recusal of COLIN on May 19, 2015⁹ from six cases after

⁹ Judge Colin's Sudden Sua Sponte Recusal One Day After Denying a Disqualification Motion as “Legally Insufficient

his denial of Eliot's Petition for Disqualification¹⁰ as "Legally Insufficient" on May 18, 2015¹¹, which alleged a massive Fraud on the Court, Fraud in the Court and Fraud by Court that was orchestrated by COLIN'S acting outside the Color of Law, due to his failure to mandatorily disqualify when he became a material and fact witness to felony criminal acts in his court committed by the Officers and Fiduciaries of his court and more.

28. It is alleged that COLIN denied the disqualification to attempt to not have his Orders voided due to the FRAUD in, on and by his court and then after recusing steered the cases to the new Judge, Hon. Howard K. Coates, Jr. ("COATES") by interfering and having a hand in the reassignment, post recusal for all six Estate and Trust cases¹² of the Bernstein family.
29. The Florida Estate and Probate cases over the last two years have been stymied and delayed by these frauds and lack of action taken to prosecute them and have since led to the removal

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150519ColinSuaSponteRecusalSimonEstate.pdf>

¹⁰ Petition for Disqualification of Judge Martin Colin

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20Large.pdf>

¹¹ Judge Colin Denial of Disqualification

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150518ORDERDenyingDisqualificationColin.pdf>

¹²

1. Case # 502012CP004391XXXXSB – Simon Bernstein Estate
2. Case # 502011CP000653XXXXSB – Shirley Bernstein Estate
3. Case # 502014CP002815XXXXSB – Oppenheimer v. Bernstein Minor Children
4. Case # 502014CP003698XXXXSB – Shirley Trust Construction
5. Case # 502015CP001162XXXXSB – Eliot Bernstein v. Trustee Simon Trust Case OLD CASE # 502014CA014637XXXXMB
6. Case # TBD – Creditor Claim – Eliot v. Estate of Simon

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from the cases of COLIN, TED'S counsel, friends and business associates, TESCHER and SPALLINA, TED'S Counsel Mark Manceri, Esq. ("MANSERI"), TED'S Counsel Greenberg Traurig's Jon Swergold, Esq. ("SWERGOLD") and TED'S Counsel John J. Pankauski, Esq. ("PANKAUSKI"). The only remnants to the frauds on the court of COLIN and FRENCH left are TED'S current counsel Alan B. Rose, Esq. ("ROSE") and TED acting as an alleged fiduciary in Simon and Shirley's Florida trusts and Shirley's Estate. There are several Petitions for removal of TED and ROSE that were pending in the COLIN court at the time of his recusal/disqualification that COLIN had evaded again and again allowing TED to continue to act despite knowing of his involvement in the Frauds.

30. Further, as of May 21 2015 new information regarding Estate and Trust documents that had been suppressed were suddenly discovered by ROSE and now alleged by him to be in his "custody," where there are allegedly boxes of unaccounted for newly discovered Estate and Trust documents found by ROSE that have relevant information to this case. The existence of these unproduced, unreviewed and untested boxes of documents records and evidence of Smon Bernstein's business dealing in a case where several years of delay, years of fraud, missing and incomplete documents is already shown should itself be a further basis to preclude Summary Judgment to Plaintiffs at this stage of litigation until further discovery is awarded.
31. Further, upon an Order issued by COLIN for inventorying of Simon's Personal Property at his office, including all of his business and other records, it has been learned that apparently none of the items are there and are missing from his Estate records with the Personal Representative, Brian O'Connell, Esq. ("O'Connell"). These missing documents, records, computer data and more may also have suppressed and denied dispositive documents and

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other data related to this case. These items have been inappropriately coveted by TED and ROSE who have no standing to possess any of Simon's Personal Properties.

32. The Estate and Trust cases need to be settled on several levels before an estate beneficiary is determined and what dispositive documents are at play needs to be settled and the result of this will have bearing on this case and who the beneficiaries of any policy proceeds may ultimately be.
33. The carrier should be brought back into the action to determine the proper beneficiary to pay, which at the moment is LASALLE who they should have contacted immediately upon learning of Simon's death and to conduct a proper investigation of the Fraudulent Application submitted by SPALLINA.
34. The matters need to be investigated by the carrier as a possible murder of Simon¹³ which was first advanced by Plaintiff Ted Bernstein at the hospital on the night of death, yet which he failed to report to HERITAGE, as this information could materially affect who would get paid in the event of foul play, as HERITAGE was not informed by TED or SPALLINA when they filed a death benefit claim, nor did they notify this Court of the allegations of the murder of Simon reported to the Palm Beach County Sheriff and the Palm Beach County Medical Examiner by TED at the same time they were attempting to make a fraudulent death benefit claim.
35. There are Petitions that were unheard by COLIN'S court at the time of his recent refusal to remove TED and ROSE as fiduciaries and counsel in these matters and to then recover

¹³ Deposition of TED Pages 101-104

<http://www.iviewit.tv/Simon%20and%20Shirley%20Estate/20150506%20Ted%20Bernstein%20Deposition.pdf>

records that have been suppressed and denied beneficiaries and interested parties due to the ongoing frauds which were continued in COLIN'S court by allowing TED, ROSE and others involved in the frauds on the court to continue to act despite their involvement and where the records once recovered may also reveal further information regarding the missing insurance policy and the unknown beneficiaries.

36. The Affidavits submitted in the Summary Judgement by Bernstein family members are made by conflicted parties whose testimonies conflict with factual evidence and heavily rely on statements made to the parties by Simon Bernstein and allegedly witness events involving Simon despite the Illinois Dead Man's Act <http://www.hg.org/article.asp?id=6446>, which according to the hornbook definition, "the Act is an evidentiary rule barring testimony by someone with an interest in litigation about any conversation with or event occurring in the presence of a decedent" and thus making most of the statements moot.
37. There are important documents, records, written materials and facts with third parties that Eliot cannot obtain without Court Order as he is not the decedent's Personal Representative or Trustee and the prior Personal Representatives and Trustees in the Estate of Simon have intentionally neglected to obtain these records or have secreted them from the beneficiaries and the courts to conceal their fraudulent activities, including but not limited to,
- a. Records from insurers and reinsurers,
 - b. Records from the Primary Beneficiary LaSalle National Trust, NA,
 - c. Records regarding a VEBA 501(c)(9) plan that was the beneficiary of the missing policy,
 - d. Records from Law Firms who are stated to have created various of the trust instruments involved in these matters, and,

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