

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

Simon Bernstein Irrevocable
Insurance Trust Dtd 6/21/95, et al.,

Plaintiffs,

v.

Heritage Union Life
Insurance Co., et al.,

Defendants.

Case No. 13-cv-3643

Judge John Robert Blakey

Filers:
Eliot Ivan Bernstein, Pro Se

**THIRD-PARTY DEFENDANT ELIOT I. BERNSTEIN'S REPLY TO PLAINTIFF'S
OPPOSITION TO MOTION FOR LEAVE TO AMEND COUNTERCLAIMS - THIRD
PARTY COMPLAINT**

1. Third-party Defendant Eliot I. Bernstein respectfully submits the following on information and belief and in Reply to the Opposition ("Response") papers filed by attorney Adam Simon on behalf of Plaintiff Ted Bernstein to a Motion for Leave to Amend Counterclaims.
2. It was anticipated that other Plaintiffs or parties may also file in Opposition to this Motion for Leave to Amend and I would submit a Reply to all parties at one time. However, as of today Wed., May 11, 2016, Adam Simon has filed the only opposition to this motion on behalf of Ted Bernstein.
3. While this Reply seeks to address all of the matters raised in the "Response" in Opposition, I first wish to address and clarify for this Court matters raised by Adam Simon in Number "2" where Adam Simon states as follows: "Take for example Eliot's attempted linkage between a rather mundane motion for leave to withdraw as counsel for two parties filed by Adam Simon,

and a tragic suicide of the buyer of the former personal residence of Simon Bernstein” (emphasis added).

4. First, nowhere in my Motion for Leave to Amend was it suggested that a Claim was being sought to be added based upon the actual death of one Mitchell B. Huhem, whose body was allegedly found in the 7020 Lions Head Lane, Boca Raton, Florida home of my deceased parents being found on or about Feb. 22nd or 23rd, 2016, 2 days or so before a Motion Hearing with your Honor on Feb. 25, 2016 on my application for Emergency Injunctive Relief under the All Writs Act and Anti-Injunction Act.
5. However, the discovery of this dead body and the timing of the motion by my sisters Jill Iantoni and Lisa Friedstein to no longer use Ted Bernstein’s counsel Adam Simon was referenced in the Procedural history of this action for just that, clear sequence and history particularly with open criminal investigations into various related matters herein.
6. As this Court may recall, the Lions Head Lane home itself in Boca Raton, Florida is not only a substantial claimed asset which I had moved this Court to restrain and enjoin but also is referenced in the Plaintiff’s Amended Complaint filed Jan. 13, 2014 here in this action as one of the alleged places where Plaintiff Ted Bernstein and his Counsel Adam Simon have represented to this Court as being one of the places searched for an Executed copy of the Trust which is the subject of this action stating in Par. 35 as follows: “Neither an executed original nor an executed copy of the BERNSTEIN TRUST Agreement has been located after diligent searches conducted as follows:
 - i) Ted Bernstein and other Bernstein family members of Simon Bernstein’s home and business office;”

7. Yet, despite this alleged “searching” of the Simon Bernstein home as of Jan. 3, 2014 finding no such executed original or copy of such Trust for this action to this very day, allegedly that is, nearly a year and a half later on or about May 20, 2015 just after Florida Probate Court Judge Colin mysteriously “recuses” after 2.5 years on the Probate case doing so within 24 hours of a mandatory Disqualification motion¹ I filed, Ted Bernstein’s other counsel. Alan Rose, magically allegedly finds executed “original” copies (alleged “duplicate” originals) of other Trusts involving my children and parents despite the fact that the PR of the Estate of Simon Bernstein by and through attorney Brian O’Connell’s law office with attorney Joy Foglietta had already fully inventoried all items in the home as of March 2015 and removed said items allegedly to storage. See, Petition for Injunction Paragraphs 95-120.

8. Of course in the prior alleged “searches” of the home that occurs by Ted Bernstein and others as referenced in his First Amended Complaint filed in this action, none of these “duplicate originals” now magically found by Alan Rose had apparently turned up, nor had these “duplicate originals” turned up by the complete Inventory by Brian O’Connell’s office as PR, allegedly that is.

9. Ted Bernstein’s counsel Alan Rose then proceeded to send through the Electronic mails and wires an email on such date describing the magical find and attaching “copies” of the alleged “duplicate” originals in further attempts to extort, coerce and wrongfully extract actions to agree in the related Trust and Estate matters, *yet never provided the alleged actual original duplicate copies or the actual original documents which he and his client Ted claim not to possess for Inspection or Review prior to an alleged pre-determined one day “validity” trial later held in Dec. 2015.*

¹ May 14, 2015 Motion for Disqualification Judge Martin Colin
<http://iviewit.tv/Simon%20and%20Shirley%20Estate/20150514%20FINAL%20Motion%20for%20Disqualification%20Colin%20ECF%20STAMPED%20COPY.pdf>

10. I respectfully draw the Court's attention to Adam Simon's affirmative representation in the recent filed Response before this Court that the death of Mitchell Huhem was "a tragic suicide" and note that nowhere in this filing does Adam Simon or Ted Bernstein provide any basis of such knowledge, yet represents this to the Court as if it is fact just like Adam Simon and Ted Bernstein filed with this Court claiming Ted Bernstein as "Trustee" of the Trust in this case yet NEITHER party had seen such trust, can produce such Trust, or have stated the basis for falsely filing as if this was a fact.

11. I also respectfully remind this Court that at no time on Feb. 25th, 2016 during the hearing on my Emergency Petition for Injunctive relief which included the 7020 Lions Head Lane home did either Adam Simon or Ted Bernstein disclose to this Court that a dead body had just been found at the home with alleged gunshot wounds to the head so gruesome that family members were not allowed to view the body of the deceased as alleged by the sisters of Mitchell Huhem.

12. I can affirmatively represent to this Court that as of April 16, 2016, the Palm Beach Sheriff's Office still had an "Open" Investigation into the alleged Suicide as I personally received a phone call from Detective Max-Carlos A. Perez-Pizarro who specifically was seeking information about the death and further stated that the Palm Beach Sheriff's Office was also investigating the fraudulent deed and shell company and real estate transaction involving the Lions Head lane home involving both Ted Bernstein and his counsel Alan Rose, See, Petition for All Writs Act Injunction Paragraphs 146-153..

13. I can also state to this Court upon information and belief with the source being a direct family member (sister) of deceased Mitchell Huhem that the PBSO had informed them that the family would be notified when the Investigation was closed and that as of yesterday, Tuesday

May 10, 2016 the family member sister reports she was directly told by a Supervisor in the PBSO Central Records Unit that the Status of the Case had now suddenly changed to “Blocked” Status and the case is Not “Open” nor “Closed” and that “Blocked” meant no one internally could access the Case files and further stated that one of the possible reasons a case could become “Blocked” is if an Outside Agency like the State’s Attorney’s Office was reviewing the case or if a new lead had developed on what happened.

14. I can further say upon information and belief from the Mitchell Huhem family members (sisters) that as of this Tuesday, May 10, 2012 the PBSO still had not interviewed them for alleged multiple contradictions in the storyline provided by Mitchell Huhem’s wife Deborah Huhem in the days after the body was discovered and further that Ted Bernstein had claimed to one sister that he was supposed to be meeting with Mitchell Huhem on the morning the body was allegedly discovered and that Ted Bernstein portrayed himself as a “close friend” of Mitchell Huhem’s, yet according to the sister the PBSO had not even interviewed Ted Bernstein about the case as of March 10, 2016.

15. Ted Bernstein’s counsel, Alan Rose, however, had claimed in an Electronic mail (email) sent to myself along the wires dated March 10, 2016 in part as follows: “Neither Ted nor anyone else on your mother’s side of this sale knew or needed to know about the buyer.”

16. Yet, pictorial evidence is available showing Ted Bernstein and Mitchell Huhem together for Thanksgiving Dinner in Nov. of 2015 and according to Mitchell Huhem’s sister, Mitchell’s wife was “staying” with Ted Bernstein and Debbie Bernstein at their intra-coastal home in Florida in the days after the body was allegedly discovered, Mitchell Huhem’s wife Deborah had waited approximately 15-20 hours to even notify any of Mitchell’s blood relative family members including the sisters and Mitchell’s mother that he was even deceased, Deborah

Huhem was constantly on the phone with attorney Laurence Pino who was directly involved in setting up the fraudulent shell company that had allegedly taken the Deed to the Lion's Head home by Deed signed by Ted Bernstein and Alan Rose, and Laurence Pino was directing or advising Deborah Huhem to Deny family members access to the Lions Head home to see the scene of the event and further denied the family members permission to view the body.

17. According to the Mitchell Huhem sister's, ultimately after the Mother flew in the next day she insisted seeing the Lions Head Home and scene where graphic photos of a pool of blood was found in the garage and Boxes upon boxes were found everywhere in the garage and elsewhere and while it is not known if any of the boxes contained Records and Documents from Simon Bernstein's life and business, one of the sisters did indicate that at least a Medical Record of Simon Bernstein's had been found in the upstairs part of the home near a closet.

18. Thus, I bring these matters to the Court's attention not only to correct the factual record as I understand it as there is no "Official" finding of "Suicide" to my knowledge by the PBSO currently, but also alerting the Court in advance that further investigation by authorities could yield new evidence which may be relevant to this action as one of the many outstanding items is the whereabouts and proper Inventory and documentation of where All of Simon Bernstein's Business records, files and documents have gone. See Petition for All Writs.

19. I remind this Court that after my father Simon Bernstein had passed away and allegations of being "poisoned" had been made at the Hospital, that Ted Bernstein indicated he and his lawyers would be handling the matters with the police and autopsy, that when I went to my father's home at Lions Head I discovered his entire hard drive of files and business records has been wiped clean and missing, that when the PBSO did eventually come by on the claim

of my father being “poisoned” the PBSO did not even enter the Home to check all the Medications and related matters in the home while I was present and claimed they would return to do so, and after that I was never allowed entry to the home again and have not been in the home since that time in 2012, that I later found the PBSO had instead docketed the investigation of “poisoning” as a “Hospital Medical Records Check”, and further that I was personally present at the home **but Court ordered by Judge Colin to remain outside** in on or about March of 2015 when Joy Foglietta, attorney of the Brian O’Connell firm as PR of the Estate were doing their “complete” Inventory and removal of ALL such items, records, etc in the home.

20. Thus, there may be relevance as far as pattern and practice by the PBSO in “skewing”, “sabotaging” and “steering” investigations as it relates to the investigation of the Mitchell Huhem matter.

Reliance on Judge St. Eve Order to determine Futility is Misplaced and rests on erroneous

Facts

21. Respectfully, the reliance by Adam Simon and Ted Bernstein on Hon. Judge St. Eve’s Order dismissing the Tescher and Spallina law firm to determine that any amendment would be futile is misplaced and is based upon an erroneous state of facts.

22. This Order cited to Plaintiff’s First Amended Complaint in Paragraph 8 as follows: “Eliot Bernstein, the sole non-consenting adult child of Simon Bernstein, holds the remaining twenty percent of the beneficial interest in the BERNSTEIN TRUST, and is representing his own interests and has chosen to pursue his own purported claims, pro se, in this Matter.”

23. These are erroneous facts.

24. I had no knowledge that Ted Bernstein or any of the parties had filed in the instant lawsuit and action until I was brought in as a Defendant by the insurer, thus these facts relied upon were erroneous.

25. Instead at the time I was waiting to see a Florida filed action to determine a Trust since the Trust was allegedly lost.

26. But for the fraudulent filing by Ted Bernstein and Adam Simon, I would have and should have been a proper Plaintiff in a properly filed action to determine a proper Trust, Trustee and policy herein and should not have been “cornered” and had my rights to seek proper Counter-claims against proper parties restricted or limited in the manner in which this Order did cornering me in as Defendant in an impleader action and the Plaintiffs should not be benefitting by their own fraud in this regard.

27. Moreover, the case cited and relied upon by Hon. Judge St. Eve is a District court case from New York which does not appear to be binding and also should not be used to achieve such a substantial prejudice and injustice.

28. Other Federal Rules of Civil Procedure apply to adding parties and claims.

29. FRCP Rule 13 on Counterclaims and Cross-claims provides in part “ **h) Joinder of Additional Parties.** Persons other than those made parties to the original action may be made parties to a counterclaim or cross-claim in accordance with the provisions of Rules 19 and 20.”

30. With respect to Heritage, Jackson and the Re-Insurer, these parties should not have been released from the case in the absence of a produced policy and contract. This court simply does not know if the amount deposited into the Court is correct without a contract.

31. "It is well established that a party to a contract which is the subject of the litigation is considered a necessary party." Ryan v. Volpone Stamp Co., Inc., 107 F. Supp.2d 369, 387 (S.D.N.Y. 2000); see also Global Discount Travel Services, LLC v. Trans World Airlines, Inc., 960 F. Supp. 701, 707-708 (S.D.N.Y. 1997).
32. These parties should be added back in either under Rule 19(a) as necessary parties or Rule 20 as part of the same transaction and occurrence and common nucleus of operative facts.
33. The same should apply to Tescher & Spallina either as necessary parties or under the same transaction and occurrence and common nucleus of operative facts.
34. Tescher and Spallina were the Estate planners for Simon and Shirley Bernstein who "should have" knowledge and possession of any such Trust and insurance policies and contracts.
35. New facts have emerged well beyond the time of my original Answer and as recently as Dec. 2015 when shown that Ted Bernstein and his counsel Alan Rose were "working with" Robert Spallina as their primary "witness" in an orchestrated "one-day" pre-determined "validity" trial where Robert Spallina directly provides false and misleading testimony about his status of pleading to criminal conduct for Insider Trading and SEC Consent Order and by the discovery that no one knows where the "original" files are and that Ted Bernstein somehow has never seen an "original" Trust in his entire time as alleged "Trustee" either in this case or any of the Florida cases.
36. In Rotter v Leahy, 93 F. Supp.2d 487, 499 (S.D.N.Y. 2000) it was determined that in order to successfully oppose a motion to amend based upon undue delay, the moving party "must make a showing of substantial and undue prejudice resulting from the delay".
37. Neither Ted Bernstein nor Adam Simon have shown "substantial" and "undue prejudice" resulting from any delay by Eliot Bernstein and in fact, an Amended complaint will amply

show that virtually all such delay has been caused by the actions of Ted Bernstein and those acting in concert with him in this case which appears nothing more than a fraud inside a fraud in a coverup of a fraud between both this action and actions in Florida and that Eliot Bernstein has had exhaustive amounts of time spent peeling apart and deciphering all such fraud where it has already been established that a Notary employee directly under Robert Spallina's control, one Kimberly Moran, had committed 6 counts of forgery in parts of the Florida case, where Robert Spallina has admitted to the PBSO of fraudulently altering part of Shirley's Trust and then admitting on the stand to dropping such fraudulent document in the US mails to one of my attorneys who was bullied off the case.

Recent Misleading and False Actions before this Court by Adam Simon and Ted Bernstein

38. Even Adam Simon's actions in the Response by claiming my "standing" has been removed in Florida is itself a false and misleading action in material respects.
39. Adam Simon would have this Court believe that such a finding came after a Due Process hearing but nothing could be further from the truth.
40. In fact, such finding by one John Phillips came at what is called a "UMC" hearing, Uniform Motion Calendar hearing which **by its very nature is NON-evidentiary** and thus not as the result of some fully litigated due process hearing.
41. The UMC hearings are set up for basic non-contested matters and the like and each party is only give 5 minutes to speak and by the words at Judge Phillips own web page are Non-evidentiary. See, "**PROBATE/GUARDIANSHIP U.M.C. HEARINGS (Non-evidentiary matters and/or ex parte matters)** are held on Tuesdays and Thursdays in Courtroom #3 at 8:30 a.m.". <http://15thcircuit.co.palm-beach.fl.us/web/judge-phillips/divinstructions>

42. And to further show the fraud upon fraud and lack of due process, such UMC hearing came up after a pre-determined “Validity” trial which was limited to one day only regardless of what evidence or testimony came up and was Expressly not a “Construction” hearing in relation to the construction and meaning of any such instruments but only if somehow “validly” executed.

43. Thus there had been no such Construction hearing at the time my standing was removed at a non-evidentiary hearing and still has been no such Construction hearing and where the validity hearing was based on copies only of testamentary documents and no originals were produced and no one knew exactly where they were despite Tescher and Spallina being court ordered to turn over ALL records and documents upon their resignation upon admission of fraudulently creating a Shirley Trust document.

44. As shown in the Petition for All Writs Injunction, the parties went into “high gear” after this Court closed submissions on the Summary Judgement to then obtain Orders in the Florida Court on Validity which I had been seeking for 2 years prior and as alleged these were orchestrated in violation of Florida’s own Civil procedure and constitutional due process for the very purpose of obtaining collateral advantage in this case as well while simultaneously blocking Discovery, production compliance and necessary witnesses as the Court simply would not allow the time beyond “one-day” and was further orchestrated so that no attorney was present to Cross-examine any of Ted Bernstein’s witnesses as Creditor William Stansbury’s attorney Peter Feaman kept saying the PR attorney Brian O’Connell would be present at the “validity” trial as the PR had filed a Motion to remove Ted Bernstein as counsel but at the last moment made some type of “agreement” with Ted Bernstein and thus the Estate

was not even represented by counsel at any such “validity” hearing where estate of Simon documents were being validated in a non legally related Shirley Trust hearing.

45. That a stay for minor children to have counsel was denied at the hearing and the minor children and other qualified beneficiaries were not present or represented.

46. Moreover, the Trusts and other items sought to be determined and added here as amended claims include Trusts that were never produced or determined in Florida in any event.

47. Still and all more important as Ted Bernstein’s counsel Alan Rose has only recently admitted that the very Trust that he sued me under for the Validity trial itself is a Trust that did not exist, never existed, still does not exist all of which has relevance to the claims to be added herein.

48. "Delay must be considered in context; not all delay will result in denial of a motion to amend."Oneida Indian Nation of New York State v. County of Oneida, N.Y., 199 F.R.D. 61, 74(N.D.N.Y. 2000); see also Messier v. Southbury Training School, No. 3:94-CV-1706, 1999 WL 20907, at *3 (D. Conn. Jan. 5, 1999) ("mere delay, absent a showing of bad faith or undue prejudice, does not provide a basis for denial of leave to amend") (citing State Teachers Retirement Bd. v. Fluor Corp., 654 F.2d 843, 856(2d Cir. 1981)); See The Randolph Foundation v Duncan, 00 Civ. 6445 (AKH)(THK) (S.D.N.Y. Jan 09, 2002).
<https://casetext.com/case/the-randolph-foundation-v-duncan>

49. I can provide to this Court exhibits showing approximately 112 Email Communications alone from Ted Bernstein’s counsel Alan Rose where approximately 40 of which had Attached documents just during the timeframe of when this Court closed Summary Judgment until approximately the time of my All Writs filing in Feb. 2016, plus approximately 200 emails during the same time from the Florida Courts and 80+ submissions by PR Brian O’Connell.

50. It is asserted that this alone is likely part of a scheme to keep me occupied so that getting to the business of filings to advance my rights and claims becomes impossible but nonetheless this provides further context for any such "delay" particularly where there are multiple investigations and fraud is widespread and has to be considered in each and every submission and document and filing etc.

51. From the Randolph Foundation case above, see also Schwimmer v. Guardian Life Ins. Co., No. 93 Civ. 0428 (RWS), 1996 WL 146004, at *3 (S.D.N.Y. Apr. 1, 1996) (granting leave to amend where amendment was "not so frivolous or outlandish to render it futile," even though amended complaint would not withstand summary judgment motion); Hall v. Prendergast, No. 91 Civ. 3829 (CSH), 1992 WL 88143, at *4 (S.D.N.Y. Apr. 22, 1992) ("A proposed amendment is considered futile if it is 'clearly frivolous.'") (citation omitted); Lerman v. Chuckleberry Publishing, Inc., 521 F. Supp. 228, 231 (S.D.N.Y. 1981) ("[U]nless a proposed claim is clearly frivolous or legally insufficient on its face, the court should not consider the merits of a claim or defense on a motion to amend.").

52. My submissions on the motion and Petition for All Writs outline at least a colorable claim.

53. I specifically sought instruction from the Court as to whether the Proposed Amended Complaint was necessary for filing this motion.

54. If failure to attach such a Proposed Amended Complaint is the basis to deny my motion, I respectfully seek leave to cure by submitting the Proposed Amendment but respectfully seek an additional 30 days or reasonable timeframe as I am also facing several deadlines in the Florida Appeals Court where I am also facing hurdles of being denied proper access to the full Record and additional hurdles on indigency etc and at least seek a reasonable time to submit such Proposed Amendment.

55. Further, the Storm v Storm (7th Circuit) case cited by Plaintiff is used improperly and was also decided before the US Supreme Court's Decision in Marshall v Marshall 547 U.S. 293; 126 S. Ct. 1735; 164 L. Ed. 2d 480; 2006.

56. In fact the Marshall v Marshall US Supreme Court case itself refers to the Storm v Storm case in further stated, "As the Court of Appeals correctly observed, Vickie's claim does not "involve the administration of an estate, the probate of a will, or any other purely probate matter." 392 F.3d at 1133. Provoked by Pierce's claim in the bankruptcy proceedings, Vickie's claim, like Carol Ankenbrandt's, alleges a widely recognized tort. See King v. Acker, 725 S.W.2d 750, 754 (Tex. App. 1987); Restatement (Second) of Torts § 774B (1977) ("One who by fraud, duress or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that [s]he would otherwise have received is subject to liability to the other for loss of the inheritance or gift."). Vickie seeks an in personam judgment against Pierce, not the probate or annulment of a [***36] will. "

57. Even the Storm v. Storm 7th Circuit case recognized that a Federal court could hear claims of neglect and mismanagement against a Trustee or PR from a probate case or will.

58. And Trusts being civil are non-probate in the first place.

59. A party may obtain a federal judgment that the party has a valid claim against an estate for a specific amount of money. However, the federal court may not order payment of the money, because that would be an assumption of control over property under probate. *Turton v. Turton*, 644 F.2d 344 (5th Cir. 1981).

60. A party may bring an action in federal court against a former personal representative for civil theft, RICO violation, breach of fiduciary, conversion, and tortious interference.

Glickstein v. SunBank/Miami, 922 F.2d 666, 672, n. 13 (11th Cir. 1991).

61. Thus, having shown at least a colorable claim, Plaintiff's have not met their burden of showing substantial and undue prejudice or futility.

WHEREFORE, Third-Party Defendant Eliot I. Bernstein respectfully requests that this Court deny the opposition by Plaintiffs and grant the Motion for Leave to Amend and should a proposed Amended Complaint be required seeks a reasonable time to submit based upon the Appeals schedule in Florida and for such other and further relief as may be just and proper.

Respectfully Submitted,

Date: May 12, 2016

/s/ Eliot Ivan Bernstein

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 12, 2016 I electronically filed the foregoing with the Clerk of the Court using CM/ECF and/or email. I also certify that the foregoing is being served this day on all counsel of record identified below via transmission of Notices of Electronic Filing

generated by CM/ECF or in some other authorized manner.

/s/ Eliot Ivan Bernstein

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