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

MEMORANDUM OF LAW IN OPPOSITION TO INTERVENOR'S MOTION FOR SUMMARY JUDGMENT

Third-party Defendant, Eliot I. Bernstein, pro se, for his Memorandum of Law in Opposition to the Intervenor's Motion for Summary Judgment, pursuant to Local Rule 56.1(b)(2), states as follows:

INTRODUCTION

Intervenor Brian O'Connell, on behalf of the Estate of Simon Bernstein, has moved for Summary Judgement on the complaint for Declaratory relief and under Count II of the Plaintiff's Amended Complaint for entitlement of the proceeds deposited with this Court allegedly under a Life Insurance Contract as the "default beneficiary" by operation of law claiming the Plaintiffs are not capable of meeting their burden of proving the existence of a 1995 Trust by clear and convincing evidence. Intervenor's motion of May 21, 2016 comes shortly after this Court issued its Decision and Order of March 15, 2016 denying Summary Judgement to Plaintiffs.

This Court concluded in its March 15, 2016 Order as follows:

> "Based on the evidence in the record, and "construing all facts and reasonable inferences in the light most favorable to the nonmoving party," the Court finds that there are genuine issues of material fact as to whether the Trust was executed and, if so, upon what terms. There remains a triable issue of fact such that a

> "reasonable jury could return a verdict for the non-moving party," Liberty Lobby, 477 U.S. at 255, and therefore summary judgment is inappropriate. Plaintiffs' motion is denied with regard to Count II." See, ECF No. 220, MEMORANDUM Opinion and Order Signed by the Honorable John Robert Blakey on 3/15/2016.

Despite this Court just recently finding that there are Triable issues of fact, the Intervenor's Motion for Summary Judgment does nothing to remove those Triable issues of fact and appears as nothing more than re-arguing to this Court that the Plaintiffs can not make out their case and thus the funds must go to the Estate by default. The Intervenors have brought nothing more to the Court in the way of evidence or affidavit despite the fact that this Court found in its Decision and Order that Plaintiffs had provided some evidence to support their position, stating in reference to the evidence and positions advanced by the Plaintiffs, "While the above sources do provide some evidence that the Trust was created, as Plaintiffs contend, that evidence is far from dispositive of the issue.". The Intervenor has failed to come forward with proof and evidence to remove the triable issues found and the absence of material facts in dispute and must be denied.

Simply stated, the Intervenor's Motion does nothing to resolve the Triable issues of fact already determined by this Court in its March 15, 2016 Opinion and Order and therefore the Intervenor's have not met their burden of proof to be awarded Summary Judgment in favor of the Estate. Even beyond the "triable" issues that this Court has already determined presently exist which prevents Summary Judgment, there are multiple outstanding issues of material fact as raised in my original opposition to Plaintiff's Summary Judgment which prevent an award in favor of the Estate at this time, most notably the existence of the Primary Beneficiary which was LaSalle National Trust, NA ("LaSalle") and the failure of the parties to properly determine from a proper successor to La Salle their interest as primary beneficiary. In fact, Plaintiffs claim Bank of America (BOA) to be successor , while Third Party Plaintiff Eliot states that it is Chicago Title

as BOA only acquired the banking division of LaSalle and not the trust company. Either way, no party has obtained any production from any of those parties (of if so, such has not been brought forth to the Court or other parties) and BOA was let out of this action without making any pleading whatsoever despite Plaintiffs claim they are the successor to the Primary Beneficiary LaSalle. Non-movant Third-party Defendant previously moved during the opposition to Plaintiff's summary judgment that these parties should be brought back into the case and Discovery re-opened. Either way, there is presently material issues of fact as to the Primary Beneficiary's claim to the proceeds sufficient to defeat the Intervenor's motion at this time. Still further, under the present state of facts and circumstances the most likely finding of a reasonable jury at this stage is reasonably in my favor as the non-moving party such that collusion and conspiracy exist specifically designed to suppress and deny from this Court and the true beneficiaries the proper, actual policy, the proper actual Trust and the proper, actual terms of both. A reasonable jury could certainly find that the Estate, by and through its trial counsel in Illinois and the office of Brian O'Connell as alleged Personal Representative of the Estate of Simon Bernstein has specifically determined and colluded not to seek the very documents and proof which would show the actual policy and likely actual Trust.

All of these matters already exist on the face of the records before this Court and the Court could deny the Intervenor's motion without my opposition. Nonetheless, my Affidavit-Declaration and opposition herein further creates the existence of triable issues of fact that prevents Summary Judgement in favor of the Estate at this time.

ARGUMENT

Summary judgment is appropriate if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. Spurling v. C & M Fine

Pack, Inc., 739 F.3d 1055, 1060 (7th Cir.). The party seeking summary judgment has the burden of establishing that there is no genuine dispute as to any material fact. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Thus, it is the Intervenor's burden to show no genuine dispute as to any material fact and that the Intervenor is entitled to Judgement as a matter of law.

The Intervenor's motion does nothing to dispel the triable issues of fact this Court already found when issuing it's March 15, 2015 Order denying Summary Judgment to the Plaintiffs. Because the Intervenor has failed to meet this burden, Summary Judgement must be denied.

There is clearly proof that some policy existed as over $1.5 million has been deposited into this Court's registry by an insurance carrier. The terms of the policy, the value of the policy, the conditions of the policy, however, are all in dispute. As shown by my Affidavit-Declaration, having been in business working with Simon Bernstein on Life Insurance and knowing his work in Life Insurance for over 30 years and knowing his expertise in asset protection, the only likely reasonable conclusion a Jury could arrive at is that there is in fact an actual Policy that is being suppressed and denied (or hidden or destroyed), and likely that there is an actual Trust that is the beneficiary, also which is being suppressed and denied (or hidden or destroyed).

According to TS TS003942 from an alleged Heritage letter of Feb. 3, 2012 in the months prior to my father's passing, La Salle National Trust, N.A., was the Primary beneficiary, see TS 003942[1]. There has been insufficient determination by any alleged successor to La Salle National Trust, N.A., of what the Primary Beneficiary's interest in the insurance proceeds are. As moved in the opposition to Plaintiffs' original motion for Summary Judgment, these parties should be properly brought back into the case and Discovery opened to determine the actual policy, discover the actual policy and determine the proper policy amount and beneficiaries. I have asserted and do

[1] February 03, 2012 Heritage Union Life Confirmation of the Primary and Contingent Benficiaries http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120203%20Heritage%20Union%20Life%20Statement%20Regarding%20Current%20Primary%20and%20Contingent%20Beneficiaries.pdf

assert a claim as beneficiary to any such policy both for myself and on behalf of my minor children.

Further, summary judgment is not appropriate "if the evidence is such that a reasonable jury could return a verdict for the non-moving party," and the Court must "construe all facts and reasonable inferences in the light most favorable to the nonmoving party." Liberty Lobby, 477 U.S. at 255; see also Carter v. City of Milwaukee, 743 F.3d 540, 543 (7th Cir. 2014). As shown herein, a reasonable jury could return a verdict for myself as the non-moving party and thus summary judgment is not appropriate.

Under the present facts and circumstances of this case, a reasonable jury could return a verdict in my favor. A reasonable jury could also issue a "no cause" finding that neither side sufficiently proved it's case. Both such grounds are sufficient to deny summary judgment to the Intervenor at this stage of litigation.

As shown by my Answer and Counterclaims herein, together with my original opposition to the Plaintiffs' motion for Summary Judgment, and the Petition under the All Writs Act filed with this Court in February of 2016, all of which is incorporated by reference herein in opposition to the Intervenor's motion, together with my Affidavit-Declaration herein, a reasonable Jury could conclude that the Estate, acting through Illinois trial counsel Stamos and PR Brian O'Connell has colluded with Ted Bernstein and others to suppress and deny from this Court the actual policy (Policies), the actual and true Trusts and who the proper beneficiaries are.

A careful review of the Deposition of Ted Bernstein shows:

1. Only a cursory examination by Intervenor Counsel Stamos on any "exhaustive search" performed by Ted Bernstein; no determination of what Ted Bernstein did find; no

questions about whether he was looking in file cabinets, if so where, on computers, if so which ones and where, in desk drawers, if so when and where, nothing.

2. Ted Bernstein admits to having seen the policy and even having documents but yet not only does Ted Bernstein not produce these to the Court or myself and parties, Intervenor Counsel Stamos has continuously failed to move for Ted Bernstein to produce such items to the Court;
3. Meanwhile, as shown by the Petition for All Writs of Feb. 2016, PR Brian O'Connell never moved to obtain all the records of Simon's Estate from Ted Bernstein's counsels Tescher and Spallina despite a Court Order of Florida Judge Colin in Feb. 2014 and PR O'Connell for the Estate still has failed to obtain such compliance and obtain such records to this day.

As seen in Ted Bernstein's Deposition,

Page 18 Line 25

25· · · · Q· · Now, you describe there that you participated

Page 19 Lines 1-16

1· ·in and conducted diligent searches of your father's
·2· ·home, office and condominium, and some further activity
·3· ·following that.· Can you tell me when those searches
·4· ·took place relative to his death?
·5· · · · A· · No, I can't.
·6· · · · Q· · Can you give me a time range?· If you think
·7· ·about the date of his death being in September, did you
·8· ·do that search October, November, December?
·9· · · · A· · I really -- I don't know the dates.
10· · · · Q· · Who else searched, or who searched with you,
11· ·if that's different?
12· · · · A· · I don't believe that anybody else searched
13· ·with me.
14· · · · Q· · Did anyone search separately for documents?
15· · · · · · ·MR. SIMON:· Object --
16· · · · A· · No.

Page 32 Ted’s Depo - Lines 3-18

3· · · · Q· · Look at page 59 -- I'm sorry, paragraph 59 on
·4· ·Page 9, please, and in that first sentence, it says,
·5· ·"During the application process, the insurer conducted a
·6· ·routine underwriting investigation of Simon Bernstein
·7· ·prior to approving his policy."· How do you know that?
·8· · · · A· · From conversations with counsel, and also
·9· ·there were a lot of documents that the insurance company
10· ·sent over to me at the time that this policy was going
11· ·through the reinstatement process.· So these are all
12· ·pretty common things for -- for me to see in -- in an
13· ·insurance company's document like that.
14· · · · · · ·I'm -- I'm -- I think it would be also in
15· ·something about an application process that may have
16· ·been through the discovery of the documents that the
17· ·insurance company provided in that reinstatement
18· ·process.

Page 116 Ted Bernstein Deposition Lines 18-22

18· · · · A· · I believe I have a copy of what the insurance
19· ·company sent during this time of reinstatement. I
20· ·believe I have a copy of the insurance policy.· Whether
21· ·executed, I -- I don't know what they deem executed.
22· · · · Q· · You have a copy of the insurance policy, okay.
23· ·Have you given that in your production?
24· · · · · · ·MR. SIMON:· Objection; misstated his answer.
25· · · · Q· · I asked you did you put it in production.· You

Page 117 Lines 1-25

1· ·haven't answered.
·2· · · · · · ·MR. SIMON:· He said he saw it in production.
·3· · · · He said what was produced.
·4· · · · Q· · No.· I asked you, did you put your copy of the
·5· ·policy in production.· You were supposed to --
·6· · · · · · ·MR. SIMON:· No, you didn't.
·7· · · · Q· · -- put all your documents.
·8· · · · · · ·MR. SIMON:· That's not what you said.· That's
·9· · · · not what he said.· He said he found the documents
10· · · · through production.
11· · · · Q· · Did you put the policy in with your production
12· ·documents?
13· · · · A· · I'm not sure.

14· · · · Q· · You were asked by the court to produce
15· ·documents.· Did you produce all your documents?
16· · · · A· · I don't know if I was asked by a court to
17· ·produce documents, but...
18· · · · Q· · Okay.· We had to do a Rule 26 document
19· ·request.· You're the plaintiff.· You produced documents.
20· · · · · · ·MR. SIMON:· I'm going to object to this line
21· · · · of questioning.· He has answered about the policy.
22· · · · He believes he had a copy.· He's not sure if --
23· · · · Q· · You believe you had a copy --
24· · · · · · ·(Cross-talking.· Interruption by the
25· ·reporter.)

Page 118 Lines 1-4

1· · · · Q· · Did you put the copy of the policy you claim
·2· ·to have with your production to the court when you
·3· ·produced?
·4· · · · A· · I'm not sure.

See attached Exhibit 1 - May 06, 2015 Deposition of Ted Bernstein

The Court is directed to the exchange with Adam Simon who interrupts the testimony of Ted Bernstein to "change" the responses. This occurred on other occasions during the Deposition of Ted Bernstein. As also shown by the Deposition, the questioning was abruptly cut off at the end and the need for further Deposition and Discovery against Ted Bernstein and Plaintiffs and other parties is clear.

Yet, not only has Trial Counsel Stamos continually failed to take action to force production by Ted Bernstein in this Illinois case, PR O'Connell in the Florida Probate case has likewise deliberately disregarded seeking Discovery and proper Deposition of Ted Bernstein in those cases.

As this Court noted in its Order denying Summary Judgement to Plaintiffs, "In the course of their attempts to obtain the policy proceeds, the Bernstein siblings discussed using a different trust that had been established by Simon Bernstein – the "2000 Trust." Intervenor's Ex. A at

37:4-18; 48:21- 49:19; Dep. Ex. 1. That option was rejected because Pam Simon was not included as a beneficiary of that trust. Id. The 2000 Trust is important, however, in that it identifies the proceeds of the policy at issue here as an asset of that trust. Intervenor's Ex. A, Dep. Ex. 23 at Schedule A. The 2000 Trust does not refer to an alleged 1995 trust, which the 2000 trust would have superseded."

Further, this Court noted, "Plaintiffs have offered testimony that, when Simon Bernstein took his trust to be executed at his law firm (then Hopkins & Sutter), the firm changed the identity of the successor trustee. This implies that the firm would have had an electronic version of the Trust, and possibly a hard copy. David Simon testified that the firm was contacted to see if it had a copy of the executed trust and did not; but David Simon could not recall who contacted the firm, which attorneys were contacted, or if he himself reached out to the firm at all. Intervenor's Ex. B at 44:12-45:15; 46:22- 47:15."

Still further, " The purported trust documents, Exhibit 15 and 16, contain inconsistencies as to who would serve as the trustee. Exhibit 16 lists the potential trustees as "Shirley," "David," and an illegible name. It then lists the successor trustees as "Pam, Ted." Exhibit 15 lists Shirley as the trustee, and David B. Simon as the successor trustee. However, when the Trust first made a claim to the insurance company, it represented that an attorney by the name of Spallina was the trustee. Intervenor's Ex. B at 59:13-60:3; 81:15-83:12. Despite all of this, in the current proceeding the Plaintiffs claim that Ted Bernstein is the trustee."

As shown in Tescher and Spallina production documents, according to TS TS005879, on Aug. 23, 2012 shortly before his passing Tescher and Spallina Billed Simon Bernstein for Estate Planning and Insurance work as follows:

"FOR LEGAL SERVICES RENDERED through July 31, 2012 in connection with estate planning, including meeting with client to finalize planning items; telephone calls and email **correspondence with Diana regarding existing insurance matters** and status of GC Trust transfers from Oppenheimer to JP Morgan; finalize EP documents and meet with client to execute same." See, TS005879[2]. Yet not only has Illinois Trial Counsel Stamos not pursued these matters further for the Estate, but PR O'Connell has likewise not pursued any such actions in the Florida Probate courts to clarify these matters.

Thus, clear actions by multiple parties to manipulate what documents were presented to this Court is shown while clear actions needing further Discovery such as who was allegedly contacted at Hopkins-Sutter etc, exist, and yet neither Trial Counsel Stamos nor PR O'Connell has pursued actions to determine the truth in any of these matters and thus material issues of fact remain preventing summary judgment.

As shown in the All Writs Petition, this is a pattern amongst these alleged "fiduciaries" and attorneys as PR O'Connell's Office and Ted's counsel Alan Rose are intertwined in other items of Tangible personal property missing, unaccounted for, and items from 7020 Lions Head Lane showing up "magically" even after O'Connell's office had allegedly already removed such items. See Motion for All Writs Injunction ECF Docket #214 Paragraphs 75-103 and the Petition in it's entirety.

Direct collusion between PR Brian O'Connell and Ted Bernstein is shown not only in PR O'Connell's abandoning of the Estate in a "validity" hearing and failure of O'Connell and Trial Counsel Stamos to pursue proper Discovery and sanctions against Ted Bernstein in this Illinois

[2] August 23, 2012 Tescher and Spallina Bill for Insurance Services
http://iviewit.tv/Simon%20and%20Shirley%20Estate/20120823%20Tescher%20Spallina%20Bill%20for%20Insurance.pdf

case, but is directly shown in a recent motion filed by Ted Bernstein in the Florida Probate Court where Brian O'Connell as PR is allowing Ted Bernstein and his attorney Alan Rose to come in and "Represent" the Estate ad litem in an action against William Stansbury who is the party who has actually been paying the fees of Trial Counsel Stamos for this action in Illinois. The conflicts and collusion are clearly set out in counsel Peter Feaman's opposition to the motion. See Exhibit 2 - August 26, 2016 Filing of Attorney at Law Peter Feaman, Esq.

This Court is respectfully reminded of the "side deals" and requests to use "inherent powers" as Petitioned in the All Writs application at least for purposes of consideration on this opposition to Summary Judgment. See, ECF #214 All Writs.

Moreover, the Affidavit-Declaration attached herein as Exhibit 3 - Eliot Ivan Bernstein Affidavit dated August 26, 2016 which reflects testimony I would provide at Trial demonstrating meticulous record keeping by Simon Bernstein for decades, describing distinct sources of record keeping, his expertise in asset protection and his 50 years in Life Insurance all leads to the reasonable conclusion a jury could reach which is that a Policy exists, a Trust likely exists, but collusion and conspiracy to suppress and deny the actual documents has occurred by the Estate and Ted Bernstein parties which creates sufficient issues of material fact in addition to the issues raised herein to deny Summary Judgment to the Intervenor at this time.

CONCLUSION

WHEREFORE, for all of the foregoing reasons, the Intervenor's motion for Summary Judgment must be denied at this stage of litigation and further Discovery ordered including Ordering Production by Ted Bernstein of all documents he allegedly provided to Tescher and Spallina including copies of the Policies and Ordering parties such as LaSalle National Trust,

N.A. or its successor, Jackson-Heritage and necessary parties back into the case and for such other and further relief as may be just and proper.

DATED: August 26, 2016

/s/ Eliot Ivan Bernstein
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 26, 2016 I electronically filed the foregoing with the Clerk of the Court using CM/ECF. 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.

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