UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

SIMON BERNSTEIN IRREVOCABLE	)
INSURANCE TRUST DTD. 6/21/95,	)
et al.,	) Appellate Case No: 17-3595
Plaintiffs-Appellees,	)
V.	) LC No. 1:13-CV-O3643
	) John Robert Blakey, Judge
HERITAGE UNION LIFE	)
INSURANCE CO., et al.,	)
Defendants-Appellees.	)

CIRCUIT RULE 3(c) DOCKETING STATEMENT

A. Statement of Jurisdiction for the United States District Court.

1. *This case is premised upon purported diversity jurisdiction, under 28 U.S.C. 1441 but the PARTIES who brought this lawsuit knew from the beginning that jurisdiction and venue was indisputably in Palm Beach,* ***Florida STATE CIVIL COURT, rather than Illinois circuit court or federal***. Ted Bernstein ("Ted") and his cadre of attorneys have orchestrated a circus of fraud upon the Florida probate court, Illinois circuit court, and the Federal District of Illinois, intentionally omitting Eliot Bernstein ("Eliot"), who is a necessary

party for just adjudication pursuant to F.R.C.P. 19a, given he is an heir and beneficiary of his late father's estate and trusts. Regardless of Ted's self-serving contentions (as he was disinherited from his parents trusts), his failure to produce a policy or the 1995 Simon L. Bernstein Irrevocable Insurance Trust dtd 6//21/95 ("1995 Trust") which filed the lawsuit as Plaintiff and lack of evidence that Simon L. Bernstein excluded Eliot necessarily leaves means that Eliot is a beneficiary with standing who is entitled to share equally in the proceeds of the policy/trust.

2. Given the evidence that Simon Bernstein retained incidence of ownership and control of the 1995 Trust during his lifetime, the trust appears to be an asset that could enure to the benefit of the Estate. Judge Rosemarie Scher ("Scher") ruled that Eliot is a beneficiary with standing to participate in litigation involving the estate despite prior claims to the US District Court by Ted and his counsel that rulings had been issued stating Eliot was not a beneficiary and did not have standing, where such alleged claims by Plaintiff Ted were not supported by actual orders but nonetheless relied on by the District Court in removing Eliot on Summary Judgment from this matter. Whether Eliot's expectancy turns on the will or intestacy laws, or has any validity at all—requires his participation. Consequently, IF THE COURT

HAD JURISDICTION, it was error to dismiss him from the case and approve settlement without his participation as he is a necessary party to any settlement and granting substantial sums of money to every Bernstein child but him.

3. Notwithstanding the foregoing, Ted bears the burden of proving jurisdiction (which can never be waived) lies in Illinois. The Parties orchestrated a fraud on the court to obtain jurisdiction in Illinois state and federal court because they failed to produce any evidence that the 1995 Trust or the policy were formed or administered in Illinois. The suit was filed with 4 of the 5 siblings seemingly united, but the omission of Eliot is the evidence the Court had to demonstrate a lack of complete diversity. Eliot was omitted from notice of the initial filing in Illinois to perpetrate this fraud and was misled by Ted and others that an interpleader action was going to be filed in Florida by the insurer to determine what to do when a trust was lost, and Eliot should have been included and noticed of the Illinois action and the insurer immediately accomplished notifying Eliot by adding him as a third party defendant.

4. This mandates a finding that the United States District Court for the Northern District of Illinois ("District Court") lacks subject matter jurisdiction over this case, rendering all court orders void as a matter of law.

Jurisdiction is based on the representations of dishonest lawyers and their client, Ted, manipulating the process from day one. Ted alleged a "common law" trust, the 1995 Trust that has never been produced or proven to exist. The insurance policy at the heart of this matter is also curiously absent and has never been produced in this matter by any party, when it was issued by a corporation that Plaintiffs Pam Simon ("Pam") and Ted sold insurance for and Pam was the insurance agent. It should also be noticed that Pam was disinherited along with Ted and their lineal descendants in their parents trusts in 2008 and Pam had been previously disinherited in trusts done in 2000.

5. The Estate of Simon which intervened claims that Simon Bernstein's estate is the beneficiary of this purported policy as the purported 1995 Trust was revocable due to the retention of incident of ownership and control maintained by Simon according to claims made by Plaintiffs, which would mean that the Will, which includes Eliot as a beneficiary controls and he therefore is being deprived of his rightful inheritance.

6. Even if this supposed 1995 Trust existed, evidence was produced of a 2000 "Simon Bernstein Life Insurance Trust ("2000 Trust") that superseded and replaced the 1995 Trust and was fully executed, replacing the 1995 Trust and

the 2000 Trust and was funded with the underlying policy of this matter and therefore the 2000 Trust would be the owner and beneficiary and significant is the fact that no evidence was produced of a legally executed 1995 Trust, when clear and convincing evidence is mandated. Evidence produced to the District Court in production clearly showed that Pam, Ted and their counsel choose to suppress the 2000 Trust because Pam, the Trustee of the 2000 Trust had been excluded as a beneficiary.

7. Fraud upon fraud deceived the courts into wasting years of time running in circles in filing pleadings in Illinois State and Federal and Florida probate court regarding the 1995 Trust and the Florida Probate court did not have jurisdiction to hear matters involving InterVivos trusts which the 1995 Trust and 2000 Trust are.

8. Scott Wellington acting on behalf of Jackson National Life Insurance Company ("Jackson") (successor to defendant Heritage Union Life Insurance Company ("Heritage")) and Adam Simon ("A. Simon"), **all recognized and agreed in writing that jurisdiction and venue for an interpleader action existed in PALM BEACH, FLORIDA, where the estate was being administered after the death of Simon L. Bernstein**.

9. Counsel all agreed that venue and jurisdiction was in Florida civil court, to the extent it existed at all, an assumption based upon no evidence that's credible. Florida State Court, pursuant to Fla. Sta. 737.024 and Chapter 47, had jurisdiction to the exclusion of any courts, because the alleged 1995 Trust's principal place of administration and situs was and remained in Palm Beach County, Florida.

10. The interpleader suing Eliot to determine the rights and liabilities of the parties reinforced the obvious fact that no diversity existed from the outset.

11. The bottom line is this Court lacks jurisdiction, as did the Illinois state and federal courts, but nonetheless mandates a finding by this Court of the same to undo the spider web of fraud perpetrated upon the courts and Eliot.

12. Ted and his counsel A. Simon agreed to dismiss the Illinois action if the interpleader action was filed by the insurer in Florida, but consistent with the lack of integrity demonstrated in 4 years of fraud, they failed to honor this promise, forcing Jackson to respond to the initial Illinois state court complaint timely and then move to remove the case from state court to Illinois Federal Court based upon diversity jurisdiction, pursuant to 28 U.S.C. 1441, when a motion to dismiss was the appropriate and agreed upon course of action.

13. Subject matter jurisdiction and venue are in Palm Beach Florida, not Illinois, depriving the District Court of jurisdiction to enter a valid order. For this reason alone, the case must be dismissed or transferred. Eliot seeks a ruling from this Court that the District Court lacks jurisdiction over the subject matter, voiding all orders and dismissing the case or transferring it to Florida District Court for rehearing, given InterVivos trusts have no jurisdiction in the state probate court.

14. Eliot further seeks for the this Appellate Court to overturn the order granting Summary Judgment against him based on not being a beneficiary of the Simon Bernstein Estate and lacking standing in the estate that was based on an alleged order of Judge John L. Phillips ("Phillips") of the Florida probate court that was never provided to the District Court despite being claimed in Plaintiffs statements of material facts provided with their Summary Judgment papers that alleged a ruling had been issued stating Eliot was not a beneficiary of the Estate of Simon and did not have standing.

15. Later, after the District Court dismissed Eliot on a Summary Judgment based in part on Judge Phillip's purported order that he was not a beneficiary and did not have standing in his father's estate, a new Florida probate judge who replaced Phillips, Judge, Rosemarie Scher ("Scher"), entered the Florida

probate case and determined that factually Eliot was a beneficiary of Simon's estate and did in fact have standing and issued rulings to that effect.

16. Jurisdiction of any purported 1995 Insurance Trust lies exclusively in Florida, the situs of administration and the decedent's domicile. Ted committed fraud with his lawyers in filing this case in Illinois, knowing that the "actual alignment" of the parties as the facts exist, unambiguously destroyed diversity. Jackson's removal was the document, notifying Eliot for the first time that a legal complaint for the proceeds had been filed in Illinois without his knowledge pursuant to rule 19a, deeming Eliot an indispensable party and wanting a full and complete resolution of the controversy.

17. Eliot filed his answer and counter-claims, as well as cross-claims. The non-diversity was made evident then. Florida domiciliary include: Eliot Bernstein, Ted Bernstein, The Estate and Trust of Simon Bernstein, the purported 1995 Irrevocable Insurance Trust administered in Florida, the Florida 2000 Trust and the Estate and Trust of Shirley Bernstein.

18. Ted schemed to exclude Eliot from the outset, giving him no notice of the conflict. Given the purported 1995 Trust doesn't appear to even legally exist, there's no basis for this case to be in Illinois because it's not proven that

there is a legally valid Illinois trust or policy. To the extent Ted claims otherwise, the 5 siblings and 10 grandchildren also have conflicts which destroy diversity too.. This declaratory judgment action / interpleader necessarily pits sibling against sibling, grandchild against grandchild, rendering all family members non-diverse who reside in the same State---Florida---with adverse claims.

19. The malfeasant parties know that Eliot Bernstein has always been a necessary party for just adjudication pursuant to F.R.C.P. 19a, but continue to tortuously interfere with his inheritance rights and expectancy and seek to remove his due process rights in this matter through frivolous and false pleadings claiming he is not a beneficiary of his father's estate and lacks standing. This is only going to fuel more future litigation. Eliot suffers damages due to the malfeasant parties' purported settlements, excluding him as a necessary party for just adjudication. F.R.C.P. 19a along with the delays caused by the fraud committed against him and more.

20. Eliot asserts that complete diversity was lacking from the beginning of this case, given the adversarial posture of Ted Bernstein vs. Eliot Bernstein. There is no evidence that the 1995 Trust was ever an Illinois common law trust as already exposed in the District Court's orders denying Plaintiffs

Summary Judgment in this case. Eliot is forced to go back to square one now.

21. The District Court further failed to vacate the Summary Judgment against Eliot after learning that orders were issued by Judge Scher that contradicted claims made by Plaintiffs and it then approved settlements of funds which Eliot should also have been privy as a necessary party under Rule 19a as a beneficiary of the Estate and as an a beneficiary of the 1995 Trust as alleged by Plaintiffs in this lawsuit. The failure to include Eliot in any settlement discussions leading to settlement of his interests has also resulted in void orders, void settlements and substantial uncertainty as to when or how this case will be resolved through fair and impartial due process. ***Fraudulent non-joinder is a basis for the court to hold that no diversity jurisdiction exists, as are other attempts to manipulate diversity jurisdiction. Saunders v. Wire Rope Corp., 777 F. Supp. 1281, 1284 (E.D. Va. 1991) (finding purposeful manipulation and abuse by the plaintiffs when they settled with nondiverse defendants, but did not formally dismiss them from the lawsuit***). "Congress did not intend plaintiffs, through gimmicks and artful maneuvering used in connection with removal, to straightjacket or deprive

nonresident defendants of their legitimate entitlements to removal." *Saunders*, 777 F. Supp at 1284.

22. For removal, Diverse "citizenship" is required. 28 U.S.C. §§ 1332(a) & 1441(b). The notice of removal should properly allege completely diverse citizenship between all plaintiffs and all defendants. The removal at issue fails to clarify the jurisdictional basis or say this. The legal representative of an estate is deemed to be a citizen only of the same state as the decedent, such that the estate is domiciled in Florida another reason why complete diversity lacks. 28 U.S.C. § 1332(c)(2).

23. All defendants must be diverse from all plaintiffs (required by the diversity statute, 28 U.S.C. § 1332(a), but not by Article III). See *Caterpillar, Inc. v. Lewis*, 519 U.S. 61, 67-69 (1996). This is the "complete diversity" rule. Additionally, in the removal context, no defendant can be a citizen of the forum state (required by the removal statute, 28 U.S.C. § 1441(b), but not by Article III or the diversity statute). See *Caterpillar*, 519 U. S. at 67-69. This latter provision sometimes is referred to as the "no local defendant" rule.

24. **Diversity is Subject matter jurisdiction and may not be waived and may be asserted at any time. See 28 U.S.C. § 1447(c)—even on appeal.**

Virtually any other "defect" or problem with removal can be waived if not

timely asserted. ELIOT waited as did the court for the 1995 Trust and policy to be produced in these years of litigation which would have answered some of these questions but without the documents, they remain unanswered. Even if the 1995 Trust could be proved, it was superseded and replaced by the fully executed 2000 Trust rendering it moot.

25. Due to fraudulent non-joinder of Eliot in a forum that had no subject matter jurisdiction, the case ended up being moved to a federal Article III court with no subject matter jurisdiction. A lack of complete diversity was evident from the beginning. ***Given subject matter jurisdiction may not be waived, the case should be dismissed as without jurisdiction and the orders vacated based on lack of jurisdiction—procured by fraud, consistent with Ted Bernstein and his associates' actions in this case.***

B. Statement of Jurisdiction for

the United States Court of Appeals.

26. The jurisdiction of the United States Court of Appeals for the Seventh Circuit is brought under 28 U.S.C. 1291[1]. in that this is an appeal from a

[1] The courts of appeals (other than the United States Court of Appeals for the Federal Circuit) shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court. The jurisdiction of the United States Court of Appeals for the Federal Circuit shall be limited to the jurisdiction described in sections 1292(c) and (d) and 1295 of this title.

final decision of the United States District Court for the Northern District of Illinois seeking to reverse the Judgment of the District Court granting Summary Judgment on his claims prior to trial as well as authorizing settlements that did not include him as a necessary and indispensable party and issuing a final order.

27. Eliot seeks an order that all orders in the underlying District Court matter are void for lack of jurisdiction and further seeks a transfer or dismissal of this action to Palm Beach, Florida where proper Jurisdiction and Venue lie. The date of entry of the final judgment sought to be reviewed is November 20, 2017. Appellant did not file a motion for new trial but requested an alteration of the judgment, via a Rule 60B Motion, which was denied despite it exposing new evidence of fraud on the Court, whereby such fraud led to an abuse of discretion by the District Court in removing Eliot from the action based on false and misleading claims by Plaintiffs and further abuse of discretion in not vacating the order despite it containing false information regarding Eliot not being a beneficiary and not having standing in his father's estate. The notice of Appeal was filed on December 19, 2017 with the District Court and challenges ALL orders issued by the District Court. Eliot seeks this Court to vacate **ALL** orders of the District Court not only on

a jurisdictional basis but on a number of other meritorious grounds for each order appealed that can be further evidenced on appeal if this Court determines jurisdiction was proper and the appeal moves forward in this Court.

DATED: January 30, 2018

Respectfully submitted,

/s/ Eliot Ivan Bernstein

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CERTIFICATE OF SERVICE

Eliot Ivan Bernstein, Pro Se certifies that he filed a Docketing Statement via Postal Mail with the Clerk of the 7th Circuit Court of Appeals, and served copies of same upon those listed below by Postal Mail on this 30th day of January, 2018.

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