1
IN THE CIRCUIT COURT
2 OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
3
WALTER E. SAHM and
4 PATRICIA SAHM,
Plaintiffs,
5 VS. CASE NO 502018CA002317XXXXMB

6 BERNSTEIN FAMILY REALTY, LLC,
BRIAN O'CONNELL, AS SUCCESSOR
7 PERSONAL REPRESENTATIVE OF
THE ESTATE OF SIMON L. BERNSTEIN;
8 ALEXANDRA BERNSTEIN, ERIC BERNSTEIN,
MICHAEL BERNSTEIN, MOLLY SIMON,
9 PAMELA B. SIMON, JILL IANTONI,
MAX FRIEDSTEIN, LISA FRIEDSTEIN,
10 INDIVIDUALLY AND TRUSTEES OF
THE SIMON L. BERNSTEIN REVOCABLE
11 TRUST AGREEMENT DATED MAY 20, 2008,
AS AMENDED AND RESTATED;
12 ELIOT BERNSTEIN, AND CANDICE
BERNSTEIN, INDIVIDUALLY AND AS
13 NATURAL GUARDIANS OF MINOR
CHILDREN JO., JA. AND D. BERNSTEIN;
14 AND ALL UNKNOWN TENANTS.

15 Defendants.
_____/
16
HEARING
17
PRESIDING: THE HONORABLE JOHN S. KASTRENAKES
18
APPEARANCES:
19
ON BEHALF OF THE PLAINTIFF:
20
ROBERT SWEETAPPLE, ESQ.
21 4800 N. Federal Highway
Ste. D306
22 Boca Raton, FL 33431

23 ON BEHALF OF THE RESPONDENT:

24 LESLIE ANN FERDERIGOS, ESQ.
941 N. Orange Avenue
25 Winter Park, FL 32789

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1 November 22, 2021
Palm Beach County Courthouse
2 Room 9D
West Palm Beach, FL 33401
3 10:25 - 10:44 a.m.

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1 ARGUMENT

2 ATTORNEY PAGE

3 SWEETAPPLE 4, 10

4 FERDERIGOS 8, 15

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1 BE IT REMEMBERED THAT the foregoing matter was
2 taken on November 22, 2021, before the Honorable John S.
3 Kastrenakes, Circuit Court Judge, Palm Beach County,
4 Florida, and this is a transcription of the stenograph
5 notes from said hearing:
6 * * *
7 THE BAILIFF: All rise.
8 THE COURT: Okay. Everybody have a seat,
9 everyone.
10 Okay. This is -- we all ready to go?
11 Sahm versus Bernstein Family Realty. And
12 it's the Plaintiff's motion for final summary
13 judgment.
14 And representing the Plaintiff is Mr.
15 Sweetapple.
16 Who represents the Bernstein Family
17 Realty?
18 MR. SWEETAPPLE: There was -- Your Honor,
19 there was a default entered against that
20 entity.
21 THE COURT: Right. Right. Well, there
22 was -- there was some individual defending it.
23 MR. SWEETAPPLE: Yes. Mr. and Mrs.
24 Bernstein have been defaulted.
25 THE COURT: Right. And how about the --

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1 the -- the -- you're seeking summary judgment
2 against whom?
3 MR. SWEETAPPLE: It's actually -- it's
4 actually a final judgment on a default.
5 However, we have prepared it as a summary final
6 judgment specifying that we're not seeking to
7 remove anyone. The relief we're seeking is
8 foreclose on the note and to get a money
9 judgment.
10 We recognize that any -- the Court's
11 going to defer any sale or any removal issues
12 until after the moratorium is lifted.
13 THE COURT: The moratorium is lifted.
14 MR. SWEETAPPLE: Oh, has it been lifted?
15 THE COURT: Sure.
16 MR. SWEETAPPLE: Okay. When -- when was
17 it lifted?
18 THE COURT: Well, I've been selling
19 property that --
20 MR. SWEETAPPLE: Oh.
21 THE COURT: -- that's secured by notes for
22 a while now.
23 MR. SWEETAPPLE: I'm saying to remove --
24 to remove people from their homes I understood
25 there --

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1 THE COURT: Well, it depends on whether
2 there's a -- a valid rental agreement that
3 would, of course -- if there is one --
4 arm's-length rental agreement --
5 MR. SWEETAPPLE: Right.
6 THE COURT: -- that would trump the -- the
7 person who would buy it at a forecloser sale
8 would be subject to that.
9 MR. SWEETAPPLE: Right. Right. So --
10 THE COURT: If it's not a valid
11 arm's-length --
12 MR. SWEETAPPLE: Right.
13 THE COURT: -- rental agreement that's
14 another matter entirely. So --
15 MR. SWEETAPPLE: Yeah. I stand corrected.
16 I stand corrected. The motion sets forth we're
17 not seeking -- I should say not seeking
18 possession --
19 THE COURT: Yeah.
20 MR. SWEETAPPLE: -- against anybody
21 claiming --
22 THE COURT: But you're seeking to
23 foreclose on the original promissory note --
24 MR. SWEETAPPLE: Right.
25 THE COURT: -- from when? A hundred and

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1 ten thousand dollars it looks like --
2 MR. SWEETAPPLE: Right. But there have
3 been no -- no --
4 THE COURT: -- from 2009 or '10?
5 MR. SWEETAPPLE: Right. Yeah.
6 And I will tell the Court that my
7 associate totaled up all of the monies owed,
8 but didn't get it to me until like 6:00 --
9 THE COURT: Yeah. I didn't get an
10 affidavit on that.
11 MR. SWEETAPPLE: Yeah. And so -- and I've
12 been dealing with Mr. Rose before the second
13 mortgage was assigned. And I told him,
14 obviously, I would have him review any numbers
15 before I submitted the judgment to the Court
16 because the second mortgagor/mortgagee is going
17 to, you know, be impacted by my numbers. So I
18 want to give him an opportunity to make sure
19 and --
20 THE COURT: So --
21 MR. SWEETAPPLE: -- recalculate everything
22 before I --
23 THE COURT: Yeah, I mean the evidence
24 that you utilize for a summary final judgment
25 has to be filed forty days in advance of the

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1 hearing --
2 MR. SWEETAPPLE: Right.
3 THE COURT: -- under the new rule.
4 MR. SWEETAPPLE: Right. But this is a
5 default. This is just a final judgment on
6 a default. So really I'm going to ask just
7 for --
8 THE COURT: On -- on a note that's liquid.
9 You know, liquidated damages on the note,
10 right?
11 MR. SWEETAPPLE: Right. Right. So --
12 THE COURT: Have they -- is there anything
13 from the Defense on this?
14 And, ma'am, you are representing?
15 MS. FERDERIGOS: I -- I'm representing
16 Jacob, Joshua and Daniel.
17 THE COURT: Okay.
18 MS. FERDERIGOS: We are all -- and we --
19 we consider them indispensable parties in this.
20 I'm newer to this case.
21 THE COURT: Yeah.
22 MS. FERDERIGOS: I just got on.
23 THE COURT: I haven't seen you here
24 before.
25 MS. FERDERIGOS: Yeah.

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1 THE COURT: They were pro se as I recall
2 before --
3 MS. FERDERIGOS: Yeah.
4 THE COURT: -- were they not?
5 MS. FERDERIGOS: I believe so. Yes. Yes.
6 But I --
7 THE COURT: And your name is?
8 MS. FERDERIGOS: I'm Leslie Ferderigos.
9 THE COURT: Okay.
10 MS. FERDERIGOS: Would -- would you like
11 me to stand up there, Your Honor?
12 THE COURT: No. You can sit --
13 MS. FERDERIGOS: Okay.
14 THE COURT: -- if you'd like. If you feel
15 more comfortable.
16 MS. FERDERIGOS: Sure.
17 THE COURT: Sweetapple just likes to
18 stand, you know. So...
19 MS. FERDERIGOS: Yeah.
20 But our -- our position is that my
21 clients are indispensable parties so -- and
22 the -- the process was not properly
23 effectuated. They were -- they all -- they
24 were all adults when service and process was
25 made. And I believe it was only made on the

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1 mother claiming that the connection --
2 THE COURT: This was all litigated last --
3 over a year ago.
4 MS. FERDERIGOS: Okay.
5 THE COURT: There was a default entered.
6 There was a motion to set aside the default.
7 We had argument on it. I believe I denied the
8 motion to set aside the default. I mean
9 what's --
10 MS. FERDERIGOS: Well --
11 THE COURT: -- your defense to the --
12 MS. FERDERIGOS: To the summary judgment?
13 THE COURT: Yeah.
14 MS. FERDERIGOS: Basically that there's --
15 I mean I don't believe that you can do a
16 summary judgment when there's not jurisdiction
17 over my clients. So I mean that's -- that's
18 really our main argument. In that to simply
19 just take my clients off of the lawsuit, I
20 don't believe that's possible because they're
21 indispensable parties.
22 THE COURT: Okay. So who -- who is the
23 Plaintiff seeking final summary judgment
24 against to enforce this promissory note?
25 MR. SWEETAPPLE: Let me be candid with the

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1 Court as to what the argument is so you fully
2 understand it for purpose of making any
3 decision that's appropriate. We sued Mrs.
4 Bernstein --
5 THE COURT: Right.
6 MR. SWEETAPPLE: -- understanding that
7 these -- these children were minors.
8 There's been some statement that
9 they're -- they weren't minors -- they're not
10 minors now or maybe they weren't minors at
11 the time. They live there. They've lived
12 there now for years without anyone paying.
13 What has happened is we got a default
14 for unknown tenants as well. So anyone
15 living there is subject to this judgment.
16 Now, if there's as you said a lease,
17 that would present us -- or even someone
18 living there I guess could come in and say
19 "you can't remove us". But this isn't time
20 or place for that. We make it clear in our
21 motion, which you should really deem as just
22 a motion for -- for final judgment that --
23 and it was done more than forty days. It was
24 filed in August and noticed -- noticed in
25 November.

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1 THE COURT: And who are -- who is the
2 signatory on the note that you're seeking?
3 MR. SWEETAPPLE: The president Simon
4 Bernstein, who is the president of the maker.
5 So we have a -- we got -- and it's a
6 dissolved entity. So what happened is he
7 died. He made the note. The family members
8 live there and have not made payments. And
9 while there was a -- a motorium, you know, we
10 didn't do anything and -- and it's languished
11 and so --
12 THE COURT: So you're seeking a money
13 judgment against?
14 MR. SWEETAPPLE: Against the dissolved
15 entity.
16 THE COURT: Right.
17 MR. SWEETAPPLE: And then which will only
18 be collected from the proceeds of the sale.
19 We won't be able to go after them for
20 any deficiency, were there one. And we're
21 seeking a -- a sale. But we understand that
22 possession is something we're going to have
23 to look into and see whether or not there's a
24 lease, whether or not they are tenants now,
25 or what the nature of their -- their rights

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1 to possession are.
2 THE COURT: What's the amount of money
3 judgment given?
4 MR. SWEETAPPLE: According -- according to
5 calculations, and subject to Mr. Rose
6 scrutinizing them, there is a principal a
7 hundred and ten.
8 THE COURT: Correct.
9 MR. SWEETAPPLE: There's interest of -- of
10 two hundred and sixty five. Taxes that were
11 paid of forty eight thousand. My clients paid
12 the taxes this whole time. Taxes that are due
13 we believe -- and we're trying to verify it --
14 of seven thousand eight forty four twenty
15 eight. And the attorney's fees are forty six
16 thousand seven seventy three. The total is
17 four seventy nine.
18 But -- but, as I said, Mr. Rose needs
19 to go through and make sure we did the
20 interest right. And he -- he agrees -- we're
21 going to file an affidavit for our fees. If
22 he doesn't agree, then obviously we'll --
23 we'll --
24 THE COURT: We'll have a hearing on the
25 fees.

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1 MR. SWEETAPPLE: -- have a -- no, probably
2 just -- I'll probably just agree to whatever.
3 You know, if he thinks something is not
4 reasonable, I'll take it out of our request.
5 THE COURT: Okay.
6 MR. SWEETAPPLE: We have that kind of
7 relationship. We've litigated quite a bit.
8 And if he's got a -- if there's some
9 objection Alan has to my fees it's because
10 they're not recoverable. There might be
11 travel. There might be whatever.
12 THE COURT: And -- and the -- and the note
13 itself requires or -- is a -- let me see --
14 does it include fees?
15 MR. SWEETAPPLE: It was a balloon -- a
16 balloon note. Yes, I believe it requires a
17 copy of it.
18 THE COURT: Enforcement of the note. I
19 mean you're going to have to refer to the
20 entitlement, I guess.
21 MR. SWEETAPPLE: Yeah. Let me look at the
22 note.
23 THE COURT: I only have the original note
24 not the whole --
25 MR. SWEETAPPLE: I have the note right

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1 here.
2 Um, yes, it says "Placed in the hands of
3 an attorney for collection and --
4 THE COURT: "All the costs included and
5 reasonable attorneys fees."
6 MR. SWEETAPPLE: Right.
7 THE COURT: Okay. So you're going to be
8 entitled to the attorney fees in an amount to
9 be determined later. Right?
10 MR. SWEETAPPLE: Right.
11 We'll submit an affidavit after I --
12 after I speak with Mr. Rose. And I'll
13 request the amount will be less than the
14 affidavit if he objects.
15 THE COURT: All right. So let me turn to
16 counsel for the Defendant.
17 MS. FERDERIGOS: Yes, Your Honor. I -- I
18 know that I'm limited to my representation --
19 THE COURT: I know.
20 MS. FERDERIGOS: -- with the -- the
21 children but -- and I'm not sure -- again
22 'cause like I said I'm new -- or I don't know
23 if this was already dealt with. I didn't see
24 it, but I could be wrong. In regards to the
25 service on the actual agent of Bernstein Family

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1 Realty, from my understanding the agent that
2 service was -- was originally perfected on was
3 a former agent who had resigned prior to the
4 service. So that's really our -- our big
5 argument is that service wasn't --
6 THE COURT: And so the person who signed
7 the note as -- as the borrower/manager, he's
8 deceased, right? And so the people that are
9 residing at the residence secured by this note
10 are -- are his family members, right?
11 MS. FERDERIGOS: Correct.
12 THE COURT: And including what? His
13 grandson and his son? Is that who we have here
14 at the house?
15 MS. FERDERIGOS: Um, I believe so. Is
16 it -- Yes.
17 MR. BERNSTEIN: Um-hmm.
18 THE COURT: Okay. And other than this
19 note and the -- what other encumbrances are on
20 this residence? Is there -- is there -- is
21 there a bank loan or no?
22 MS. FERDERIGOS: I am not sure.
23 MR. BERNSTEIN: There's a second to the --
24 MR. SWEETAPPLE: This is the -- this is
25 the first.

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1 MS. FERDERIGOS: Yeah.
2 MR. SWEETAPPLE: I know there's a second
3 that the -- that Mr. Rose's client has.
4 THE COURT: Okay. Well, you have an
5 attorney here.
6 MR. BERNSTEIN: I don't.
7 MR. SWEETAPPLE: But I don't --
8 MR. BERNSTEIN: My children do.
9 MR. SWEETAPPLE: -- believe this counsel
10 represents the entity, Your Honor. I -- I
11 think she's just here on -- she's appeared on
12 behalf of the --
13 THE COURT: The tenants?
14 MR. SWEETAPPLE: -- grandsons.
15 MR. BERNSTEIN: I just wanted to note to
16 the Court that the person who accepted service
17 resigned from service due to fraud on the Court
18 where he submitted fraudulent estate documents
19 to the Court. We're going to be bringing all
20 this up in a much bigger push to get the
21 corruption that's going on here. But Mr. Don
22 Tescher was suspended from law practice. He
23 resigned from all Bernstein family matters.
24 Mr. Rose and Mr. Sweetapple both were aware of
25 that. He illegally accepted that service.

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1 THE COURT: Okay.
2 MR. BERNSTEIN: So BFR has never been
3 properly served.
4 THE COURT: Okay. Thank you. Appreciate
5 it.
6 THE COURT REPORTER: Can I get your name,
7 sir? Can I get your name?
8 MR. BERNSTEIN: Eliot Bernstein.
9 THE COURT REPORTER: Thank you.
10 MR. BERNSTEIN: One l. One t.
11 MS. FERDERIGOS: Your Honor, he is pro se.
12 THE COURT: Right. Right. Right.
13 MS. FERDERIGOS: I just wanted to point
14 that out.
15 THE COURT: We -- I know. I remember.
16 MS. FERDERIGOS: Yes.
17 THE COURT: They could have -- he could
18 have been sitting with you at the counsel
19 table --
20 MS. FERDERIGOS: Yes.
21 THE COURT: -- if he wanted to.
22 MR. BERNSTEIN: Oh.
23 THE COURT: All right.
24 MR. BERNSTEIN: I'm all right.
25 THE COURT: The Court has had an

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1 opportunity to review the information provided
2 by the Plaintiff here. The Court believes that
3 summary judgment is appropriate.
4 The Plaintiff is entitled to reasonable
5 attorney's fees.
6 I'm -- you want me to -- no, I'm not
7 going to set a sale date 'til I get your
8 affidavit -- finalized affidavit. When you
9 submit that to court. Did you want me to set
10 a sale date?
11 MR. SWEETAPPLE: No. I'll let the Court
12 do that as it's pleasure because I don't --
13 THE COURT: Well you --
14 MR. SWEETAPPLE: -- know how long --
15 THE COURT: Yeah.
16 MR. SWEETAPPLE: -- it's going to take me
17 to have Alan review my fees to make sure he's
18 comfortable.
19 THE COURT: Okay. But once I get the
20 order that is uploaded, you want me to set a
21 sale date --
22 MR. SWEETAPPLE: Yes.
23 THE COURT: -- in the order?
24 MR. SWEETAPPLE: Yes, I do.
25 THE COURT: So I want to give the

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1 Bernsteins a chance, if they wish, to work out
2 some arrangement with your client.
3 I can set a sale date down the road if
4 you want to work this out?
5 MS. FERDERIGOS: That -- that would be
6 great.
7 MR. BERNSTEIN: Yes.
8 MS. FERDERIGOS: So I could have, you
9 know, time to --
10 THE COURT: I mean it's only been going on
11 for over a decade, you know. So I mean
12 there's -- somebody owes somebody money, right?
13 Okay.
14 So I -- I can set them out as far as a
15 hundred twenty days.
16 MR. SWEETAPPLE: That's fine. That's
17 fine.
18 THE COURT: So when I -- that's, of
19 course, a hundred twenty plus when I get the
20 order from Mr. Sweetapple which will contain
21 the affidavit of indebtedness. All right?
22 MS. FERDERIGOS: Um-hmm.
23 THE COURT: All right. When I get that, I
24 will upload an order. And the order will
25 indicate that I'll set a sale date a hundred

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1 and twenty days down the road, which is four
2 months. And gives everybody a chance if you
3 can work it out with the Plaintiff who's owed
4 money, right? And if -- if you can work out an
5 arrangement so you can stay at the house,
6 great. I want people to be able to stay at
7 their homes; but they have to pay, you know,
8 pay whoever they owe the money to. I assume on
9 the -- on the -- is it a condo? Is that what
10 we're talking about? Is it a condominium?
11 It's in a -- it's in an association though?
12 What's the second mortgage holder on
13 this?
14 MR. BERNSTEIN: My father's estate or now
15 the trust. And that was an illegal transfer as
16 well.
17 THE COURT: All right.
18 MR. SWEETAPPLE: And as I understand it
19 they haven't sought a -- a foreclosure. I
20 don't know whether --
21 THE COURT: Yeah. So they're not seeking
22 payment. So the only person that's seeking
23 payment here --
24 MR. BERNSTEIN: Is Mr. --
25 THE COURT: -- is Mr. Sahm?

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1 MR. BERNSTEIN: Yep.
2 THE COURT: Yeah. So work out whatever
3 you can, if you can. If you can't, then I'll
4 have to have the property sold to a third-party
5 after a hundred and twenty days.
6 MR. BERNSTEIN: Yep.
7 THE COURT: Okay. And then after that, if
8 it's sold to someone and you have to leave the
9 premises and find your own place to live,
10 you're going to have to do that. Okay. All
11 right.
12 MR. SWEETAPPLE: And my understanding is
13 that Mr. Rose and the Bernsteins have had a
14 mediation last year and they've been attempting
15 to work out the second mortgage. And I have
16 let them know that we're more than happy to --
17 to -- to work with them --
18 THE COURT: Okay.
19 MR. SWEETAPPLE: -- if we can.
20 THE COURT: All right. The motion for
21 summary judgment is granted. And I'll wait for
22 your order and affidavit.
23 Don't forget to attach the affidavit to
24 the order of -- of indebtedness. Okay.
25 MR. SWEETAPPLE: We'll do that.

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1 THE COURT: All right.
2 MR. SWEETAPPLE: Thank you, Your Honor.
3 THE COURT: All right.
4 MR. SWEETAPPLE: Thanks for hearing this.
5 THE COURT: How long you think? About a
6 week or two?
7 MR. SWEETAPPLE: It'll be a week. No
8 more. No more. I had put a call into Alan.
9 And Naomi --
10 THE COURT: All right.
11 MR. SWEETAPPLE: -- is doing the affidavit
12 now.
13 THE COURT: All right. Thank you.
14 You all have a great Thanksgiving. It
15 was nice to meet you all.
16 MS. FERDERIGOS: Thank you.
17 MR. SWEETAPPLE: Thank you.
18 THE COURT: Good luck.
19 (Whereupon, the hearing was concluded.)
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1 C E R T I F I C A T E

2 THE STATE OF FLORIDA,

3 COUNTY OF PALM BEACH.

4 I, DAWN M. LeROY, Notary Public, State of

5 Florida at large, do hereby certify that the

6 preceding pages, numbered 1 through 24, inclusive, are

7 a true and accurate transcription of my stenotype notes

8 taken at said proceeding.

9 I FURTHER CERTIFY that I have no personal nor

10 financial interest in this action or a party thereto.

11 THE FOREGOING CERTIFICATION of the transcript

12 does not apply to any reproduction of the same by any

13 means unless under the direct control and/or direction of

14 the court reporter. The reproduction and/or distribution

15 and/or receipt of said transcript unless directly

16 authorized by the court reporter in writing in any manner

17 is theft.

18 IN WITNESS WHEREOF, I have hereunto affixed

19 my seal and signature this 26th day of December, 2021.

20

21 Dawn M LeRoy

22 Dawn M. LeRoy, Notary Public

23 Commission No.: HH 123789

24

25

NOTARY PUBLIC STATE OF FLORIDA
DAWN M. LEROY
Commission # HH 123789
Expires August 28, 2025
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MR. BERNSTEIN: [15] 16/16 16/22 17/5 17/7 17/14 18/1 18/7 18/9 18/21 18/23 20/6 21/13 21/23 21/25 22/5
MR. SWEETAPPLE: [54]
MS. FERDERIGOS: [29]
THE BAILIFF: [1] 4/5
THE COURT REPORTER: [2] 18/5 18/8
THE COURT: [85]

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adults [1] 9/24
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Alan [3] 14/9 19/17 23/8
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