

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION

In re:

BERNSTEIN FAMILY REALTY, LLC,

Case No.: 22-13009-EPK

Debtor.

Chapter 11

/

**JOINDER TO EMERGENCY MOTION OF U.S. TRUSTEE
TO DISMISS OR CONVERT CASE**

Walter Sahm and Patricia Sahm (together, the "Secured Creditors"), hereby join with the *Emergency Motion of U.S. Trustee to Dismiss or Convert Case* (the "Motion" or "Motion to Convert") [ECF No. 23], and state as follows:

1. The Secured Creditors are each a party in interest in the above-captioned case.
2. Through this joinder, the Secured Creditors hereby join, adopt, and allege the statements and arguments raised in the Motion to Convert, and request that the Court convert this case to chapter 7.
3. In addition to the arguments raised in the Motion to Convert, the Secured Creditors submit that the case should be converted for two reasons.

A. The Case Was Filed in Bad Faith.

4. First, it is apparent that the case was filed in bad faith. The case was not only filed the day prior to a scheduled foreclosure sale, it was also filed involuntarily in order to circumvent the fact that the Debtor lacks a manager, and thus cannot file for bankruptcy or otherwise act on its own behalf.

5. Specifically, in December 2021 the Secured Creditors obtained a foreclosure judgment against various persons, including the Debtor, in the Circuit Court of Palm Beach County, Florida (the "Judgment"). A copy of the Judgment is attached as **EXHIBIT "A"**.

6. The Judgment scheduled a foreclosure sale of real property commonly known as 2753 N.W. 34th Street, Boca Raton, Florida 33434 (the "Property") for April 20, 2022. The Property is owned by the Debtor and, upon information and belief, is the primary asset of the Debtor.

7. This bankruptcy case was commenced by the filing of an involuntary petition on April 19, 2022, the day prior to the foreclosure sale. *See* ECF No. 1 (involuntary petition). The petitioning creditors, Joshua Bernstein, Jacob Bernstein and Daniel Bernstein (each a "Bernstein" and together, the "Bernsteins"), have stated that they respectively hold the membership interests of the Debtor via individual irrevocable trusts. *See* ECF No. 1 at p. 5. The Bernsteins are in other words insiders of the Debtor.

8. The Bernsteins appear to have filed an involuntary petition as an end around to the fact that the Debtor lacks a manager, and is thus unable to file for bankruptcy on its own behalf. In particular, a review of public records maintained by the State of Florida, Division of Corporations, reveals that the Debtor last filed an annual report over six years ago, on March 28, 2016, and has been administratively dissolved since 2017. A copy of that record is attached as **EXHIBIT "B"**.¹

9. Additionally, in 2016 the Oppenheimer Trust of Delaware ("Oppenheimer") withdrew as the manager of the Debtor. A copy of the withdrawal notice, which was filed with the Division of Corporations on July 11, 2016, is attached as **EXHIBIT "C"**.

¹ Records of the Division of Corporations are publicly available online at <https://dos.myflorida.com/sunbiz/search/>

10. Upon information and belief, following the withdrawal of Oppenheimer, the Debtor never obtained a new manager. *See generally* Ex. B (the Debtor does not list any current authorized persons with the Division of Corporations).

11. To summarize the foregoing:

- The Debtor last possessed a manager and filed an annual report in 2016. It has been administratively dissolved for years.
- An involuntary petition was filed against the Debtor the day prior to a scheduled foreclosure sale of its primary asset, the Property.
- The involuntary petition was filed by insiders of the Debtor, apparently due to the fact that the Debtor could not act on its own behalf.

12. Given these dynamics, the petition was filed in a transparent, bad faith effort to delay a foreclosure sale and sidestep corporate authorization procedures. Cause therefore exists to either dismiss or convert the case under 11 U.S.C. § 1112(b). *See, e.g.*, 11 U.S.C. § 1112(b)(1) (the court shall convert or dismiss a chapter 11 case to chapter 7 for "cause"); *In re Asanda Air II, LLC*, 600 B.R. 714, 721 (Bankr. N.D. Ga. 2019) ("The Eleventh Circuit Court of Appeals has long recognized that a debtor's lack of good faith constitutes cause for [conversion or] dismissal...Courts may consider any factors which evidence an intent to abuse the judicial process...or, in particular, factors which evidence that the petition was filed to delay or frustrate the legitimate efforts of secured creditors to enforce their rights.") (citations and quotations omitted).

13. Once "cause" is established under § 1112, the court either may dismiss or convert the case based upon what is in the best interest of creditors and the estate. *See In re BTS, Inc.*, 247 B.R. 301, 308–09 (Bankr. N.D. Okla. 2000) (citations omitted). Here, the Secured Creditors believe that conversion would be in the best interests of creditors. The Bernsteins' filing of an involuntary petition on the eve of a foreclosure sale evidences a willingness by the Debtor and its

insiders to engage in litigation gamesmanship. The Secured Creditors fear that if the case is dismissed the Debtor and the Bernsteins will employ similar delaying tactics in other forums, and may obstruct a foreclosure of the Property or otherwise stymie creditors from enforcing their rights. By contrast, converting the case will result in an independent trustee liquidating the Debtor's assets and minimize these concerns.

B. A Trustee Should Sell the Property.

14. The Secured Creditors believe that the Property may be worth in excess of \$750,000, and that creditors of the estate will benefit from an asset sale. Given the circumstances of the bankruptcy filing described *supra*, together with the Debtor's apparent inability to act on its own behalf, a sale would best be accomplished in chapter 7 via an independent trustee.

[Remainder of Page Intentionally Left Blank]

WHEREFORE, the Secured Creditors respectfully request that this Court enter an Order: (i) granting the Motion [ECF No. 23]; (ii) converting this case to chapter 7; and (iii) granting such further relief as the Court deems just and proper.

ATTORNEY CERTIFICATION

I HEREBY CERTIFY that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice in this Court set forth in Local Rule 2090-1(A).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via Notice of Electronic Filing to those parties registered to receive electronic noticing in this case on June 6, 2022.

SHRAIBERG PAGE, P.A.
Attorneys for the Secured Creditors
2385 NW Executive Center Drive, #300
Boca Raton, Florida 33431
Telephone: 561-443-0800
Facsimile: 561-998-0047

By: /s/ Patrick Dorsey
Patrick Dorsey
Florida Bar. No. 0085841
pdorsey@slp.law
Bradley S. Shraiberg
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bshraiberg@slp.law

EXHIBIT A

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA
CIVIL DIVISION DIV: "AF"
CASE NO.: 2018CA002317AXX

WALTER E. SAHM,
and PATRICIA SAHM

Plaintiffs,
vs.

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

Defendants.

/

FINAL JUDGMENT OF FORECLOSURE

THIS CAUSE came before the Court on November 22, 2021 upon Plaintiffs' Motion for Summary Final Judgment of Foreclosure. The Court, having reviewed the Motion, the attached exhibits, affidavits, and evidence, having reviewed the court file and record, having heard argument of counsel, and after being otherwise duly advised in the premises, it is hereby

ORDERED and ADJUDGED that Plaintiffs' Motion is **GRANTED** as follows:

1. **Final Judgment.** The parties have consented to the entry of this Final Judgment.
2. **Value of Claim.** At the initiation of this action, in accordance with section 28.241(1)(a)2.b, Florida Statutes, Plaintiff estimated the amount in controversy to be \$110,000.00.

In accordance with section 28.241(1)(a)2.c, Florida Statutes, the Court identifies the actual value of the claim as set forth below. For any difference between the estimated amount in controversy and the actual value of the claim that requires the filing fee to be adjusted, the Clerk shall adjust the filing fee. In determining whether the filing fee needs to be adjusted, the graduated filing fee scale in section 28.241(1)(a)2.d, Florida Statutes, controls. In an excess filing fee was paid, the Clerk shall provide a refund of the excess fee. In an additional filing fee is owed, the plaintiff shall pay the additional filing fee at least five (5) business days prior to the judicial sale. In any additional filing fee owed is not paid prior to the judicial sale, the Clerk shall cancel the judicial sale without further order of the Court.

3. Amounts Due. Plaintiffs Walter E. Sahm and Patricia Sahm, are owed:

Principal:	\$110,000.00;
Interest at Note rate to 6/19/2014:	\$3,850.00;
Default Interest at 18% 6/20/2014 – 12/31/2021	\$149,122.56
Real Property Taxes paid by Lender	\$38,596.62
Attorney's Fees	\$52,005.50
TOTAL:	\$353,574.68

The interest on the **TOTAL SUM** shall bear at a rate pursuant of 18%.

4. Lien on Property. Plaintiff holds a lien for the total sum superior to any and all claims or estates of Defendant(s), on the following described property in Palm Beach County, Florida:

Lot 68, Block G, BOCA MADERA UNIT 2, according to the Plat thereof, recorded in Plat Book 32, Pages 59 and 60, of the Public Records of Palm Beach County, Florida

5. Sale of Property. If the total sum with interest at the rate described in Paragraph 1 and all costs accrued subsequent to this judgment are not paid, then the Clerk of the Court shall sell the property at public sale on April 20, 2022, beginning at 10:00 a.m. to the highest bidder for cash, except as prescribed in Paragraph 4, at the courthouse located at 205 North Dixie Highway Suite 323, West Palm Beach, FL 33401 in Palm Beach County, Florida, in accordance with § 45.031, Florida Statutes (2021), using the following method: <https://palmbeach.realforeclose.com>. The foreclosure sale can only be cancelled by Court Order.

6. Costs. Plaintiff shall advance all subsequent costs of this action and shall be reimbursed for them by the Clerk of the Court in the event Plaintiff is not the buyer of the subject property for sale, provided, however, that the buyer of the subject property for sale shall be responsible for the documentary stamps payable on the certificate of title. If Plaintiff is the buyer of the subject property for sale, then the Clerk of the Court shall credit Plaintiff's bid with the total sum with interest and costs accruing subsequent to this Final Judgment, or such part of it as necessary to pay the bid in full.

7. Distribution of Proceeds. On filing the certificate of title, the Clerk shall distribute the proceeds of the sale, so far as they are sufficient, by paying: first, all of plaintiff's costs; second, documentary stamps affixed to the certificate; third, plaintiff's attorneys' fees; fourth, the total sum due to plaintiff, less the items paid, plus interest at the rate prescribed in Paragraph 3 from this date to the date of the sale; and by retaining any remaining amount pending further Order of Court.

8. Right of Redemption. On filing the certificate of sale, defendant(s) and all persons claiming under or against defendant(s) since the filing of the notice of lis pendens shall be

foreclosed of all estate or claim in the property, except as to claims or rights under chapter 718 or chapter 720, Florida Statutes, if any.

9. **Right of Possession.** Upon filing of the certificate of title, the person named on the certificate of title shall be let into possession of the property. If any defendant or tenant remains in possession of the property, an Order Granting the Motion for Writ of Possession shall be entered without further notice or hearing, subject to the purchaser's compliance with Section 83.561, Florida Statutes.

10. **Jurisdiction Retained.** Jurisdiction of this action is retained to enter further orders that are proper including, without limitation, a deficiency judgment, writs of possession and such supplemental relief or judgments as may be appropriate.

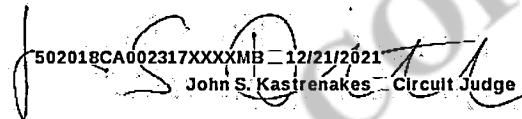
IF THIS PROPERTY IS SOLD AT PUBLIC AUCTION, THERE MAY BE ADDITIONAL MONEY FROM THE SALE AFTER PAYMENT OF PERSONS WHO ARE ENTITLED TO BE PAID FROM THE SALE PROCEEDS PURSUANT TO THE FINAL JUDGMENT. IF YOU ARE A SUBORDINATE LIENHOLDER CLAIMING A RIGHT TO FUNDS REMAINING AFTER THE SALE, IF ANY, YOU MUST FILE A CLAIM WITH THE CLERK NO LATER THAN THE DATE THAT THE CLERK REPORTS THE FUNDS AS UNCLAIMED. IF YOU FAIL TO FILE A TIMELY CLAIM, YOU WILL NOT BE ENTITLED TO ANY REMAINING FUNDS.

IF YOU ARE THE PROPERTY OWNER, YOU MAY CLAIM THESE FUNDS YOURSELF. YOU ARE NOT REQUIRED TO HAVE A LAWYER OR ANY OTHER REPRESENTATION AND YOU DO NOT HAVE TO ASSIGN YOUR RIGHTS TO ANYONE ELSE IN ORDER FOR YOU TO CLAIM ANY MONEY TO WHICH YOU ARE ENTITLED. PLEASE CHECK WITH THE ST. LUCIE CLERK OF THE COURT, WITHIN 10 DAYS AFTER THE SALE TO SEE IF THERE IS ADDITIONAL MONEY FROM THE FORECLOSURE SALE THAT THE CLERK HAS IN THE REGISTRY OF THE COURT.

IF YOU DECIDE TO SELL YOUR HOME OR HIRE SOMEONE TO HELP YOU CLAIM THE ADDITIONAL MONEY, YOU SHOULD READ VERY CAREFULLY ALL PAPERS YOU ARE REQUIRED TO SIGN, ASK SOMEONE ELSE, PREFERABLY AN ATTORNEY WHO IS NOT RELATED TO THE PERSON OFFERING TO HELP YOU, TO MAKE SURE THAT YOU UNDERSTAND WHAT YOU ARE SIGNING AND THAT YOU ARE NOT TRANSFERRING YOUR PROPERTY OR THE EQUITY IN YOUR PROPERTY WITHOUT THE PROPER INFORMATION. IF YOU CANNOT AFFORD

TO PAY AN ATTORNEY, YOU MAY CONTACT FLORIDA RURAL LEGAL SERVICES MONDAY THROUGH FRIDAY AT 1-888-582-3410 TO SEE IF YOU QUALIFY FINANCIALLY FOR THEIR SERVICES. IF THEY CANNOT ASSIST YOU, THEY MAY BE ABLE TO REFER YOU TO A LOCAL BAR REFERRAL AGENCY OR SUGGEST OTHER OPTIONS. IF YOU CHOOSE TO CONTACT FLORIDA RURAL LEGAL SERVICES AT 1-888-582-3410 FOR ASSISTANCE, YOU SHOULD DO SO AS SOON AS POSSIBLE AFTER RECEIPT OF THIS NOTICE.

DONE and ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this 21 day of December, 2021.


502018CA002317XXXXMB 12/21/2021
John S. Kastrenakes Circuit Judge

502018CA002317XXXXMB 12/21/2021
John S. Kastrenakes
Circuit Judge

A COPY OF THIS ORDER IS BEING SERVED ON THE FOLLOWING PARTIES VIA THE E-FILING PORTAL:

Robert A. Sweetapple, Esquire, Sweetapple, Broeker & Varkas, PL, 4800 N. Federal Highway, Suite D306, Boca Raton, Florida 33431 (pleadings@sweetapplelaw.com)

Eliot Ivan Bernstein, 2753 NW 34th St., Boca Raton, FL 33434 (iviewit@iviewit.tv)

Brian O'Connell, Esquire, O'Connell & Crispin, PLLC, 420 Royal Palm Way, Palm Beach, FL 33480 (boconnell@ocalawyers.com)

Cary P. Sabol, Esquire, Law Offices of Cary P. Sabol, P.O. Box 15981, West Palm Beach, FL 33416 (Csabol@sabollaw.com)

Alan B. Rose, Esquire, Mrachek-law, Fitzgerald & Rose, PL (Arose@Mrachek-law.com)

EXHIBIT B



[Department of State](#) / [Division of Corporations](#) / [Search Records](#) / [Search by Entity Name](#) /

Detail by Entity Name

Florida Limited Liability Company
BERNSTEIN FAMILY REALTY LLC

Filing Information

Document Number L08000054043
FEI/EIN Number 26-2735064
Date Filed 06/02/2008
State FL
Status INACTIVE
Last Event ADMIN DISSOLUTION FOR ANNUAL REPORT
Event Date Filed 09/22/2017
Event Effective Date NONE

Principal Address

2753 NW 34th Street
BOCA RATON, FL 33434

Changed: 04/12/2013

Mailing Address

c/o eliot bernstein
2753 nw 34th st
boca raton, FL 33434

Changed: 01/11/2017

Registered Agent Name & Address

T & S REGISTERED AGENTS, LLC
4855 TECHNOLOGY WAY, SUITE 720
BOCA RATON, FL 33431

Name Changed: 04/20/2009

Address Changed: 04/20/2009

Authorized Person(s) Detail

NONE

Annual Reports

Report Year	Filed Date
2014	03/19/2014
2015	04/27/2015

2016 03/28/2016

Document Images

07/11/2016 -- CORLCDSMEM	View image in PDF format
03/28/2016 -- ANNUAL REPORT	View image in PDF format
04/27/2015 -- ANNUAL REPORT	View image in PDF format
03/19/2014 -- ANNUAL REPORT	View image in PDF format
04/12/2013 -- ANNUAL REPORT	View image in PDF format
01/05/2012 -- ANNUAL REPORT	View image in PDF format
04/14/2011 -- ANNUAL REPORT	View image in PDF format
09/29/2010 -- REINSTATEMENT	View image in PDF format
04/20/2009 -- ANNUAL REPORT	View image in PDF format
06/02/2008 -- Florida Limited Liability	View image in PDF format

Florida Department of State, Division of Corporations

EXHIBIT C

LOF00054043

(Requestor's Name)

(Address)

(Address)

(City/State/Zip/Phone #)

PICK-UP WAIT MAIL

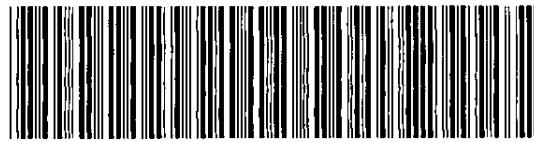
(Business Entity Name)

(Document Number)

Certified Copies _____ Certificates of Status _____

Special Instructions to Filing Officer:

Office Use Only



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2016 JUL 11 PM 2:29
SOUTHERN FLORIDA
JUDGE BRUCE
TALLAHASSEE, FLORIDA

FILED

JUN 12 2016
JUDGE BRUCE

COVER LETTER

TO: Registration Section
Division of Corporations

SUBJECT: Bernstein Family Realty, LLC
(Name of Limited Liability Company)

The enclosed member, resignation or dissociation and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to:

Attn: Janet Craig, SVP
(Contact Person)

Oppenheimer Trust Company of Delaware
(Firm/Company)

405 Silverside Road, Suite 250
(Address)

Wilmington, DE 19805
(City/State and Zip Code)

For further information concerning this matter, please call:

Janet Craig, SVP at (302) 792-3502
(Name of Contact Person) (Area Code & Daytime Telephone Number)

Enclosed please find a check made payable to the Florida Department of State for:
 \$25 Filing Fee \$55 Filing Fee & Certified Copy

STREET/COURIER ADDRESS:
Registration Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, Florida 32301

MAILING ADDRESS:
Registration Section
Division of Corporations
P.O. Box 6327
Tallahassee, Florida 32314



FLORIDA DEPARTMENT OF STATE
DIVISION OF CORPORATIONS

**DISSOCIATION OR RESIGNATION OF MEMBER, MANAGER FROM
FLORIDA OR FOREIGN LIMITED LIABILITY COMPANY**

(Pursuant to 605.0216, Florida Statutes)

1. The name of the limited liability company as it appears on the records of the Florida Department of State is: Bernskin Family Realty LLC.

2. The Florida document/registration number assigned to this limited liability company is:

108000554043

3. The date this member/manager withdrew/resigned or will withdraw/resign is: per Court Order dated

4. 1. Oppenheimer Trust Co of DE, hereby withdraw/resign as a

6/7/16

(Print Name of Person Resigning)

Manager
(Print Title)

of this limited liability company and affirm the limited liability company has been notified of my resignation in writing.

By: Janet Craig, SVP
Signature of Dissociating Member or Resigning Manager

Janet Craig
Oppenheimer Trust Co. of Delaware

Filing Fee: \$25.00 (Required)
Certified Copy: \$30.00 (Optional)

2016 JUL 11 P 4:29
FLORIDA
DEPARTMENT OF
STATE
DIVISION OF
CORPORATIONS

FILED