

Judge Eric Kimball: ... of I believe Bernstein Family Realty, LLC. I have a large list of parties who are appearing, so I'm just gonna call them in the order they appear in my Zoom list. Ms. Feinman. Good morning.

Heidi Feinman: Good morning, your honor. Heidi Feinman for the US Trustee.

Judge Eric Kimball: Mr. Bakst. Good morning.

Michael Bakst: Good morning, your honor. Michael Bakst, the trustee.

Judge Eric Kimball: Um, Mr. Rose. Good morning.

Alan Rose: Uh, good morning, your honor. Alan Rose on behalf of Ted S. Bernstein, a successor trustee and Mr. Bernstein is also on one of the Zoom windows.

Judge Eric Kimball: Very good and good morning to Mr. Ted Bernstein. Let's see Mr. Daniel Bernstein.

Daniel Bernstein: Good morning, your honor. Daniel Bernstein.

Judge Eric Kimball: Uh, Mr. Jacob Bernstein

Joshua Bernstein: Morning, your honor. Jake here.

Judge Eric Kimball: Let's see. Ms-- Oh, Mr. Joshua Bernstein.

Joshua Bernstein: Good morning, your honor. I'm here.

Judge Eric Kimball: Let's see. Ms. Candice Bernstein.

Candice Bernstein: Hello, your honor. Yes. Candice Bernstein here.

Judge Eric Kimball: Thank you. Uh, Mr. Eliot Bernstein.

Eliot Bernstein: Hi, your honor. I'm here and I'd like to make a brief opening statement to the court.

Judge Eric Kimball: Um, well, I think we, Mr. Bernstein, we need to wait until all the appearances are in. Okay?

Eliot Bernstein: Oh, okay, that's what I meant.

Judge Eric Kimball: Thank you.

Eliot Bernstein: Thank you.

Judge Eric Kimball: Ms. Hogue? Is there Ms--

Hillary Hogue: Good morning.

Judge Eric Kimball: Oh, go ahead.

Hillary Hogue: Good, good morning, your honor. My name is Hillary Hogue, and I'm a member of the Guardianship Improvement Task Force and I'm an observer.

Judge Eric Kimball: Ah, thank you. Good morning. Ms. Fleming.

Hillary Hogue: Good morning.

Judge Eric Kimball: I have Ms. Luann Fleming. Did you like, wish to appear? Okay. You are on mute. If you're on a phone, it will be star six. Let's see. Um, Ms. Garcia.

Inger Garcia: Good morning, you're honor. Observing.

Judge Eric Kimball: Okay. Let's see. And Mr. Shraiberg.

Bradley Shraiberg: Good morning, your honor. Bradley Shraiberg on behalf of secured creditor, the estate of Walter Sahm, and Patricia Sahm.

Judge Eric Kimball: All right, so I know you--

Luann Fleming: Your honor, this is Luann Fleming. Uh, I am just an observer from [inaudible] radio. Okay.

Judge Eric Kimball: Very, very good. Thank you. And good morning.

Luann Fleming: Thank you. Good morning.

Judge Eric Kimball: All right. So before we jump into the two matters that I have on the calendar tomorrow-- this morning, um, that is a motion filed by Mr. Bakst at ECF 40, and then a motion filed by Mr. Eliot Bernstein at ECF 44. I'd like to give a little review of how we have procedurally got to today. Um, this is currently a chapter seven case for a limited liability company, a Florida limited liability company, it's Bernstein Family Realty. The case was commenced by the filing of an involuntary petition back in April. Um, there were three petitioners on that involuntary petition and each of them are participating in the hearing this morning. Now, they signed the involuntary petition, on the involuntary petition itself it indicates that each of them are creditors. If you read the attachment, there's a lengthy attachment to the petition.

It's fairly clear that they are not creditors of the debtor. In fact, it appears that each of them is the beneficiary of a trust. And each of those trusts is an equity owner in the debtor. And so they are at best the beneficiary, each of an equity owner in the debtor. This is also made clear in the statement in the attachment that whatever right they have against the debtor is for capital investment. And that's literally stated in the attachment. And so, uh, and likely it's not actually true that the individuals have a right to return of capital the trusts have a right to return of capital if the attachment is correct. So it's very likely that none of the petitioners were actually appropriate creditors under section 303.

Um, but, uh, what normally happens when an involuntary petition is filed, the clerk issues the summons, and then the petitioners are required to serve the petition and the summons on the alleged debtor. In this case, the alleged debtor again, is a Florida limited liability company. Um, as of this morning, that entity remains dissolved on the Florida, um, corporations website and has no manager according to the Florida corporations website. Also apparently at the time of the petition, the registered agent for the alleged debtor had resigned. And so the summons and the petition were served on the Florida secretary of state. Now, there was no response to the, um, involuntary petition, for fairly obvious reasons. And that is that the petitioners are in control of the alleged debtor. And, of course, they did not want there to be a response.

So why was the petition filed when it was? Um, this is also apparent from the attachment to the petition. There has been a foreclosure action in Florida state court. There had been a judgment obtained. Um, I believe on behalf of Mr. Shraiberg's clients and they were moving forward a sale. And so the bankruptcy was instituted to prevent that sale. The property in question is the single family residence. It appears to be the only real asset of the Bernstein Family Realty, LLC. And I believe that the petitioning creditors live in that property. Um, and so the, the petition was filed to prevent, um, the sale of the property.

Why was this not a voluntary petition? Well, apparently the answer is that the entity had been dissolved and there was no manager. And so there was nobody to file a voluntary petition. Now, no matter how a case is commenced, whether it be by a voluntary petition filed by the entity or an involuntary petition, a very important thing happens at the moment that the petition is filed. The automatic stay comes into play. That's a statute in title 11, section 362, and it prevents any creditor activity with regard to the alleged debtor in an involuntary, are the debtor and later debtor in possession against that entity to collect any debt that existed previously or against any property that was owned by that entity.

So creditors are prevented from taking action. And, uh, if creditors do take action, then in this circuit, that action would be void unless they had sought relief from stay, meaning it would have no legal impact whatsoever. So once the case is started, this was a chapter 11 case. In a chapter 11 case, it is presumed that the debtor becomes the debtor in possession and remains in possession of its property, which here is primarily a single family residence and also maintains control over the course of what should be a reorganization effort. Um, the debtor, once the order relief, for relief is entered. And even before that, as the alleged debtor has some extremely important tasks that fall on it, the very first task is to provide the court with a list of creditors.

Until a list of creditors is filed, and we call that the matrix, we have a secret bankruptcy. There is an automatic stay, but nobody knows about it officially. The clerk is without power to send notice to anyone. Um, and that means creditors are put in the position of potentially violating the stay of taking actions, which be, which would be void and having no knowledge that the bankruptcy exists. Also importantly, the absence of the matrix means that the United States Trustee, which is a special arm of the justice department, whose duty it is in general to oversee the administration of bankruptcy cases, in particular chapter 11 cases, cannot convene a

meeting of creditors as required by section 341 of the bankruptcy code. So really the basic start of a case cannot happen without the matrix.

The debtor also has other duties. The debtor has to file schedules of assets and liabilities that lets everyone know what there is and who may be making claims against it. And also a statement of financial affairs. Each of those things, and other documents need to be filed under oath, um, by somebody who can represent that they act on behalf of the debtor. But here, at least as of today, the official records don't show that anyone can act on behalf of the debtor. And then, perhaps a more difficult problem for this particular debtor, um, the, uh, a entity such as the Bernstein Family Realty, LLC can do nothing at all in federal court without a lawyer. And so as soon as the, the order for relief was entered, I, as I often do set a status conference in the case, um, it became clear to me that there were a number of parties who are interested in the case.

There's of course, um, uh, the three petitioners, Mr. Eliot Bernstein, uh, Candace Bernstein. I still don't know exactly what your relationship is with the debtor. Um, but, uh, and then there were also some creditors who appeared. Um, after that initial status conference, I entered an order directing the debtor again, an entity to hire counsel because I had a chapter 11 with an entity with no captain of the ship, because there was no manager and with nobody at the rudder, because there was no lawyer. And so I had a second status conference.

When I got to that second status conference, the debtor had still failed to comply with other orders entered by the court requiring that the matrix schedule, statement of financial affairs and other documents be filed and the debtor still didn't have a lawyer. And so I entered a longer order giving new deadlines for filing all the required documents to have a bankruptcy case, and also a deadline for there to be a lawyer, uh, who make an appearance in the case, the debtor file a, uh, engagement, um, agreement and application to retain counsel, a disclosure by that counsel, all of this is addressed in that order. None of that happened.

So the United States Trustee filed a motion under section 11, 12(b), asking that the court find that there is cause. There are very, uh, there's a very significant list of reasons why the court can find cause under 11, 12(b). Um, that is not a, is not a dispositive list. There are other things the trustee made, I think four arguments. The United States Trustee made four arguments. Um, and they were, uh, they were all serious problems with the case, including I point out, um, lack of proof of insurance. Um, and I set that matter for hearing. I had a hearing, um, at which the real issues were, there was no lawyer, there were no documents filed. There was no proof of insurance. Those were the issues at that hearing. I know there was some concerns raised about whether a particular creditor had died and whether certain claims that might be later subject to litigation in the bankruptcy are real and valid.

And whether there are defenses somehow to a judgment already entered in the state court, none of that was relevant at the court's hearing on the US Trustee's motion to dismiss or convert. I ruled on that and I converted the case. And so that's where we are today. We have a couple of things. Um, we have a motion filed by the trustee, which points out that at least at the time he filed the motion, there still hadn't been almost anything done in the case. And he was worried that the case was going to be

dismissed as a result. And the other is a creditor, excuse me, a claimed creditor, an interested party, Mr. Eliot Bernstein, wa- asked that the court that I disqualify from the case and that essentially the chapter 11 be reinstated. So Mr. Eliot Bernstein, you said you wanted to make a statement.

Eliot Bernstein: I do. Thank you, your honor. Uh, I'm still under, uh, medical care, um, super high blood pressure and holding off a quadruple bypass to help my kids here. Um, first off, your honor, when you said three trusts own this, Mr. Rose can tell you since he had those trusts destroyed in a prior court hearing, there are no three trusts.

Judge Eric Kimball: Uh, Mr. Bernstein, Mr. Bernstein.

Eliot Bernstein: Yeah.

Judge Eric Kimball: Your three sons have represented specifically in writing that they are beneficiaries of three trusts.

Eliot Bernstein: No.

Judge Eric Kimball: So if that's not true, then they have lied to the court. Let me also point out to you. Let me go, I wanna go back Mr. Bernstein stop. When I speak, you should not speak.

Eliot Bernstein: Oh.

Judge Eric Kimball: I wanna go back. I think it is very wise that each of the petitioners obtain independent counsel in this case. The United States Trustee is sitting in--

Eliot Bernstein: [crosstalk]--

Judge Eric Kimball: ... on this hearing through Ms. Feinman. Mr. Bernstein, when I'm speaking, you do not speak. It is possible that the filing of the petition in this case was a violation of title 18. There are potential criminal penalties for the three individuals who filed the petition in this case.

Eliot Bernstein: Got you.

Judge Eric Kimball: Okay. Mr. Bernstein, you may continue.

Eliot Bernstein: Okay. So your honor, with, uh, no disrespect to you, uh, I believe you should [inaudible] disqualify or recuse, as you're now on material and fact witness to several ongoing frauds before the court, your court, which were stated on the June 18, 22 record directly to you and the US Trustee, who was given prior notice of the fraud going on by my children's former counsel, Inger Garcia, and have now been proven before this court. First, Bradley Shraiberg made a series of fraud, done in court by representing from the start of dead Walter Thomas' client.

Judge Eric Kimball: Mr. Bernstein, Mr. Bernstein, people telling me that they think others have defrauded them does not make me a witness to the fraud.

Eliot Bernstein: A lawyer, a lawyer--

Judge Eric Kimball: Sir.

Eliot Bernstein: An officer of the court notified you. Not me, your honor. [crosstalk]

Judge Eric Kimball: I know Mr. Bernstein, Mr. Bernstein, I just, Mr. Bernstein, you don't need to continue with that argument because if, Mr. Bernstein, if you were correct, anyone telling me that they felt a fraud had occurred during a hearing would mean that I would not be able to rule on the case. That makes no sense. So you can go to the next argument.

Eliot Bernstein: Okay. Second, Bradley Shraiberg stated per judiciously to the court repeatedly on the record that the final judgment in deceased Walter Sahm's individual name had somehow transferred his interest to his wife, Patricia. I think you'll recall he said that closing.

Judge Eric Kimball: Mr. Bernstein, could I ask you--

Eliot Bernstein: [crosstalk]

Judge Eric Kimball: Mr. Bernstein, I want you to focus on the issues. What does that have to do with conversion of the case or your motion to disqualify?

Eliot Bernstein: Well, this all has to do with the motion to disqualify you.

Judge Eric Kimball: Okay. Can you explain how, let's say you are right and Mr. Shraiberg has lied to me, how does that mean that I need to disqualify?

Eliot Bernstein: Well, you, A, you, because you're a material on fact witness he's lied to you. So you'll be questioned by the US Attorney when they're brought in. And as you know, the trustee who has information on all this, and now the court does as of this morning, um, the US Attorney needs to, should have been called in by Heidi Feinman, but I don't know how she didn't. She was notified about a dead man filing in your court before the last hearing and seemed to forget it kind of like you're forgetting it now, but I--

Judge Eric Kimball: Mr. Bernstein, Mr. Bernstein, somebody filing or making a false statement in, in the federal court does not make the judge hearing the matter a material witness. I might need to rule on sanctions. I might need to rule on other matters, but it doesn't make me a material witness.

Eliot Bernstein: Okay, maybe--

Judge Eric Kimball: So I would not disqualify based on that.

Eliot Bernstein: It may make you a party to the crime. If you knew Walter was dead prior to Inger Garcia putting it on here.

Judge Eric Kimball: Um, Mr. Bernstein, I don't know the Sahms at all. I know nothing about the background of the case and there's no way I could be a party to any alleged crime and connection with those matters.

Eliot Bernstein: You also didn't disclose that Robert Sweet Apple's daughter clerked for you, and Robert Sweet Apple's part of the lower court process is in the petition's numerous time as a party who started this fraud. And I think you should have firmly disclosed that to us upfront. [crosstalk]

Judge Eric Kimball: Um, Mr. Bernstein, I do not need to disclose the fact that nine years ago, somebody was an intern for a number of weeks during the summer.

Eliot Bernstein: [crosstalk]

Judge Eric Kimball: Mr. Bernstein, when I'm talking, you don't talk. Um, let me point out that the court I, and all of my colleagues have interns. I have two summer interns this year. I have had, I've lost count of how many term law clerks I have had. Those people go out into the world. Uh, they are prohibited from working on anything that was in chambers at the time that they were employed in chambers. Other than that, they get to appear in matters. Many of the law firms in South Florida have law clerks, lawyers who are previously employed by my chambers and my colleagues, Mr. Shraiberg's firm, I think has two of my former law clerks. I do not need to disclose that in every case. I do not have ongoing relationships with them.

Let me point out that Ms. Sweet-- Mr. Sweet Apple's daughter was in chambers nine years ago as a summer intern. As far as I know I've had no contact with her since then. And my only contact with Mr. Sweet Apple is that I was going to say he has appeared in some cases with me. I'm not sure that's true. I think his former partner has appeared in some cases with me. This is all not relevant to a motion to disqualify in this case. What else do you have?

Eliot Bernstein: Okay, well, I'd ask if you stay on as the jurist and hear the matters further that you assure my children and family you'll immediately discharge your duties to report the frauds that have been reported to you by a licensed Florida Attorney to the proper authorities and take corrective actions that if Mr. Shraiberg and Mr. Rose are propounding frauds on the court by representation, that's illegal that they be removed from the proceedings and sanctioned immediately. And my family protected by you, 'cause we're in danger from your lack of action to do anything after an attorney notified to a fraud, unless you're telling me you notified the US Attorney. And, but I see Mr. Shraiberg here, and the guy ran a fraud on this court for since the beginning, he was representing a dead person.

He now tried to substitute it for the estate and the estate has no claim. So that's even more fraud 'cause the final judgments in the dead man's name prove fraud in that court. There's so much fraud here. And your honor, everything you ask for, we're trying to do, trying to get counsel. But Mr. Rose is at the helm of blocking us from getting funds for the kids to save this property that's theirs, that they put money into

to buy two thirds of the money that purchased the home. Other than the Sahms note, which we have all intent of honoring my father's deal with the Sahms. But, but Mr. Shraiberg didn't even put in letters of testamentary to prove that the Sahm's are even aware of what he's pulling here in their deceased father and husband's name. This, this is so steep in [crosstalk]--

Judge Eric Kimball: Mr. Bernstein, Mr. Bernstein, I need to point out, I need to point out something very important to you that you probably have not understood.

Eliot Bernstein: Okay.

Judge Eric Kimball: I acted on a motion filed by the United States Trustee. If no one else had attended the hearing in support of that motion, I would've done exactly what I did at that prior hearing. If Mr, if Mr--

Eliot Bernstein: I'm not, I'm not questioning that.

Judge Eric Kimball: Mr. Bernstein, stop. If Mr. Shraiberg had not appeared, if Mr. Rose had not appeared, if the Sahms had not taken part in the case dead or alive, I would still have granted that motion. That motion was about what the debtor was doing in the case. Not anyone else. If there are, if I, I assure you that if I believe that there is a crime that is subject to federal investigation, I will report it as my duty as a member of the Florida Bar. I have yet to see that in this case. And so, but that is not what today is about. Mr. Bernstein. Today is about the trustee's motion and your motion explaining that I should disqualify based at least initially on the allegation that I was somehow biased as a result of retaining an intern nine years ago, who happens to be the daughter of a lawyer who apparently is opposing the debtor in some litigation that I know really nothing about at this stage. So let's go back to you. What is your relationship with the debtor in this case?

Eliot Bernstein: Um, well, now I'm the acting Bernstein family manager coming into so much fraud. That [crosstalk]

Judge Eric Kimball: Okay. Mr. Bernstein, I'd like you to focus, I'd like you to focus on my questions. I'd like you to focus on my questions. What do you mean by acting manager? Are you saying that the entity-- who are the owners of the Bernstein Family Realty, LLC, in your view, Mr. Bernstein?

Eliot Bernstein: Well, I don't, it was dissolved by a judge in the state court BFR and the assets were transferred to me and my wife. Mr. Rose is very--

Judge Eric Kimball: Wait, wait, wait, wait, wait, wait, wait, wait, wait, wait, stop. Are you saying that Bernstein Family Realty LLC does not have any assets?

Eliot Bernstein: I'm saying it was judicially dissolved, I believe. And there's an order Mr. Rose is in possession of, I don't know why he hasn't put it down since he sought it. Um--

Judge Eric Kimball: Uh, Mr. Bernstein, if the Bernstein Family Realty has no assets at all, why do I have a bankruptcy case?

Eliot Bernstein: Well, because the assets were removed fraudulently and that's what's gonna-- the onions peeling here, sir, right in your court. There's a massive fraud going on, on so many levels. So let me give you some of the answers. [crosstalk]--

Judge Eric Kimball: No, I don't, I don't want to hear any, Mr. Bernstein, I'm, I'm done with the answers. I'm coming back to you, coming back to you.

Eliot Bernstein: Okay. Yeah.

Judge Eric Kimball: Oh, so who, who chose you as the manager of Bernstein Family Realty, LLC.

Eliot Bernstein: My children.

Judge Eric Kimball: Okay. And so, and how do they have the power to do that? Are they the equity owners of Bernstein Family Realty--

Eliot Bernstein: They're the members.

Judge Eric Kimball: Excuse me?

Eliot Bernstein: They're the members.

Judge Eric Kimball: They're the members in- individually in their own names?

Eliot Bernstein: Correct. Well, there is no trust anymore. Mr. Rose dissolved that through a bunch more fraud in the lower court, but we'll get to that too.

Judge Eric Kimball: Then, then why do they say in their own attachment to the petition that they are the sole beneficiaries of three irrevocable trusts?

Eliot Bernstein: They were, that's how first [crosstalk]--

Judge Eric Kimball: They were in April?

Eliot Bernstein: Well, I believe they stated that they were, that the BFR was held in trust at one point.

Judge Eric Kimball: That isn't what they stated. They stated that they were then at that time, the beneficiaries of three irrevocable trusts, which were in turn the owners of Bernstein Family Realty, LLC.

Eliot Bernstein: That's correct. That's 100% correct. There's no misstatement there.

Judge Eric Kimball: Okay. So that was all true.

Eliot Bernstein: Yes.

Judge Eric Kimball: Okay. So, but there's no longer a trust for any of them?

Eliot Bernstein: The, that was dissolved by fraudulent activities of Mr. Rose, which we'll get into in this proceeding, no matter which way we take it.

Judge Eric Kimball: All right. Um, so when, when were you selected--

Eliot Bernstein: And, and I appreciate by the way, your honor.

Judge Eric Kimball: Hold on, when were you selected as manager?

Eliot Bernstein: Uh, few weeks ago, because when we contacted the state department, uh, it appears that somebody fraudulently changed the address from my brother's office address, 'cause he was the manager of BFR at one point to my address. And we still don't know, we've been waiting for them to follow us back and try to figure out how to make the change and get it done with the state. And there's also a matter of \$1,000 that Mr. Rose, again, is holding up in the state court in an, again, a similar fraud to what he's doing here in this court, your honor. He in fact said he represents Ted S. Bernstein as the trustee of the Simon L. Bernstein trust. I provided you a copy with the trust that he submitted at a validity hearing and it was validated and that trust clearly states Ted Bernstein cannot be the successor trustee as he's related to Simon Bernstein.

And it also states Ted Bernstein is predeceased for all purposes of the trust. So yet again, we have another fraud that continuing now in your court, and I'm hoping that as a federal judge, you take those steps you just assured me you'd take to protect my kids. Okay. I don't know what the hell I'm doing to be quite honest. I'm quite sick and medicated and I'm trying the best to protect my kids in a house they own. And you're being lied to in so many ways that that's gotta stop. These parties gotta be removed. That, I mean, seriously, they, they need to be investigated. I've already contacted some authorities and put in all their names as best as I can. I know the trustee, Michael, who's been very helpful, uh, got that letter I wrote to him, correct, Michael? Mr. Bakst?

Judge Eric Kimball: Well, I'll, I'll let him talk in a couple of minutes.

Eliot Bernstein: Oh, okay. So I had sent him a letter describing all this and the fact that once there is a fraud that's known, he needs to report it to the US Attorney. And the case most likely should be suspended till everybody's determined to not be a part of the fraud and not disrespectfully you yourself, your honor. I'm not the guy, I'm not the guy [crosstalk]

Judge Eric Kimball: Um, Mr Bernstein, Mr. Bernstein, Mr. Bernstein, nothing in this case is going to be suspended. This is an ongoing chapter seven case right now, [crosstalk]. Although there is, I think a motion to dismiss file.

Eliot Bernstein: Yeah.

Judge Eric Kimball: Um, but I haven't reviewed that yet. And it'll be set for hearing, um--

Eliot Bernstein: What will be your reaction in the fraud issues if there is the fraud we're describing to you and that was reported to you by a licensed Florida Attorney?

Judge Eric Kimball: Uh, Mr. Bernstein, as I said, I get to decide as a Florida lawyer and a member of the federal judiciary when I report things. But everybody on this meeting, if they were aware all of the lawyers, if they were aware of a crime being committed, they also have an independent duty and you yourself, of course, as a citizen can report to appropriate--

Eliot Bernstein: Yes. [crosstalk].

Judge Eric Kimball: ... authorities that a crime is, has been committed. And, and you, you should do that if you feel that that's appropriate.

Eliot Bernstein: [crosstalk]--

Judge Eric Kimball: But Mr. Bernstein, that is, Mr. Bernstein yelling back at me will really not make any difference. Um, there is--

Eliot Bernstein: I'm just concerned for my children's life. Your honor, [00:27:20]

Judge Eric Kimball: What you don't, Mr. Bernstein, Mr. Bernstein, if you don't stop talking I will mute you. Okay.

Eliot Bernstein: Oh, okay.

Judge Eric Kimball: Okay. Um, this is the problem with what's happening in this case is that your three sons have brought into play the very substantial power of the federal court in a bankruptcy matter. And now Mr. Bakst has been appointed as trustee and assuming that the case is not dismissed, he will be investigating everything in relation to this particular debtor. Not necessarily all of the things that you think are frauds, by the way, I'm not inviting or directing Mr. Bakst to do anything in that regard, he will decide what's right. Um, and right now what we have is in my view, a completely unsupported motion to disqualify filed by somebody who apparently has been made the manager of the debtor in spite of the fact that the official records show nothing filed since 2016. It also says that you're a creditor. Could you explain how you're a creditor of this debtor?

Eliot Bernstein: Yeah, I put in a, uh, a, uh, agreement me and my father had, uh, that funded BFR for many years. Uh, I believe to go over a million dollars or so. Um, so you know, I'm looking to get that back if anything happens here, of course. [crosstalk]

Judge Eric Kimball: Um, there are deadlines, Mr. Bernstein, there are deadlines for the filing of claims that will be probably created in this case. You need to pay very close attention to that. Um--

Eliot Bernstein: Yeah, [inaudible] I'm trying.

Judge Eric Kimball: Okay. All right. So--

Eliot Bernstein: And then--

Judge Eric Kimball: Yeah, I'm gonna go to Mr. Bakst. So Mr. Bakst, you have a motion that's on today. ECF 40.

Michael Bakst: Thank you, your honor. Michael Bakst, the trustee. Um, your honor, I filed the motion, um, because of the fact that when certain things aren't filed, the clerk of the court may automatically dismiss a case. Um, I can't see really how this case proceeds forward based on the reasons I give, um, including that we still don't have required court filings with the court. Um, we had a 341 meeting on July 6th, nobody appeared on behalf of the debtor. Um, so there's many issues as far as the case going forward. Um, and I have seen the motion Mr. Shraiberg filed, uh, yesterday where he is seeking to dismiss this case. The purpose of what I filed is that I wanted to give everyone an opportunity to explain why based on the fact that we don't have certain filings with the court, why this case should not be dismissed as it normally would when there, uh, a debtor doesn't file what they're supposed to file. Um, so really if no petitioning creditor, um, with actual standing or any other creditors comes forward today, um, I think it would be appropriate for the case to be dismissed because I, I do not see how for many reasons this case could be a viable chapter seven proceeding, whether there be a distribution for the benefit of general unsecured creditors.

Judge Eric Kimball: Understood. Hold on a moment, everyone. All right. So there's been a motion to dismiss filed. Um, I think this morning, Mr. Shraiberg? Yesterday?

Bradley Shraiberg: Uh, after hours yesterday.

Judge Eric Kimball: All right. Um, normally I would set that out several weeks. Is there anybody who would object to me hearing that next week? We have on the call all three petitioning creditors, Mr. Eliot Bernstein, Ms. Candice Bernstein, a number of other parties. Um, is there, is there anyone who would've--

Candice Bernstein: [inaudible]--

Judge Eric Kimball: Go ahead? Who was that?

Candice Bernstein: Hi, this is Candice Bernstein. I had to run to get a power port. Um, yes. So, you know, everything that, you know, our family has done has been in good faith, trying to get this company reorganized, restructured, get the documents, you know, everything, get counsel. You know, we have had, there's money being held in the court registry. We've been try and get to seek counsel. So, um, you know, we definitely would love that opportunity, you know, to not be dismissed, stay here. Um, I've also notified the trustee that, you know, I'm coming in as a potential buyer as well.

Judge Eric Kimball: Understood. Are you also a creditor, Ms. Bernstein?

Candice Bernstein: So I am in there like that as well, because I have been supporting Fam- Bernstein Family Realty. You know, this has been going on for about 10 years from probate court. [crosstalk]

Judge Eric Kimball: And when you say--

Candice Bernstein: [inaudible] to work out something fairly with the songs.

Judge Eric Kimball: I know. I'm trying to figure out, are you, when you say supporting, do you mean personally putting money into Bernstein Family Realty?

Candice Bernstein: Uh, correct. [crosstalk]

Judge Eric Kimball: Okay. Thank you. Well, my, my question is there has been a, there's been a separate motion filed to dismiss the case. Now, let me remind everyone when the United States Trustee filed, uh, their motion that I heard a couple of weeks ago. And, uh, I found that there was cause under 11, 12(b), but there are two options at that time, um, for the court, if there's cause. There were three independent reasons that I gave for finding cause. One is dismissal and the other is conversion. And at that time I selected conversion. Now, there's a new motion to dismiss filed by Mr. Shraiberg. And my question to all of you is, should I wait until the beginning of August to hear that? Or should I hear it next week? Does there anybody who would be concerned with me shortening the notice period and hearing it next week?

Eliot Bernstein: I am, your honor. Eliot Bernstein.

Judge Eric Kimball: Okay. Can you explain why?

Eliot Bernstein: Yeah, 'cause I just got their motion last night and that's gonna take me some time to research all that and oppose it with an argument.

Judge Eric Kimball: All righty, we'll give the normal notice for, uh, a motion to dismiss. And that means also I think, um, Mr. Eliot Bernstein, you filed another motion to reconsider.

Eliot Bernstein: Well, that was kind of partial answer to their stuff and notifying you of the [inaudible] letter of fraud, et cetera, putting it in the [crosstalk].

Judge Eric Kimball: So is that, is this supplemental motion for reconsideration and response? Do you want me to consider that now? It was apparently filed this morning. So is, is that intended for me to consider in connection with today's hearing is, is--

Eliot Bernstein: No, no. Yeah. Let, if you're holding off their motion, sure.

Judge Eric Kimball: No, no, you, you're misunderstanding my question. I'm, I, apparently I'm not being clear enough. Was this filed in connection with today's hearing?

Eliot Bernstein: It was, it, no, to their motion that was filed last night in the middle of the night that I've been up all night dealing with.

Judge Eric Kimball: Okay, let me read the title of it to you. And then I'm gonna try to figure out how it's in response to a motion filed last night that I haven't said for hearing yet. It says creditor--

Eliot Bernstein: [crosstalk]--

Judge Eric Kimball: I'm gonna read you the title, creditor and interested party, Eliot Bernstein, creditor, and acting agent BFR manager, supplemental motion for reconsideration and response to trustee motion for delay and partial response to last minute motion for improper parties, Joanna Sahm as alleged representative of Walter Sahm. What is the-- So this is not for today's hearing or it's for today's hearing?

Eliot Bernstein: Part of it, part of it was for today's hearing

Judge Eric Kimball: And part of it is not?

Eliot Bernstein: Correct.

Judge Eric Kimball: Okay. I'm setting that for hearing along with the motion to dismiss.

Eliot Bernstein: Okay.

Judge Eric Kimball: Let me ask a really basic question. Mr. Shraiberg, your client, you have a judgment. Can you, can you answer aloud please?

Bradley Shraiberg: Sorry. I was on mute. Correct, you honor.

Judge Eric Kimball: Okay. Is the judgment under appeal?

Bradley Shraiberg: The judgment was not timely appealed by the borrower. It was appealed by Mr. Bernstein. Eliot Bernstein.

Judge Eric Kimball: Was Mr., was Mr. Eliot Bernstein a party to the action?

Bradley Shraiberg: I don't believe so.

Eliot Bernstein: Yes.

Bradley Shraiberg: I, I'm, I know he was living in the, um, house at the time. I don't know. I'll, I'll defer to Mr. Rose who was involved in that case, or who was a--

Judge Eric Kimball: I, I don't want, I don't, I do not wanna get deeply into this. All right. So there's an appeal pending from that judgment. And where does that stand procedurally? Just timing wise.

Bradley Shraiberg: Yeah, the, um, uh, it, it, no briefs have been filed and just the notice of appeal has been filed. Um, Mr. Bernstein filed a motion to stay foreclosure pending the appeal. Judge Kastrenakes grant-- Sorry, denied that motion. However, that motion, while it wasn't argued post-petition, was entered post-petition and our motion to, we will also be filing a motion for stay relief to just retroactively allow [crosstalk]

Judge Eric Kimball: Okay. So, but the motion was, I'm sorry, the motion for stay was denied or granted?

Bradley Shraiberg: Denied.

Judge Eric Kimball: Okay. I get it. And so, yeah, that's--

Eliot Bernstein: Your honor, your honor, this--

Judge Eric Kimball: Yes, Mr. Bernstein.

Eliot Bernstein: One more, one more pertinent piece on that. Uh, Judge Kastrenakes violated your stay order by ruling after the state was in place on dismissing a whole bunch of things without any hearing.

Judge Eric Kimball: I get that Mr. Bernstein, but apparently, Mr. Shraiberg, [crosstalk] hold on. I doubt the state court did that intent--

Eliot Bernstein: [crosstalk]--

Judge Eric Kimball: Mr. Bernstein, when I'm talking, you don't talk. I doubt the state court did that intentionally. Um, and so, uh, and there are ways to remedy that, so.

Eliot Bernstein: Oh--

Judge Eric Kimball: Okay?

Eliot Bernstein: And the appeal is on stay by the appellate court.

Judge Eric Kimball: Can you repeat--

Eliot Bernstein: So I don't know what [crosstalk]--

Judge Eric Kimball: Can you repeat that? Can you repeat that?

Eliot Bernstein: The appeal is on stay--

Judge Eric Kimball: Oh.

Eliot Bernstein: ... by the appeal court and Mr. Shraiberg just misrepresented all that.

Judge Eric Kimball: Uh, he didn't say any, Mr. Bernstein, he didn't say anything about that. He didn't say anything about whether the appeal was stayed. He didn't say it at all. He didn't say that. Yeah. I don't know what you heard, but he didn't say that. All right.

Eliot Bernstein: I'll get it right.

Judge Eric Kimball: Okay. So, uh, right. And arguing about stuff like that is really not helpful. Uh, 'cause what we have right now is a bankruptcy case where there's still no lawyer for appearing for the debtor, where there's somebody speaking as supposedly the manager who is actually not reflected as the manager in the official records of the, of the State of Florida. Mr. Bakst, I'm very curious. You had a 341 meeting. What happened?

Michael Bakst: Nobody appeared on behalf of the debtor, your honor.

Judge Eric Kimball: Wow. Mr. Bernstein, um, on July 6th, were you the manager of the debtor?

Eliot Bernstein: I was.

Judge Eric Kimball: Why were you not at the 341 meeting?

Eliot Bernstein: I didn't know about it.

Judge Eric Kimball: You didn't know about it. Okay. So I assume that you speak to the petitioners. Who are your sons?

Eliot Bernstein: Yeah.

Judge Eric Kimball: Are they able to read?

Eliot Bernstein: Yeah.

Judge Eric Kimball: They all got the notice. So nobody showed up. What I have here is a case filed as a litigation tactic where no one cares to do anything--

Eliot Bernstein: [inaudible]--

Judge Eric Kimball: Be quiet, where no one cares to do anything required under the bankruptcy code except sling mud. And the case is very likely to be dismissed. I will be entering a brief order, shortening the notice period for the motion to dismiss. It'll be heard next week. Um, this case Mr. Bernstein, it is a very good idea if you obtain criminal counsel for you and your three sons. I strongly advise that. If there's anything that should be reported to the, um, to the justice department, it is the filing of the petition in this case. So far that is the one thing I've heard that is potentially a criminal violation. Uh, Mr. Bakst, your motion is granted. You may submit an appropriate order on 40. I'll do a written order on 44. We are done with this case today. I do not intend to hear any more presentation. Good morning, everyone.

Eliot Bernstein: Thank you.

Judge Eric Kimball: All right. Let's see. I believe, is court in recess until 1:30? Yes. Court is in recess.

Recorder: Recording stopped.

Judge Eric Kimball: Wow. Okay.

Michael Bakst: Do a brief order, um, under the rule--