

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH

www.flsb.uscourts.gov

IN RE:

CASE NO.: 22-13009-EPK
Chapter 7 Involuntary

Bernstein Family Realty, LLC,

Debtor.

**RESPONSE AND JOINDER OF TED S. BERNSTEIN, TRUSTEE, TO
MOTION TO DISMISS WITH PREJUDICE [ECF 52]**

Ted S. Bernstein, as Successor Trustee of the Simon L. Bernstein Amended and Restated Trust dated July 25, 2012 ("Simon's Trustee"), as a junior creditor under a recorded second mortgage, submits its response to the *Motion to Dismiss with Prejudice* [ECF 52] filed by the senior secured creditor, Joanna Sahm, as PR of the Estate of Walter Sahm, and Patricia Sahm ("Sahm").

1. Debtor owns only one asset, a single family home (the "Residence"). The original manager of the Debtor financed that purchase in 2007 with a \$110,000 purchase money mortgage from the seller (Sahm, now represented by Brad Shraiberg) and with a \$365,000 second mortgage from Simon Bernstein. Simon was the original manager of Debtor, and apparently funded the LLC's expenses. But after Simon died in 2012, the loans went into default, and Sahm initiated a foreclosure action in state court. The second mortgage was later assigned by Estate of Simon to Simon's Trustee through probate court proceedings, some of which are highlighted below.

2. In state court, after the federal moratorium on foreclosures was lifted, Sahm prevailed by way of a final judgment of foreclosure. A foreclosure sale was noticed for 10:00 a.m. on April 20, 2022. After the foreclosure sale, the second mortgage will be foreclosed as well, and Simon's Trustee will only have a claim to any surplus over the first mortgage and court costs.

3. At 12:58 p.m. on April 19th, the Involuntary Petition was filed, which automatically stayed the foreclosure sale set the following morning. Regardless of the venue, the Residence needs to be sold as soon as possible and without any further delay, given current market conditions. By the time of this hearing on July 20, 2022, three months and a day will have passed since the Petition was filed, and 40 days since the Order Converting Case. Yet nothing has happened to even start the process of selling the Residence. But at the same time, since the April 19th filing, the senior debt has increased at 18% interest, plus substantial attorneys' fees, and the property value has declined. The Court, the US Trustee, the Chapter 7 Trustee, the senior secured creditor, and Simon's Trustee all have been forced to expend substantial time and resources in this Court, just to hear from Eliot Bernstein the same nonsense and smears against fiduciaries and their counsel. In short, Eliot has found a new home for his crusade, along with some new involuntary passengers.¹

4. In state court orders attached as Exhibits A through F, of which this Court is requested to take judicial notice under Federal Rule of Evidence 201,² it has been conclusively determined – in most cases after an appeal – that:

- a. Simon Bernstein's Last Will and Trust were valid (Ex A, p.2);
- b. Eliot Bernstein is not a beneficiary and lacks standing, his filings were stricken, and he was barred from further participation in the cases (id. and Ex. B);

¹ As indicated during the conversion hearing, there is a tortured history to the state proceedings involving the Debtor LLC and no less than fifteen trusts, but such history is irrelevant to the issues before this Court. But so the record is made, the version of facts proffered by Eliot Bernstein and his children is inaccurate.

² A bankruptcy court may take judicial notice of its own records, as well as the records of other courts in related matters. *E.g., In re Meltzer*, 516 B.R. 504, 506 n.2 (Bankr. N.D. Ill. 2014).

c. Eliot Bernstein's "agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the cost to the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust.³ He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions." (Ex. B, p. 3, ¶6);

d. Eliot's petition to remove Ted as Successor Trustee was dismissed, and he is barred from bringing any further actions against Successor Trustee, Ted Bernstein (Ex. D);

e. Eliot was acting in a manner adverse and destructive to his children's best interest; and a Guardian Ad Litem (the late former probate judge Diana Lewis) needed to be appointed to protect the beneficial interest of Eliot's children in their trusts (Composite Ex. C);⁴

f. After more than a dozen appeals to Florida's Fourth District Court of Appeal, Eliot was eventually barred from filing any further *pro se* papers in that court "unless the document has been reviewed and signed by a member in good standing of the Florida Bar who certifies that a good faith basis exists for each claim presented." (Ex. E, F)

7. Those are only some of the highlights of a decade of state court litigation; just the small tip of an "Eliot Bernstein iceberg" that senses new life in bankruptcy court. It took multiple years and hundreds of thousand dollars in legal fees to get to Exhibits A-F. Given (i) the time it would take for due process to run its course through federal bankruptcy, district and appellate courts;

³ The Shirley Bernstein Trust does not have a direct interest in the second mortgage, but it is a related trust administered Ted Bernstein, and its assets pour into the Simon Bernstein Trust.

⁴ The Court may recall there were certain attendees at the last hearing who identified themselves as "observers" or guardianship advocates.

and (ii) the fact his wife and children still support Eliot's antics and, indeed, join in his filings, bankruptcy court no longer looks like an appealing option.

5. While the passage of time and delay are currently the enemy, it has not always been so. Before the Sahms commenced their foreclosure action, there was an expectation the Residence was worth less than the Sahm debt, and thus, there was little hope of a surplus in a state court foreclosure sale. However, with this sudden rise in Florida property values, Zillow shows an estimate of \$770,000. There could be equity above the Sahm debt that could be harvested if the Residence could be sold quickly and before there is a major real estate downturn.

6. Thus, Simon's Trustee initially viewed this bankruptcy court proceeding as a possible blessing in disguise. But it has not proven so. And, as noted, this new venue has unfortunately breathed new life into a regurgitation of nearly a decade of nonsense since Simon Bernstein died. At the last hearing, and in the voluminous filings in this simple, single-asset Chapter 7, this Court heard, among other things, there is a massive fraud and conspiracy in probate court, foreclosure court, and bankruptcy court involving misrepresentations by numerous parties and lawyers, and also heard a preview of more nonsense about Ted Bernstein not being the Successor Trustee. These are not new arguments, they are the same decade-old arguments that died in state court, and have found fresh life and an active voice in bankruptcy court.

8. Were the above not so, or were there an easy and effective way to manage/ liquidate the Debtor's single asset, Simon's Trustee believed there was more hope the Residence could be sold for an amount in excess of the Sahm mortgage debt under section 363 than in a state court foreclosure sale. But hope alone of a surplus, which might recover part of a junior lien or even return some money to the equity holders, does not appear to be enough to justify the continuation

of this otherwise bad faith bankruptcy filing. Perhaps it is not possible to convert into something good, that which started out by the "petitioning creditors" as a bad faith filing or fraud on the court.

9. The initial optimism and hope that the conversion to Chapter 7 would lead to the immediate marketing and sale of the property has been replaced with a dose of reality – there is no easy way to deal with the Eliot Bernstein Family. There has been continued loss to the junior lienholder through erosion in the value of the property and further increase in the amount of the Sahm debt. Reluctantly, in the view of Simon's Trustee, it now appears time to dismiss this case and send it back to the state court.

9. Finally, in reaching its position on the pending motion, Simon's Trustee notes that it carefully considered the various actions taken by the senior creditor, the Sahm family, over the past decade since Simon's death. The senior creditor and its counsel should be commended for their actions and patience after Simon died; their efforts to find a reasonable solution; and their decision to not immediately seek dismissal or stay relief to give this bankruptcy a chance. The Sahm family has been waiting more than 15 years to get paid in full for their home. They were slowed by probate proceedings, a Covid-caused foreclosure moratorium in state court, and now for three months this bankruptcy. There has been no cooperation from Eliot Bernstein or his children, who have been occupying the house rent and mortgage-payment free for more than a decade. The senior creditor even agreed to a carve out to facilitate a bankruptcy sale, which as noted could be more beneficial than a state court auction, even though that was probably not necessarily in the primary secured creditor's absolute best interest. Simon's Trustee commends the primary secured creditor for its position in this case, and now joins in their Motion to Dismiss With Prejudice.

10. Absent an immediate gag order and bar order against Eliot's filings, and absent the commitment of the Chapter 7 Trustee to immediately retain a licensed realtor to sell the only asset of this Estate, this is not the best forum. This case should be immediately dismissed, with a two-year prejudice period, and returned to state court for a foreclosure auction.

WHEREFORE, Ted S. Bernstein, as Successor Trustee of the Simon L. Bernstein Amended and Restated Trust dated July 25, 2012, hereby joins in the Sahm's motion to dismiss with a two-year prejudice period.

Dated: July 15, 2022

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 Rules 2090-1(A) and 9011-4(A)(1)

MRACHEK, FITZGERALD, ROSE,
KONOPKA, THOMAS & WEISS, A P.A.
505 S. Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
email: arose@mrachek-law.com

*Attorneys for Creditor, Ted S. Bernstein,
as Successor Trustee of the Simon L. Bernstein
Amended and Restated Trust dated July 25, 2012*

By: s/ Alan B. Rose
Alan B. Rose
Florida Bar No. 961825

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, on July 15, 2022, I also certify that the foregoing document is being served this day on all counsel of record identified on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those counsel or parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Alan B. Rose

SERVICE LIST

Case No. 22-13009-EPK

VIA ELECTRONICALLY MAILED VIA CM/ECF

Joshua Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
Petitioning Creditor

Jacob Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
Petitioning Creditor

Daniel Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
Petitioning Creditor

U.S. Trustee
Office of the US Trustee
51 S.W. 1st Ave, Suite 1204
Miami, FL 33130
(305) 536-7285

Bradley S. Shraiberg, Esq.
SHRAIBERG PAGE, P.A.
2385 NW Executive Center Drive, Suite 300
Boca Raton, Florida 33431
(561) 443-0800 - Telephone
(561) 998-0047 - Facsimile
email: bss@slp.law
*Attorney for Secured Creditors,
Walter Sahm and Patricia Sahm*

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of his minor children D.B., Ja. B. and Jo. B.;
JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F.,

Defendants.

**ORDER DETERMINING ELIOT BERNSTEIN LACKS STANDING INDIVIDUALLY
AND STRIKING ELIOT'S FILINGS, AND DEFERRING RULING ON THE
APPOINTMENT OF A GUARDIAN AD LITEM AND OTHER RELIEF SOUGHT**

THIS CAUSE came before the Court for hearing on January 14, 2016 on Successor Trustee's *Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children; For A Gag Order to Protect Guardian and Others; and to Strike Eliot's Filings* (the "Motion"). The Court, having considered the record, heard argument of counsel and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. The Motion is GRANTED in part as set forth in this Order and DEFERRED in remaining part pending an evidentiary hearing as requested by Eliot Bernstein and his wife.

2. By Final Judgment dated December 16, 2015, this Court has determined that Simon Bernstein's Will dated July 25, 2012 is valid and enforceable according to its terms. The Final Judgment is valid, binding and in full force and effect.

3. Based upon the Court's determination of the validity of Simon's Will, Simon Bernstein exercised a power of appointment he held over assets in the Shirley Bernstein Trust, in favor of his "then living grandchildren." Eliot Bernstein is not a grandchild of Simon or Shirley Bernstein. Based upon the exercise of the power of appointment, Eliot Bernstein is not a beneficiary of the Shirley Bernstein Trust. As a result, Eliot Bernstein lacks individual standing to participate in this proceeding, as he is not a beneficiary of either the Shirley Bernstein Trust or the Shirley Bernstein Estate.

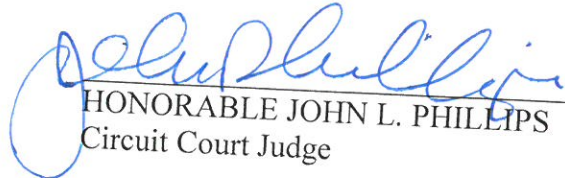
4. Accordingly, Eliot Bernstein is barred from any further participation in his individual capacity in this action, and is removed individually as a party. Any and all pending motions, claims, or other filings by Eliot Bernstein, individually, in this case are hereby stricken from the record, and no further individual filings will be permitted except for a Notice of Appeal of the Final Judgment, should he desire to file one.

5. Having determined that Eliot Bernstein lacks individual standing, the Court next will consider whether a Guardian ad Litem should be appointed to represent the interests of the children of Eliot and Candice Bernstein, each of whom has been determined to be a beneficiary of the Shirley Bernstein Trust, and whether to enter a confidentiality order as requested by the

Trustee in the Motion. These matters will be addressed at an evidentiary hearing to be set by separate order of this Court.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this 1 day of January, 2016.

Feb.


HONORABLE JOHN L. PHILLIPS
Circuit Court Judge

Copies to: Attached Service List

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of

D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile

Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401

(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile

Email: John P. Morrissey
(john@jmorrisseylaw.com)

Counsel for Molly Simon, Alexandra
Bernstein, Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for
her children, and as natural guardian for M.F.
and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a
minor
jilliantoni@gmail.com

Alan Rose, Esq.

Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon

303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.

Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNB

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN,
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of his minor children D.B., Ja. B. and Jo.
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as
Trustee f/b/o Max Friedstein and C.F., under the
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf
of her minor child, C.F.,

Defendants.

**ORDER ON SUCCESSOR TRUSTEE'S MOTION TO
APPOINT A GUARDIAN AD LITEM; FOR A GAG ORDER TO PROTECT THE
GUARDIAN AND OTHERS; AND TO STRIKE ELIOT BERNSTEIN'S FILINGS**


THIS CAUSE came before the Court for evidentiary hearing on February 25, 2016, on
Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of
Eliot Bernstein's Children etc. (the "Motion"). The Court, having considered the record, heard
argument of counsel and being otherwise fully advised in the premises, hereby

ORDERS AND ADJUDGES:

RECEIVED MAR 04 2016

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Shirley Bernstein Trust Agreement dated 5/20/2008 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust. This Court entered a written order dated February 1, 2016, determining Eliot Bernstein lacks standing to participate in this proceeding and striking his individual filings.

2. Eliot Bernstein's three children are among the class of Trust beneficiaries. Eliot seeks to use his role as parent and natural guardian of three trust beneficiaries to give him standing to continue his involvement in this case. The primary issue now raised is whether Eliot Bernstein should be permitted to continuing representing the interests of his minor children, as their parent and natural guardian, in this Trust Proceeding.

3. ~~Despite his status as natural guardian, Eliot will not be permitted to do so, and~~ The Court will appoint a Guardian ad Litem, because there is a conflict of interest between the parent and the children, and because Eliot Bernstein has proven to be an inadequate representative of the best interests of his children. 

4. First, as to the conflict, Eliot's position throughout the case and at trial was that he was a beneficiary of the Trust. He continued advancing that position after trial by prosecuting an appeal of the December 16, 2015 Final Judgment. Eliot's individual interests are in conflict with the interests of his children. Under Florida law, a court should appoint a guardian ad litem when a parent's interest conflicts with the interest of her or her minor child. *Mistretta v. Mistretta*, 566 So. 2d 836, 837-38 (Fla. 1st DCA 1990)(best interests of a minor are *not* fully protected when adverse to the interests of the parent); *Florida Nat. Bank & Trust Co. at Miami v. Blake*, 155 So. 2d 798 (Fla. 3d DCA 1963) (court should have appointed a guardian ad litem for minor child when it was

apparent that the interests of the minor conflicted with the interests of the mother and father); *Gilbertson v. Boggs*, 743 So. 2d 123 (Fla. 4th DCA 1999) (guardian ad litem should have been appointed ^{when} ~~then~~ the parents' interests were adverse to the minor child(s)).

5. Second, Fla. Stat. 731.303(4) provides: "If the court determines that representation of the interest would otherwise be inadequate, the court may, at any time, appoint a guardian ad litem to represent the interests of ... a minor ..." Based upon the evidence presented and the Court's observations at the trial in December 2015 and at the evidentiary hearing on February 25, 2016, and

based upon the Court's review of various motions filed by Eliot Bernstein since the trial, it is ^{in fact, his actions are adverse & destructive to the children's interest} apparent Eliot Bernstein is not an adequate representative of the best interests of his children. ^{JB}

6. Eliot Bernstein states that his agenda includes ridding the court system of corruption among judges, lawyers and fiduciaries, regardless of the ^{to} cost ^{to} the beneficiaries. He appears to have no interest in the swift and efficient administration of the Shirley Bernstein Trust. He has taken actions to hinder and delay the administration of the Trust, and caused waste of Trust assets to respond to his assertions.

7. To the extent not already covered by this Court's Order dated February 1, 2016, Eliot Bernstein is barred from any further participation in this action, whether individually or as purported parent and natural guardian. Any and all pending motions, claims, or other filings by Eliot Bernstein,

¹ In addition, under section 744.3025, the court *may* appoint a guardian ad litem to represent a minor's interest before approving a settlement of the minor's portion of any cause of action in which the gross settlement of the claim exceeds \$15,000 if the court believes a guardian ad litem is necessary to protect the minor's interest, and "shall appoint a guardian ad litem to represent the minor's interest before approving a settlement of the minor's claim in a case in which the gross settlement involving a minor equals or exceeds \$50,000." Here, it is likely that there will be a settlement at some point in which each of minors receives a substantial distribution, and it is likely Eliot will oppose any such settlement.

on behalf of his children, ^{are} ~~is~~ hereby stricken from the record, without prejudice to the rights of the Guardian Ad Litem to take whatever actions are deemed appropriate.

8. The parties shall attempt to mutually agree on a guardian ad litem. The Court will appoint whomever the parties agree upon within the next three business days. Eliot Bernstein may

participate in such discussions. To the extent the parties, including Eliot Bernstein, are unable to

agree on a guardian ad litem, ^{each of the parties shall submit a list of three} ~~upon notice from the Trustee's counsel the Court shall randomly~~

^{names of potential Guardian Ad Litem is each of whom has agreed to} ~~appoint a guardian ad litem for Ja.B., Jo.B. and D.B. or schedule a further hearing to appoint a~~
^{accept the appointment if selected. Those lists shall be filed} ~~suitable Guardian Ad Litem.~~ ^{with the Clerk with courtesy copy to the} ~~undersigned, no later than 10 days from this date.~~

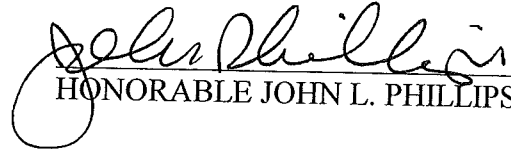
9. The Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

10. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall ^{not} ~~make no effort to~~ contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) ~~shall make no statement of any kind about the guardian, nor post information about the guardian on the internet in any fashion; and (c) shall not in any way threaten or harass the guardian.~~ This Court alone shall supervise the guardian, ^{proposed} ~~and all information concerning this guardianship shall be treated as private and confidential.~~ Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

^{proposed}
 * Parties shall furnish an ^{proposed} ~~order~~ appointing GAT with the lists. The Court will act without further hearing on the appointment, if possible.

11. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE and ORDERED in Chambers, North County Courthouse on 3-1-16, 2016.


HONORABLE JOHN L. PHILLIPS

cc: Attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for
her children, and as natural guardian for M.F.
and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

**IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA**

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIH

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN,
individually, as Trustee f/b/o D.B., Ja. B. and Jo. B.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of his minor children D.B., Ja. B. and Jo.
B.; JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX
FRIEDSTEIN; LISA FRIEDSTEIN, Individually, as
Trustee f/b/o Max Friedstein and C.F., under the
Simon L. Bernstein Trust Dtd 9/13/12, and on behalf
of her minor child, C.F.,

Defendants.

**ORDER APPOINTING DIANA LEWIS AS GUARDIAN AD LITEM FOR
ELIOT BERNSTEIN's CHILDREN, JO.B.; JA. B.; and D.B.**

THIS CAUSE came before the Court at an evidentiary hearing held on February 25, 2016, on Successor Trustee's Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's Children etc. (the "Motion"). Having considered the Motion and the arguments of the parties, taken judicial notice of the matters requested in the Motion, and being otherwise duly advised in the premises, the Court entered an Order in this matter, and a companion order in Case No. 502014CP002815XXXXNB, granting motions to appoint a guardian ad litem for Eliot's

children, Jo.B., Ja.B. and D.B., and setting forth a protocol for selecting a guardian ad litem. Having received the parties' notices contemplated under the companion order, the Court hereby appoints a guardian ad litem as follows:

1. Diana Lewis is hereby appointed as the guardian ad litem for Jo.B., Ja.B. and D.B. in this case, with sole and exclusive authority to represent their interests in this case. The guardian ad litem shall be entitled to petition the Court for reasonable compensation for his/her services, to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by the Jo.B., Ja.B. and D.B. from the Shirley Bernstein Trust u/a/d May 20, 2008, as amended, the Simon Bernstein Trust, and/or the Estates of Simon or Shirley Bernstein.

2. The guardian ad litem shall file an acceptance of appointment with this Court, with a copy to the parties listed at the end of this Order, within 5 business of the date of this Order; otherwise, the parties shall notify the Court by letter that the appointment has not been accepted, in which case the Court will either appoint an alternate guardian ad litem without further hearing or hold an additional hearing to select an alternate guardian ad litem.

3. The guardian ad litem shall have sufficient time after his/her acceptance of this appointment to within which to prepare necessary court filings and prepare for mediation as ordered by the Court at a hearing held on March 7, in the related case of Estate of Simon Bernstein.

4. Trustee and the guardian ad litem shall confer in good faith regarding a resolution of this matter and/or a time frame within which to try any unresolved issues.

5. Pursuant to the Order dated March 1, 2016, the Guardian Ad Litem will have full power and autonomy to represent the interests of the children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court

for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B., Jo.B, and/or D.B.

6. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; and (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

7. The guardian ad litem shall notify this Court and Trustee of any actions taken by Eliot and/or Candice Bernstein which interfere with the guardian ad litem's duties hereunder.

DONE and ORDERED in Chambers, North County Courthouse on 4-4, 2016.


HONORABLE JOHN L. PHILLIPS

cc: Attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIH

Eliot Bernstein and Candice Bernstein,
as Parents of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein, individually and as trustee for
her children, and as natural guardian for M.F.
and C.F., Minors; and Max Friedstein
lisa.friedstein@gmail.com

Jill Iantoni, individually and as trustee for her
children, and as natural guardian for J.I. a minor
jilliantoni@gmail.com

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
561-833-4209 - Facsimile
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

IN RE:

CASE NO. 502012CP004391XXXXNBIH

ESTATE OF SIMON L. BERNSTEIN,

**ORDER APPOINTING GUARDIAN AD LITEM TO
REPRESENT THE INTERESTS OF ELIOT BERNSTEIN'S CHILDREN**

THIS CAUSE came before the Court for hearing on April 8, 2016, on Successor Trustee's *Motion for Appointment of a Guardian Ad Litem to Represent Interests of Eliot Bernstein's Children in this Estate* ("the Motion"). The Court, having reviewed the Motion and the record, having heard argument of counsel and/or the parties, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Simon L. Bernstein Amended and Restated Trust Agreement dated 7/25/12 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust.
2. The Court already has determined in the related matter of the Shirley Bernstein Trust that Eliot Bernstein should not be permitted to continue representing the interests of his minor children, because his actions have been adverse and destructive to his children's interest, resulting in appointment of a guardian ad litem.
3. Accordingly, the Court appoints DIANA LEWIS to act as Guardian ad Litem to advance and protect the interests of Jo.B, Ja.B and D.B. as the guardian sees fit. The Guardian Ad Litem will have full power and autonomy to represent the interests of the

children of Eliot Bernstein, subject to the jurisdiction and review of this Court. The Guardian Ad Litem will be entitled to petition the Court for an award of attorneys' fees to be paid out of the gross proceeds of any recovery, distributions or inheritance to be received by Ja.B, Jo.B, and/or D.B.

4. To protect the integrity and independence of the guardian, Eliot Bernstein and all persons acting in concert with him: (a) shall not contact, email or otherwise communicate with the Guardian Ad Litem except at the request of the Guardian Ad Litem; (b) shall not in any way threaten or harass the guardian. This Court alone shall supervise the Guardian. Any violation of this order may subject the violator to severe sanctions for contempt of court. The Court will use the full measure of its coercive powers to ensure compliance with this Order.

5. The Court reserves jurisdiction to enforce all terms of this Order, and to oversee the service of the guardian ad litem appointed.

DONE AND ORDERED in Chambers, North County Courthouse on 4-8, 2016.



HONORABLE JOHN L. PHILLIPS

cc: All parties on the attached service list

SERVICE LIST Case No.: 502012CP004391XXXXNBIH

Eliot Bernstein, individually
and Eliot and Candice Bernstein,
as Parents and Natural Guardians of
D.B., Ja. B. and Jo. B, Minors
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
Email: Eliot I. Bernstein (iviewit@iviewit.tv)

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0766 - Telephone
(561) 833-0867 - Facsimile
Email: John P. Morrissey
(john@jmorrisseylaw.com)
Counsel for Molly Simon, Alexandra Bernstein,
Eric Bernstein, Michael Bernstein

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com
Individually and as trustee for her children, and
as natural guardian for M.F. and C.F., Minors

Alan Rose, Esq.
Mrachek Fitzgerald Rose
Konopka Thomas & Weiss, P.A.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
Email: arose@mrachek-law.com

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com
Individually and as trustee for her children, and
as natural guardian for J.I. a minor

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 West Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552 - Telephone
Email: service@feamanlaw.com;
mkoskey@feamanlaw.com
Counsel for William Stansbury

Gary R. Shendell, Esq.
Kenneth S. Pollock, Esq.
Matthew A. Tornincasa, Esq.
Shendell & Pollock, P.L.
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431
(561) 241-2323 - Telephone
Email: gary@shendellpollock.com
ken@shendellpollock.com
matt@shendellpollock.com
estella@shendellpollock.com
britt@shendellpollock.com
grs@shendellpollock.com
robyne@shendellpollock.com

Robert Spallina, Esq.
Donald Tescher, Esq.
Tescher & Spallina
925 South Federal Hwy., Suite 500
Boca Raton, Florida 33432

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Dr., 20th Floor
West Palm Beach, FL 33401
561-832-5900 - Telephone
Email: boconnell@ciklinlubitz.com;
jfoglietta@ciklinlubitz.com;
service@ciklinlubitz.com;
slobdell@ciklinlubitz.com

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

ELIOT BERNSTEIN, individually;
ELIOT BERNSTEIN as a beneficiary of the
2008 SIMON L. BERNSTEIN TRUST
AGREEMENT, as amended and restated in the
SIMON L. BERNSTEIN AMENDED AND
RESTATED TRUST AGREEMENT dated
July 25, 2012 and as Legal Guardian of
JOSHUA BERNSTEIN, JACOB BERNSTEIN,
and DANIEL BERNSTEIN,

Case No.: 502015CP001162XXXXSBIY

Plaintiffs,

v.

THEODORE STUART BERNSTEIN, individually;
THEODORE STUART BERNSTEIN, as Successor
Trustee of the 2008 SIMON L. BERNSTEIN
TRUST AGREEMENT, as amended and restated in the
SIMON L. BERNSTEIN AMENDED AND RESTATED
TRUST AGREEMENT dated July 25, 2012;
ALEXANDRA BERNSTEIN;
ERIC BERNSTEIN;
MICHAEL BERNSTEIN;
MOLLY SIMON;
JULIA IANTONI;
MAX FRIEDSTEIN;
CARLY FRIEDSTEIN;
JOHN AND JANE DOE 1-5000,

Defendants.

ORDER DISMISSING ACTION FOR LACK OF STANDING

THIS CAUSE came before the Court for hearing on April 8, 2016, on Successor Trustee's
(1) *Motion for Appointment of a Guardian Ad Litem to Represent Interests of Eliot Bernstein's
Children and (2) Successor Trustee's Amended Motion to Dismiss for Lack of Standing or,
Alternatively, to Appoint a Guardian Ad Litem to Represent the Interests of Eliot Bernstein's*

Children ("the Motions"). The Court, having reviewed the Motions and the record, having heard argument of counsel and/or the parties, and being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. This Court determined after a trial held on December 15, 2015 that the beneficiaries of The Simon L. Bernstein Amended and Restated Trust Agreement dated 7/25/12 (the "Trust") are Simon Bernstein's "then living grandchildren." Under that ruling, Simon's children – including Eliot Bernstein – are not beneficiaries of the Trust.

2. Eliot Bernstein lacks standing to prosecute a petition to remove the Successor Trustee. Eliot Bernstein has no standing individually, and the Court already has determined in the related matter that Eliot Bernstein should not be permitted to continue representing the interests of his minor children, because his actions have been adverse and destructive to his children's interest, resulting in appointment of a guardian ad litem.

3. Accordingly, this action is dismissed with prejudice. Eliot Bernstein, individually; as a purported beneficiary of the Trust, and as legal guardian of his children, shall file no further action against the Successor Trustee.

DONE AND ORDERED in Chambers, North County Courthouse on April 8, 2016.


HONORABLE JOHN L. PHILLIPS

cc: All parties on the attached service list

SERVICE LIST

Case No.: 502015CP001162XXXXNBIJ

Eliot Bernstein
2753 NW 34th Street
Boca Raton, FL 33434
(561) 245-8588 - Telephone
(561) 886-7628 - Cell
(561) 245-8644 - Facsimile
Email: iviewit@iviewit.tv

Alan Rose, Esq.
Mrachek Fitzgerald Rose at al.
505 S Flagler Drive, Suite 600
West Palm Beach, FL 33401
(561) 655-2250 - Telephone
(561) 655-5537 - Facsimile
Email: arose@mrachek-law.com

John P. Morrissey, Esq.
330 Clematis Street, Suite 213
West Palm Beach, FL 33401
(561) 833-0866 - Telephone
(561) 833-0867 - Facsimile
Email: john@jmorrisseylaw.com

Courtesy Copy also to:

Peter M. Feaman, Esq.
Peter M. Feaman, P.A.
3695 W. Boynton Beach Blvd., Suite 9
Boynton Beach, FL 33436
(561) 734-5552
Email: service@feamanlaw.com;
mkoskey@feamanlaw.com

Lisa Friedstein
2142 Churchill Lane
Highland Park, IL 60035
lisa@friedsteins.com

Max Friedstein
2142 Churchill Lane
Highland Park, IL 60035

Gary R. Shendell, Esq.
Kenneth S. Pollock, Esq.
Matthew A. Tornicasa, Esq.
Shendell & Pollock, P.L.
2700 N. Military Trail, Suite 150
Boca Raton, FL 33431
(561) 241-2323
Email: gary@shendellpollock.com
ken@shendellpollock.com
matt@shendellpollock.com
estella@shendellpollock.com
britt@shendellpollock.com
grs@shendellpollock.com
robyne@shendellpollock.com

Robert Spallina, Esq.
Donald Tescher, Esq.
Tescher & Spallina
925 S. Federal Highway, Suite 500
Boca Raton, FL 33432

Jill Iantoni
2101 Magnolia Lane
Highland Park, IL 60035
jilliantoni@gmail.com

Pamela Beth Simon
303 E. Wacker Drive, Suite 2725
Chicago, IL 60601
Email: psimon@stpcorp.com

Brian M. O'Connell, Esq.
Joielle A. Foglietta, Esq.
Ciklin Lubitz Martens & O'Connell
515 N. Flagler Drive., 20th Floor
West Palm Beach, FL 33401
(561) 832-5900
Email: boconnell@ciklinlubitz.com
jfoglietta@ciklinlubitz.com
service@ciklinlubitz.com
slobdell@ciklinlubitz.com

**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401**

July 19, 2017

CASE NO.: 4D17-1932

L.T. No.: 502014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS TRUSTEE, ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that appellee's June 26, 2017 motion to dismiss is granted. This appeal is dismissed. Further,

ORDERED that appellant has initiated numerous meritless and improper pro se proceedings in this court and has abused the court system. See, eg.: 15-3849 - petition denied; 16-0064 - petition denied; 16-0222 - affirmed; 16-1449, 16-1476, 16-1478 (consolidated) - dismissed for lack of prosecution; 16-2249 - dismissed for lack of standing; 16-3162 - dismissed for lack of jurisdiction; 16-4120 - dismissed for lack of jurisdiction; 17-1607 - dismissed; 17-1608 - dismissed for nonpayment of filing fee. Appellant is ORDERED to show cause, within ten (10) days, why this court should not impose the sanction of no longer accepting his pro se filings. See *Johnson v. Bank of New York Mellon Trust Co.*, 136 So. 3d 507, 508 (Fla. 2014); *Lomax v. Taylor*, 149 So. 3d 1135, 1137 (Fla. 2014); *Riethmiller v. Riethmiller*, 133 So. 3d 926 (Fla. 2013); *May v. Barthet*, 934 So. 2d 1184, 1186 (Fla. 2006).

TAYLOR, DAMOORGIAN and KUNTZ, JJ., concur.

Served:

cc: Lorin Louis Mrachek
Gary R. Shendell
Kenneth S. Pollock
Donald R. Tescher
Clerk Palm Beach

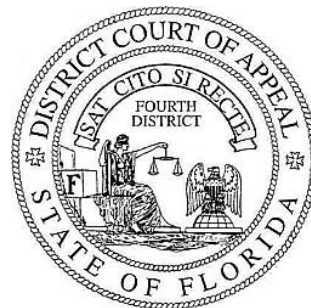
Brian M. O'Connell
Steven A. Lessne
Alan Benjamin Rose
Joielle A. Foglietta
Hon. Rosemarie Scher

Mark R. Manceri
John P. Morrissey
Peter Marshall Feaman
Eliot Ivan Bernstein

ka



LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



**IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401**

August 23, 2017

CASE NO.: 4D17-1932

L.T. No.: 502014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS TRUSTEE, ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that on July 19, 2017, this court ordered appellant to show cause why sanctions should not be imposed. Having considered appellant's August 8 and August 18, 2017 partial responses and motions for extension of time to respond, we deny the request for extension of time in the August 18, 2017 motion (we granted a short extension requested in the August 8, 2017 motion) and determine that sanctions are appropriate. For the reasons set forth in the July 19, 2017 order to show cause, we now impose sanctions pursuant to *Johnson v. Bank of New York Mellon Trust Co.*, 136 So. 3d 507, 508 (Fla. 2014); *Lomax v. Taylor*, 149 So. 3d 1135, 1137 (Fla. 2014); *Riethmiller v. Riethmiller*, 133 So. 3d 926 (Fla. 2013). The Clerk of this Court is directed to no longer accept any paper filed by Eliot Ivan Bernstein unless the document has been reviewed and signed by a member in good standing of the Florida Bar who certifies that a good faith basis exists for each claim presented.

Served:

cc: Lorin Louis Mrachek
Gary R. Shendell
John P. Morrissey
Alan Benjamin Rose
Joielle A. Foglietta
Ralph S. Janvey
Albert Gortz
Eliot Ivan Bernstein
Theodore Stuart Bernstein
James Dimon
Neil Wolfson
Cbiz Mhm, Llc
Brian Moynihan
Clerk Palm Beach

Brian M. O'Connell
Steven A. Lessne
Kenneth S. Pollock
Peter Marshall Feaman
Dennis McNamara
Joseph M. Leccese
Byrd "biff" F. Marshall, Jr.
Lisa Friedstein
Pamela Beth Simon
William McCabe
Stp Enterprises, Inc.
Heritage Union Life Ins.
Life Insurance Concepts

Mark R. Manceri
Charles D. Rubin
John Pankauski
Donald R. Tescher
Kimberly Moran
Hunt Worth
Robert Spallina
Jill Iantoni
Dennis G. Bedley
Gerald Lewin
Lindsay Baxley
David Lanciotti
T&s Registered Agents, Llc

ka

Lonnn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

