

 **SHRAIBERG
PAGE P.A.**
2385 Northwest Executive Center Dr
Suite 300
Boca Raton, FL 33431

Bernstein Family Realty, LLC

Candice Bernstein,

Daniel Bernstein,

Eliot Bernstein,

Jacob Bernstein,

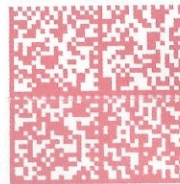
Joshua Bernstein,

Candice Bernstein

Eliot I. Bernstein

2753 NW 34th Street

Boca Raton, FL 33434-3459



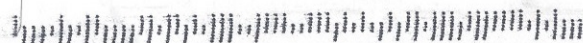
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United States Bankruptcy Court
Southern District of Florida
www.flsb.uscourts.gov

Case Number: 22-13009-EPK
Chapter: 7

In re:

Bernstein Family Realty, LLC
dba BFR, LLC, dba BFR
2753 NW 34th Street
Boca Raton, FL 33434
EIN: 26-2735064

NOTICE OF HEARING

PLEASE TAKE NOTICE that a hearing will be held before the Honorable Erik P. Kimball to consider the following:

Motion for Limited Annulment of Automatic Stay Retroactive to Petition Date Filed by Creditors Joanna Sahm, Patricia Sahm (61)

1. This matter has been set on the Court's motion calendar for a non-evidentiary hearing. The allotted time for this matter is ten minutes. The hearing will be held:

Date: July 20, 2022

Time: 09:30 AM

Location: Flagler Waterview Building, 1515 N Flagler Dr Room 801 Courtroom B, West Palm Beach, FL 33401

2. Although the Court will conduct the hearing in person, any interested party may choose to attend the hearing remotely using the services of Zoom Video Communications, Inc. ("Zoom"), which permits remote participation by video or by telephone, if the judge's procedures allow. To participate in the hearing remotely via Zoom (whether by video or by telephone), you must register in advance no later than 3:00 p.m., one business day before the date of the hearing. To register, click on or manually enter the following registration link in a browser:

https://www.zoomgov.com/meeting/register/vJIsduGsrTouGn7Udkhqe_ZF90qPJ3uM95E

All participants (whether attending in person or remotely) must observe the formalities of the courtroom, exercise civility, and otherwise conduct themselves in a manner consistent with the dignity of the Court. This includes appropriate courtroom attire for those participants appearing in person or by video.

3. The movant, or movant's counsel if represented by an attorney, must:
 - (a) serve a copy of this notice of hearing and, unless previously served, the above-described document(s) on all required parties within the time frame required by the Federal Rules of Bankruptcy Procedure, the local rules of this Court, and orders of the Court, and
 - (b) file a certificate of service as required under Local Rules 2002-1(F) and 9073-1(B).

Any party who fails to properly serve any pleading or other paper may be denied the opportunity to be heard thereon.

4. **PLEASE NOTE:** No person may record the proceedings from any location by any means. The audio recording maintained by the Court will be the sole basis for creation of a transcript that constitutes the official record of the hearing.
5. **PLEASE NOTE:** Photo identification is required to gain entrance to all federal courthouse facilities.

Electronic devices, including but not limited to cameras, cellular phones (including those with cameras), iPads, tablets, pagers, personal data assistants (PDA), laptop computers, radios, tape-recorders, etc., are not permitted in the courtroom, chambers or other environs of this Court. These restrictions (except for cameras not integrated into a cell phone device) do not apply to attorneys with a valid Florida Bar identification card, attorneys who have been authorized to appear by pro hac vice order and witnesses subpoenaed to appear in a specific case. No one is permitted to bring a camera or other prohibited electronic device into a federal courthouse facility except with a written order signed by a judge and verified by the United States Marshals Service. See Local Rule 5072-2.

Dated: 7/18/22

CLERK OF COURT

By: Dawn Leonard

Courtroom Deputy

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 7

**MOTION FOR LIMITED ANNULMENT OF AUTOMATIC STAY
RETROACTIVE TO PETITION DATE**

Joanna Sahm, as personal representative of the estate of Walter Sahm, and Patricia Sahm (together, the "Secured Creditors"), by and through their undersigned counsel and pursuant to 11 U.S.C. § 362(d), hereby request that the Court, for one limited purpose, annul the automatic stay, retroactive to the petition date. In support, the Secured Creditors state as follows:

Relevant Facts

a. The Debtor

1. Beyond speculative litigation claims, the sole asset of Bernstein Family Realty, LLC (the "Debtor") is the non-income producing real property located at 2753 N.W. 34th Street, Boca Raton, Florida 33434 (the "Real Property").

2. The Debtor is a non-operating entity without an attorney representing it in this bankruptcy case.

3. The Debtor has no employees. *See* Schedule E, ECF No. 53.

4. The Debtor has few, if any, unsecured creditors. *See* Schedule F, ECF No. 53.

b. The Judgment and Resulting Efforts to Vacate and Reverse It

5. The Secured Creditors hold a claim against the Debtor that is secured by the Real Property. Specifically, the Secured Creditors are the holders of that certain *Final Judgment of*

Foreclosure (the "Judgment") in the amount of \$353,574.68 against the Debtor—which also foreclosed on the Real Property—entered by the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida (the "State Court") in Case No. 2018-CA-002317AXX (the "State Court Case"). A copy of the Judgment is attached hereto as **Exhibit 3**.

6. The State Court Case was initiated by the Secured Creditors against the Debtor on February 23, 2018 via a one-count complaint seeking to foreclose on a mortgage on the Real Property.¹

7. The Defendants in the State Court case also include Eliot Bernstein, Candice Bernstein, Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein (the "Bernsteins").

8. The Judgment was entered by the State Court on December 23, 2021. Pursuant to the Judgment, a public sale of the property was scheduled for April 20, 2022.

9. On January 5 and 6, 2022, the Bernsteins each filed a motion, in the State Court Case, for rehearing and to vacate the Judgment pursuant to Florida Rule of Civil Procedure 1.530 (the "Motions to Vacate").

10. On January 24, 2022, Eliot Bernstein on the one hand, and Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein on the other hand, filed appeals of the Judgment with the Florida Fourth District Court of Appeal (the "Appellate Court"), thereby initiating Appellate Case Nos. 22-0264 and 22-0262 (the "Appellate Cases").

11. On January 26, 2022, the Appellate Court entered an order in each Appellate Case holding such Appellate Case in abeyance pending the State Court's disposition of the Motions to Vacate.

¹ As set forth in the operative Third Amended Complaint, on June 20, 2008, the Debtor made a promissory note in favor of Walter Sahm and Patricia Sahm, secured by a mortgage on the Real Property. A copy of such operative complaint is attached hereto as **Exhibit 2**.

12. On February 14, 2022, the Secured Creditors filed, in the State Court Case, a response addressing the arguments raised in the Motions to Vacate.

13. On February 10, 17, and March 4, 2022, Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein filed replies to such response.

14. On February 23, 2022, the Appellate Court, *sua sponte*, dismissed Appellate Case 22-0262 filed by Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein for non-payment of the \$300 filing fee. On March 4, 2022, the Appellate Court reinstated Appellate Case 22-0262.

15. On April 2, 2022, Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein filed, in the State Court Case, a further paper in support of the Motions to Vacate wherein the Bernsteins stated at the end:

WHEREFORE, it is respectfully prayed for an immediate Order Vacating [the Judgment] . . . and Dismissing this action with prejudice and for such other and further relief as may be just and proper.

16. On April 17 and 18, 2022, the Bernsteins filed motions in the State Court Case requesting an order canceling the April 20, 2022 foreclosure sale of the Real Property.

c. The Bankruptcy Case and the Subsequent State Court Action

17. On April 19, 2022 (the "Petition Date"), the Debtor's beneficial owners, Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein (the "Petitioning Bernsteins") filed an involuntary chapter 11 bankruptcy petition (the "Petition") against the Debtor, thereby commencing this case.² For the reasons set forth in the Secured Creditors' *Motion to Dismiss with*

² The Petitioning Bernsteins are not creditors of the Debtor. The Petitioning Bernsteins own the Debtor as beneficiaries of several trusts that owns the Debtor. See ECF No. 1 at ECF Page 5, ¶3 and at ECF Pages 6-7, ¶¶12-14.

Prejudice, ECF No. 52, such involuntary petition was improper, contained false statements, and was filed in bad faith.

18. On April 19, 2022, Candice Bernstein and Eliot Bernstein each filed suggestions of bankruptcy advising the State Court of the pendency of this bankruptcy case.

19. May 25, 2022, the State Court entered its *Omnibus Order Denying Motions for Rehearing* (the "State Court Denial Order") wherein the State Court denied the Motions to Vacate. A copy of State Court Denial Order is attached hereto as **Exhibit 1**.

20. On June 22, 2022, the Appellate Court entered an order acknowledging this bankruptcy case and the automatic stay.

d. Summary of Relevant Facts

21. In sum:

- a. The underlying State Court Case between the Secured Creditors and the Debtor has been pending for over four years and has progressed to the point of post-judgment litigation and appeal.
- b. The underlying State Court Case involves a complaint containing a single count for foreclosure of the Secured Creditors' mortgage on the Real Property.
- c. The Debtor has not sought to vacate, appeal, or reverse the Judgment.
- d. Since the entry of the Judgment, the Bernsteins have actively sought, in the State Court and the Appellate Court, to vacate and reverse the Judgment.
- e. The Bernsteins' Motions to Vacate the Judgment had the effect of abating the consideration of the Bernsteins' pending appeals of the Judgment.

f. The Petitioning Bernsteins—near the eve of their initiation of this bankruptcy case—sought an immediate order from the State Court vacating the Judgment.

g. The Petitioning Bernsteins initiated this bankruptcy case improperly, falsely, and in bad faith in an effort to prevent the April 20, 2022 foreclosure sale scheduled via the Judgment from going forward.

h. The Secured Creditors have taken no action whatsoever in violation of the automatic stay.

i. The State Court, postpetition and on its own volition without any prompting from any party, entered the State Court Denial Order, solely denying the relief repeatedly sought by the Bernsteins.

j. The State Court Denial Order did not cause a foreclosure sale of the Real Property to be rescheduled.

Relief Requested and Argument

22. The Secured Creditors request that the Court annul the 11 U.S.C. § 362(d) automatic stay—retroactive to the April 19, 2022—for the sole purpose of ensuring that the automatic stay shall have no effect on the validity of the State Court Denial Order.

23. While “actions taken in violation of the automatic stay are generally deemed void and without effect,” section 362(d) permits bankruptcy courts to annul, *i.e.*, retroactively modify or terminate, the automatic stay for cause. *In re Barr*, 318 B.R. 592, 597-98 (Bankr. M.D. Fla. 2004) (quoting and citing *In re Albany Partners, Ltd.*, 749 F.2d 670, 675 (11th Cir. 1984)). As explained by the *Barr* Court:

Several factors have been identified by Courts when determining whether circumstances are sufficiently compelling to warrant retroactive annulment of the

stay. Such factors include (1) whether the creditor had actual or constructive knowledge of the bankruptcy filing, (2) whether the debtor acted in bad faith, (3) whether grounds would have existed for modification of the stay if a motion had been filed before the violation, (4) whether the denial of retroactive relief would result in unnecessary expense to the creditor, and (5) whether the creditor has detrimentally changed its position on the basis of the action taken.

In re Barr, 318 B.R. at 598. Once the party seeking annulment of the automatic stay demonstrates “the presence of circumstances warranted annulment of the stay, the debtor then bears the ultimate burden of proving that the request for retroactive relief from the stay should be denied.” *Id.* at 599.

24. In this instance, compelling circumstances exist for the Court to annul the automatic stay in order to prevent the State Court Denial Order from being void.

25. First, while the Secured Creditors have had actual knowledge of the bankruptcy case since its outset, the Secured Creditors took no action in violation of the automatic stay. Second, and as set forth above, the Petitioning Bernsteins filed this bankruptcy case in bad faith. Third, denial of the limited retroactive stay relief requested herein would only serve to increase the expenses of the Secured Creditors by: (a) causing the Secured Creditors to inform the State Court that its State Court Denial Order is void, and (b) necessitating the reissuance of the State Court Denial Order once the automatic stay is no longer in effect.

26. Finally, if the Secured Creditors would have moved to modify the stay at the outset of this bankruptcy case in order to permit the State Court to rule on the pending Motions to Vacate, cause would have existed for the Court to grant such request. As set forth above, this bankruptcy case was initiated by the Petitioning Bernsteins improperly, falsely, and in bad faith, thereby supplying cause to modify the automatic stay. *See In re Dixie Broadcasting, Inc.*, 871 F.2d 1023, 1026 (11th Cir. 1989) (“[A] petition filed in bad faith . . . justifies relief from a stay.”). Separately, cause existed at the outset of this bankruptcy case to modify the automatic stay and thereby permit the State Court to rule on the pending Motions to Vacate, simply based on the unique posture of

the State Court Case. *See In re American Spectrum Realty, Inc.*, 540 B.R. 730, 737 (Bankr. 540 B.R. 730, 737 (Bankr. C.D. Cal. 2015) (listing factors to consider).³

³ “There are 12 non-exclusive factors that courts weigh to determine whether ‘cause’ exists to grant relief to allow an entity to continue pending litigation against a debtor in a non-bankruptcy forum, including:

1. Whether the relief will result in a partial or complete resolution of the issues;
2. The lack of any connection with or interference with the bankruptcy case;
3. Whether the foreign proceeding involves the debtor as a fiduciary;
4. Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
5. Whether the debtor’s insurance carrier has assumed full financial responsibility for defending the litigation;
6. Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
7. Whether the litigation in another forum would prejudice the interests of other creditors, the creditors’ committee and other interested parties;
8. Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c);
9. Whether movant’s success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);
10. The interests of judicial economy and the expeditious and economical determination of litigation for the parties;
11. Whether the foreign proceedings have progressed to the point where the parties are prepared for trial, and
12. The impact of the stay on the parties and the ‘balance of hurt.’

In re American Spectrum Realty, Inc., 540 B.R. at 737 (emphasis added). “The most important factor in determining whether to grant relief from the automatic stay to permit litigation against the debtor in another forum is the effect of such litigation on the administration of the estate.” *Id.* at 739 (internal quotation marks omitted).

As applicable, such factors would have weighed in favor of limited-purpose modification of the automatic stay at the outset of the case because:

- a. The relief requested would have resulted in a complete resolution of the Motions to Vacate;
- b. Resolving the Motions to Vacate would in no way interfere with the bankruptcy case, as the Judgment has already been entered, remains valid and effective, and the appeals of the Judgment would remain stayed;
- c. The State Court, having entered the Judgment, and having presided over the State Court Case for over four years, is the most proper tribunal for a ruling on the Motions to Vacate;
- d. No other creditors would have been prejudiced by permitting the State Court to rule on the Motions to Vacate because the Motions to Vacate were already fully-briefed and pending, and a ruling denying the Motions to Vacate would only have the effect of reviving the abated appeals of the Judgment (with such appeals remaining stayed pursuant to section 362);
- e. Permitting the State Court to rule on the pending and fully briefed Motions to Vacate would serve the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- f. By the Petition Date, the State Court Case had already progressed, after four years, to the point of the post-judgment litigation and appeal; and
- g. No parties would have been unfairly prejudiced by such limited modification of the automatic stay because, as set forth above, the Motions to Vacate were already

fully-briefed and pending, and because the State Court Denial Order did not have any effect other than to revive the abated (but still stayed) appeals of the Judgment.

27. Accordingly, cause exists for the Court to grant this Motion and the limited annulment of the automatic stay requested herein.

WHEREFORE, the Secured Creditors respectfully request that the Court annul the 11 U.S.C. § 362(d) automatic stay—retroactive to the April 19, 2022—for the sole purpose of ensuring that the automatic stay shall have no effect on the validity of the State Court Denial Order.

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 July 15, 2022.

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

By: /s/ Bradley S. Shraiberg
Bradley S. Shraiberg
Florida Bar. No. 121622

EXHIBIT 1

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, *et. al.*,

Defendants.

OMNIBUS ORDER DENYING MOTIONS FOR REHEARING.

THIS CAUSE came before the Court on the following Motions: (1) Defendant, Eliot Bernstein's *Pro Se* Motion for Rehearing to Vacate Final Judgment of Foreclosure (DE #90, 98), filed January 5, 2022 and January 6, 2022, respectively; (2) Defendants Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein's Motion for Rehearing to Vacate Final Judgment of Foreclosure (DE ##91, 92), filed January 5, 2022; (3) Defendant, Candice Bernstein's *Pro Se* Motion for Rehearing to Vacate Final Judgment of Foreclosure (DE #93), filed January 5, 2022. The Court, having reviewed the Defendants' various Motions, the Plaintiffs' Response in Opposition (DE #119), filed February 10, 2022, Defendants Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein's Amended Reply thereto (DE #123), filed February 17, 2022, having reviewed the court file and record, including the Final Judgment of Foreclosure (DE #88), entered December 23, 2021, and the bases therefore, and after being otherwise duly advised in the premises, it is hereby

ORDERED and ADJUDGED that Defendants Eliot Bernstein, Candice Bernstein, Joshua Bernstein, Jacob Bernstein, and Daniel Bernstein's Motions for Rehearing to Vacate Final Judgment of Foreclosure are all **DENIED**.

DONE and ORDERED in Chambers, at West Palm Beach, Palm Beach County, Florida, this 24 day of May, 2022.


JOHN S. KASTRENAKES
Circuit Judge

COPIES PROVIDED:

All counsel of Record

EXHIBIT 2

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 50-2018-CA-002317-XXXX-MB

WALTER E. SAHM and
PATRICIA SAHM

Plaintiffs,

v.

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, AND CANDICE BERNSTEIN, INDIVIDUALLY AND AS NATURAL
GUARDIANS OF MINOR CHILDREN JO., JA. AND D. BERNSTEIN; AND
ALL UNKNOWN TENANTS.

Defendants

PLAINTIFFS' THIRD AMENDED COMPLAINT FOR FORECLOSURE

Plaintiffs, WALTER E. SAHM, an individual, and PATRICIA SAHM, an individual, by
and through their undersigned counsel, hereby sue BERNSTEIN FAMILY REALTY, LLC, a
Florida Limited Liability Company, BRIAN O'CONNELL, AS SUCCESSOR PERSONAL
REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN; ALEXANDRA
BERNSTEIN, ERIC BERNSTEIN, MICHAEL BERNSTEIN, MOLLY SIMON, PAMELA B.

LAW OFFICES OF SWEETAPPLE, BROEKER & VARKAS, P.L.
4800 N. FEDERAL HIGHWAY, SUITE B105, BOCA RATON, FLORIDA 33431

Walter E. Sahn and Patricia Sahn v. Bernstein Family Realty, LLC. et al.
Case No.: 50-2018-CA-002317-XXXX-MB
Motion for Leave to File Third Amended Complaint for Foreclosure

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, AND CANDICE BERNSTEIN, INDIVIDUALLY AND AS NATURAL GUARDIANS OF MINOR CHILDREN JO., JA. AND D. BERNSTEIN; AND ALL UNKNOWN TENANTS and allege:

JURISDICTION AND VENUE

1. The Court has subject matter jurisdiction over this action because it is both an action in equity seeking to foreclose a mortgage on real property, and because it is an action seeking to enforce a promissory note for damages in excess of fifteen thousand dollars (\$15,000.00).

2. Venue is proper in Palm Beach County, pursuant to § 47.011, Florida Statutes, because Palm Beach County is the county in which the subject property is located.

3. All conditions precedent and necessary to bring this cause of action either have been performed, have occurred, have been waived, or otherwise excused.

PARTIES¹

4. Plaintiff, WALTER E. SAHM ("Mr. Sahn"), is an individual residing in Palm Beach County, Florida, and at all times material was *sui juris*.

5. Plaintiff, PATRICIA SAHM ("Mrs. Sahn"), is an individual residing in Palm Beach County, Florida, and all times material was *sui juris*.

¹ Mr. Sahn and Mrs. Sahn may collectively be referred to as the "Sahms."
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6. Defendant, BERNSTEIN FAMILY REALTY, LLC ("BFR") is an administratively dissolved Florida Limited Liability, with its principal place of business in Boca Raton, Florida, and its registered agent, T&S Registered Agents, LLC, also located in Boca Raton, Florida.

7. BRIAN O'CONNELL, AS SUCCESSOR PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN is an individual residing in Palm Beach County, Florida, and all times material was *sui juris*, and is serving as the personal representative of the estate of Simon Bernstein, who was the second mortgage holder of the subject property.

8. ALEXANDRA BERNSTEIN, INDIVIDUALLY AND TRUSTEES OF THE SIMON L. BERNSTEIN REVOCABLE TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED AND RESTATED is an individual residing in Palm Beach County, Florida, and all times material was *sui juris*.

9. ERIC BERNSTEIN, INDIVIDUALLY AND TRUSTEES OF THE SIMON L. BERNSTEIN REVOCABLE TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED AND RESTATED is an individual residing in Palm Beach County, Florida, and all times material was *sui juris*.

10. MICHAEL BERNSTEIN, INDIVIDUALLY AND TRUSTEES OF THE SIMON L. BERNSTEIN REVOCABLE TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED AND RESTATED is an individual residing in Palm Beach County, Florida, and all times material was *sui juris*.

11. MOLLY SIMON, INDIVIDUALLY AND TRUSTEES OF THE SIMON L. BERNSTEIN REVOCABLE TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED

Walter E. Sahn and Patricia Sahn v. Bernstein Family Realty, LLC. et al.
Case No.: 50-2018-CA-002317-XXXX-MB
Motion for Leave to File Third Amended Complaint for Foreclosure

AND RESTATED is an individual residing in Tuscon, Arizona, and all times material was *sui juris*.

12. PAMELA B. SIMON, INDIVIDUALLY AND TRUSTEES OF THE SIMON L. BERNSTEIN REVOCABLE TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED AND RESTATED is an individual residing in Chicago, Illinois, and all times material was *sui juris*.

13. JILL IANTONI, INDIVIDUALLY AND TRUSTEES OF THE SIMON L. BERNSTEIN REVOCABLE TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED AND RESTATED is an individual residing in Highland Park, Illinois and all times material was *sui juris*.

14. MAX FRIEDSTEIN, INDIVIDUALLY AND TRUSTEES OF THE SIMON L. BERNSTEIN REVOCABLE TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED AND RESTATED is an individual residing in Palm Beach County, Florida, and all times material was *sui juris*.

15. LISA FRIEDSTEIN, INDIVIDUALLY AND TRUSTEES OF THE SIMON L. BERNSTEIN REVOCABLE TRUST AGREEMENT DATED MAY 20, 2008, AS AMENDED AND RESTATED is an individual residing in Palm Beach County, Florida, and all times material was *sui juris*.

16. ELIOT BERNSTEIN, INDIVIDUALLY AND AS NATURAL GUARDIANS OF MINOR CHILDREN JO., JA. AND D. BERNSTEIN; AND ALL UNKNOWN TENANTS BERNSTEIN is a known tenant of the subject property, and is an individual residing in Palm Beach County, Florida, and all times material was *sui juris*.

LAW OFFICES OF SWEETAPPLE, BROEKE & VARKAS, P.L.
4800 N. FEDERAL HIGHWAY, SUITE B105, BOCA RATON, FLORIDA 33431

Walter E. Sahn and Patricia Sahn v. Bernstein Family Realty, LLC. et al.
Case No.: 50-2018-CA-002317-XXXX-MB
Motion for Leave to File Third Amended Complaint for Foreclosure

17. CANDICE BERNSTEIN, INDIVIDUALLY AND AS NATURAL GUARDIANS OF OF MINOR CHILDREN JO., JA. AND D. BERNSTEIN, is a known tenant of the subject property, and is an individual residing in Palm Beach County, Florida, and all times material was *sui juris*.

18. All UNKNOWN TENANTS ("Tenants") who are unidentified but are either residing on the subject property or may claim an interest in the subject property, as a spouse, heir, devisee, grantee, or other name, are joined as defendants, and whose interest is subordinate, junior, and inferior to Plaintiff's interest.

COUNT I – FORECLOSURE OF MORTGAGE

19. This action seeks to foreclose a mortgage on real property which secures an outstanding debt owed under a promissory note between the parties.

20. On June 20, 2008, BFR entered into a Promissory Note ("Note") with the Sahms, agreeing to pay the Sahms the sum of \$110,000.00 plus interest under terms set forth in the Note. **Exhibit "1"**.

21. On June 20, 2008, BFR executed a Mortgage on real property in favor of the Sahms as collateral to the debt owed under the Note. **Composite Exhibit "2"**.

22. The Mortgage was recorded on June 26, 2008 in the Public Records of Palm Beach County, Florida: O.R. Book 22723, Page 0691.

23. On February 15, 2012, BFR and the Sahms executed an Amendment to Mortgage and Promissory Note ("Amendment" to the Note and Mortgage). **Composite Exhibit "3"**.

24. The Amendment was recorded on April 12, 2012 in the Public Records of Palm Beach County, Florida: O.R. Book 25132, Page 1051.

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Case No.: 50-2018-CA-002317-XXXX-MB
Motion for Leave to File Third Amended Complaint for Foreclosure

25. The Sahms both own and hold both the Note and Mortgage.

26. Defendant BRIAN O'CONNELL, THE PERSONAL REPRESENTATIVE OF THE ESTATE OF SIMON L. BERNSTEIN is serving as the personal representative of the estate of Simon Bernstein, who was the second mortgage holder.

27. The Second Mortgage was recorded on September 4, 2008 in the Public Records of Palm Beach County, Florida: OR Book 22841, Page 1818.

28. BFR owns the subject property and is in possession of it.

29. BFR defaulted under, and subsequently breached its obligations under both the Note and Mortgage by failing to make all necessary payments under the Note, Mortgage, and Amendment.

30. As of the date of the filing of this Amended complaint, BFR owes the Sahms at least \$235,898.94, including \$110,000.00 in principal, \$102,838.00 in interest and default interest, \$23,060.94 in taxes paid by the Sahms, exclusive of both attorney's fees and costs.

31. The Defendants' interests in the land is subordinated to the mortgagee's.

WHEREFORE, Plaintiffs, WALTER E. SAHM and PATRICIA SAHM, pray for a final judgment of foreclosure against Defendants BERNSTEIN FAMILY REALTY, LLC, a Florida Limited Liability Company, 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, AND CANDICE

LAW OFFICES OF SWEETAPPLE, BROEKER & VARKAS, P.L.
4800 N. FEDERAL HIGHWAY, SUITE B105, BOCA RATON, FLORIDA 33431

Walter E. Sahn and Patricia Sahn v. Bernstein Family Realty, LLC. et al.
Case No.: 50-2018-CA-002317-XXXX-MB
Motion for Leave to File Third Amended Complaint for Foreclosure

BERNSTEIN, INDIVIDUALLY AND AS NATURAL GUARDIANS OF MINOR CHILDREN JO., JA. AND D. BERNSTEIN; AND ALL UNKNOWN TENANTS:

- a. concluding that Plaintiffs' Mortgage is a valid Lien on the subject property and is superior to any lien of record;
- b. foreclosing Plaintiffs' Mortgage;
- c. foreclosing of all Defendants named in this action;
- d. delivering full possession of the subject property to Plaintiffs;
- e. retaining jurisdiction for the Court to determine any deficiency to which Plaintiffs may be entitled; and
- f. retaining jurisdiction to determine the reasonable amount of both attorney's fees and costs which Plaintiffs are entitled to recover against Defendant; and
- g. any other relief which the Court deems just and proper.

ATTORNEY FEE DEMAND

Plaintiffs, WALTER E. SAHM and PATRICIA SAHM, have retained the undersigned law firm to represent them in this action. The Note, which the Sahms are suing to enforce, contains an attorney's fees provision. Plaintiff hereby exercises that entitlement and prays for its attorney's fees and costs.

Respectfully submitted,

SWEETAPPLE, BROEKER & VARKAS, P.L.
Attorneys for Plaintiff/Counter-Defendant
4800 N. Federal Highway, Suite B105
Boca Raton, Florida 33431
Telephone (561) 392-1230
Email: pleadings@sweetapplelaw.com

LAW OFFICES OF SWEETAPPLE, BROEKER & VARKAS, P.L.
4800 N. FEDERAL HIGHWAY, SUITE B105, BOCA RATON, FLORIDA 33431

Walter E. Sahn and Patricia Sahn v. Bernstein Family Realty, LLC. et al.
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Motion for Leave to File Third Amended Complaint for Foreclosure

By: /s/ Robert A. Sweetapple
ROBERT A. SWEETAPPLE
Florida Bar No. 0296988

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the E-Filing Portal this 18th day of June, 2019 to: Eliot Ivan Bernstein, 2753 NW 34th St., Boca Raton, FL 33434, (iviewit@iviewit.tv); Brian O'Connell, Esq., and Ashley Crispin Ackal, Esq., O'Connell & Crispin, PLLC, 420 Royal Palm Way, Palm Beach, FL 33480 (boconnell@ocalawyers.com; acrispinackal@ocalawyers.com).

LAW OFFICES OF SWEETAPPLE, BROEGER & VARKAS, P.L.
4800 N. FEDERAL HIGHWAY, SUITE B105, BOCA RATON, FLORIDA 33431

PROMISSORY NOTE

\$110,000.00

June 20, 2008
Boca Raton, Palm Beach County, Florida

FOR VALUE RECEIVED, the undersigned promise to pay to the order of Walter E. Sahn and Patricia Sahn, his wife at 8230 SE 177th Winterthru Loop, The Villages, FL 32162 or at such other address as may be indicated in writing, in the manner hereinafter specified, the principal sum of One Hundred Ten Thousand and 00/100 Dollars (\$110,000.00) with interest from the date hereof, at the rate of Six and One Half percent (6.5%) per annum on the balance from time to time remaining unpaid. The said principal and interest shall be payable in lawful money of the United States of America, on the date and in the following manner:

The sum of \$7,150.00 representing a payment of interest only shall be due and payable on June 19, 2009, and on June 19, 2010, and on June 19, 2011 at which time all unpaid principal and accrued but unpaid interest shall be due and payable in full.

All payments shall be first applied to late charges, if any, then to the payment of accrued interest, and the balance remaining, if any, shall be applied to the payment of the principal sum.

This note may be prepaid, in whole or in part, without penalty, at any time prior to maturity.

This note with interest is secured by a purchase money mortgage, of even date herewith, the terms of which are incorporated herein by reference, made by the makers hereof in favor of the said payee, is given as part of the purchase price of the real property described in the mortgage, and shall be construed and enforced according to the laws of the State of Florida.

If default be made in the payment of any installment under this note, and if such default is not made good within 15 days, the entire principal sum and accrued interest shall at once become due and payable without notice at the option of the holder of this Note. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at a later time for the same default or for any subsequent default. Any payment not received within 10 days of the due date shall include a late charge of 5% of the payment due. In the event of default in the payment of this note, interest shall accrue at the highest rate permitted by law, and if the same is placed in the hands of any attorney for collection, the undersigned hereby agree to pay all costs of collection, including a reasonable attorneys' fee.

Makers waive demand, presentment for payment, protest, and notice of nonpayment and dishonor.

Bernstein Family Realty, LLC,
a Florida limited liability company

By: [Signature]
Simon Bernstein - Borrower, Manager

(Corporate Seal)

The state documentary tax due on this Note has been paid on the Mortgage securing this indebtedness.





Prepared by and return to:
John M. Cappeller, Jr.
Florida Title & Closing Co.
350 Camino Gardens Blvd. Suite 303
Boca Raton, FL 33432
561-392-3636
File Number: FT08-087Will Call No.: 159

CFN 20080241511
OR BK 22723 PG 0691
RECORDED 06/26/2008 09:06:17
Palm Beach County, Florida
ANT 110,000.00
Deed Doc 385.00
Intang 220.00
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 0691 - 694; (4pgs)

[Space Above This Line For Recording Data]

THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$110,000.00, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.

MORTGAGE

This Indenture, Made this June 20, 2008 by and between Bernstein Family Realty, LLC, a Florida limited liability company whose address is 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, FL 33431, hereinafter called the Mortgagor, and Walter E. Sahn and Patricia Sahn, his wife whose address is 8230 SE 177th Winterthr Loop, The Villages, FL 32162, hereinafter called the Mortgagee:

The terms "Mortgagor" and "Mortgagee" shall include heirs, personal representatives, successors, legal representatives and assigns, and shall denote the singular and/or the plural, and the masculine and/or the feminine and natural and/or artificial persons, whenever and wherever the context so admits or requires.

Witnesseth, that the said Mortgagor, for and in consideration of the aggregate sum named in the promissory note, a copy of which is attached hereto and made a part hereof, the receipt of which is hereby acknowledged, does grant, bargain and sell to the said Mortgagee, his successors and assigns, in fee simple, the following described land, situate, lying and being in Palm Beach County, Florida, to-wit:

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.

And the said Mortgagor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever.

Provided always, that if said Mortgagor, his successors or assigns, shall pay unto the said Mortgagee, his successors or assigns, that certain promissory note, of which a true and correct copy is attached, and Mortgagor shall perform, comply with and abide by each and every stipulation, agreement, condition and covenant of said promissory note and of this mortgage, and shall duly pay all taxes, all insurance premiums reasonably required, all costs and expenses including reasonable attorneys fees that Mortgagee may incur in collecting money secured by this mortgage, and also in enforcing this mortgage by suit or otherwise, then this mortgage and the estate hereby created shall cease and be null and void.

Mortgagor hereby covenants and agrees:

1. To pay the principal and interest and other sums of money payable by virtue of said promissory note and this mortgage, or either, promptly on the days respectively the same severally come due.
2. To keep the buildings now or hereafter on the land insured for fire and extended coverage in a sum at least equal to the amount owed on the above described promissory note, and name the Mortgagee as loss payees, and to furnish Mortgagee with a copy of all current policies. If Mortgagor does not provide Mortgagee with copies of the policies showing Mortgagee as loss payees after 14 days written demand by Mortgagee, then Mortgagee may purchase such insurance and

Initials: DoubleTime

shall add any payments made for such policy to the principal balance owed on the mortgage, and such payments shall accrue interest at the maximum rate of interest allowed by law. In the event any sum of money becomes payable under such policy, Mortgagee, his legal representatives or assigns, shall have the option to receive and apply the same on account of the indebtedness hereby secured or to permit Mortgagor to receive and use it or any part thereof for repair or replacement, without hereby waiving or impairing any equity, lien or right under or by virtue of this mortgage. In the event of loss Mortgagor shall give immediate notice to Mortgagee.

3. To permit, commit or suffer no waste, impairment or deterioration of the property, or any part thereof.
4. To permit no other lien or mortgage to be placed ahead of this mortgage.
5. Mortgagor shall provide proof of payment of annual real estate taxes by March 15, for the preceding years taxes. In the event that Mortgagor does not pay the taxes by such date, the Mortgagee may pay the taxes and the full amount of such payment by Mortgagee shall be added to the principal balance owed on the mortgage, and shall accrue interest at the maximum rate allowed by law.
6. The Mortgagee may, at any time pending a suit upon this mortgage, apply to the court having jurisdiction thereof for the appointment of a receiver, and such court shall forthwith appoint a receiver, and such receiver shall have all the broad and effective functions and powers in anywise entrusted by a court to a receiver, and such appointment shall be made by such court as an admitted equity and a matter of absolute right to said Mortgagee. The rents, profits, income, issues, and revenues shall be applied by such receiver according to the lien of this mortgage.
7. If any of the sums of money due and owing to Mortgagee under the terms of the promissory note and this mortgage, including but not limited to any advance made by Mortgagee for the payment of insurance or taxes, are not paid within 15 days after the same become due and payable, or if each of the stipulations, agreements, conditions and covenants of the promissory note and this mortgage, or either, are not fully performed or complied with the aggregate sum owed on the promissory note shall become due and payable forthwith or thereafter at the option of Mortgagee, his successors, legal representatives, or assigns.

This mortgage and the note hereby secured shall be construed and enforced according to the laws of the State of Florida.

The principal sum secured hereby, along with any interest to be paid in accordance with the terms of the note secured hereby, shall immediately become due and payable without notice, if a transfer of title to the premises by sale or otherwise is made without the Mortgagee's written consent; while this mortgage remains a lien thereon, at the option of Mortgagee, his successors, legal representatives, or assigns.

Executed at Palm Beach County, Florida on the date written above.

Signed, sealed and delivered in the presence of:

THIS IS A BALLOON MORTGAGE AND THE FINAL PRINCIPAL PAYMENT OR THE PRINCIPAL BALANCE DUE UPON MATURITY IS \$110,000.00, TOGETHER WITH ACCRUED INTEREST, IF ANY, AND ALL ADVANCEMENTS MADE BY THE MORTGAGEE UNDER THE TERMS OF THIS MORTGAGE.

Carolina Flynn
Witness Name: Carolina Flynn
Lisa Harrell
Witness Name: Lisa Harrell

Bernstein Family Realty, LLC, a Florida limited liability company

By: Simon Bernstein, Manager

Florida Mortgage (Seller) - Page 2

DoubleTime

State of Florida
County of Palm Beach

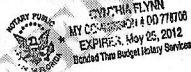
The foregoing instrument was acknowledged before me this 20th day of June, 2008 by Simon Bernstein of Bernstein Family Realty, LLC, on behalf of the corporation. He/she ☒ is personally known to me or ☐ has produced a driver's license as identification.

[Notary Seal]

Notary Public

Printed Name:

My Commission Expires:



Prepared by and return to:

John M. Cappeller, Jr.
Cappeller Law
John M. Cappeller, Jr.
350 Camino Gardens Blvd., Suite 303
Boca Raton, FL 33432

CFN 20120143493
OR BK 25132 PG 1051
RECORDED 04/12/2012 09:21:00
Palm Beach County, Florida
Sharon R. Bock, CLERK & COMPTROLLER
Pgs 1051 - 1054; (4pgs)

AMENDMENT TO MORTGAGE AND PROMISSORY NOTE

This AMENDMENT TO MORTGAGE AND PROMISSORY NOTE (this "Amendment") is entered into effective the 15 day of February, 2012, among BERNSTEIN FAMILY REALTY, LLC, a Florida limited liability company, having an address at 950 Peninsula Corporate Circle, Suite 3010, Boca Raton, FL 33487 (the "Mortgagor"), and WALTER E. SAHM and PATRICIA SAHM, having an address at 8230-SE 177th Winterthru Loop, The Villages, FL 32162 ("Mortgagee").

WITNESSETH

WHEREAS, Mortgagee granted Mortgagor a purchase money mortgage in the amount of \$110,000.00, evidenced by that certain Promissory Note dated June 20, 2008, (the "Promissory Note"); and

WHEREAS, the Promissory Note is secured, *inter alia*, by that certain Mortgage dated June 20, 2008 from Mortgagor in favor of Mortgagee, recorded on June 26, 2008 in Official Records Book 22723, Page 691, of the Public Records of Palm Beach County, Florida (the "Mortgage"); and

WHEREAS, Mortgagor has asked Mortgagee to extend the term of the Mortgage and the Promissory Note (the "Amendment"); and

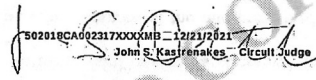
WHEREAS, to document the Amendment, Mortgagor is executing and delivering to Mortgagee this Amendment to Mortgage and Promissory Note;

DOCUMENTARY STAMP TAXES AND INTANGIBLE TAXES ON THE ORIGINAL INDEBTEDNESS OF \$110,000.00 WERE PAID IN FULL UPON THE RECORDING OF THE MORTGAGE AND SECURITY AGREEMENT DATED JUNE 20, 2008 AND RECORDED ON JUNE 26, 2008 IN OFFICIAL RECORDS BOOK 22723 PAGE 691, IN THE PUBLIC RECORDS OF PALM BEACH, FLORIDA.



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

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 (iviewitt@iviewitt.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)