

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' MOTION TO RESET FORECLOSURE SALE AND ISSUE RE-NOTICE
OF SALE

COME NOW Plaintiffs, WALTER E. SAHM and PATRICIA SAHM, by and through undersigned counsel, and move the Court to reset the mortgage foreclosure sale scheduled in the instant matter. In support thereof, Plaintiffs state as follows:

1. On December 21, 2021 this Court entered a Final Judgment of Foreclosure, wherein a foreclosure sale was scheduled to take place on April 20, 2022.

2. On April 19, 2022, Defendant, ELIOT BERNSTEIN, filed a Suggestion of Bankruptcy.
3. Therefore, the foreclosure sale scheduled for April 20, 2022 did not take place.
4. On May 24, 2022, this Honorable Court entered an Omnibus Order Denying Motions for Rehearing (See **Exhibit A**).
5. On July 25, 2022, the attached Order Annuling Automatic Stay, on Limited Bases, Retroactive to Petition Date, was entered by the United States Bankruptcy Court for the Southern District of Florida, West Palm Beach Division, In re: BERNSTEIN FAMILY REALTY, LLC, bearing Case No. 22-13009-EPK (See **Exhibit B**).
6. The Bankruptcy Court subsequently entered an Order Dismissing Case with Prejudice on July 26, 2022 (See **Exhibit C**).
7. On August 2, 2022, the Fourth District Court of Appeal entered an Order dismissing the case bearing Case No. 4D22-2064. (See **Exhibit D**).
8. Therefore, Plaintiff is entitled to have the foreclosure sale reset.

WHEREFORE, Plaintiff, JOANN TURNER, TRUSTEE OF THE RONALD C. TURNER 2012 IRREVOCABLE TRUST, respectfully requests this Court enter an order resetting the foreclosure sale and such other and further relief as this Court deems just and proper.

SWEETAPPLE, BROEKER & VARKAS, P.L.

Attorneys for Plaintiffs

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By: /s/ Robert A. Sweetapple

ROBERT A. SWEETAPPLE, ESQ.

Florida Bar No. 296988

CYNTHIA MILLER

Florida Bar No. 1007692

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via the E-Filing Portal this 17th day of August, 2022 to all parties listed on the Service List on the portal.

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

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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

NOT A CERTIFIED COPY



ORDERED in the Southern District of Florida on July 22, 2022.

A handwritten signature in black ink, appearing to read "Erik P. Kimball", is written over a horizontal line.

Erik P. Kimball, Judge
United States Bankruptcy Court

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

In re:

BERNSTEIN FAMILY REALTY, LLC,

Debtor.

Case No. 22-13009-EPK

Chapter 7

**ORDER ANNULING AUTOMATIC STAY, ON LIMITED BASIS,
RETROACTIVE TO PETITION DATE**

THIS MATTER came before the Court for hearing on July 20, 2022, upon the *Motion for Limited Annulment of Automatic Stay Retroactive to Petition Date* [ECF No. 61] (the "Motion") filed by Joanna Sahm, as personal representative of the estate of Walter Sahm, and Patricia Sahm (together, the "Secured Creditors").

For the reasons stated on the record, and being otherwise fully advised in the premises, it is **ORDERED AND ADJUDGED** that:

1. The Motion [ECF No. 61] is GRANTED.

2. The 11 U.S.C. § 362(a) automatic stay is hereby annulled on a limited basis, retroactive to April 19, 2022, such that the automatic stay had no effect on the validity of the Omnibus Order Denying Motions for Rehearing entered by the Circuit Court for the Fifteenth Judicial Circuit in and for Palm Beach County, Florida on May 25, 2022 in Case No. 2018-CA-002317AXX.

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Submitted by:

Eric Pendergraft
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Eric Pendergraft is directed to immediately serve a conformed copy of this Order and to file a Certificate of Service evidencing same.



ORDERED in the Southern District of Florida on July 26, 2022.

A handwritten signature in black ink, reading "Erik P. Kimball", is positioned above the judge's name.

Erik P. Kimball, Judge
United States Bankruptcy Court

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

ORDER DISMISSING CASE WITH PREJUDICE

THIS MATTER came before the Court for hearing on July 20, 2022 upon the *Motion to Dismiss with Prejudice* [ECF No. 52] filed by Joanna Sahm, as personal representative of the estate of Walter Sahm, and Patricia Sahm (together, the "Secured Creditors"). Prior to the hearing, Ted S. Bernstein filed his *Response and Joinder of Ted. S. Bernstein, Trustee, to Motion to Dismiss with Prejudice* [ECF No. 60] (the "Joinder"), wherein Ted S. Bernstein joined in the relief requested in the Motion. In addition, two responses in opposition to the relief requested in the Motion were filed by Eliot I. Bernstein, ECF Nos. 55 and 71.

In the Motion, the Secured Creditors request that this case be dismissed with two years' prejudice to both the filing of a voluntary bankruptcy petition by Bernstein Family Realty, LLC

(the “Debtor”) and the filing of an involuntary bankruptcy petition against the Debtor by Joshua Bernstein, Jacob Bernstein, Daniel Bernstein (together, the “Petitioning Bernsteins”) or their parents, Eliot I. Bernstein and Candice Bernstein.

For the reasons stated on the record, having considered the Motion, the Joinder, the responses, and the arguments presented at the hearing, and being otherwise fully advised in the premises, the Court finds as follows:

The Debtor owns one real asset: the single-family home located at 2753 N.W. 34th Street, Boca Raton, Florida 33434 (the “Real Property”). Since prior to the initiation of this case, the Debtor has had no operations or employees. The Debtor has, at most, a few minor unsecured creditors.

This case was initiated when the Petitioning Bernsteins filed an involuntary chapter 11 petition against the Debtor. However, the Petitioning Bernsteins are not creditors of the Debtor, and this case was filed as an involuntary case because the Debtor had been dissolved and had no manager, and thus, nobody to sign a voluntary bankruptcy petition on behalf of the Debtor.

Dissatisfied with rulings by the state court in a foreclosure case resulting in a judgment and the scheduling of a foreclosure sale, the Petitioning Bernsteins—supported by Eliot I. Bernstein and Candice Bernstein—filed this case as a litigation tactic for the sole purpose of getting the effect of the section 362 automatic stay in order to stymie a foreclosure sale of the Real Property. Once such stay was achieved, the Debtor did nothing in this bankruptcy case. Moreover, after this case was converted to chapter 7, the Debtor failed to file schedules as required by the Court’s conversion order,¹ ECF No. 29, and failed to attend its section 341 meeting of creditors on July 6, 2022 despite the Clerk’s notice that such failure may result in dismissal. ECF No. 31.

¹ After schedules filed by Eliot I. Bernstein were stricken, ECF No. 46, Mr. Bernstein filed schedules, purportedly on behalf of the Debtor as its “acting manager.” ECF No. 53. Such schedules show almost nothing in terms useful information.

Given the foregoing, the Court concludes that this case was filed in bad faith and should be dismissed with prejudice.

Accordingly, it is **ORDERED AND ADJUDGED** that:

1. The Motion [ECF No. 52] is GRANTED.
2. All objections to the Motion, including those filed by Eliot I. Bernstein at ECF Nos. 55 and 71, are OVERRULED.
3. The above-captioned case is DISMISSED with two years' prejudice, from the date of this Order, to filing of, in any United States Bankruptcy Court: (a) any voluntary petition for relief under Title 11 of the United States Code by Bernstein Family Realty, LLC; and (b) any involuntary petition for relief against Bernstein Family Realty, LLC under Title 11 of the United States Code by Eliot I. Bernstein, Candice Bernstein, Joshua Bernstein, Jacob Bernstein, or Daniel Bernstein.
4. The Court reserves jurisdiction to hear, determine, and enforce the Motion for Sanctions filed by the Secured Creditors at ECF No. 69.

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Submitted by:

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Bradley S. Shraiberg is directed to immediately serve a conformed copy of this Order and to file a Certificate of Service evidencing same.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 110 SOUTH TAMARIND AVENUE, WEST PALM BEACH, FL 33401

August 02, 2022

CASE NO.: 4D22-0264

L.T. No.: 502018CA002317

ELIOT I. BERNSTEIN

v. WALTER E. SAHM and PATRICIA SAHM, et
al.

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

According to this court's August 23, 2017 order in case number 4D17-1932, "[t]he 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." Therefore, it is ORDERED that this case is dismissed as appellant is prohibited from pro se filings in this court.

GROSS, CIKLIN and KUNTZ, JJ., concur.


Served:

cc: Robert A. Sweetapple
Hon. John S. Kastrenakes

Eliot Ivan Bernstein *P*

Clerk Palm Beach

dl



LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

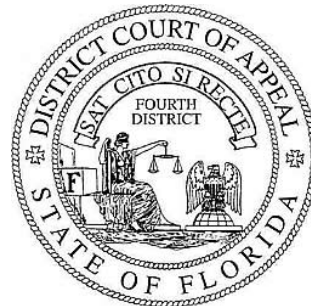


Exhibit D