

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

CIRCUIT CIVIL DIVISION: AO
CASE NO.: 50-2018-CA-002317-XXXX-MB

WALTER E SAHM,
CHARLES REVARO AS GUARDIAN OF THE WARD PAMELA A SAHM,
Plaintiff/Petitioners

vs.
BERNSTEIN FAMILY REALTY LLC,
ALL UNKNOWN TENANTS,
BRIAN O'CONNELL,
et al.,
Defendant/Respondents.

**ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE ALLEGED SETTLEMENT
AGREEMENT AND FOR SANCTIONS DUE TO FRAUD ON THE COURT (DE #226)**

This Cause came before the Court on the Plaintiff's Motion to Strike Alleged Settlement Agreement and for Sanctions for Fraud on the Court (DE #226) first on a special set hearing held on August 12, 2024. At the conclusion of the time set aside by the parties, the parties requested additional discovery and hearing time. After several intervening hearings, the matter was ultimately concluded on January 28, 2025. The Court requested and received written closing arguments. After reviewing all docket entries between, DE #226 and #313, a complete review of the Court file, and the Court being otherwise apprised in the premises the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

This matter has its genesis in a foreclosure action filed on or about February 27, 2018, which became final on December 31, 2021. Describing the procedural history of this matter as "tortured" would be an understatement. For brevity's sake, based upon this Court's review of the Court file, the documentary evidence introduced during the hearing, and the Court's evaluation of

the sworn witness testimony, this Court accepts the Plaintiff's Statement of Facts as set forth in Pages 2 – 20 of its written closing arguments (DE #312) as a generally accurate recitation of the litigation taking place prior to the substitution of Charles Revard as the Party Plaintiff for the Ward, Patricia A Sahm which frames the issues this Court must attempt to untangle.

The Owner of the foreclosure action is Patricia A. Sahm ("Ms. Sahm") an 83-year-old woman who has been diagnosed with Alzheimer's disease since September 2022. Ms. Sahm has two daughters, Joanna Sahm and Patricia Sahm, Jr. Joanna Sahm testified that, as of August 12, 2024, her mother been incapacitated for approximately two years. Joanna Sahm testified that she has possessed Ms. Sahm's power of attorney since around December of 2021. Joana Sahm testified that, after her father passed away in January 2021, she assumed handling of the foreclosure matter pursuant to a Power of Attorney. Joana Sahm testified that her mother was aware of the foreclosure litigation, but requested that Joanna Sahm handle it. Joanna Sahm testified that she sees her mother two to three times per week. Before the guardianship process began, Ms. Sahm had been victimized by several financial scams and was unable to discuss the merits of the foreclosure proceedings with Joanna Sahm. Joanna Sahm had been the primary point of contact handling the foreclosure matter and had retained Robert Sweetapple, Esq., pursuant to her valid limited power of attorney, to represent Ms. Sahm in the foreclosure matter at some point prior to February 27, 2018, when the initial complaint was filed. Joanna Sahm testified that her sister, Patricia Sahm Jr., pulled a gun and threatened to kill her in January of 2023, and, as a result of that, she obtained a restraining order against Patricia Sahm, Jr.

On or about March 15, 2023, Ms. Sahm completed a form entitled Florida Power of Attorney Revocation which was provided to Joanna Sahm prior to a court hearing in the related Bankruptcy Action on or around April 13, 2023 (Def Comp. Exh. #1). On or about April 11, 2023,

Morgan L. Weinstein, from the firm of Twig, Trade, & Tribunal sent an engagement letter to Ms. Sahm but ultimately was not retained (Def. Exh. #10).

Joanna Sahm testified that when she questioned Ms. Sahm about signing the revocation form, Ms. Sahm had no recollection of signing it. On or about April 17, 2023, Joanna Sahm testified that she sought a Petition for Appointment of a Plenary Guardian over Ms. Sahm (Pltf. Exh. #1). Ms. Sahm was represented by Amber Patwell, Esq., in the guardianship proceeding. On or around April 19, 2023, Joanna Sahm received a 65 paragraph notarized statement from Ms. Sahm (Def. Exh. 2), which asserted numerous contradictory statements and was, according to the statement, co-authored by Patricia Sahm, Jr. Joanna Sahm testified that, at some point in May 2023, Patricia Sahm Jr. took Ms. Sahm's phone away and further blocked her phone number in her mother's phone.

Dr. Stanley Bloom testified as to his evaluation of Ms. Sahm taken pursuant to the guardianship proceeding. Dr. Bloom testified that at least on or after May 5, 2023, Ms. Sahm lacked the capacity to contract, sue, or defend lawsuits. Dr. Brennan Cheshire found that Ms. Sahm was incapacitated and should be consulted with respect to her living residence and the sale of her property and have counsel in contracts and legal matters (Def. Exh. 14). Ultimately, an order Determining that Ms. Sahm had Limited Incapacity was entered on or about June 27, 2023 in Palm Beach County Case No. 2023MH001072 (Pltf. Exh. 3).

The Settlement agreement that the Plaintiffs seek to set aside was signed by Ms. Sahm purportedly on May 22, 2023 (Def. Exh. #6). This is after the guardianship proceeding began, but before the final adjudication of limited incapacity. The Settlement Agreement asserts that Walter Sahm is deceased and that Ms. Sahm is the "only true party in interest." Defense Exhibit 3 is a

stipulation for substitution of counsel also signed by Ms. Sahm on May 22, 2023, which purports to substitute Ms. Patwell for Mr. Sweetapple but is not signed by either attorney.

Inger Garcia, Esq., testified twice, both in the Plaintiff's case in chief and then in the Defendant's case as the Defense's sole witness in support of the settlement agreement. Ms. Garcia's testimony was, in a word, astonishing. Ms. Garcia has been practicing law since 1991 and a member of the Florida Bar since 1997. Ms. Garcia claimed to have included Mr. Sweetapple in her attempts to settle the case, yet did not use Mr. Sweetapple's correct email and never actually spoke to him before the settlement agreement was executed. Ms. Garcia claimed to know that Amber Patwell, Esq.¹, Ms. Sahm's attorney in the guardianship case, had also become counsel of record in the foreclosure case, despite never having seen an executed stipulation of counsel. Ms. Garcia was in possession of Ms. Patwell's retainer and engagement letters with Ms. Sahm and entered them into evidence. Ultimately, Ms. Garcia admitted to expeditiously negotiating the settlement of the foreclosure case with the attorney representing Ms. Sahm in proceeding where Ms. Sahm's mental capacity was at issue, without ever seeing any document indicating that attorney had the ability to settle the foreclosure matter or that Mr. Sweetapple had ceased representing Ms. Sahm. It was her second attempt to settle the matter with the second new lawyer on the foreclosure case, which had been prosecuted by Mr. Sweetapple for the past five years, in the span of two weeks. (*Cf.* Def. Exh. "T" *Texts between Garcia and Weinstein beginning 4/6/2023*

¹ Although listed as a witness by the Defendant, Ms. Patwell did not testify at the hearing. Nor did she appear for a deposition despite a court order requiring her to do so. During a hearing on a Motion for Protective Order held on September 20, 2024, it was represented to the Court by counsel for Mr. Revard in the guardianship matter that the reason Ms. Patwell was unable to attend her deposition was because Ms. Patwell was incarcerated for perjury. In fact, on or about September 13, 2024, Ms. Patwell's bond was revoked on two counts of Felony Child Neglect in Pasco County Case No. 2022CF001041 based upon a finding of probable cause in Pasco County Case No. 2024CF002407 for one count of Perjury in an Official Proceeding for allegedly providing false statements under oath in a hearing before Hon. Lauralee Westine held on June 19, 2023. Ms. Patwell remains incarcerated as of the date of this order. Both Pasco County matters remain open and pending, and Ms. Patwell is presumed innocent of all three of those charges. The Court does not consider any of the facts or circumstances of the Pasco County cases for its ruling on the instant motion as none of them were presented in full during the hearing.

and Def. Exh. “MM” *Texts between Garcia and Patwell beginning appx 5/5/2023*). Ms. Garcia testified that after “settling” the matter with Ms. Patwell, the Defendants met at her house to sign the settlement paperwork and then, with Ms. Patwell’s permission, the Defendants took the settlement agreement over to Ms. Sahm to obtain her signature.

Eliot Bernstein’s deposition provided further clarification as to the events leading up to the signing of the “settlement agreement” (Def. Exh. #27). Eliot Bernstein traveled to Ms. Sahm’s home when she was alone, either by himself or with one or more of his children, to discuss settlement of this case. According to Eliot Bernstein, Kevin Hall, manager of Defendant Bernstein Family Realty, LLC (“BFR”), contacted Patty Sahm, Jr. by finding her contact information from “the police reports” and began talking with Patty Sahm, Jr. and Ms. Sahm (Def. Exh. #27 Pg. 59 Ln. 5-22)². According to Eliot Bernstein, Mr. Hall discussed the pending foreclosure matter at length with Ms. Sahm which upset her and ultimately lead her to want to revoke her power of attorney (*Id.*). According to Eliot Bernstein, following these conversations with Mr. Hall³, Ms. Sahm wanted to revoke her power of attorney from Joanna Sahm (*Id.* at Pg. 60 Lns. 1 -22). The Court notes that the statements Eliot Bernstein claims Ms. Sahm made were of a substantially different level of comprehension than the statements made by Ms. Sahm during a hearing before Judge Feuer (Def. Comp. Exh. #28 *Transcript of May 13, 2024 hearing* at Pgs. 13 - 24).

² Presumably from Patty Sahm, Jr.’s Arrest on or about January 25, 2023 for two Counts of Aggravated Assault in Palm Beach Case Number 23CF000747 (DE #5) where one of the victims was Joanna Sahm, though not explicitly stated in the deposition. Patty Sahm, Jr. ultimately pled guilty and was placed on 3 years concurrent probation with the first year to be served as in house arrest on or about 1/3/2024 (DE #156) which was given as the reason by Ms. Garcia that she was unable to appear and testify in Court.

³ Kevin Hall has repeatedly attempted to insert himself in these proceedings, as well as the Guardianship and Mental Health Cases filing numerous unauthorized motions and notices (DEs #209 - #210, #216, #223, #229 0 #234 and #258). Shortly after this Court taking over the case from its Predecessor Judge, this Court entered an Order Striking Mr. Hall’s unauthorized filings and finding he both could not intervene *pro se* and that, to the extent that BFR, LLC is a party it must be represented by counsel (DE #261). Thereafter, Mr. Hall moved twice to disqualify the Court. (DEs #280 and #297). Both motions were denied. (DEs #283 and #298). Mr. Hall was warned that further filings in this case would cause the Court to issue a Rule to Show Cause why the Court should not direct the Clerk of Court to refuse any further *pro se* filings by him (DE #261). Mr. Hall continues to file documents in both in 2023GA000245 and 2023MH001072.

Defendants, Eliot Bernstein and Mr. Hall on behalf of BFR, LLC, along with their counsel Inger Garcia, Esq. as well as with members of the Florida Court Task Force on Guardianship Abuse and Elder Abuse, apparently taken aback at how “unfair” the guardianship process had been going for their adversary in this proceeding, Ms. Sahm, sought to find a guardianship attorney to represent Ms. Sahm (Def. Exh. #27 at Pgs 70 – 72, 87 - 88). That guardianship attorney would also conveniently settle the instant foreclosure matter for a drastically reduced amount. *Id.* This scheme is cynically referred to throughout this litigation, as well as the guardianship and incapacity cases, as “giving Ms. Sahm a voice” or “preventing her voice from being taken from her.”

Eliot Bernstein went to Ms. Sahm’s home after the initiation of the guardianship proceedings to have her sign a settlement agreement. This was done with the knowledge and consent of Inger Garcia, Esq. and Amber Patwell, Esq., but not Robert Sweetapple, Esq. (*Id.* at Pgs. 71 – 74). Mr. Hall continued to not only speak with Ms. Sahm but also sent several draft settlement agreements for the parties and assisted with revisions (*Id.* at Pgs. 75 - 79). According to Eliot Bernstein, although denying that he was engaging in settlement negotiations, he and his sons went to see Ms. Sahm to discuss terms and conditions to settle the case while doing chores for her around the house and discussing about how Joanna Sahm was failing to care for Ms. Sahm, endangering her well-being. (*Id.* at Pgs. 79 - 86).

Throughout these proceedings, Inger Garcia, Esq. has represented the Defendants. Ms. Garcia also represents Patty Sahm Jr., in Ms. Sahm’s guardianship proceedings, including through the August 14, 2024 Injunction for Protection against Exploitation of a Vulnerable Adult proceedings (*See* Pltf. Exh. #11). Ms. Garcia has pending in this case a Motion for Relief from Judgment pursuant to *Fla. R. Civ. P.* 1.540 (DE #207) which was filed on or about May 24, 2023 (two days after the “settlement agreement”). Despite being pending for two years, this motion has

never been set for a hearing. In fact, Ms. Garcia consistently refused this Court's requests to hear both the Motion to Set Aside the May 22, 2023 settlement at the same time as her Motion to Set Aside a Judgment, she asserts has been settled by way of a valid settlement agreement, based upon "fraud." In the related bankruptcy action, Hon. Peter Russin found that Ms. Garcia, on behalf of certain defendants including Eliot Bernstein, filed a factually false and legally incorrect Suggestion of Bankruptcy *in these proceedings* for the purpose of obtaining the cancellation of the April 4, 2023 foreclosure sale as part of a continuing bad faith scheme to delay and hinder the foreclosure action. (Pltf. Exh. #6 at Paragraphs d – e; *See also* DE #203). Ms. Garcia has also made reference to her "pending 1.540" motion in her various appearances in 2023MH001072 and 2023GA000245.

A draft settlement agreement Ms. Garcia emailed on March 10, 2023 to another attorney handling one of these cases, states:

WHEREAS, on February 23, 2018, Plaintiffs, Walter E. Sahm and his then wife Patricia A. Sahm, filed a lawsuit for foreclosure on a first mortgage and promissory note [...]
Walter E. Sahn, [sic] Jr., is now deceased and his estate is pending in Marion County, and **his now incapacitated wife, Patricia Sahm**, has a POA/Trustee/Pre-need Guardian with her daughter Johanna Sahm, and are the true current parties in interest[.] (Pltf. Exh. 12)
(*emphasis added*).

This Court assumed responsibility for this Case from its Predecessor Judge on or about July 1, 2024. Since that time, Ms. Garcia has frequently filed documents the day prior to hearing, failed to comply with orders to meet and confer and provide scheduling with opposing counsel, and consistently requested extensions of time. (DEs #248, #251, #259) This Court has previously found that Ms. Garcia's conduct did appear to be dilatory and indicated that this Court was close to ordering her to show cause why It should not impose sanctions. (*See Transcript of September*

20, 2024 Hearing DE #285 at Pgs. 12, 38-29). At the January 28, 2025 hearing, Ms. Garcia produced Defense Exhibit MM, which were text exchanges between her and Ms. Patwell. *Inter alia*, Ms. Garcia texts to Ms. Patwell:

Thank you for your time today. Without sharing I requested client and kevin to back off and not communicate with you or your client or her daughter so you can let me know on Monday or whenever what you need from us. If you get any calls or texts from Kevin ignore him. I can tell Patty jr that we are stepping back and not communicating with them for now so you guys can decide what to do and we are here to help but not to respond to anyone but you[.]

Sorry to bother you on a Sunday. I am working on the 1.540 motion on the foreclosure case. I am going to change it to support your client[...]
Ok well I hate wasting time drafting but it will all support your client as having no knowledge. I need this money to pay my mortgage lol[...]

Statement of the Law

A person is presumed to be competent when she enters into a contract and the burden of overcoming this presumption rests on the party who challenges the validity of the contract. *John Knox Village of Tampa Bay, Inc v. Perry*, 94 So. 3d 715, 717 (Fla. 2nd DCA 2012) *citing Travis v. Travis*, 87 So. 762, 765 (1921). Incompetence is not shown by evidence of simple feebleness or mental weakness. The challenging party must prove that the mental or physical weakness amounted to an inability to comprehend the effect and nature of the transaction. *Dukes v. Dukes*, 346 So.2d 544, 546 (Fla. 1st DCA 1976).

“[U]ndue influence justifying the setting aside of will, deed, or other contract must be such as to dethrone the free agency of the person making it and rendering his act the product of the will of another instead of his own.” *Peacock v. Du Bois*, 105 So. 321, 322 (Fla. 1925). “The character

of the transaction, the mental condition of the person whose act is in question, and the relationship of the parties concerned to each other, are all elements that may be taken into consideration in applying the rule.” *Id.*

ANALYSIS

Having had the opportunity to observe the demeanor and frankness of the witnesses and their ability to testify relevantly, the Court credits the testimony of Joanna Sahm and Dr. Bloom. Dr. Bloom’s opinion is corroborated by Dr. Cheshire’s opinion. Further, this Court finds only those portions of Ms. Garcia and Eliot Bernstein’s testimony cited in the above finding of facts to be credible. The Court finds that the credible evidence conclusively rebuts the presumption of competency and that the Plaintiffs have established Ms. Sahm was not competent to execute either her initial revocation of the Power of Attorney. As of that time, she had already been diagnosed with Alzheimer’s disease and had fallen victim to at least three prior financial scams. Ultimately, she would be examined by a guardianship committee and adjudicated to require a guardianship. While the ultimate adjudication of incapacity in the guardianship proceeding occurred significantly after the events giving rise to the instant “settlement” agreement, the evidence demonstrates that Ms. Sahm had been suffering from cognitive impairment for some time *prior* to the institution of the guardianship proceedings. Indeed, Joanna Sahm testified Ms. Sahm did not recognize or remember some of the letters she wrote discussing the case days after signing them. The Plaintiffs having overcome the presumption of Ms. Sahm’s capacity, there was no credible evidence to demonstrate that Ms. Sahm was in fact competent at the time she revoked her power of attorney. With the Court finding the revocation of Ms. Sahm’s Power of Attorney to not have been done in a competent capacity, all acts following that, including the May 22, 2023 settlement agreement, would necessarily be *void ab initio*.

Assuming, *arguendo*, Ms. Sahm was competent and validly executed a revocation of her power of attorney, the Court is convinced *beyond a reasonable doubt* that this settlement agreement was the product of undue influence. Kevin Hall reached out to Patty Sahm Jr., following Patty Sahm Jr.'s arrest for Aggravated Assault against her sister Joanna Sahm and utilized Patty Sahm Jr., to communicate with Ms. Sahm directly despite having knowledge she was represented by counsel. The Defendants met with Ms. Sahm alone and used those opportunities to build her trust by performing housework while sowing the seeds of discord between Ms. Sahm and Joanna Sahm. After building a position of confidence, they then convinced their adversary in a long-standing foreclosure action to retain counsel they helped select to settle the matter for a drastically reduced sum. The April 19, 2023 letter, written with the assistance of Patricia Sahm Jr., who is represented by Inger Garcia, Esq. and who has an order precluding further exploitation of Ms. Sahm, a vulnerable adult, conclusively demonstrates the pervasive undue influence placed before Ms. Sahm at least one month before the "settlement agreement" was signed. The decision to settle this case was the will of the Bernstein Defendants, and not the independent decision of Ms. Sahm.

Furthermore, this Court does find that this scheme was enacted with the full knowledge and personal involvement of clients Eliot Bernstein, Kevin Hall on behalf of BFR, LLC., and Inger Garcia Esq. with the assistance of Patricia Sahm Jr., in furtherance of the same type of dilatory conduct that has surrounded this case since the entry of the final judgment of foreclosure. Ms. Garcia's acts are willful and not the result of neglect or inexperience. These acts have prolonged the conclusion of these cases to the detriment of Ms. Sahm by causing her to expend attorney's fees and costs, and untold amounts of emotional strain. Ms. Garcia failed to provide a reasonable justification for noncompliance other than continually, and incorrectly, indicating that all the proceedings are "fraudulent." This conduct has caused the Court to expend large quantities of

needless hearing time on baseless and frivolous motions, precluding the Court from hearing other, meritorious matters.

CONCLUSION

For all of the foregoing reasons, it is **HEREBY ORDERED AND ADJUDGED:**

1. The Plaintiff's Motion to Set Aside Settlement Agreement (DE #226) is **GRANTED**.
2. As a sanction for their conduct in this case, all of the Defendants' Pending Motions attacking the final judgment are hereby **STRICKEN WITH PREJUDICE**.
3. As a further sanction for their conduct in this case, the Court **GRANTS** the Plaintiff's Motion to Assess Attorneys' Fees against Inger Garcia, Esq., Defendant Eliot Bernstein, and Defendant Bernstein Family Realty, LLC, jointly and severally, for all reasonable and necessary costs and Attorney's fees expended litigating this matter from March 27, 2024 until the date of this order.
4. No Motions for Rehearing of this Order will be entertained.
5. The Plaintiff is directed to forthwith provide this Court with a proposed order resetting the foreclosure sale date. The Court will edit and enter the appropriate order and thus the proposed order does not have to be approved by Counsel for the Defendants before submission.
6. The Court retains jurisdiction to enter all further orders as necessary and appropriate to enforce this order.

7. The Defendants are further placed on notice that failure to abide by this Order shall result in this Court issuing a Rule to Show Cause pursuant to *Fla. R. Crim. P.* 3.840.

DONE AND ORDERED in West Palm Beach, Florida.

 502018CA002317XXXXMB 03/06/2025
John J. Parnofiello Circuit Judge
ADMINISTRATIVE OFFICE OF THE COURT

502018CA002317XXXXMB 03/06/2025
John J. Parnofiello
Circuit Judge

Copies to:

All Counsel of Record