

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

IN RE:)
ELIOT IVAN BERNSTEIN,)
Debtor,) CASE No. 25-14028-PDR
) Chapter 13

BANKRUPTCY MOTION HEARING
BEFORE THE HONORABLE PETER D. RUSSIN
JUNE 2, 2025

REPORTED BY:
Melva Weldon, CRD
TRANSCRIBED BY:
Kimberly Jones, CET
AAERT-1411

A P P E A R A N C E S

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P R O C E E D I N G S

MS. WEINER: The next matter is also on my regular page 18, Case No. 25-14028, Eliot Bernstein. On the regular calendar at 10:00, there is an Amended Motion for Relief from Stay filed by a creditor. I don't have who that is.

MR. SCHRAIBERG: Charles Revard (ph) as guardian of the ward of Patricia Sahm.

THE COURT: Let's get appearances first.

MR. SHRAIBERG: Brad Schraiberg, spelled S-H-R-A-I-B-E-R-G, on behalf of Mr. Revard as guardian of the ward of Patricia Sahm. And, I apologize, I'm just getting over some laryngitis, so --

THE COURT: No problem.

MS. WEINER: That is our -- oh, state your name.

MR. BERNSTEIN: Good morning, Your Honor. Eliot Bernstein, E-L-I-O-T, Bernstein, B-E-R-N-S-T-E-I-N. I'm the debtor.

THE COURT: And --

MS. WEINER: That --

THE COURT: -- you're representing yourself.

MR. BERNSTEIN: I am for today, Your Honor.

THE COURT: Okay. Thank you, Mr. Bernstein.

MS. WEINER: That's on the 10:00 calendar, and on the 10:30 calendar, we have Docket 29 and Docket 19, if

Commented [KJ1]: The reporter has Brevard, but PACER shows Revard.

1 I'm correct. This is Docket -- oh, no, 19 is on both.
2 Okay.

3 MR. BERNSTEIN: They were changed.

4 MR. SHRAIBERG: Your Honor, there was an amended
5 notice of hearing moving this to the 10:30 docket.

6 MS. WEINER: So then 19 is off.

7 THE COURT: We've got docket entry 19, which is
8 an Amended --

9 MS. WEINER: Right.

10 THE COURT: -- Motion for Stay of Relief, Mr.
11 Shraiberg, by your client.

12 MR. SHRAIBERG: Yes.

13 THE COURT: And then we've got the Debtor's
14 Emergency Submittal for Temporary Stay or Continuance of
15 Hearing at docket entry 29. And that's what we have,
16 right?

17 MR. SHRAIBERG: Yes, Your Honor.

18 THE COURT: Okay. So tell me -- tell me about
19 your Motion for Stay of Relief, Mr. Schraiberg.

20 MR. SHRAIBERG: Thank you, Your Honor.

21 This is a Motion for Stay of Relief pursuant to
22 Sections 362(d)(1), (d)(2), 362(d)(4)(B), and Federal Rule
23 of Bankruptcy Procedure 4001(a)(3). Today we are going to
24 be asking the Court to lift the automatic stay to permit
25 litigation against and involving the debtor including an

1 appending state court matter and including with regard to
2 the prosecution, defense, and litigation of three pending
3 appellate cases, and, once again, terminating the
4 automatic stay prospectively for two years with respect to
5 any act against the real property at issue in this case
6 or, in the alternative, for straight-up stay relief.
7 Modifying the automatic stay as to actions against the
8 real property and --

9 THE COURT: Well, tell me about -- I don't know
10 much about this. So tell me about the real property.
11 What's, what's the background?

12 MR. SHRAIBERG: Yes. This is the -- round three
13 of a third bankruptcy that has been filed. The first two
14 have been filed in bad faith -- I'm sorry -- were
15 dismissed in bad faith. The easiest part of my argument
16 today is that Mr. Bernstein's last Chapter 13, the -- my
17 client received *In Rem Stay Relief* against --

18 THE COURT: Your client is the lender --

19 MR. SHRAIBERG: Correct.

20 THE COURT: -- first position mortgage holder?

21 MR. SHRAIBERG: Yes. And has a judgment of
22 foreclosure. The filing of this bankruptcy for the third
23 time stopped the foreclosure sale of the property. This
24 case --

25 THE COURT: Okay. And how much is your judgment

1 for?

2 MR. SHRAIBERG: The judgment, I believe, is for
3 in excess of \$500,000.

4 THE COURT: Okay. And this is homestead
5 property?

6 MR. SHRAIBERG: It, I believe, is. Mr. Bernstein
7 is a tenant. This is just another --

8 THE COURT: Oh, is a tenant.

9 MR. SHRAIBERG: Correct. The owner of the
10 property is Bernstein Family Realty, LLC. They filed --
11 let me get back to that just to give the 30,000-foot --
12 Mr. Bernstein's last Chapter 13, we were -- in that case,
13 my client received *In Rem Stay of Relief* against this
14 property for two years. This case was filed one day
15 before that two-year period lapsed. Now the overall
16 background of --

17 THE COURT: Have stay of relief automatically as
18 to the property.

19 MR. SHRAIBERG: Correct. But we wanted to get a
20 --

21 THE COURT: You wanted an order so the --

22 MR. SHRAIBERG: -- comfort order.

23 THE COURT: -- state court knows you have a stay
24 of relief.

25 MR. SHRAIBERG: Correct.

1 THE COURT: Okay.

2 MR. SHRAIBERG: The first bankruptcy was filed by
3 the Bernstein Family Realty, LLC. It was filed as an
4 involuntary bankruptcy against itself. The three members
5 of the Bernstein Family Realty, which are Mr. Bernstein's
6 three children, filed an involuntary against themselves.
7 We suspect that the reason why they did that was because
8 it was a manager-less LLC. Regardless, it was heard by
9 Judge Kimball originally and a detailed order was entered
10 finding that that bankruptcy was filed in bad faith and --

11 THE COURT: It's also filed on the eve of the
12 foreclosure sale?

13 MR. SHRAIBERG: Correct, Your Honor.

14 THE COURT: Okay.

15 MR. SHRAIBERG: Then, when we went back to state
16 court and got a new sale date, the -- sorry -- on April 3,
17 2023, this debtor filed a voluntary Chapter 13 petition
18 case in front of Your Honor. Immediately thereafter, the
19 debtor filed a Suggestion of Bankruptcy in the state court
20 case wherein the debtor, even though he was not the owner
21 of the real property --

22 THE COURT: Was he even a party to the case?

23 MR. SHRAIBERG: As an unknown tenant.

24 THE COURT: Okay.

25 MR. SHRAIBERG: -- falsely stated that the real

1 property is property of the Chapter 13 estate and falsely
2 implied, in his Chapter 13 bankruptcy case, would somehow
3 result in a discharge of the foreclosure judgment or
4 otherwise release the real property from the foreclosure
5 judgment. And we have that as an exhibit to this motion.
6 After the debtor's filing of the previous Suggestion of
7 Bankruptcy, the state court canceled that hearing. In
8 response, the secured -- my client's predecessor --

9 THE COURT: (Indiscernible) sale.

10 MR. SHRAIBERG: I'm sorry?

11 THE COURT: Canceled the sale?

12 MR. SHRAIBERG: -- canceled the sale.

13 THE COURT: Sale. Not a hearing?

14 MR. SHRAIBERG: Sorry. Correct. Yes.

15 THE COURT: Okay.

16 MR. SHRAIBERG: Following a motion -- our Motion
17 for Relief from Stay in the prior Chapter 13 filed by Mr.
18 Bernstein, on April 13, 2023, this Court made the
19 following findings: a) The real --

20 THE COURT: This Court?

21 MR. SHRAIBERG: Your Honor, yourself. Yes.

22 THE COURT: Moi?

23 MR. SHRAIBERG: Moi.

24 THE COURT: Okay.

25 MR. SHRAIBERG: The real property is owned by the

1 family -- the Bernstein Family Realty, LLC. The secured
2 creditors' predecessor in interest is the holder of a
3 final foreclosure judgment with respect to the real
4 property of my client. The April 3, 2023, Suggestion of
5 Bankruptcy filed by the debtor in the state court was,
6 quote, factually false and legally incorrect, and was
7 designed to mislead the state court and/or the clerk of
8 the state court into cancelling the April 4, 2023,
9 foreclosure sale of the real property. Because the
10 Suggestion of Bankruptcy stated that this action is
11 founded on a claim from which a discharge would be a
12 release of that seeks to impose a charge on the property
13 of the estate. The debtor's purpose -- this is also a
14 finding. The debtor's purpose in filing the voluntary
15 Chapter 13 petition was not to reorganize or confirm a
16 plan but, instead, quote, was to obtain the cancelation of
17 the April 4, 2023, foreclosure sale of the real property
18 as part of a continuing bad faith scheme to delay and
19 hinder the movants with respect to the foreclosure action
20 against the real property. This order is found at docket
21 entry 22 in the case 23-12630 that was before Your Honor,
22 and it's attached as Exhibit B to this motion.

23 THE COURT: Okay.

24 MR. SHRAIBERG: And having so found that the
25 bankruptcy court ordered, pursuant to 11 U.S.C.

1 362(d)(4)(B), that the automatic stay, quote, is modified
2 so that for the next two years from the date of this,
3 which was April 14, 2023, order, no voluntary or
4 involuntary petition filed under Title 11 of the United
5 States Code shall operate as a stay of any act against the
6 real property.

7 THE COURT: What's happened in the two years?
8 You weren't able to get a sale scheduled and completed?

9 MR. SHRAIBERG: There were numerous -- this
10 foreclosure started in 2018. There were numerous,
11 respectfully, what we call, frivolous defenses raised
12 throughout this entire case.

13 THE COURT: Weren't you post-judgment?

14 MR. SHRAIBERG: No. They --

15 THE COURT: I'm just asking a simple question.

16 MR. SHRAIBERG: Yes. Yes.

17 THE COURT: What happened between the order that
18 I entered and why didn't the sale actually happen?

19 MR. SHRAIBERG: Mr. Bernstein filed various
20 pleadings state -- post-judgment stating that there wasn't
21 authority to obtain the foreclosure judgment.

22 THE COURT: Okay. And those were all denied and
23 are set -- a sale was reset?

24 MR. SHRAIBERG: That is correct, Your Honor.

25 THE COURT: Okay.

1 MR. SHRAIBERG: And Mr. --

2 THE COURT: For what date?

3 MR. SHRAIBERG: It was set for, I believe, the
4 day of the filing.

5 THE COURT: Okay. And that's why this case was -
6 - this most recent case was filed, to stay that sale.

7 MR. SHRAIBERG: Correct.

8 THE COURT: Okay. All right. So all that's been
9 adjudicated, state court has reset the sale, and then this
10 filed. And you're obviously asserting that this was a bad
11 faith filing and that it was filed and should have been
12 accepted -- or has no -- the stay -- you want to confirm
13 that the stay is not in effect.

14 MR. SHRAIBERG: Correct.

15 THE COURT: Okay.

16 MR. SHRAIBERG: As well as we want a new two-year
17 period to be added. This debtor has no income. This
18 debtor filed this case -- has filed the plan that calls
19 for no distribution to unsecured creditors, claims under
20 penalty of perjury on his schedules that we are over-
21 secured, and even with that, they are making no payments
22 pursuant to the proposed plan, have made to date no
23 payments into his plan --

24 THE COURT: Okay. I understand.

25 MR. SHRAIBERG: Yes.

1 THE COURT: Anything else?

2 MR. SHRAIBERG: This debtor filed almost -- or a
3 very similar Suggestion of Bankruptcy in the state court
4 that's --

5 THE COURT: As he did the last time.

6 MR. SHRAIBERG: Exactly, Your Honor.

7 THE COURT: All right.

8 MR. SHRAIBERG: The difference is the last one
9 was done by -- with the help of an attorney. This one was
10 filed pro se.

11 THE COURT: Okay.

12 MR. SHRAIBERG: And we've attached that
13 Suggestion of Bankruptcy to our exhibits.

14 THE COURT: All right. Mr. Bernstein?

15 MR. BERNSTEIN: Thank you, Your Honor. I'm still
16 under medication, as my motions show. Heart and oral. I
17 showed cause why my papers in opposition should be
18 considered, even if deemed late, but Mr. Shraiberg also
19 did not proper notice under the rules. The hearing should
20 be continued, as my emergency motion shows. There should
21 be an evidentiary hearing under local rule 4001-1, as
22 requested, as Mr. Shraiberg did not attach documents to
23 his motion on the debt and property under the local
24 guidelines. There are multiple witnesses who should be
25 heard at the evidentiary hearing.

1 THE COURT: Why? If there's a judgment that's
2 been entered and a foreclosure sale set, there's no --
3 there's no issue that I will adjudicate that the state
4 court hasn't already adjudicated.

5 MR. BERNSTEIN: Well, there's a whistleblower
6 who's a former intern prosecutor for Janet Reno and a
7 licensed Florida attorney --

8 THE COURT: All right. So denied. I'm granting
9 your motion, Mr. Shraiberg. Please get me the order.

10 Mr. Bernstein --

11 MR. BERNSTEIN: Yeah?

12 THE COURT: -- this is a --

13 MR. BERNSTEIN: We'll sit down.

14 THE COURT: -- an abusive process, so --

15 MS. WEINER: Excuse me, Your Honor?

16 THE COURT: What's that?

17 MS. WEINER: I'm going to call the federal
18 marshals. He just called you an abusive process.

19 THE COURT: Well, I said it was an abusive
20 process.

21 MS. WEINER: He called you, as he was walking
22 out.

23 THE COURT: I've been called worse.

24 MS. WEINER: Okay.

25 THE COURT: Probably will be called worse --

1 MS. WEINER: Just saying.

2 THE COURT: -- you know, many times in the
3 future. It is part of the job.

4 MS. WEINER: Your Honor, may I ask what the
5 status of this case is going to be, because I believe we
6 have a motion -- could Mr. Girardi (ph) come --

7 THE COURT: I think stay of relief.

8 MS. WEINER: -- forward --

9 THE COURT: So -- and I'm granting the two-year
10 prejudice period.

11 MS. WEINER: So, therefore, anything we have
12 pending will be moot then?

13 THE COURT: I don't know what you have pending,
14 but it seems to me that the only reason this was filed was
15 to stop the foreclosure sale, and now the foreclosure sale
16 will not be stopped and I'm granting stay of relief. File
17 whatever you need to file to dispose of the case, I
18 suppose.

19 MR. GIRARDI: Precisely, Your Honor. And Matt
20 Girardi with the Trustee's Office. We filed a request for
21 dismissal on May 23rd for no money. It's a 341. I
22 believe that would just then get entered once the motion
23 for relief is resolved.

24 THE COURT: Okay. Got it. Yeah, that was
25 holding it up, the fact that it was pending. Okay.

1 MS. WEINER: Then I'm going to ask Your Honor
2 that you draft your own order with regard to denying Mr.
3 Bernstein's motions and maybe Mr. Shraiberg could upload
4 an order or -- I don't know if the Court's inclined to do
5 both?

6 THE COURT: Well, we'll draft the order.

7 MS. WEINER: Okay.

8 THE COURT: Not a problem. Mr. Kline (ph.) is
9 very good at that.

10 MS. WEINER: And he was sending me all kinds of
11 stuff and I had no -- and making allegations against me,
12 and I had nothing to do with anything he was saying.
13 Okay. Thank you, Your Honor.

14 THE COURT: Madam Trustee, we've all been there.
15 It's --

16 MS. WEINER: It's not the first.

17 THE COURT: Listen, I -- and I'm not taking this
18 lightly. You know, these folks are desperate. They are
19 losing their roof over their head, so they take desperate
20 action, and it is what it is, and, you know, we know it
21 when we see it, and I've ruled, and it'll be what it'll
22 be.

23 MS. WEINER: We did have one matter, but it's
24 going to take more than the two minutes you have left, so
25 could we say 1:00? Do you think 1:00 would be too early

1 for Your Honor?

2 THE COURT: What matter is that?

3 MS. WEINER: One -- you had said, originally, one
4 -- oh, we have people coming back at 1:30? All right.
5 So, Your Honor, may I continue doing what I need to do and
6 we'll see you at 1:30?

7 THE COURT: Absolutely. Thank you, all.

8 MR. SHRAIBERG: Your Honor -- I apologize -- am I
9 submitting the order or is -- are -- you entering the
10 order?

11 THE COURT: You're submitting an order on your
12 motion --

13 MR. SHRAIBERG: Great.

14 THE COURT: -- and we will be entering an order
15 on the debtor's objection or whatever -- we will be
16 entering an order on -- hold on a second -- on docket
17 entry 29, which is the Debtor's Emergency Submittal under
18 11 U.S.C. 105(a) for Temporary Stay, denying it.

19 MR. SHRAIBERG: Yeah. I'm just wondering,
20 because they are serial filers, can I at least make a
21 finding that this was filed in bad faith?

22 THE COURT: Yes.

23 MR. SHRAIBERG: Okay.

24 THE COURT: It was filed in bad faith.

25 MR. SHRAIBERG: I understand.

1 THE COURT: Okay. All right.

2 MS. WEINER: Thank you, Your Honor.

3 THE COURT: Thank you, all.

4 MR. SHRAIBERG: Thank you, Your Honor. Your
5 Honor, I apologize, because I don't -- I want to make sure
6 things are on the record with this debtor. Can it also
7 re-state the finding that was in the prior order that the
8 Suggestion of Bankruptcy was filed to mislead the state
9 court?

10 THE COURT: Is that attached to your motion?

11 MR. SHRAIBERG: It's Exhibit C -- you know what,
12 let me make sure I'm right. Nope, it's not. It is
13 Exhibit D, found at page 24 of 29. And it could be found
14 -- he bolded the misrepresentation.

15 THE COURT: So this did not act as an automatic
16 stay.

17 MR. SHRAIBERG: It was filed within the two years
18 --

19 THE COURT: It's within the two years. And that
20 date, April 14th -- and tell me how you calculate the
21 other date.

22 MR. SHRAIBERG: It falls within one day.

23 THE COURT: Okay.

24 MR. SHRAIBERG: We believe -- and we've set forth
25 in our motion that --

1 THE COURT: Okay. You can include that finding.
2 MR. SHRAIBERG: Thank you, Your Honor.
3 THE COURT: All right.
4 MS. WEINER: Thank you, Your Honor.
5 THE COURT: Thank you, all.
6 (End of proceedings)

C E R T I F I C A T E

I, KIMBERLY JONES, do hereby certify that this transcript was prepared from the digital audio recording of the foregoing proceeding, that said transcript is a true and accurate record of the proceedings to the best of my knowledge, skills, and ability; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this was taken; and, further, that I am not a relative or employee of any counsel or attorney employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

KIMBERLY JONES

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