

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95,)

Plaintiff,)

v.)

HERITAGE UNION LIFE INSURANCE)
COMPANY,)

Defendant,)

HERITAGE UNION LIFE INSURANCE)
COMPANY)

Counter-Plaintiff)

v.)

SIMON BERNSTEIN IRREVOCABLE)
INSURANCE TRUST DTD 6/21/95)

Counter-Defendant)

and,)

FIRST ARLINGTON NATIONAL BANK)
as Trustee of S.B. Lexington, Inc. Employee)
Death Benefit Trust, UNITED BANK OF)
ILLINOIS, BANK OF AMERICA,)
Successor in interest to LaSalle National)
Trust, N.A., SIMON BERNSTEIN TRUST,)
N.A., TED BERNSTEIN, individually and)
as purported Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd 6/21/95,)

Case No. 13 cv 3643
Honorable John Robert Blakey
Magistrate Mary M. Rowland

Filers:
Simon Bernstein Irrevocable
Insurance Trust Dated 6/21/95,
Ted Bernstein, as Trustee

ANSWER TO INTERVENOR
COMPLAINT OF BENJAMIN
BROWN, AS ADMINISTRATOR
AD LITEM, FOR THE ESTATE
OF SIMON BERNSTEIN

and ELIOT BERNSTEIN)
)
Third-Party Defendants.)
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)
ELIOT IVAN BERNSTEIN,)
)
Cross-Plaintiff)
)
v.)
)
TED BERNSTEIN, individually and)
as alleged Trustee of the Simon Bernstein)
Irrevocable Insurance Trust Dtd, 6/21/95)
)
Cross-Defendant)
and,)
)
PAMELA B. SIMON, DAVID B.SIMON,)
both Professionally and Personally)
ADAM SIMON, both Professionally and)
Personally, THE SIMON LAW FIRM,)
TESCHER & SPALLINA, P.A.,)
DONALD TESCHER, both Professionally)
and Personally, ROBERT SPALLINA,)
both Professionally and Personally,)
LISA FRIEDSTEIN, JILL IANTONI)
S.B. LEXINGTON, INC. EMPLOYEE)
DEATH BENEFIT TRUST, S.T.P.)
ENTERPRISES, INC. S.B. LEXINGTON,)
INC., NATIONAL SERVICE)
ASSOCIATION (OF FLORIDA),)
NATIONAL SERVICE ASSOCIATION)
(OF ILLINOIS) AND JOHN AND JANE)
DOES)
)
Third-Party Defendants.)
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NOW COMES Plaintiffs, Simon Bernstein Irrevocable Insurance Trust Dtd 6/21/95, by Ted Bernstein, as Trustee, (The “Bernstein Trust”), Ted Bernstein, Individually, Pam Simon, Jill Iantoni, Lisa Friedstein, and states as their Answer to the Intervenor Complaint of the Estate of Simon Bernstein, as follows:

INTRODUCTION

1. This declaratory judgment action is filed pursuant to Fed. R. Civ. P. 57 and seeks a declaration that there exists no designated beneficiary of the life insurance policy proceeds at issue in the instant action and that the proceeds of the policy must be paid to the Estate of Simon Bernstein, currently pending in Palm Beach County, Florida.

Answer:

Respondents make no answer to ¶1 as the allegations are merely descriptive and contain no allegations of fact requiring a response.

2. Benjamin P. Brown is an Intervening Party pursuant to Fed. R. Civ. P.24 and is a resident of Palm Beach County, Florida.

Answer: Admit.

3. The purported Simon Bernstein Irrevocable Insurance Trust is alleged in Plaintiff’s original complaint to have been established in Chicago, Illinois.

Answer: Admit the Bernstein Trust was formed in Chicago, Illinois.

4. Heritage Union Life Insurance Company, a Minnesota corporation, is the successor corporation to the insurer that issued the life insurance policy (the “Policy”) at issue in the instant litigation.

Answer: Admit.

5. The death benefit under the Policy proceeds exceeds \$1 million dollars.

Answer: Admit.

6. This court has jurisdiction over this matter in that it is a civil action wherein the parties are all citizens of different states and the amount in controversy exceeds \$75,000.00.

Answer: The Bernstein Trust admits this court has jurisdiction pursuant to 28 U.S.C. §1332(a).

7. Simon L. Bernstein, a resident of Florida, died in September of 2012. His estate was admitted to probate in Palm Beach County, Florida on October 2, 2012. Letters of curatorship in favor of Benjamin Brown were issued on March 11, 2014 (A copy of the Letters of Curatorship filed in the Probate Court is attached hereto as Exhibit A).

Answer: Admit.

8. At the time of Simon Bernstein's death, there was in effect a life insurance policy issued by Capitol Bankers Life Insurance Company as policy number 1009208 (the "Policy"). The Policy's current proceeds are \$1,689,070.00, less an outstanding loan. (see Dkt. No. 17 at ¶17).

Answer: The Bernstein trust admits that Dkt. 17 reflects the deposit of the Policy proceeds with the Registry of the Court by Heritage pursuant to its Interpleader Action.

9. After Mr. Bernstein's death, several of his children filed a Complaint in the Circuit Court of Cook County claiming a right to the proceeds of the Policy as alleged beneficiaries under a purported trust they describe as the "Simon Bernstein Irrevocable Insurance Trust (the "Trust"). The Bernstein children acknowledge that they have been unable to produce an executed Trust document under which they assert their rights.

Answer:

Admit only that a complaint was filed on behalf of the Bernstein Trust in the Circuit Court of Cook County, and that, to date, no executed original or executed copy of a formal written trust agreement has been located by any party. Denies that no documents and signed writings have been produced evidencing the existence of the Bernstein Trust and its terms.

10. Defendant, Heritage Union Life Insurance Company, as successor to Capitol Bankers Life Insurance Company, removed the case to this Court on June 12, 2013 and filed an Interpleader action pursuant to 28 U.S.C. §1335(a), in conjunction with its Answer to Plaintiff's Complaint. (*See* Dkt. 17). In its Complaint for Interpleader, Heritage asserts the following:

“Presently the Bernstein Trust has not been located. Accordingly [Defendant] is not aware whether the Bernstein Trust even exists, and if it does whether its title is the “Simon Bernstein Trust, N.A.”, as listed as the Policy’s contingent beneficiary (or otherwise), and/or if Ted Bernstein is in fact its trustee. In conjunction, [Defendant] has received conflicting claims as to whether Ted Bernstein had authority to file the instant suit on behalf of the Bernstein Trust.”

ANSWER: Neither admit nor deny the allegations in ¶10, as the Complaint for Interpleader speaks for itself.

11. On May 23, 2014, Mr. Brown was appointed *Administrator Ad Litem* to act on behalf of the Estate of Simon L. Bernstein (the “Estate”) and, more specifically, directed by the Probate Court in Palm Beach County “to assert the interests of the Estate in the Illinois Litigation involving life insurance on the Decedent’s life.”

ANSWER: Neither admit nor deny the allegations in ¶11, and states that the Order referenced in ¶11 speaks for itself.

12. Plaintiff cannot prove the existence of a Trust document, cannot prove that a trust was ever created, thus, cannot prove the existence of the Trust nor its status as purported beneficiary of the Policy. In the absence of a valid Trust and designated beneficiary, the Policy proceeds are payable to Petitioner, the Estate of Simon Bernstein, as a matter of both Illinois and Florida Law. *See New York Life Ins. Co. v. RAK*, 180 N. E.2d 470 (Ill. 1962) (where beneficiary no longer existed, proceeds of life insurance policy passed to decedent's estate); *Harris v. Byard*, 501 So.2d 730 (Fla. Dist. Ct. App. 1987) (in the absence of a named beneficiary, no basis in law for directing payment of insurance proceeds to anyone other than decedent's estate for administration and distribution)

ANSWER: Deny.

13. Intervenor Benjamin Brown seeks a judgment from this Court declaring that no valid beneficiary is named under the Policy and that the proceeds of the Policy must therefore be paid to the Estate.

Answer: Denies that Intervenor Benjamin Brown is entitled to any of the relief sought in ¶13.

WHEREFORE, Plaintiffs respectfully request that this Honorable Court deny any of the relief sought by Intervenor in his Complaint, enter judgment against Intervenor, and award the Bernstein Trusts its costs and such other relief as this court deems just and proper.

Dated: February ___, 2015

/s Adam M. Simon

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Attorney for Answering Plaintiffs

*Simon L. Bernstein Irrevocable Insurance Trust
Dtd 6/21/95; Ted Bernstein as Trustee, and
individually, Pamela B. Simon, Jill Iantoni and
Lisa Friedstein*

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that he caused a copy of the foregoing Appearance, Answer and Affirmative Defenses to Eliot Ivan Bernstein's Cross-Claims and/or Third-Party Claims to be served upon the following persons and entities via ECF filing to:

Alexander David Marks
Frederic A. Mendelsohn
Burke Warren MaCkay & Serritella
330 N. Wabash Ave. -- 22nd Floor
Chicago, IL 60611
312-840-7000
Attorneys for Heritage Union Life Insurance Company
And Jackson National Insurance Company;

And *via* U.S. Mail, proper postage prepaid to:

Eliot Ivan Bernstein
2753 NW 34th St.
Boca Raton, FL 33434

on the 4th day of November, 2013.

/s Adam M.Simon

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Attorney for Answering Defendants

Simon L. Bernstein Irrevocable Insurance Trust Dtd 6/21/95; Ted Bernstein as Trustee, and individually, Pamela B. Simon, David Simon, Adam Simon, The Simon Law Firm and STP Enterprises, Inc.