

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

CASE NO. 4D17-1932

ELIOT IVAN BERNSTEIN

L.T. CASE NOS. 2014CP003698 XXXX
NB

Appellant,

v.

TED S. BERNSTEIN, AS TRUSTEE, et al.

Appellee.

/

**APPENDIX TO
APPELLEE'S, TED S. BERNSTEIN, AS TRUSTEE,
MOTION TO DISMISS APPEAL FOR LACK OF STANDING, AND
REQUEST THAT COURT DISMISS APPEAL AND IMPOSE
NON-MONETARY SANCTIONS AGAINST PRO SE APPELLANT**

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
as Trustee f/b/o D.B., Ja. B. and Jo. B. under the
Simon L. Bernstein Trust Dtd 9/13/12, and on
behalf of his minor children D.B., Ja. B. and Jo. B.;
JILL IANTONI, Individually, as Trustee f/b/o J.I.
under the Simon L. Bernstein Trust Dtd 9/13/12, and
on behalf of her Minor child J.I.; MAX FRIEDSTEIN;
LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F.,

copy

Defendants.

FINAL JUDGMENT ON COUNT II OF THE AMENDED COMPLAINT

This cause came before the Court for trial on December 15, 2015, pursuant to the Court's
ORDER SETTING TRIAL on AMENDED COMPLAINT (DE 26) COUNT II dated September 24,
2015. The Court, having received evidence in the form of documents and testimony of witnesses,

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having heard argument of counsel and *pro se* parties who wished to argue, and being otherwise fully advised of the premises, hereby enters a Final Judgment as to Count II of the Amended Complaint:

1. This is an action for declaratory judgment to determine the validity, authenticity and enforceability of certain wills and trusts executed by Simon Bernstein and Shirley Bernstein, as follows:

- A. Shirley Bernstein Trust Agreement dated May 20, 2008 ("Shirley Trust", attached to the Amended Complaint as Exhibit A~~3~~, *Ex. P1 AT TRIAL*) *JP*
- B. First Amendment to Shirley Bernstein Trust Agreement dated November 18, 2008 ("Shirley First Amendment", attached to the Amended Complaint as Exhibit B~~3~~, *Ex. P3 AT TRIAL*) *JP*
- C. Will of Simon L. Bernstein dated July 25, 2012 ("Simon Will", attached to the Amended Complaint as Exhibit C~~3~~, *Ex. P4 AT TRIAL*) *JP*
- D. Simon L. Bernstein Amended and Restated Trust Agreement dated July 25, 2012 ("Simon Trust", attached to the Amended Complaint as Exhibit D~~3~~, *Ex. P5 AT TRIAL*), and *JP*
- E. Will of Shirley Bernstein dated May 20, 2008 ("Shirley Will", attached to the Amended Complaint as Exhibit E~~3~~, *Ex. P1 AT TRIAL*) *JP*

(collectively, the "Testamentary Documents").

2. Based upon the evidence presented during the trial, the Court finds that the Testamentary Documents, as offered in evidence by Plaintiff, are genuine and authentic, and are valid and enforceable according to their terms.

3. The Court finds that Simon's Testamentary Documents were signed by Simon and Shirley's Testamentary Documents were signed by Shirley, in the presence of two attesting witnesses who signed in the presence of the testator and in the presence of each other. § 732.502, Fla. Stat.; § 736.0403(2)(b), Fla. Stat.

4. The Court finds the Testamentary Documents meet the requirements for self-proof, as specified in §732.503, Fla. Stat. Alternatively, the Testamentary Documents were properly admitted based upon the testimony of at least one of the attesting witnesses, which occurred. §733.201, Fla. Stat.

5. Based on the evidence presented, the Court finds that Plaintiff, Ted S. Bernstein, Trustee, was not involved in the preparation or creation of the Testamentary Documents. ~~Indeed,~~ ^{J4} Ted S. Bernstein had never seen the documents before his father's death. ~~Moreover,~~ ^{J4} Ted S. Bernstein played no role in any questioned activities of the law firm Tescher & Spallina, PA, who represented ^{of ELIOT BERNSTEIN} Simon and Shirley while they were alive. There is no evidence to support the assertions that Ted Bernstein forged or fabricated any of the Testamentary Documents, or aided and abetted others in ^{J8} ~~The evidence shows~~ forging or fabricating documents. ~~That~~ ^{J8} Ted Bernstein played no role in the preparation of any improper documents; the presentation of any improper documents to the Court; or any other improper act, contrary to the allegations of Eliot Bernstein ~~made in the pleadings in this case or in~~ ^{J8} ~~various blogs and websites in which Eliot Bernstein has attacked the actions of Ted Bernstein.~~

6. Based on the evidence presented, the Court finds that an unauthorized version of the First Amendment to Shirley Bernstein Trust Agreement was prepared sometime after Simon died. This document ~~X~~ (Pl. Ex. 6) was not signed by Shirley Bernstein and, therefore, is not an operative document.

7. This ruling is intended to be a Final Judgment under Rule 9.170 of the Florida Rules of Appellate Procedure, determining the validity of Testamentary Documents, denying any objection to the probate of Shirley's and Simon's Wills or the validity of the Trust Agreements, and determining which persons are entitled to receive distributions from these trusts and estates.

8. Based upon the rulings made by the Court in this trial of Count II, the Court reserves jurisdiction to determine the remaining issues in this action.

DONE AND ORDERED in Chambers, in Palm Beach County, Florida, this 16 day of December, 2015.



John L. Phillips
CIRCUIT COURT JUDGE

cc: All parties on the attached service list

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

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and Eliot and Candice Bernstein,
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DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

ELIOT IVAN BERNSTEIN,
Appellant,

v.

TED BERNSTEIN, as Trustee of the SHIRLEY BERNSTEIN TRUST
AGREEMENT dated May 20, 2008, as amended, et al.,
Appellees.

No. 4D16-222

[April 27, 2017]

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; John L. Phillips, Judge; L.T. Case Nos. 2011CP000653 XXXXSB and 2014CP003698XXXXNB.

Eliot Ivan Bernstein, Boca Raton, pro se.

Alan B. Rose of Mrachek, Fitzgerald, Rose, Konopka, Thomas & Weiss, P.A., West Palm Beach, for appellee Ted Bernstein, as Trustee.

PER CURIAM.

Affirmed.

MAY, KLINGENSMITH and KUNTZ, JJ., concur.

* * *

Not final until disposition of timely filed motion for rehearing.

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT, 1525 PALM BEACH LAKES BLVD., WEST PALM BEACH, FL 33401

June 05, 2017

CASE NO.: 4D16-0222

L.T. No.: 2011CP000653XXXXSB
2014CP003698XXXXNB

ELIOT IVAN BERNSTEIN

v. TED BERNSTEIN, AS TRUSTEE, ET AL.

Appellant / Petitioner(s)

Appellee / Respondent(s)

BY ORDER OF THE COURT:

ORDERED that the appellant's May 30, 2017 motion to accept motion for rehearing and other relief filed less than one hour late is granted; further,

ORDERED that the appellant's May 30, 2017 motion for rehearing, clarification, written decision and certification is denied.

Served:

cc: Lorin Louis Mrachek
Steven A. Lessne
Alan Benjamin Rose
Joielle A. Foglietta
Lisa Friedstein
Pamela Beth Simon
James Dimon
Neil Wolfson
Lindsay Baxley
Heritage Union Life Ins.
Co.

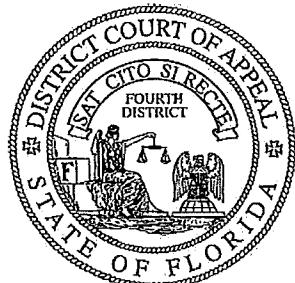
Brian M. O'Connell
John P. Morrissey
Peter Marshall Feaman
Charles D. Rubin
Jill Iantoni
Dennis McNamara
William McCabe
Stp Enterprises, Inc.
T & S Registered Agents,
Llc
David Lanciotti

Mark R. Manceri
Kenneth S. Pollock
Donald R. Tescher
Eliot Ivan Bernstein
Theodore Stuart Bernstein
Dennis G. Bedley
Gerald Lewin
Ralph S. Janvey
Joseph M. Leccese
Brian Moynihan

||

Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal



M A N D A T E

from

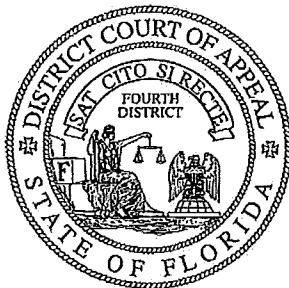
DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA FOURTH DISTRICT

This cause having been brought to the Court by appeal, and after due consideration the Court having issued its opinion;

YOU ARE HEREBY COMMANDED that such further proceedings be had in said cause as may be in accordance with the opinion of this Court, and with the rules of procedure and laws of the State of Florida.

WITNESS the Honorable Cory J. Ciklin, Chief Judge of the District Court of Appeal of the State of Florida, Fourth District, and seal of the said Court at West Palm Beach, Florida on this day.

DATE:	June 23, 2017
CASE NO.:	16-0222
COUNTY OF ORIGIN:	Palm Beach
T.C. CASE NO.:	2011CP000653XXXXSB, 2014CP003698XXXXNB
STYLE:	ELIOT IVAN BERNSTEIN
	v. TED BERNSTEIN, AS TRUSTEE, ET AL.



Lonn Weissblum

LONN WEISSBLUM, Clerk
Fourth District Court of Appeal

Served:

cc: Lorin Louis Mrachek
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Alan Benjamin Rose
Joielle A. Foglietta
Lisa Friedstein
Pamela Beth Simon

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Joseph M. Leccese
Brian Moynihan

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

TED BERNSTEIN, as Trustee
of the Shirley Bernstein Trust Agreement
dated May 20, 2008, as amended,

Probate Division
Case No.: 502014CP003698XXXXNBIJ

Plaintiff,

v.

ALEXANDRA BERNSTEIN; ERIC BERNSTEIN;
MICHAEL BERNSTEIN; MOLLY SIMON;
PAMELA B. SIMON, Individually and as Trustee
f/b/o Molly Simon under the Simon L. Bernstein
Trust Dtd 9/13/12; ELIOT BERNSTEIN, individually,
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behalf of his minor children D.B., Ja. B. and Jo. B.;
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under the Simon L. Bernstein Trust Dtd 9/13/12, and
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LISA FRIEDSTEIN, Individually, as Trustee f/b/o
Max Friedstein and C.F., under the Simon L.
Bernstein Trust Dtd 9/13/12, and on behalf of her
minor child, C.F.,

Defendants.

**ORDER DETERMINING ELIOT BERNSTEIN LACKS STANDING INDIVIDUALLY
AND STRIKING ELIOT'S FILINGS, AND DEFERRING RULING ON THE
APPOINTMENT OF A GUARDIAN AD LITEM AND OTHER RELIEF SOUGHT**

THIS CAUSE came before the Court for hearing on January 14, 2016 on Successor
Trustee's *Motion for Appointment of a Guardian Ad Litem to Represent the Interests of Eliot
Bernstein's Children; For A Gag Order to Protect Guardian and Others; and to Strike Eliot's
Filings* (the "Motion"). The Court, having considered the record, heard argument of counsel and
being otherwise fully advised in the premises, hereby ORDERS AND ADJUDGES:

1. The Motion is GRANTED in part as set forth in this Order and DEFERRED in remaining part pending an evidentiary hearing as requested by Eliot Bernstein and his wife.

2. By Final Judgment dated December 16, 2015, this Court has determined that Simon Bernstein's Will dated July 25, 2012 is valid and enforceable according to its terms. The Final Judgment is valid, binding and in full force and effect.

3. Based upon the Court's determination of the validity of Simon's Will, Simon Bernstein exercised a power of appointment he held over assets in the Shirley Bernstein Trust, in favor of his "then living grandchildren." Eliot Bernstein is not a grandchild of Simon or Shirley Bernstein. Based upon the exercise of the power of appointment, Eliot Bernstein is not a beneficiary of the Shirley Bernstein Trust. As a result, Eliot Bernstein lacks individual standing to participate in this proceeding, as he is not a beneficiary of either the Shirley Bernstein Trust or the Shirley Bernstein Estate.

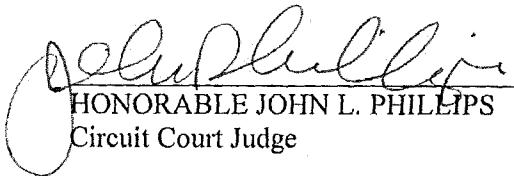
4. Accordingly, Eliot Bernstein is barred from any further participation in his individual capacity in this action, and is removed individually as a party. Any and all pending motions, claims, or other filings by Eliot Bernstein, individually, in this case are hereby stricken from the record, and no further individual filings will be permitted except for a Notice of Appeal of the Final Judgment, should he desire to file one.

5. Having determined that Eliot Bernstein lacks individual standing, the Court next will consider whether a Guardian ad Litem should be appointed to represent the interests of the children of Eliot and Candice Bernstein, each of whom has been determined to be a beneficiary of the Shirley Bernstein Trust, and whether to enter a confidentiality order as requested by the

Trustee in the Motion. These matters will be addressed at an evidentiary hearing to be set by separate order of this Court.

DONE and ORDERED in Chambers, North County Courthouse in Palm Beach Gardens, Florida, on this 1 day of January, 2016.

P.L.


HONORABLE JOHN L. PHILLIPS
Circuit Court Judge

Copies to: Attached Service List

SERVICE LIST Case No.: 502014CP003698XXXXNBIJ

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and Eliot and Candice Bernstein,
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minor
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