

ANNEEN NINA GLORIA BAUM,

Plaintiff,

v.

DAVID A. BAUM, individually and as
Personal Representative of the Estate of
Seymour Baum; PINE RIDGE PLAZA,
LLC; VILLAGE GREEN PLAZA, LLC;
SILVER SPRING MANOR, INC.; SILVER
SPRING MANOR, LLC; BORUCH-
DAVID, INC.; BORUCH-DAVID, LLC;
AND DOWNTOWN MINI STORAGE OF
MELBOURNE, LLC,

Defendants.

IN THE CIRCUIT COURT OF THE
EIGHTEENTH JUDICIAL CIRCUIT IN
AND FOR BREVARD COUNTY,
FLORIDA

CASE NO.: 05-2013-CP-028863

PROBATE DIVISION

**PERSONAL REPRESENTATIVE'S MOTION TO STRIKE
NOTICE OF HEARING FOR AUGUST 28, 2014**

Defendant, David A. Baum, as Personal Representative of the Estate of Seymour Baum ("David"), by and through his undersigned counsel, respectfully moves the Court to strike the Notice of Hearing for the hearings scheduled for August 28, 2014, and states as follows:

1. On July 25, 2014, Plaintiff ANNEEN NINA GLORIA BAUM ("Nina") filed a Notice of Hearing setting for a two (2) hour hearing on August 28, 2014.

2. By her Notice, the Plaintiff seeks to have the following motions heard on August 28, 2014:

- (a) a Motion for Relief from Court Orders (pursuant to Rule 1.540); and
- (b) Motion to Strike Personal Representative's Response to Petitioner's Motion for Relief from Orders.

3. These Motions seek to vacate, pursuant to Fla. R. Civ. P. 1.540, the Order Compelling Service entered on November 15, 2013 in this matter and in related proceedings

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pending before this Court in Case No. 05-2012-CP-048323 and the Order Dropping Parties Pursuant to Florida Rule of Civil Procedure 1.070(j) entered in this action on April 2, 2014 and the Order Dropping Parties and Dismissing Amended Petition entered on April 2, 2014 in Case No. 05-2012-CP-048323.

4. The orders for which the Plaintiff seeks relief pursuant to Fla. R. Civ. P. 1.540 are the subject of consolidated appeals currently pending before the Fifth District Court of Appeal in Case No. 5D14-1683 and Case No. 5D14-1652.

5. It is well settled under Florida law that a trial court lacks jurisdiction to proceed on a motion for relief pursuant to Fla. R. Civ. P. 1.540 once appellate jurisdiction is invoked. Stoppa v. Sussco, Inc., 943 So. 2d 309, 313 (Fla. 3d DCA 2006). During the pendency of an appeal, the appellate court has exclusive jurisdiction to proceed. Glatstein v. City of Miami, 391 So. 2d 297, 298 (Fla. 3d DCA 1980). Accordingly, a trial court is without jurisdiction to consider a motion to vacate an order, pursuant to Rule 1.540, while that order is pending on appeal, in the absence of the appellate court relinquishing jurisdiction to the trial court for that purpose. Stoppa, 943 So. 2d at 313.

6. Though the Plaintiff filed her Notice of Appeal and Motion for Relief on May 1, 2014, filed her Motion to Strike on May 5, 2014, and filed her Notice of Hearing on July 25, 2014, the Plaintiff waited until August 13, 2014 to file her motions to relinquish jurisdiction with the Fifth DCA.

7. As described in the Personal Representative's Response to the Motion for Relief (a copy of which is attached as Exhibit "A"), the Plaintiff's Motion is entirely without merit and another example of her "dilatory and stall tactics" which have been noted by this Court. All of the purported "new evidence" which Plaintiff cites in support of her Motion for Relief, is not

only false, it was available prior to the multiple hearings which this Court held before it entered its orders dropping parties and dismissing the will contest.

8. The Personal Representative intends to oppose the motions to relinquish jurisdiction which are pending before the Fifth DCA.

9. Unless and until the Fifth DCA relinquishes jurisdiction to this Court, this Court is without jurisdiction to rule on the Plaintiff's motions. Consequently, conducting a hearing on Plaintiff's Motions prior to the Fifth DCA relinquishing jurisdiction to this Court would be premature and any orders entered would be void.

10. The Notice of Hearing setting a hearing for August 28, 2014 should therefore be stricken.

11. If this Court does not strike the Notice of Hearing, a continuance of the hearing should be granted. Due to a technical error with Gunster's email server, the Notice of Hearing purportedly scheduling a hearing on August 28, 2014 was not received when it was served on July 25, 2014. See affidavit of Deborah Carr attached as Exhibit "B". The undersigned counsel first learned of the hearing yesterday when he received the Motion to Relinquish Jurisdiction filed with the 5th DCA. The Motion for Relief is evidentiary in nature. The Personal Representative will need a brief continuance to complete discovery related to the Motion for Relief. If the Court intends to proceed with this matter, the Personal Representative requests that the Plaintiff be required to coordinate a new hearing time with counsel for the Personal Representative.

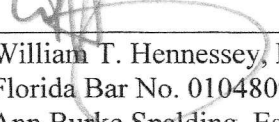
WHEREFORE, Defendant David A. Baum, as Personal Representative of the Estate of Seymour Baum, respectfully requests that this Court to enter its order striking the Notice of

Hearing for August 28, 2014, or, in the alternative, continuing the hearing, and granting such other and further relief as may be just and appropriate under the circumstances.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document is being served on August 14th, 2014 via an automatic email generated by the Florida Courts E-Filing Portal to Teresa Abood Hoffman, Esq., Law Office of Hoffman & Hoffman, P.A., 848 Brickell Ave., Suite 810, Miami, FL 33131, Eservice@hoffmanpa.com, Teresa@hoffmanpa.com, Christina@hoffmanpa.com, William E. Boyes, Esq., 3300 PGA Boulevard, Suite 600, Palm Beach Gardens, FL 33410, bboyes@boyesandfarina.com, asabocik@boyesandfarina.com, czill@boyesandfarina.com, David H. Jacoby, Esq. David H. Jacoby, P.A., 2111 Dairy Road, Melbourne, FL 32904, d.jacoby@davidhjacobypa.com, j.bentley@davidhjacobypa.com and Wayne Alder, Esq., Becker & Poliakoff, PA, 625 N. Flagler Dr., 7th Floor, West Palm Beach, FL 33401, walder@BPLegal.com, abourget@BPLegal.com.

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ANNEEN NINA GLORIA BAUM,
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CASE NO.: 05-2013-CP-028863

PROBATE DIVISION

**ORDER GRANTING PERSONAL REPRESENTATIVE'S MOTION TO STRIKE
NOTICE OF HEARING FOR AUGUST 28, 2014**

THIS CAUSE, came before the Court on the Personal Representative's Motion to Strike Notice of Hearing for August 28, 2014, the Court having reviewed the motion and the file, and being otherwise fully advised in the premises, it is hereby

ORDERED and ADJUDGED as follows:

1. The Personal Representative's Motion to Strike Notice of Hearing for August 28, 2014 is hereby GRANTED.

2. Unless and until the Fifth District Court of appeal relinquishes jurisdiction, this Court is without jurisdiction to hear Plaintiff's Motion for Relief from Court Orders or Plaintiff's Motion to Strike the Personal Representative's Response. *See Stoppa v. Sussco, Inc.*, 943 So. 2d 309, 313 (Fla. 3d DCA 2006); *Glatstein v. City of Miami*, 391 So. 2d 297, 298 (Fla. 3d DCA 1980).

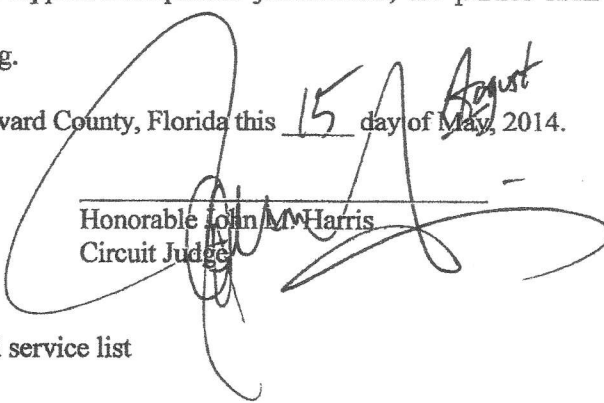
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3. If the Fifth District Court of Appeal relinquishes jurisdiction, the parties shall coordinate a new date and time for the hearing.

DONE and ORDERED in Viera, Brevard County, Florida this 15 day of ~~May~~ ^{August}, 2014.

Honorable John M. Harris
Circuit Judge



Copies furnished to all parties on the attached service list