

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT

LYNN WEINBERG,
Appellant,

v.

DEBORAH BORT,
Appellee.

No. 4D19-3040

[May 7, 2020]

CORRECTED OPINION

Appeal from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County; Charles E. Burton, Judge; L.T. Case No.502001CP003521.

Lynn Weinberg, Bayville, NJ, pro se.

Geoffrey M. Cahen of Cahen Law, P.A., Boca Raton, and Lisa Paige Glass of the Glass Law Office, P.A., Boca Raton, for appellee.

PER CURIAM.

Affirmed.

Ciklin and KLINGENSMITH, JJ., and LEVENSON, JEFFREY R., Associate Judge, concur.

* * *

Not final until disposition of timely filed motion for rehearing.

APPENDIX A

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL CIRCUIT IN AND FOR
PALM COUNTY, FLORIDA

PROBATE DIVISION
CASE NO. 502001CP003521XXFOIY

IN RE: ESTATE OF JOSEPH WEINBERG
Deceased.

LYNN WEINBERG,
Petitioner,
vs.

DEBORAH BORT,
Respondent.

**ORDER ON DEBORAH BORT'S MOTION TO DISMISS 2019 PETITION
OF LYNN WEINBERG**

THIS CAUSE came before the Court on August 23, 2019 on Deborah Bort's ("Bort") Motion To Dismiss Lynn Weinberg's Petition to Correct Erroneous \$63,819.56 Promissory Note Payment and Correct Fundamental Errors dated May 24, 2019 ("2019 Petition"). The Court has carefully considered the Motion, the response thereto, reviewed the lengthy history documented in the court file, heard argument of the parties, and is otherwise advised in the premises. Accordingly, it is:

ORDERED AND ADJUDGED as follows:

1. The Motion to Dismiss is GRANTED with prejudice.
2. The 2019 Petition is barred by law of the case and *res judicata* because it arises from Ms. Weinberg's dissatisfaction with the Court's December 29, 2006 Order. That Order directed the disbursement of the dollars in issue, \$50,000 plus \$13,819.56 in interest. That Order was affirmed by the Fourth District Court of Appeal in 2008 (4D07-4608). The Court also dismissed the same

APPENDIX B

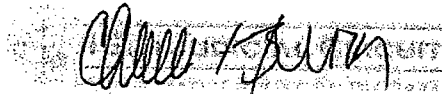
claims presented by the 2019 Petition in a May 19, 2015 Order, which was also affirmed by the Fourth District Court of Appeal in 2016 (4D15-2504).

3. The 2019 Petition is barred by statute of limitations because it arises from the alleged breach of a 2002 Settlement Agreement and Deed of Disclaimer executed by the parties. The breach allegedly occurred in 2007 or earlier, so the claim is barred by the five-year statute of limitation period for breach of a written contract.

4. The Court hereby directs the Clerk of Court to close the case. The parties agree that there are no remaining assets subject to probate.

5. If the Petitioner, Lynn Weinberg, wishes to submit another petition or complaint against Deborah Bort in this 18 year old litigation or any action concerning the Estate or any Trust of Joseph Weinberg, she shall be required to file a new case under a new case number and pay a new filing fee.

DONE AND ORDERED in Chambers at Delray Beach, Florida, this 23rd day of August, 2019.



CHARLES E. BURTON
CIRCUIT JUDGE

cc:

Geoffrey Cahen, Esq., 1900 Glades Rd., Suite 270, Boca Raton, Florida 33433,
geoff@cahenlaw.com

Lynn Weinberg, 220 Riverside Drive, Bayville, New Jersey 00721, lynnierw@aol.com

PROMISSORY NOTE

\$50,000

Lake Worth, Florida
February 25, 2002

For value received, the undersigned promises to pay to the order of **DEBORAH W. BORT, as Custodian FBO SHARON BORT, under the Uniform Transfers to Minors Act**, at 436 Rockview Avenue, North Plainfield, New Jersey 07063, the principal sum of FIFTY THOUSAND AND 00/100 DOLLARS (\$50,000), without interest, except after default. This Note shall be due and payable in full on the 30th day of June, 2002.

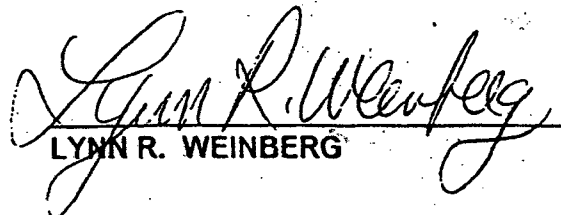
This note shall be considered in default when any payment required to be made hereunder shall not have been made within 10 days following its due date and shall remain in default until said payment shall have been made. While in default, this note shall bear interest at the rate of 18% per cent annum in lieu of the rate hereinbefore specified. If such default shall not be made good within 10 days following its due date, the entire principal sum and accrued interest shall at once become due and payable, without notice, at the option of the holder of this note. Failure at any time to exercise this option shall not constitute a waiver of the right to exercise the same at any other time.

As further consideration for the promises and covenants set forth in the Settlement Agreement by and between the Maker and Payee, this note shall not be assignable and any attempt by Payee to assign this note, with or without consideration therefor, shall immediately void this note and the Maker's obligations to make the payments set forth herein. Payment and collection of this note shall be limited exclusively to the net proceeds of the maker's inheritance from the Estate of Joseph Weinberg and the Joseph Weinberg 1997 Revocable Trust (the "Estate and Trust"), after payment of all taxes, claims, administrative expenses and fees, excluding fees for services paid to the Maker. In the event the net proceeds of the Estate and Trust are insufficient to make the full payment to Payee, the net proceeds of the Estate and Trust shall be divided equally between Maker and Payee, but under no circumstances shall the payment obligation exceed the amount set forth above. In such event, the unpaid payment obligation shall be forgiven.

Each maker and endorser further agrees, jointly and severally, to pay all costs of collection, including a reasonable attorneys' fee in case the principal of this note or any payment on the principal or any interest thereon is not paid at the respective maturity thereof, or in case it becomes necessary to protect the security hereof, whether suit be brought or not, including attorneys' fees and costs in all appellate proceedings.

This note is secured by a First mortgage on date herewith and is to be construed and enforced according to the laws of the State of Florida; upon default in the payment of principal and/or interest due on any note secured by said Mortgage, all notes so secured and remaining unpaid shall forthwith become due and payable notwithstanding their tenor.

Each maker or endorser or any other person, firm or corporation becoming liable under this note hereby consents to any extensions or renewals of this note or any part thereof without notice and agree that they will remain liable under said note during any extensions or renewals hereof until the debt represented hereby is fully paid.

 (SEAL)
LYNN R. WEINBERG

APPENDIX C

Prepared by and Return to:
Alan B. Cohen, Esq.
Abrams Anton P.A.
P.O. Box 229010
Hollywood, FL 33022-9010

DEED OF DISCLAIMER

KNOW ALL MEN BY THESE PRESENTS, that I, DEBORAH W. BORT, of 436 Rockview Avenue, North Plainfield, New Jersey 07063, as beneficiary of the Estate of JOSEPH WEINBERG, who died on March 22, 2001, domiciled in the State of Florida and whose will has been admitted to probate by the Circuit Court of Palm Beach County, Florida, on August 8, 2001, and whose estate is being administered pursuant to appointment of DEBORAH W. BORT by the Circuit Court of Palm Beach County, Florida, on August 8, 2001, and as beneficiary under the *Joseph Weinberg Revocable Trust Agreement Dated 4/28/97*, hereby disclaims, renounces and forever refuses to accept any and all interest or benefit from her one-half interest of the residuary estate created under Item III of said Last Will and Testament of JOSEPH WEINBERG, and from her one-half interest created under Section 4 of the *Joseph Weinberg Revocable Trust Agreement Dated 4/28/97*, to which I am or may be entitled, whether now known to me or hereafter discovered or identified, and whether passing under said will, Trust, intestacy or by operation of other law or order. This instrument of disclaimer is prepared pursuant to F.S.A. Section 732.801 and F.S.A. Section 689.21 and in satisfaction of the requirements of Internal Revenue Code, Section 2518, to be filed, recorded and delivered as provided by said statutes.

IN WITNESS WHEREOF, I have signed this Deed of Disclaimer this 19th day of

December, 2001.

Eileen S. Feinberg
Witness

Deborah W. Bort
DEBORAH W. BORT, Disclaimant

Eileen S. Feinberg
Please Print Name

Kaho Alexander
Witness

Kaho Alexander
Please Print Name

APPENDIX D