

Teneshia Hudspeth



NO. 412,249-401

CARL HENRY BRUNSTING,	§	IN PROBATE COURT
INDIVIDUALLY AND AS	§	
INDEPENDENT EXECUTOR OF THE	§	
ESTATES OF ELMER H. BRUNSTING	§	
AND NELVA E. BRUNSTING	§	NUMBER FOUR (4)
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING f/k/a	§	HARRIS COUNTY, TEXAS
ANITA KAY RILEY, individually,	§	
as attorney-in-fact for Nelva E. Brunsting,	§	
and as Successor Trustee of the Brunsting	§	
Family Living Trust, the Elmer H.	§	
Brunsting Decedent's Trust, the	§	
Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Anita Kay Brunsting	§	
Personal Asset Trust;	§	
AMY RUTH BRUNSTING f/k/a	§	
AMY RUTH TSCHIRHART,	§	
individually and as Successor Trustee	§	
of the Brunsting Family Living Trust,	§	
the Elmer H. Brunsting Decedent's Trust,	§	
the Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Amy Ruth Tschirhart	§	
Personal Asset Trust;	§	
CAROLE ANN BRUNSTING,	§	
Individually and as Trustee of the	§	
Carole Ann Brunsting Personal Asset Trust;	§	
and as a nominal defendant only,	§	
CANDACE LOUISE CURTIS	§	

Answer to Defendant Co-Trustees Untimely Motion for Severance

On January 6, 2022, almost nine years after case initiation, Defendant Co-Trustees Anita Brunsting and Amy Brunsting and Independent Executor Carl Brunsting (the severing fiduciaries) filed an extremely vague and untimely motion to sever that appears to raise more questions than it attempts to answer.





“Plaintiff, Carl Brunsting, and Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting (collectively the “Severing Parties”), file this motion to sever their respective claims against each other from the above-entitled and numbered cause (the “401 Case”)”

The fiduciaries move for severance in the name of judicial economy but neglect to identify any authority for the requested severance; make no effort to demonstrate their entitlement to a severance and fail to provide the court with a factual basis upon which severance should be granted.

While the court has discretion in granting a severance, *see Liberty Nat'l Fire Ins. Co. v. Akin*, 927 S.W.2d 627, 629 (Tex. 1996), severance is only proper were the following conditions are met: (1) the controversy involves more than one cause of action (2) the severed claim is one that would be the proper subject of a lawsuit if independently asserted, and (3) the severed claim is not so interwoven with the remaining action that they involve the same facts and issues. See *Guaranty Fed. Savs. Bank v. Horseshoe Op. Co.*, 793 S.W.2d 652, 658 (Tex. 1990); *see also* Tex. R. Civ. P. 41.

The Questions of Facts and Issues

While there appears to be a -401 case, a -402 case, a -403 case and a -404 case, there is only one nexus of operative facts. The real parties in interest are the five beneficiaries of the Brunsting family living trust, two of whom also occupy the fiduciary office as Co-trustees. Interwoven into the causative nexus are the decedent's personal representative's claims against the Settlor's estate planning attorneys (**the -403 case**). The Brunsting trusts were drafted by the law firm of Albert Vacek Jr. which later became Vacek & Freed P.L.L.C.

There is both a trust and a litigation chronology. Elmer Brunsting passed April 1, 2009 and Nelva Brunsting passed November 11, 2011.



Trust income beneficiary Candace Curtis filed a verified complaint in the Southern District of Texas under diversity jurisdiction on February 27, 2012, naming Co-trustees Anita Brunsting and Amy Brunsting Defendants, and seeking fiduciary disclosures and trust accounting^[1]. At page 3 para 9 beneficiary Curtis alleged:

“9. Defendant(s) Anita Brunsting and Amy Brunsting acting individually and severally as co-trustees for the Trust have exercised all of the powers of trustees while refusing or otherwise failing to meet their first obligation under that power, to provide full, accurate, complete and timely accounting to the beneficiaries, to provide copies of material documents or other information relating to administration of the Trust, and to provide notice to all beneficiaries and successor beneficiaries of proposed changes to the trust that may tend to affect their beneficial interests.”

The federal diversity case was dismissed under the probate exception, then reversed and remanded by the Fifth Circuit Court of Appeal on January 9, 2013. On January 29, 2013 Carl Henry Brunsting, the deceased Settlor's Personal Representative, filed professional negligence claims against the estate planning attorneys in Harris County District Court 164 (**the -403 case**).

On April 9, 2013² Carl filed ancillary cause 412,249-401 (**the -401 case**) in the probate court both individually (**-401.1**), and in the capacity of independent executor (**-401.2**). The -401 case is styled as above, not as the fiduciaries severance motion is styled. Knowing there was already an integrally related lawsuit pending in the federal court, involving the same beneficial rights and fiduciary obligations, independent executor Carl Brunsting filed civil conspiracy claims against the estate planning attorneys in Harris County District Court No. 164, and then filed civil conspiracy claims against the Defendant Co-trustees individually and as independent executor, in Harris County Probate Court No. 4. In part, the -403 complaint alleges:

¹ Made a part of this court's record February 9, 2015 [02102015:1527:P0027]

² 2013-04-09 PBT-2013-115617 Original Petition 412249-401





“8. This is a case involving Defendants' negligence, breach of fiduciary duty and other acts or omissions in their representation of Elmer and Nelva, both individually and in their capacities as trustees of the Family Trust. Defendants' actions constitute negligent misrepresentation, negligence per se, deceptive trade practices, conversion, fraud, commercial bribery, breaches of their fiduciary duties, as well as aiding and abetting, assisting and encouraging repeated breaches of fiduciary duty. Alternatively, a conspiracy existed between Defendants and the Current Trustees for that unlawful purpose.

9. The Defendants assisted the Current Trustees in implementing a scheme to change the terms of the Family Trust, to ultimately remove Nelva from her position as trustee of the Family Trust, and to improperly remove assets from Elmer and Nelva' s estates and from the Family Trust. Because of the actions of the Defendants, the Current Trustees were able to alter Elmer and Nelva's wishes, resulting in the improper transfer of assets to Anita, Amy, and Carole, all to Plaintiffs detriment.

10. Despite the Law Firm's representations to Elmer and Nelva that the Family Trust would preserve their plans for their estate, Defendants took direction from the Current Trustees, while representing Nelva, with the result being just the opposite. It is believed that Defendants not only failed to inform Nelva that they had established a relationship with the Current Trustees which put them in a conflict of interest with regard to their representation of Nelva's interests but that Defendants actually ignored that conflict of interest and their obligations to Nelva and assisted the Current Trustees in changing the terms of the Family Trust in ways which it is believed that Nelva did not have capacity to change and/or did not understand or want. Defendants also took steps to undermine and even remove Nelva's control of her own assets, of the assets of Elmer's estate, and of the Family Trust assets, thereby placing those assets at risk of loss to Anita, Amy, and Carole and facilitating the loss which actually occurred.

11. Moreover, it is believed that Defendants assisted the Current Trustees in various ways intended to prevent Nelva from even understanding that documents were being prepared by Defendants at the Current Trustee's request, why those documents were being prepared, and what the impact of the documents would be. It is believed that in assisting the Current Trustees in obtaining their improper objectives, Defendants, among other things: ...”

The Preliminary Injunction

On the very same day Carl filed his -401 claims in the Probate Court, there was a hearing held in the Southern District of Texas on Plaintiff Candace Curtis pro se motion for preliminary





injunction [³]. The federal Court issued the preliminary injunction in open court and published a memorandum of the injunction on April 19, 2013 [⁴]. Due to trustee Anita Brunsting's failure to produce a proper trust accounting after more than two and one half years as trustee, the Federal District Court felt compelled to appoint a Special Master in order to get an accounting of the financial assets [⁵] of the trust.

Relevant Trust History and Effect

1996 Family Trust – Settlor's Co-Trustees - Anita sole successor trustee [Divide by 2 at the passing of the first settlor – Divide by 5 at the passing of the last settlor]

1999 Irrevocable Life Insurance Trust - Anita sole trustee [Divide by 5 and distribute at the passing of the last settlor]

2005 Restatement – Settlor's Co-Trustees – Anita removed from Article IV – Carl and Amy successor Co-Trustees with Candace as the alternate - [Divide by 2 at the passing of the first settlor – Divide by 5 at the passing of the last settlor]

2007 Amendment – Settlor's Co-Trustees – Amy removed from Article IV – Carl and Candace successor Co-Trustees with Frost Bank as the alternate - [Divide by 2 at the passing of the first settlor – Divide by 5 at the passing of the last settlor]

June 9, 2008 Elmer N.C.M. - Family Trust becomes irrevocable and all changes require approval from Court of Competent Jurisdiction.

July 1, 2008 Amendment to Article IV – Anita and Carl successor Co-Trustees with Candace as the alternate. This Instrument does not meet the Article III criterion for alterations and is invalid in its entirety.

April 1, 2009 Elmer Brunsting passes and the passing of a Settlor was a qualifying event that triggered the separation of assets into two resulting trusts. The Decedent's Irrevocable Trust [DIT] and the Survivors Revocable Trust [SRT].

August 25, 2010 Amendment to Article IV - Anita and Amy successor Co-Trustees with Frost Bank as the alternate – Carl Removed

August 25, 2010 Nelva's Qualified Beneficiary Designation - - [Divide by 5 at the passing of the last settlor] Anita, Amy & Carole trustees of their own 1/5 share – Anita & Amy Co-Trustees for Carl and Candace Shares. If valid, this QBD could only apply to Nelva's share.

³ Transcript of April 9, 2013 injunction hearing

⁴ 2013-04-19 Case 4-12-cv-592 Doc 45: Notice of filing of injunction and Report of Master filed in 412,249: 2015-02-06 PBT-2015-47630 Notice of filing of injunction and Report of Master

⁵ 2013-05-09 Case 4-12-cv-592 [Doc 55] Order Appointing West - Special Master



November 11, 2011, the passing of Nelva Brunsting, was a qualifying event that triggered the obligation to separate trust assets into five shares. November 11, 2011 is a focal point.

QUALIFYING EVENTS

1. The incapacity of Elmer Brunsting was a qualifying event because under Article III, changes to the trust agreement required the signatures of both Settlers or the approval of a court of competent jurisdiction. Elmer could no longer sign legal instruments.
2. The passing of Elmer Brunsting was a qualifying event because it triggered provisions requiring the division of assets into two separate shares; an irrevocable decedents share and a revocable survivors share.
3. The passing of Nelva Brunsting was a qualifying event because, whether you look at the 2005 restatement or the 8/25/2010 QBD, the passing of the last Settlor triggered provisions requiring the division of assets into five separate shares. How the shares were to be managed after Nelva's passing is irrelevant to the fiduciary obligation to perform the divisions required. Those divisions have not been performed.

Obligations of the Co-Trustees

Any argument over whether the Co-Trustees occupy the office de jure or de facto is not relevant to the obligation to perform the duties of the office they occupy. Whether one refers to Article X of the 1996 trust, the 2005 Restatement or the August 25, 2010 QBD, the Defendant Co-trustee had a duty to divide the trust estate by five and establish separate share accounts for each beneficiary. Neither the validity of transactions prior to November 11, 2011 nor the manner in which trust shares were to be distributed or managed are not relevant to the obligation to divide by five. The question of whether or not those divisions were performed is core to any subsequent questions and by their own admissions at hearing on January 6, 2022; the Co-trustee Defendants have refused and otherwise failed to perform the required divisions.

The Obligation to Account and Disclose

Among the obligations of the office of trustee was to maintain and establish books and records of accounts. As shown by the preliminary injunction, Anita failed to establish and maintain proper books and records of accounts and failed in her obligation to disclose:





The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment

Defendant Co-trustees rely heavily upon the 8/25/2010 QBD's no-contest clause with corruption of blood provisions, seeking to evade accountability and enlarge their shares. However, without addressing questions of the validity of transactions or instruments we can look at what the QBD commands. The QBD requires the Co-Trustees to divide the assets and distribute those assets into five separate shares. These shares are thereafter referred to as "personal asset trusts".

According to the QBD's terms, Amy, Anita and Carole would be the sole trustee for their own share but Amy and Anita would also be Co-Trustees over Carl and Candace "Personal Asset Trust" shares.

Separation of legal and equitable title

A trust is a relationship, a specific type of private law relationship relating to property. The hierarchy of controlling law is the trust indenture, then the trust code and, if neither addresses the subject, the common law is controlling. The public policy parameters within which trusts must confine their operation are covered in Title 9 of the Texas Property Code.

In distinguishing trusts from other kinds of legal relationships there are two vital distinctions to be noted. The first is separation of legal and equitable title wherein a fiduciary (loyal and trustworthy) holds the bare legal title to property and the beneficiary (deserving of a windfall) holds the equitable title and right to enjoy the property. The beneficiary is considered the true property owner. For a trust relationship to exist the separation of legal and equitable title



must be maintained, Texas Property Code § 112.034, because when legal and equitable titles are held by the same person merger occurs and either the trust collapses or no trust is created.

Enforceable duties

The second aspect of a valid trust is the Imposition of enforceable (fiduciary) duties on the holder of legal title. Precatory language is insufficient. The duties of the trustee must be legally enforceable by the beneficiary and not merely moral or ethical. If the trustee has no enforceable affirmative obligations to perform for the benefit of the beneficiary, the trust becomes dry and both legal and equitable titles merge in the beneficiary.

The imposition of affirmative and enforceable duties is called “executing the uses”, which finds origin in King Henry’s Statute of Uses of 1535. *See Property Code § 112.032*

When merger occurs the property is held by the beneficiary in their individual capacity. The current Co-Trustees have not divided the assets into five separate shares and according to their own argument Carole’s share vested entirely in Carole at the passing of Nelva Brunsting November 11, 2011 and, the Defendant Co-Trustees have been in wrongful possession of Carole Brunsting’s personal property for more than ten years.

According to Defendants QBD the Defendant Co-Trustees own their own shares outright but claim to hold Carl and Candace shares in trust. However, if this is the case, the Defendant Co-Trustees failure to separate Carl and Candace trust assets from their own shares is co-mingling personal property with trust property.

In sum total the severing fiduciaries motion asks:

“The Severing Parties request that the Court sever the claims of Plaintiff, Carl



David M. H. Harris



Brunsting, against Defendant/Co-Trustees, Anita Brunsting and Amy Brunsting, and those of the Defendant/Co-Trustees against Plaintiff, Carl Brunsting, into a separate cause number, and grant the Severing Parties such other and further relief to which they may be entitled.”

List of Claims

412,249-401.1 - Carl Henry Brunsting individually vs

- (a) ANITA KAY BRUNSTING f/k/a as attorney-in-fact for Nelva E. Brunsting and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust;
- (b) AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust;
- (c) CAROLE ANN BRUNSTING, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust;
- (d) And, as a nominal defendant only, CANDACE LOUISE CURTIS

Breach of Fiduciary Duties,

- 1. There is fiduciary relationship between the plaintiff and defendant;
- 2. The defendant breached a fiduciary duty to the plaintiff;
- 3. The defendant's breach proximately caused injury to the plaintiff or benefit to the defendant.

Conversion,

- 1. Plaintiff owned, had legal possession of, or was entitled to possession of the property;
- 2. Defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with plaintiff's rights;
- 3. Plaintiff made a demand for the property;
- 4. Defendant refused to return the property.

Negligence,

- 1. Duty owed by defendant to plaintiff;
- 2. Breach of that duty;
- 3. Proximate cause of the plaintiff's damages by defendant's breach; and
- 4. Damages.

Civil Conspiracy,

- 1. a combination of two or more persons;
- 2. the persons seek to accomplish an object or course of action;



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- 3. the persons reach a meeting of the minds on the object or course of action;
- 4. one or more unlawful, overt acts are taken in pursuance of the object or course of action; and
- 5. Damages occur as a proximate result.

Fraudulent Concealment

- 1. Generally a theory applied to statutes of limitations in fraud cases. Given limitations are not at issue here, this cause would simply mean breach of the fiduciary duty of full disclosure in conjunction with the object or course of action in the civil conspiracy.

THE OTHER CLAIMS ARE REMEDIAL

~~Tortious Interference with Inheritance,~~

Texas does not recognize this cause Archer v. Anderson, 556 S.W.3d 228, 239 (Tex. 2018)

Constructive Trust,

Construction of Trust and Suit for Declaratory Judgement,

Demand for Trust Accounting,

Prejudgment Interest

Attorney's Fees pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code.

412,249-401.2 - Independent Executor Carl Brunsting vs

- (a) ANITA KAY BRUNSTING f/k/a as attorney-in-fact for Nelva E. Brunsting and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust;
- (b) AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust;
- (c) CAROLE ANN BRUNSTING, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust;
- (d) And, as a nominal defendant only, CANDACE LOUISE CURTIS

Breach of Fiduciary Duties,



1. there is fiduciary relationship between the plaintiff and defendant;
2. the defendant breached his fiduciary duty to the plaintiff; and
3. the defendant's breach proximately caused injury to the plaintiff or benefit to the defendant.

Conversion,

1. Plaintiff owned, had legal possession of, or was entitled to possession of the property;
2. Defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with plaintiff's rights;
3. Plaintiff made a demand for the property;
4. Defendant refused to return the property.

Negligence,

1. Duty owed by defendant to plaintiff;
2. Breach of that duty;
3. Proximate cause of the plaintiff's damages by defendant's breach; and
4. Damages.

Civil Conspiracy,

1. a combination of two or more persons;
2. the persons seek to accomplish an object or course of action;
3. the persons reach a meeting of the minds on the object or course of action;
4. one or more unlawful, overt acts are taken in pursuance of the object or course of action; and
5. Damages occur as a proximate result.

Fraudulent Concealment

1. Generally a theory applied to statutes of limitations in fraud cases. Given limitations are not at issue here it would simply mean breach of the fiduciary duty of full disclosure combined with the object or course of action in the civil conspiracy.

THE OTHER CLAIMS ARE REMEDIAL

Tortious Interference with Inheritance –

Texas does not recognize this cause Archer v. Anderson, 556 S.W.3d 228, 239 (Tex. 2018)

Constructive Trust,

Construction of Trust and Suit for Declaratory Judgement,

Demand for Trust Accounting,

Prejudgment Interest



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Attorney’s Fees pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code.

412,249-401.3 - Defendant Carole Brunsting’s Original Counter Claims vs Independent Executor Carl Brunsting

(Filed May 5, 2013)

Breach of Fiduciary,

1. there is fiduciary relationship between the plaintiff and defendant;
2. the defendant breached his fiduciary duty to the plaintiff; and
3. the defendant's breach proximately caused injury to the plaintiff or benefit to the defendant.

~~Tortious Interference with Inheritance Rights~~

Texas does not recognize this cause Archer v. Anderson, 556 S.W.3d 228, 239 (Tex. 2018)

Actual Damages

Punitive Damages

Attorneys' fees, costs, and expenses

declaratory judgment

412,249-401.4 Defendant Co-trustees Original Counter Claims vs beneficiary Carl Brunsting

Defendant Co-Trustees filed their original answers on May 13, 2013 with no counter claims. On November 4, 2019, 6 years, 5 months, 23 days later, the Defendant Co-Trustees filed their “original counter claims” against beneficiaries Carl Brunsting and Candace Curtis, without reference to jurisdiction, venue or forum statutes. Those claims are as follows:

1. One or more of the causes of action asserted and/or declarations sought by Carl trigger forfeiture provisions.
2. One or more of the motions, responses, and/or replies filed by Carl trigger forfeiture provisions;
3. Carl did not have just cause to bring the action, and it was not brought in good faith;
4. Carl has forfeited his interest, and thus his interest passes as if he has predeceased the Founders;
5. If Carl has not forfeited his interest via asserting any of the identified claims, and is or becomes entitled to receive any interest in the Founders' estate, then Amy's and Anita's



expenses in defending against Carl's claims are to be charged against his interest dollar for-dollar

6. All expenses incurred by Amy and Anita to legally defend against or otherwise resist the contest or attack by Carl and/or Curtis are to be paid from the Trust as expenses of administration.

It is an odd theory that defending beneficial interests in trust property equals forfeiture of rights in property or that bringing action to compel the trustee to perform their obligations somehow equals forfeiture of beneficial interests. This is the equivalent of saying the beneficiary's interest is merely nominal, the Co-trustees obligations are merely nominal and the trust is merely a token.

If the Defendant Co-Trustees have no obligations that can be enforced by the beneficiary, the trust becomes dry or passive and both legal and equitable titles merge in the beneficiary, see Trust Code § 112.032. If the trust is passive the Defendant Co-trustees have no authority other than to deliver the assets to the beneficiary or as instructed by the beneficiary.

Texas Property Code § 111.0035(b)(6) The terms of a trust will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties; from seeking redress against a fiduciary for a breach of the fiduciary's duties; or seeking a judicial construction of a will or trust. (§ 112.038)

"The right to challenge a fiduciary's actions is inherent in the fiduciary / beneficiary relationship." McLendon, 862 S.W.2d at 678." Lesikar v. Moon, 237 S.W.3d 361, 370 (Tex. App. 2007)

Defendant Co-Trustees have no claims against Carl for seeking to compel the fiduciary's to perform their fiduciary duties.

412,249-401.5 - Defendant Co-trustees Original Counter Claims vs beneficiary Candace Curtis

1. One or more of the causes of action asserted and/or declarations sought by Candace trigger forfeiture provisions.
2. One or more of the motions, responses, and/or replies filed by Curtis trigger the Forfeiture provisions;



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3. Curtis did not have just cause to bring the action, and it was not brought in good faith;
4. Curtis has forfeited her interest, and thus her interest passes as if she has predeceased the Founders;
5. If Curtis has not forfeited her interest via asserting any of the identified claims, and is or becomes entitled to receive any interest in the Founders' estate, then Amy's and Anita's expenses in defending against Curtis' claims are to be charged against her interest dollar-for-dollar;
6. All expenses incurred by Amy and Anita to legally defend against or otherwise resist the contest or attack by Carl and/or Curtis are to be paid from the Trust as expenses of administration.

If the Defendant Co-Trustees have no obligations that can be enforced by the beneficiary, the trust becomes dry or passive and both legal and equitable titles merge in the beneficiary, see Trust Code § 112.032. If the trust is passive the Defendant Co-trustees have no authority other than to deliver the assets to the beneficiary or as instructed by the beneficiary.

Texas Property Code § 111.0035(b)(6) The terms of a trust will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties; from seeking redress against a fiduciary for a breach of the fiduciary's duties; or seeking a judicial construction of a will or trust. (§ 112.038)

"The right to challenge a fiduciary's actions is inherent in the fiduciary / beneficiary relationship." McLendon, 862 S.W.2d at 678." Lesikar v. Moon, 237 S.W.3d 361, 370 (Tex. App. 2007)

Defendant Co-Trustees have no claims against any beneficiary for seeking to compel the fiduciary's to perform their fiduciary duties. Those duties begin with fiduciary disclosures including, but not limited to, a proper accounting so that they could divide by five at the passing of the last Settlor. The federal preliminary injunction and the Report of Special Master settled the question of whether or not the Defendant Co-trustees were able to produce a proper accounting. The Report of Special Master was filed August 8, 2013 [6] and the first trust accounting submitted by the Co-trustees was received on a CD-ROM from Defendant Co-trustees counsel

⁶ 2013-08-08 Case 4-12-cv-592 Doc 62 Report of Special Master. (fn. 4)



Laura M. Harris



George Vie III (Mills Shirley) on August 16, 2013, containing Bates numbers [Brunsting000001-004922]. That was more than eight years ago. Defendant's own admissions on January 6, 2022 establish their continued failure to divide the assets into five separate shares.

412,249-402 - Candace Louise Curtis vs Anita Brunsting, Amy Brunsting and Does 1-100

Filed U.S. District Court No. 4:12-cv-592 on 2/27/2012

Breach of Fiduciary Duties,

1. there is fiduciary relationship between the plaintiff and defendant;
2. the defendant breached his fiduciary duty to the plaintiff; and
3. the defendant's breach proximately caused injury to the plaintiff or benefit to the defendant.

Constructive Fraud, (Subset of breach and not a separate cause of action)

Constructive fraud is a breach of a legal or equitable duty that the law declares fraudulent, irrespective of moral guilt, because it tends to deceive others, violate confidences, or injure public interests. Constructive fraud, by its very definition, does not include an overt act.

Extrinsic Fraud, (Subset of breach and not a separate cause of action)

Fraudulent acts which keep a person from obtaining information about his/her rights to enforce a contract or getting evidence to defend against a lawsuit. This could include destroying evidence or misleading an ignorant person about the right to sue. Extrinsic fraud is distinguished from intrinsic fraud, which is the fraud that is the subject of a lawsuit

Intentional Infliction of Emotional Distress, a byproduct of breach and not an independent cause of action

1. the defendant acted intentionally or recklessly;
2. the defendant's conduct was extreme and outrageous;
3. the conduct caused the plaintiff emotional distress; and
4. the emotional distress was severe

Intentional infliction of emotional distress is a "gap-filler" tort applicable only when "a defendant intentionally inflicts severe emotional distress in a manner so unusual that the victim has no other recognized theory of redress.

Plaintiff Candace Curtis October 15, 2021 Addendum adds:

Money had and received, an equitable doctrine used to prevent unjust enrichment.

Conversion – Theft -



Janice M. Hight



1. Plaintiff owned, had legal possession of, or was entitled to possession of the property;
2. Defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with plaintiff's rights;
3. Plaintiff made a demand for the property;
4. Defendant refused to return the property.

~~Tortious interference with inheritance rights~~

Texas does not recognize this cause Archer v. Anderson, 556 S.W.3d 228, 239 (Tex. 2018)

Declaratory Judgement

In Terrorem allegations against the co-trustee defendants

412,249-403 - Independent Executor Carl Brunsting vs Vacek & Freed P.L.L.C.

Carl filed professional negligence claims in the District Court in his fiduciary capacity as independent executor for the estates of Elmer and Nelva Brunsting on January 29, 2013, three months before related claims were filed against all of the trust beneficiaries in the probate court. The -403 case has remained without an official plaintiff since Carl's resignation on February 19, 2015 and so has the -401.2.

Professional negligence,

Negligence Per Se- Violation of Texas Penal Code§ 32.43; Commercial Bribery

Negligence Per Se- Violation of Texas Penal Code §7.02(a)(2) & (3); Criminal Responsibility for Conduct of Another

Breach of Fiduciary Duty

Negligent Misrepresentation

Aiding & Abetting Current Trustees' Breaches of Fiduciary Duty

Assisting & Encouraging

Assisting & Participating





Concert of Action

Fraud

Conversion

Conspiracy

Deceptive Trade Practices

Fraudulent Concealment

Actual Damages

Forfeiture of Fees

Treble Damages

Punitive Damages

Attorney's Fees

Prejudgment Interest

See Tex. R. Civ. P. 41

A claim may be properly severed only if: (1) the controversy involves more than one cause of action, (2) the severed claim is one that would be proper if independently asserted, and (3) the severed claim is not so interwoven with the remaining action that they involve the same facts and issues. State Dep't of Highways & Pub. Transp. v. Cotner, 845 S.W.2d 818, 819 (Tex. 1993). Additionally, even when a case may be properly severed, a severance must be affected prior to the point at which all the facts have been presented to the finder of fact and the parties have requested a resolution. See Tex. R. Civ. P. 41; In re El Paso County Hosp. Dist., 979 S.W.2d 10, 12 (Tex.App.- El Paso 1998, orig. proceeding).

A severance divides a lawsuit into two or more separate and independent causes that may be resolved separately. In re Liu, 290 S.W.3d 550, 519-20 (Tex. App.—Texarkana 2009, no pet.) (citing Hall v. City of Austin, 450 S.W.2d 836, 837-38 (Tex. 1970)). When a severance is granted, the separated causes proceed to individual judgments—judgments that are separately final and appealable. Liu, 290 S.W.3d at 520 (citing Hall, 450 S.W.2d at 838); see Van Dyke v. Boswell,



O'Toole, Davis & Pickering, 697 S.W.2d 381, 383 (Tex. 1985). In other words, after a severance, there are two separate causes resulting in two separate judgments. Accordingly, the "one judgment rule," which states "one final judgment shall be rendered in any cause" is not implicated because there are two causes with separate judgments. 04-10-00602-CV 11/23/11

At the scheduling conference on May 24, 2021 Defendant Co-trustees argued their estimate of 7-10 days for trial with Carl's counsel arguing four weeks with as many as four experts and twelve fact witnesses. The joint severance motion argues that severing would reduce the serving fiduciaries trial estimate to four days but have failed to provide the court with a proposed order identifying what specific claims, separated from what cause(s), this separate lawsuit would be composed and fail to identify any new or unique facts that would distinguish the amputated portion from the body of fact questions left behind. This leaves one to wonder how additional segmentation will help clarify the issues and aid the Court in resolving the existing controversy, or how two separate trials will conserve judicial resources.

Respectfully submitted,

Candice Schwager

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ATTORNEY FOR CANDACE
CURTIS, PLAINTIFF





CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel of record and unrepresented parties in the manner required by the Rules on this Monday, February 07, 2022.

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James Horwitz



NO. 412,249-401

CARL HENRY BRUNSTING,	§	IN PROBATE COURT
INDIVIDUALLY AND AS	§	
INDEPENDENT EXECUTOR OF THE	§	
ESTATES OF ELMER H. BRUNSTING	§	
AND NELVA E. BRUNSTING	§	NUMBER FOUR (4)
	§	
vs.	§	
	§	
ANITA KAY BRUNSTING f/k/a	§	HARRIS COUNTY, TEXAS
ANITA KAY RILEY, individually,	§	
as attorney-in-fact for Nelva E. Brunsting,	§	
and as Successor Trustee of the Brunsting	§	
Family Living Trust, the Elmer H.	§	
Brunsting Decedent's Trust, the	§	
Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Anita Kay Brunsting	§	
Personal Asset Trust;	§	
AMY RUTH BRUNSTING f/k/a	§	
AMY RUTH TSCHIRHART,	§	
individually and as Successor Trustee	§	
of the Brunsting Family Living Trust,	§	
the Elmer H. Brunsting Decedent's Trust,	§	
the Nelva E. Brunsting Survivor's Trust,	§	
the Carl Henry Brunsting Personal	§	
Asset Trust, and the Amy Ruth Tschirhart	§	
Personal Asset Trust;	§	
CAROLE ANN BRUNSTING,	§	
Individually and as Trustee of the	§	
Carole Ann Brunsting Personal Asset Trust;	§	
and as a nominal defendant only,	§	
CANDACE LOUISE CURTIS	§	

Order denying Motion to Sever

Defendant Co-Trustees Anita Brunsting and Amy Brunsting and Plaintiff Carl Brunsting's motion to sever fails to provide the Court with a basis in law or fact for the desired separation. It is therefore Ordered this _____ day of _____, 2022 that the motion to sever is denied.

James Horwitz, Judge
Harris County Probate Court No. 4





I, Teneshia Hudspeth, County Clerk of Harris County, Texas certify that these pages are a true and correct copy of the original record filed and recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office
This April 18, 2022

Teneshia Hudspeth, County Clerk
Harris County, Texas

Confidential information may have been redacted from the document in compliance with the Public Information Act.

