

C.A. No. 412249-401

ESTATE OF § IN PROBATE COURT
NELVA E. BRUNSTING, §
DECEASED § NUMBER FOUR (4) OF
§ HARRIS COUNTY, TEXAS
§

CARL HENRY BRUNSTING §
V. §
ANITA KAY BRUNSTING & §
AMY R. BRUNSTING, Et Al §

**Motion for Authority for the
Co-Trustees to Sell the Iowa Farm**

The Co-Trustees, Anita Brunsting and Amy Brunsting, and Carl Brunsting, an individual beneficiary, the Co-Trustees and Carl Brunsting being three of the four remaining beneficiaries, file this motion for authority for the Co-Trustees to sell, transfer, and/or convey the Iowa Farm under a purchase and sale contract (“Contract”), attached hereto as Exhibit A, executed by the Co-Trustees as Sellers, and Doyle Wissink, the current tenant/farmer, as the Buyer, and which such Contract is subject to Court approval by virtue of the Preliminary Injunction transferred from a federal court to this Court.

I. Procedural Status

1.01. The Brunsting Family Trust, which includes the Nelva E. Brunsting Survivor’s Trust (“Survivor’s Trust”) and the Elmer H. Brunsting Decedent’s Trust (“Decedent’s Trust”), are three (3) of several trusts (collectively the “Trust”) subject to this Court’s jurisdiction. Furthermore, material transactions related to the Trust require Court approval because of the Preliminary Injunction currently in effect.

1.02. This case originated on February 27, 2012, in the U.S. District Court for the Southern District of Texas, Houston Division (Judge M. Hoyt Presiding Judge), under C.A. No. 4:12-CV-592. On

1.03. April 19, 2013, the federal court entered a Preliminary Injunction that required, *inter alia*, court approval of the sale of real property. *See* Exhibit B, Copy of the Preliminary Injunction.

1.04. On June 3, 2014, this Court received and approved the transfer of the federal case to this Court, and which transfer included the pleadings and orders entered in the federal case. *See* Exhibit C, Copy of this Court’s Order of Transfer.

1.05. On February 25, 2022, the Court granted the Co-Trustees motion for summary judgment, which found the plaintiff, Candace Curtis (“Curtis”), forfeited her interest as a beneficiary under the Trust. As such, the term “Remaining Beneficiaries” as used herein does not include Curtis. The term “Remaining Beneficiary” means Carl Brunsting, Carole Brunsting, Amy Brunsting, or Anita Brunsting, as determined by the context, and collectively the sole Remaining Beneficiaries.

1.06. As a forfeited devisee, Curtis has no standing to challenge the relief sought by this motion.

1.07. The ***Farm must be sold*** for the Remaining Beneficiaries to receive a Trust distribution of liquid assets. In addition, each Remaining Beneficiary has the right, but not the obligation to receive some of the acreage of the Iowa Farm in lieu of a monetary distribution. As of this filing, the only Remaining Beneficiary with an interest in receiving some acreage is Carole Brunsting.

II. The Iowa Farm

2.01. Decedent’s Trust owns approximately 145 acres (+/-) of farm land in Sioux County, Iowa (the “Iowa Farm” or “Property”).¹ On June 3, 2024, the Co-Trustees and the Buyer signed the aforementioned Contract for the sale of the Iowa Farm. *See* Exhibit A.

2.02. The sale would be a cash sale. No third party financing will be involved. The negotiated sales price is \$3,249,000.00, which is ninety-five percent (95%) of the appraised value of \$3,420,000.00.

2.03. The Co-Trustees seek this Court’s approval so that the sale can close on or before July 12, 2024.

¹ The term “Iowa Farm” or “Property” means the real property and improvements thereon of 144.37 acres of land in Sioux County, Iowa, and which is more particularly described as follows:

The fractional NW1/4 of Section 02, Township 96 North, Range 45 West of the 5TH P.M., Sioux County, Iowa; EXCEPT the North 542.50 feet of the West 660.00 feet (both as measured at right angles) of the Fr'L NW1/4 of said NW1/4; containing a total of 144.37 acres, inclusive of 4.45 acres of a public roadway easement, and being subject to any and all other easements, be they of record or not (hereinafter the “Farm”).

(Note: the foregoing legal description assumes the North line of the Fr'L NW1/4 of said Section 02 bears South 89° 23' 08" East, as shown from the Iowa Regional Coordinate System, Zone 1: Spencer).

Prayer

The Co-Trustees and Carl Brunsting request that the Court authorize the Co-Trustees, without the necessity of further Court approval, to: (1) negotiate and execute such other agreements and/or amendments, if any, related in whole or in part to the Iowa Farm; (2) execute and deliver legal instruments related in whole or in part to the sale, conveyance, and/or closing of the Iowa Farm, such instruments to include, but not be limited to, closing statements, affidavits, state and/or federal tax statements, notices, waivers, and/or designations; (3) receive the sale proceeds and deduct therefrom fees and expenses incurred in the sale of the Iowa Farm, such fees and expenses to include, but not be limited to, recording fees, title insurance, closing costs, and/or reasonable attorneys' fees; and (4) sign and do everything necessary or appropriate to sell, transfer, and/or convey the Iowa Farm.

The Co-Trustees and Carl Brunsting request that the Court grant them such other and further relief, general and special, legal and equitable, to which they may be entitled to receive.

Respectfully submitted,

// s // Stephen A. Mendel

Stephen A. Mendel (SBN 13930650)
Emily J. Wyatt (24088685)
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079
O: 281-759-3213
F: 281-759-3214
E: info@mendellawfirm.com

Attorneys for Anita Brunsting

Respectfully submitted,

// s // Neal E. Spielman

Neal E. Spielman (SBN 00794678)
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079
O: 281-870-1124
F: 281-870-1647
E: nspielman@grifmatlaw.com

Attorneys for Amy Brunsting

Certificate of Conference

As indicated in the motion, the only parties with standing to agree or oppose this motion are Carl Brunsting, Carole Brunsting, and the Co-Trustees, Anita Brunsting and Amy Brunsting (collectively the “Remaining Beneficiaries”).

By his electronic signature below, the undersigned certifies that he communicated with the Remaining Beneficiaries with standing regarding the relief sought.

Carl Brunsting agrees to the relief sought by this motion.

Carole Brunsting opposes the relief sought under the false and erroneous impression that the Contract somehow affects her right to receive a distribution of acreage.

// s // Stephen A. Mendel

Stephen A. Mendel

COPY UNOFFICIAL

Certificate of Service

I certify that a true and correct copy of the foregoing instrument was served on the following:

Neal E. Spielman (SBN 00794678)
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079
O: 281-870-1124 / F: 281-870-1647
E: nspielman@grifmatlaw.com

Attorney for Co-Trustee, Amy Brunsting

Bobbie G. Bayless (SBN 01940600)
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224 / F: 713-522-2218
E: bayless@baylessstokes.com

Attorney for Drina Brunsting,
Alleged Attorney in Fact for Carl Brunsting

Mr. John Bruster Loyd (SBN 24009032)
Jones, Gillaspia & Loyd, L.L.P.
4400 Post Oak Parkway, Suite 2360
Houston, TX 77027
O: 713-225-9000 / F: 713-225-6126
E: bruse@jgl-law.com

Attorney for Carole Ann Brunsting

Cory S. Reed/ Zandra Foley
Thompson, Coe, Cousins & Irons, LLP
One Riverway, Suite 1400
Houston, Texas 77056
O: 713-403-8213
E: creed@thompsoncoe.com

Attorneys for Candace Kunz-Freed
& Vacek & Freed, P.L.L.C.

via eService, email, telefax, or first-class mail, on this June 10, 2024.

// s // Stephen A. Mendel

Stephen A. Mendel

Exhibit A

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INDEX LEGEND

Location: Section: 02-96-45 Fr1 NW $\frac{1}{4}$
 Requestor: Steve Mendel
 Proprietor: Elmer H. Brunsting Decedent's Trust
 Surveyor: David L. Wilberding, P.L.S. #10315
 Surveyor: Beck Engineering, Inc.
 Company: 620 8th Street SE
 Orange City, Iowa 51041
 Return To: info@beck-engineering.net (712) 737-9225

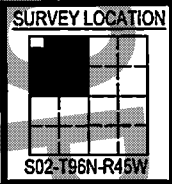
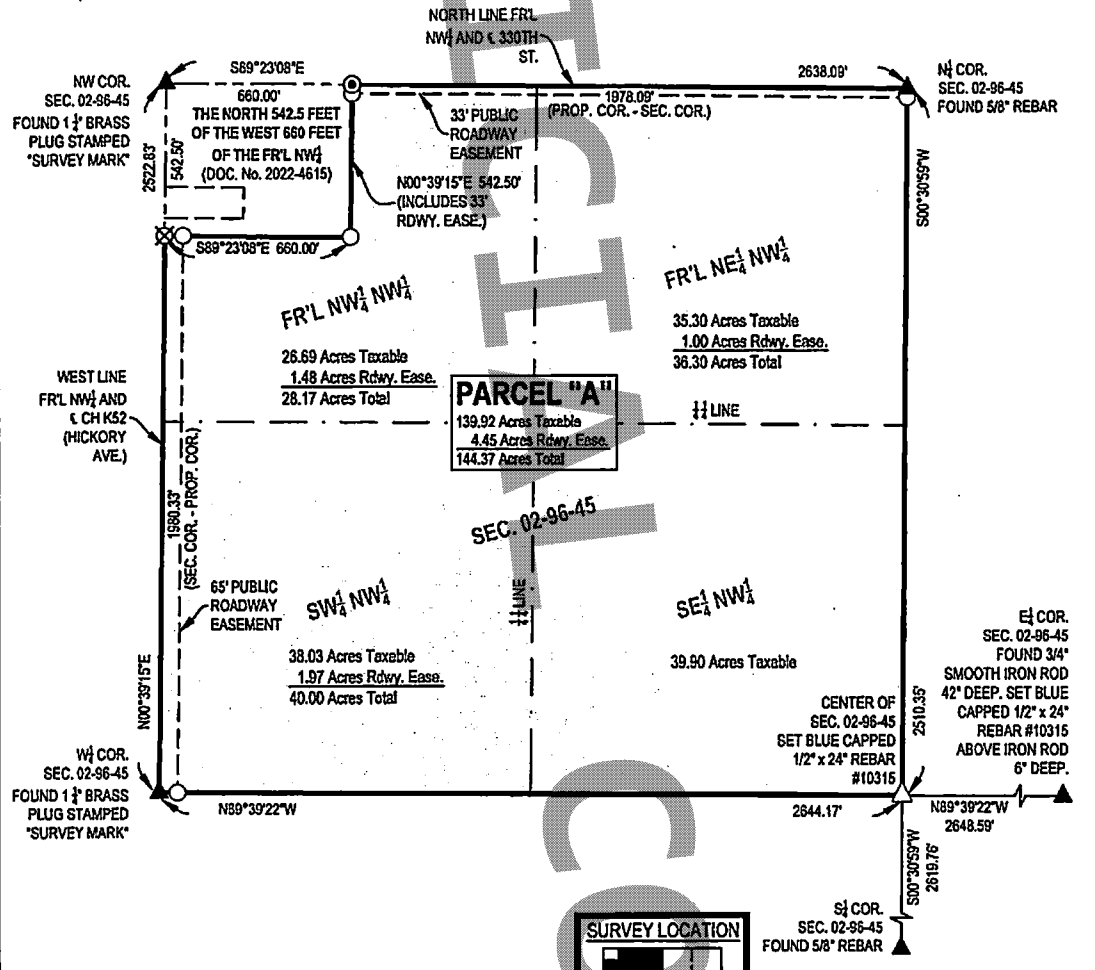
Number: 2022-05522
 BK: 2022 PG: 5522
 Recorded: 9/23/2022 at 2:38:45.0 PM
 County Recording Fee: \$7.00
 Iowa E-Filing Fee: \$3.13
 Combined Fee: \$10.13
 Revenue Tax:
 Jessica Koolker RECORDER
 Sioux County, Iowa

PLAT OF SURVEY

LOCATED IN THE FRL NW $\frac{1}{4}$ OF SECTION 02, TOWNSHIP 96 NORTH, RANGE 45 WEST OF THE 5TH P.M., SIOUX COUNTY, IOWA.

Legal Description for Parcel "A":

The Fractional NW $\frac{1}{4}$ of Section 02, Township 96 North, Range 45 West of the 5th P.M., Sioux County, Iowa,
 EXCEPT the North 542.50 feet of the West 660.00 feet (both as measured at right angles) of the Fr1 NW $\frac{1}{4}$ of said NW $\frac{1}{4}$,
 containing a total of 144.37 acres, inclusive of 4.45 acres of a Public Roadway Easement, and being subject to any and all other easements, be they of record or not.
 For this Survey, the North line of the Fr1 NW $\frac{1}{4}$ of said Section 02 is assumed to bear S89°23'08"E as shown from the Iowa Regional Coordinate System, Zone 1: Spencer.



- LEGEND**
- SET BLUE CAPPED 1/2" x 24" REBAR #10315
 - ⊙ SET GIN SPIKE IN GRAVEL ROADWAY
 - ⊗ SET CUT 'X' IN CONCRETE ROADWAY



I hereby certify that this land surveying document was prepared and the related survey work was performed by me or under my direct personal supervision and that I am a duly licensed Professional Land Surveyor under the laws of the State of Iowa.
 Date: 7-22-22 *David L. Wilberding*
 David L. Wilberding, P.L.S. #10315
 License renewal date: 12/31/2023
 Pages certified by this seal: 1

GRAPHIC SCALE
 0 250 500
 (1" = 500')

BEI PROJECT #: S22239
 SURVEY DATE: SEP. 2022 BY SMB

BECK ENGINEERING, INC.
BEI
 Civil Engineering - Land Surveying
 Landscape Architecture



**OFFER TO BUY REAL ESTATE AND ACCEPTANCE
(NONRESIDENTIAL)**

TO: Elmer H. Brunsting Decedent's Trust, dated April 1, 2009, (SELLERS)

The undersigned BUYERS (whether one or more), who is also the Tenant under that one certain Farm Lease with SELLERS, for the time period March 1, 2024, through February 28, 2025, hereby offer to buy and the undersigned SELLERS by their acceptance agree to sell the real property situated in Sioux County, Iowa, legally described as:

The fractional NW ¼ of Section 2, Township 96 North, Range 45 West of the 5th P.M., Sioux County, Iowa; EXCEPT the North 542.50 feet of the West 660.00 feet (both measure at right angles) of the Fractional NW ¼ of said NW ¼; containing a total of 144.37 acres, inclusive of 4.45 acres of a public roadway easement.

Note: the foregoing legal description assumes the North line of the Fractional NW 1/4 of said Section 2 bears South 89°23'08" East, as shown from the Iowa Regional Coordinate System, Zone 1: Spencer;

together with any easements and appurtenant servient estates, but subject to any reasonable easements of record for public utilities or roads, any zoning restrictions, customary restrictive covenants, and mineral reservations of record, if any, herein referred to as the "Property," upon the following terms and conditions provided BUYERS, on possession, are permitted to use the Property for agricultural.

1. PURCHASE TRANSACTIONS.

A. The entire tract of the Property is 144.37 acres. However, the purchase of the Property will take place in two phases. The first phase of the purchase will be a purchase of 115.50 acres, described as Parcel A in the Fractional NW ¼ of Section 2, Township 96 North, Range 45 West of the 5th P.M., Sioux County, Iowa, as described in the Plat of Survey recorded September 23, 2022, at Book 2022, Page 5522, except for the West 635.02 feet of the South 1,980.33 feet thereof.

B. If on the one-year anniversary of the closing of the sale of 115.50 acres to BUYERS, there remains any portion of the West 635.02 feet of the South 1,980.33 feet of Parcel A in the Fractional NW ¼ of Section 2, Township 96 North, Range 45 West of the 5th P.M., Sioux County, Iowa, as described in the Plat of Survey recorded September 23, 2022, at Book 2022, Page 5522, then the Phase II purchase will be the portion, if any, of the acreage that was not conveyed and/or distributed to one or more of the Brunsting Beneficiaries (e.g., Carole Brunsting, Carl Brunsting, Amy Brunsting, and/or Anita Brunsting). It is understood by BUYERS that if one or more of the Brunsting Beneficiaries collectively receive the entire remaining portion of the West

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635.02 feet of the South 1,980.33 feet of Parcel A, then there will be no subsequent sale to BUYERS.

- C. If on or before the one-year anniversary of the closing of the Phase I sale to BUYERS, the SELLERS notify BUYERS that BUYERS must purchase the remaining portion of the West 635.02 feet of the South 1,980.33 feet of Parcel A, then BUYERS shall purchase such remaining acreage from SELLERS at a price of \$22,504.68 per acre. The closing for the Phase II purchase shall be not later than thirteen (13) months from the Phase I closing date. Closing costs for the survey, deed and abstract, and such other usual and customary expenses for a closing, including SELLERS reasonable attorneys' fees, for the remainder and residue of the Phase II purchase shall be paid pro rata by the Brunsting Beneficiary(ies) that received any portion of the West 635.02 feet of the South 1,980.33 feet of Parcel A.

2. PURCHASE PRICE.

- A. The Purchase Price for Phase I of the purchase shall be \$2,599,290.54 (115.50 acres x \$22,504.68) and the method of payment shall be as follows: \$1,000.00 with this offer, to be deposited upon acceptance of this offer and held in trust by Heidman Law Firm, PLLC as earnest money, to be delivered to the SELLERS upon performance of SELLERS' obligations and satisfaction of BUYERS' contingencies, if any; and the balance of the Purchase Price, as follows: In cash or certified funds at closing.
- B. The Purchase Price for Phase II of the purchase shall be the sum of \$22,504.68 per acre, multiplied by the surveyed acres of the remaining portion of the West 635.02 feet of the South 1,980.33 feet of Parcel A in the Fractional NW ¼ of Section 2, Township 96 North, Range 45 West of the 5th P.M., Sioux County, Iowa, as described in the Plat of Survey recorded September 23, 2022, at Book 2022, Page 5522

3. REAL ESTATE TAXES.

- A. With respect to Phase I, Sellers shall pay the 2023/2024 taxes, prorated to the date of possession and any unpaid real estate taxes payable in prior years. BUYERS shall pay all subsequent real estate taxes.

Unless otherwise provided in this Agreement, at closing SELLERS shall pay BUYERS, or BUYERS shall be given a credit for, taxes from the first day of July prior to possession to the date of possession based upon the last known actual net real estate taxes payable according to public records. However, if such taxes are based upon a partial assessment of the present property improvements or a changed tax classification as of the date of possession, such proration shall be based on the current levy rate, assessed value, legislative tax rollbacks and real estate tax exemptions that will actually be applicable as shown by the assessor's records on the date of possession.

- B. With respect to Phase II, Sellers shall pay the 2024/2025 taxes, prorated to the date of possession and any unpaid real estate taxes payable in prior years. BUYERS shall pay

all subsequent real estate taxes.

Unless otherwise provided in this Agreement, at closing SELLERS shall pay BUYERS, or BUYERS shall be given a credit for, taxes from the first day of July prior to possession to the date of possession based upon the last known actual net real estate taxes payable according to public records. However, if such taxes are based upon a partial assessment of the present property improvements or a changed tax classification as of the date of possession, such proration shall be based on the current levy rate, assessed value, legislative tax rollbacks and real estate tax exemptions that will actually be applicable as shown by the assessor's records on the date of possession.

4. SPECIAL ASSESSMENTS.

- A. With each Phase, SELLERS shall pay in full at time of closing all special assessments which are a lien on the Property as of the date of closing.
- B. All charges for solid waste removal, sewage and maintenance that are attributable to SELLERS' possession, including those for which assessments arise after closing, shall be paid by SELLERS.
- C. Any preliminary or deficiency assessment which cannot be discharged by payment shall be paid by SELLERS through an escrow account with sufficient funds to pay such liens when payable, with any unused funds returned to SELLERS.
- D. BUYERS shall pay all other special assessments or installments not payable by SELLERS.

5. RISK OF LOSS & INSURANCE.

SELLERS shall bear the risk of loss or damage to the Property prior to closing or possession, whichever first occurs. SELLERS agree to maintain existing insurance, if any, and BUYERS may purchase additional insurance. In the event of substantial damage or destruction prior to closing, and which is not caused by BUYERS as the BUYERS or in their capacity as Tenant, this Agreement shall be null and void; provided, however, BUYERS shall have the option to complete the closing and receive insurance proceeds, if any, regardless of the extent of damages. The Property shall be deemed substantially damaged or destroyed if it cannot be restored to its present condition within ninety (90) days from the closing date. The term "present condition" shall not include damage or loss to crops, whether in whole or in part.

6. POSSESSION & CLOSING.

- A. The closing for Phase I shall be by 5:00 p.m., Central time, and on the latter of: (1) ten (10) days from the date the Probate Court dissolves the preliminary injunction; (2) ten (10) days from the date the Probate Court approves the sale of this Agreement; (3) ten (10) days from the date SELLERS cure any title objections raised by BUYERS;

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or (4) July 12, 2024. Possession of the Property shall occur on the date of closing, provided that the BUYERS timely perform all BUYERS' obligations under this Agreement, and the SELLERS receive the Purchase Price, less any adjustments of rent, insurance, interest, and all charges attributable to the SELLERS' possession shall be made as of the date of possession.

B. SELLERS will permit BUYERS to inspect the Property within twenty-four (24) hours prior to closing to assure that the premises are in the condition required by this Agreement. If possession is given on a day other than closing, the Parties shall make a separate agreement with adjustments as of the date of possession. This transaction shall be considered closed upon the delivery of the title transfer documents to BUYERS and receipt of all funds then due at closing from BUYERS under the Agreement.

C. With respect to Phase II, if BUYERS timely perform all obligations, possession of the Property shall be delivered to BUYERS on or before the closing date required by § 1.C., and any adjustments of rent, insurance, interest and all charges attributable to the SELLERS' possession shall be made as of the date of possession. Closing shall occur after the approval of title by BUYERS and vacation of the Property by SELLERS, but prior to possession by BUYERS. SELLERS agree to permit BUYERS to inspect the Property within twenty-four (24) hours prior to closing to assure that the premises are in the condition required by this Agreement. If possession is given on a day other than closing, the Parties shall make a separate agreement with adjustments as of the date of possession. This transaction shall be considered closed upon the delivery of the title transfer documents to BUYERS and SELLERS' receipt of all funds then due at closing from BUYERS under this Agreement.

7. FIXTURES.

Included with the Property shall be all fixtures that integrally belong to, are specifically adapted to or are a part of the real estate, whether attached or detached. Also included shall be the following: n/a. The following items shall not be included: n/a.

8. CONDITION OF PROPERTY.

By virtue of that one certain lease agreement between the Parties, the Property as of the date of this Agreement, including buildings, grounds, and all improvements, will be preserved by BUYERS in its present condition until possession, ordinary wear and tear excepted. SELLERS make no warranties, expressed or implied, as to the condition of the Property. BUYERS warrant and represents that they made a satisfactory inspection of the Property and are purchasing the Property as-is with all faults known and unknown. This provision shall survive closing.

9. ABSTRACT & TITLE.

For each Phase, SELLERS, at their expense, shall promptly obtain an abstract of title to the Property continued through the date of acceptance of this Agreement, and deliver it to

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BUYERS' attorney for examination. It shall show marketable title in SELLERS in conformity with this Agreement, Iowa law, and title standards of the Iowa State Bar Association. The SELLERS shall make reasonable efforts to perfect title. If closing is delayed due to SELLERS' inability to provide marketable title, this Agreement shall continue in force and effect until either party rescinds the Agreement after giving ten (10) days written notice to the other party. The abstract shall become the property of BUYERS when the Purchase Price is paid in full. SELLERS shall pay the costs of any additional abstracting and title work due to any act or omission of SELLERS, including transfers by or the death of SELLERS or their assignees. Unless stricken, the abstract shall be obtained from an abstracter qualified by the Guaranty Division of the Iowa Housing Finance Authority.

10. SURVEY.

If a survey is required under Iowa Code Chapter 354, or city or county ordinances, SELLERS shall pay the costs thereof. If the survey shows an encroachment on the Property or if any improvements located on the Property encroach on lands of others, the encroachments shall be treated as a title defect, and SELLERS shall make reasonable efforts to cure the title defect; provided further either Party may terminate this Agreement as provided in section 9 above.

11. ENVIRONMENTAL MATTERS.

A. SELLERS warrant to the best of their knowledge and belief that there are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Property, the Property does not contain levels of radon gas, asbestos, or urea-formaldehyde foam insulation which require remediation under current governmental standards, and SELLERS have done nothing to contaminate the Property with hazardous wastes or substances. SELLERS warrant that the Property is not subject to any local, state, or federal judicial or administrative action, investigation or order, as the case may be, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks. SELLERS shall also provide BUYERS with a properly executed GROUNDWATER HAZARD STATEMENT showing no wells, private burial sites, solid waste disposal sites, private sewage disposal system, hazardous waste and underground storage tanks on the Property unless disclosed here: none.

B. BUYERS warrant during the pendency of BUYERS' lease that:

- 1) There are no abandoned wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks located on the Property, the Property does not contain levels of radon gas, asbestos, or urea-formaldehyde foam insulation which require remediation under current governmental standards.
- 2) BUYERS have done nothing to contaminate the Property with hazardous wastes or substances.

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- 3) The Property is not subject to any local, state, or federal judicial or administrative action, investigation or order, as the case may be, regarding wells, solid waste disposal sites, hazardous wastes or substances, or underground storage tanks.
- 4) BUYERS will provide SELLERS with a properly executed GROUNDWATER HAZARD STATEMENT showing that there are no wells, private burial sites, solid waste disposal sites, private sewage disposal system, hazardous waste and underground storage tanks on the Property unless disclosed here: none.

C. BUYERS may at their expense, within ten (10) days after the date of acceptance, obtain a report from a qualified engineer or other person qualified to analyze the existence or nature of any hazardous materials, substances, conditions or wastes located on the Property. In the event any hazardous materials, substances, conditions or wastes are discovered on the Property, BUYERS' obligation hereunder shall be contingent upon the removal of such materials, substances, conditions or wastes or other resolution of the matter reasonably satisfactory to BUYERS. However, in the event SELLERS are required to expend any sum in excess of \$5,000.00 to remove any hazardous materials, substances, conditions or wastes, SELLERS shall have the option to cancel this transaction and refund to BUYERS all earnest money paid and declare this Agreement null and void. The expense of any inspection shall be paid by BUYERS. The expense of any action necessary to remove or otherwise make safe any hazardous material, substances, conditions or waste shall be paid by SELLERS, subject to SELLERS' right to cancel this transaction as provided above.

12. DEED.

Upon payment of the Purchase Price, SELLERS shall convey the Property to BUYERS by Trustee Special Warranty Deed, free and clear of all liens, restrictions, and encumbrances except as provided in this Agreement. The warranty of title is limited to claims by, through, or under SELLERS, and not otherwise. General warranties of the title shall extend to the time of delivery of the deed excepting liens and encumbrances suffered or permitted by BUYERS.

13. USE OF PURCHASE PRICE.

At time of settlement, funds of the Purchase Price may be used to pay taxes and other liens and to acquire outstanding interests, if any, of others.

14. APPROVAL OF COURT.

There is presently a preliminary injunction in C.A. No. 412249-401, in a case styled as *Estate of Nelva E. Brunsting, Deceased & Carl Henry Brunsting, Et Al v. Antia Kay Brunsting, Et Al*, and pending in Probate Court No. 4, Harris County, Texas (hereinafter the Probate Court) that requires Probate Court approval of matters such as this Agreement, and other matters that relate in whole or in part to SELLERS. Notwithstanding any other provision in this Agreement to the contrary, until such time as

the preliminary injunction is no longer in force, the SELLERS obligations under this Agreement shall remain subject to the Probate Court's jurisdiction, and this Agreement shall not be enforceable against either Party and there shall be no closing absent approval of this Agreement by the Probate Court; provided further, either Party may terminate this Agreement prior to this Agreement becoming enforceable. If, prior to closing, the preliminary injunction is no longer in force, then this Agreement shall be enforceable against the Parties without the need for Probate Court approval.

15. REMEDIES OF THE PARTIES.

- A. If BUYERS fail to timely perform this Agreement, SELLERS may forfeit it as provided in the Iowa Code (Chapter 656), and all payments made shall be forfeited; or, at SELLERS' option, upon thirty (30) days written notice of intention to accelerate the payment of the entire balance because of BUYERS' default (during which thirty (30) days the default is not corrected), SELLERS may declare the entire balance immediately due and payable. Thereafter this Agreement may be foreclosed in equity and the Court may appoint a receiver.
- B. If SELLERS fail to timely perform this Agreement, BUYERS have the right to have all payments made returned to them.
- C. BUYERS and SELLERS are also entitled to utilize any and all other remedies or actions at law or in equity available to them, and the prevailing parties shall be entitled to obtain judgment for costs and attorney fees.

16. NOTICE.

Any notice under this Agreement shall be in writing and be deemed served when it is delivered by personal delivery or mailed by certified mail, addressed to the parties at the addresses given below.

17. GENERAL PROVISIONS.

In the performance of each part of this Agreement, time shall be of the essence. Failure to promptly assert rights herein shall not, however, be a waiver of such rights or a waiver of any existing or subsequent default. This Agreement shall apply to and bind the successors in interest of the parties. This Agreement shall survive the closing. This Agreement contains the entire agreement of the parties and shall not be amended except by a written instrument duly signed by SELLERS and BUYERS. Paragraph headings are for convenience of reference and shall not limit or affect the meaning of this Agreement. Words and phrases herein shall be construed as in the singular or plural number, and as masculine, feminine, neutral or other gender according to the context.

18. NO REAL ESTATE AGENT OR BROKER.

Neither party has used the service of a real estate agent or broker in connection with this

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transaction.

19. CERTIFICATION.

BUYERS and SELLERS each certify that they are not acting, directly or indirectly, for or on behalf of any person, group, entity or nation named by any Executive Order or the United States Treasury Department as a terrorist, "Specially Designated National and Blocked Person" or any other banned or blocked person, entity, nation or transaction pursuant to any law, order, rule or regulation that is enforced or administered by the Office of Foreign Assets Control; and are not engaged in this transaction, directly or indirectly on behalf of, any such person, group, entity or nation. Each party hereby agrees to defend, indemnify and hold harmless the other party from and against any and all claims, damages, losses, risks, liabilities and expenses (including attorney's fees and costs) arising from or related to my breach of the foregoing certification.

20. INSPECTION OF PRIVATE SEWAGE DISPOSAL SYSTEM.

SELLERS and BUYERS agree that this transaction is exempt from the time of transfer inspection requirements by reason that (1) transfer is made by a trustee in the course of administering a trust, and (2) the Property does not have any buildings on it which are served by a private sewage disposal system.

21. ADDITIONAL PROVISIONS.

- A. BUYERS shall receive a credit against the Purchase Price for Phase I equal to all rent paid by BUYERS after May 1, 2024 if, and only if, the sale of Phase I closes in calendar year 2024.
- B. All signed documents, including this Agreement, transmitted by email or machine shall be treated in all manner and respects as an original document. The fax, electronic, digital, or photocopy signature of any Party shall be considered as an original signature. Any signed fax, electronic, digital, or photocopy document shall be considered to have the same binding legal effect as the original signed document. Either Party may request that a fax, electronic, digital, or photocopy document be re-executed as an original document and in its original form, and the other Party hereby agrees to comply within ten (10) days of such request. The Parties agree that neither shall raise the use of a fax, electronic, digital, or photocopy signature as a defense to this Agreement and forever waive such defense.
- C. Any agreement, including this Agreement, executed by, through, or under DocuSign or any other digital service shall have the same force an effect as an original.
- D. BUYERS and SELLERS agree that the document retention policy of either Party may involve the imaging of this Agreement and other documents sent by either Party to or received by either Party from the other and/or any persons or entities regarding the subject matter of this Agreement, and the destruction of the paper originals of all such

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documents. Each Party, therefore, forever waive any right the Party may have to a claim that the imaged copies are not originals.

- E. This Agreement may be executed in multiple counterparts and, as executed, shall constitute one agreement, notwithstanding that any Party to this Agreement is not a signatory to the same original document. The Parties agree that all counterpart signature pages shall be read as one and shall have the same force and effect as though all the signers had signed the same signature page.
- F. The terms and conditions of this Agreement were mutually negotiated, and this entire Agreement shall be considered as jointly drafted by the Parties.
- G. This Agreement shall be considered effective as of 6/3/2024 (the "Effective Date").

ACCEPTANCE. When the signature page of this Agreement is executed by both Parties, then this Agreement shall become a binding contract. During the period there is an acceptance by one Party, but not the other, an acceptance by the BUYERS is an offer to purchase. In the alternative, an acceptance by SELLERS is an offer to sell. If this Agreement is not executed by both Parties on or before June 4, 2024, then this Agreement shall be null and void and all earnest money payments, if any, made by BUYERS shall be returned promptly to BUYERS.

[SIGNATURES ON FOLLOWING PAGES]

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BUYERS:

Doyle R. Wissink
Doyle Wissink

Address : 1526 Willow St.
Hull, IA 51239

Telephone: 712-439-2311 cell # 712-441-4110

Date Accepted: 6-3-24

SELLERS:

DocuSigned by:

Anita Brunsting

Anita K. Brunsting, Co-Trustee of the
Elmer H. Brunsting Decedent's Trust, dated
April 1, 2009

DocuSigned by:

Amy Brunsting, Co-Trustee

Amy Brunsting, Co-Trustee of the
Elmer H. Brunsting Decedent's Trust, dated
April 1, 2009

Address : 801 Bassington Ct.
Pflugerville, TX 78660

Telephone: N/A

Date Accepted: 6/3/2024

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Exhibit B

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412249-401

Harris County - County Probate Court No. 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,

Plaintiff,

VS.

CIVIL ACTION NO. 4:12-CV-592

ANITA KAY BRUNSTING, *et al*,

Defendants.

**MEMORANDUM AND ORDER
PRELIMINARY INJUNCTION**

I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits, received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

II. BACKGROUND

A. Procedural Background

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a

recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

B. Contentions of the Parties

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489 F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway*, 489 F.2d at 572-73.

IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

presented as the Trust is; in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.¹ At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

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.

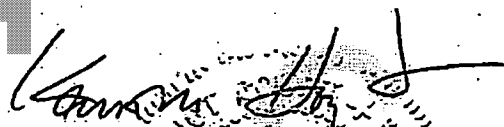
¹ It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

In light of what appears to be irregularities in the documents and the failure of the Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.


Kenneth M. Hoyt
United States District Judge

TRUE COPY I CERTIFY ATTEST
DAVID J. BRADLEY, Clerk of Court

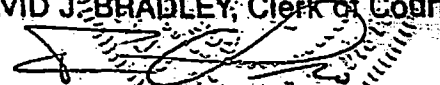
By 
Deputy Clerk

Exhibit C

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PROBATE COURT 4

CAUSE NO. 412,249-401

IN RE: ESTATE OF
NELVA E. BRUNSTING,
DECEASED

§
§
§
§
§

IN THE PROBATE COURT
NUMBER FOUR (4) OF
HARRIS COUNTY, TEXAS

ORDER OF TRANSFER

On this day came to be considered the Motion to Enter Transfer Order filed by Plaintiff Candace Curtis, seeking to have this Court accept the Order to Remand entered by the Federal Court for the Southern District of Texas and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.* The Court is of the opinion that it has jurisdiction over the parties and claims pending under Cause Number 4:12-CV-00592 finds that the Motion to Enter Transfer Order should be granted. It is, therefore,

ORDERED that the Order of Remand entered by the Federal Court for the Southern District of Texas in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, is hereby accepted. It is further,

ORDERED that the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, be and hereby are transferred to this Court to be held under Cause Number 412,249.- 401.

SIGNED on this 3 day of June, 2014.

Christine Pontre
JUDGE PRESIDING

FILED
2014 JUN -4 AM 10:35
COUNTY CLERK
HARRIS COUNTY, TEXAS

06052014:0759:P0102

06052014:0759: P0105

APPROVED AS TO FORM:

OSTROM/Sain
A limited Liability Partnership

BY: 

JASON B. OSTROM
(TBA #24027710)
NICOLE K. SAIN THORNTON
(TBA #24043901)
5020 Montrose Blvd., Ste. 310
Houston, Texas 77006
713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

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Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stephen Mendel
Bar No. 13930650
info@mendellawfirm.com
Envelope ID: 88600526
Filing Code Description: Application of Miscellaneous kind
Filing Description: Motion for Authority for the Co-Trustees to Sell the Iowa Farm
Status as of 6/10/2024 10:15 AM CST

Associated Case Party: ANITAKAYBRUNSTING

Name	BarNumber	Email	TimestampSubmitted	Status
Stephen A.Mendel		info@mendellawfirm.com	6/10/2024 8:31:01 AM	SENT

Associated Case Party: CANDACELKUNZ-FREED

Name	BarNumber	Email	TimestampSubmitted	Status
Cory SReed		creed@thompsoncoe.com	6/10/2024 8:31:01 AM	SENT

Associated Case Party: AMYRUTHBRUNSTING

Name	BarNumber	Email	TimestampSubmitted	Status
Neal Spielman		nspielman@grifmatlaw.com	6/10/2024 8:31:01 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Bobbie Bayless		bayless@baylessstokes.com	6/10/2024 8:31:01 AM	SENT
John BrusterLloyd		bruse@jgl-law.com	6/10/2024 8:31:01 AM	SENT