Case No. 17-20360

In the United States Court of Appeals
For the Fifth Circuit

CANDACE LOUISE CURTIS; RIK WAYNE MUNSON,
Plaintiffs - Appellants

v.

CANDACE KUNZ-FREED; ALBERT VACEK, JR.; BERNARD LYLE MATTHEWS, III; NEAL SPIELMAN; BRADLEY FEATHERSTON; STEPHEN A. MENDEL; DARLENE PAYNE SMITH; JASON OSTROM; GREGORY LESTER; JILL WILLIARD YOUNG; CHRISTINE RIDDLE BUTTS; CLARINDA COMSTOCK; TONI BIAMONTE; BOBBIE BAYLESS; ANITA BRUNSTING; AMY BRUNSTING; DOES 1-99,

Defendants - Appellees

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION
Case No. 4:16-cv-1969

APPELLANTS' REPLY BRIEF

Candace Louise Curtis
Rik Munson
218 Landana St
American Canyon, California
94503
(925) 759-9020
occurtis@sbcglobal.net

Table of Contents

Table of Contents i
Table of Authorities ii
Curtis v Brunsting 704 F.3d 406 1
A Complete Absence of Subject Matter Jurisdiction 2
  Immunity 6
  Forgery, Obstruction and Collusion 7
Chronological Statement of the Case 10
  Defendant Appellee Jason Ostrom 10
Conversion Agreement 11
  Continuing the 8/25/2010 QBD Plan 13
  Neal Spielman and Bradley Featherston 14
Implementing the Forged 8/25/2010 QBD No-Contest Artifice 16
  Defendants Gregory Lester and Jill Willard Young 16
  Defendant Neil Spielman 17
Prove Up or Shut Up 18
  Defendants Clarinda Comstock and Christine Butts 20
Request for Judicial Notice of Undisclosed Conflicts 20
Article III Standing 22
If Not Probate, Then What? 27
Texas State Conspiracy Law 27
Federal Conspiracy Law 27
  Hobbs Act Extortion CRM 2402 30
Conclusion 30
CERTIFICATE OF SERVICE 32
CERTIFICATE OF COMPLIANCE 34
Addendum of Statutes v
  Texas Estates Code §22.012 ESTATE v
  Texas Estates Code §22.029 v

Texas Estates Code §31.001 v
Texas Probate Code §2*(e)* vi
Texas Probate Code §3(l) vi
Texas Probate Code §3(bb) vii
Texas Probate Code §5(b) vii
Texas Property Code *§112.035* viii
Texas Rule of Evidence §1002 Requirement of the Original x
Texas Rule of Evidence §1003 Admissibility of Duplicates x
Texas Rule of Evidence §1004 Admissibility of Other Evidence of Content xi
Texas Penal Code §31.02 Consolidation of Theft Offenses xi
Texas Penal Code §§7.01, 7.02, 7.03 xii

Table of Authorities

Cases

Alpert v. Gerstner, 232 S.W.3d 117, 127 (Tex.App.-Houston [1st Dist.] 2006, pet. denied) 7

Candace Louise Curtis v. Anita and Amy Brunsting Does 1-100, No. 4:12-cv-592 2, 8, 11, 23

Cantey Hanger, LLP v. Byrd, 467 S.W.3d 477, 484 6

Cleveland v. Ward, 285 S.W. 1063 (Tex. 1926) 5

Curtis v. Gibbs, 511 S.W.2d 263, 267 (Tex. 1974) 5

Evans v. United States, 504 U.S. 255, 265, 112 S.Ct. 1181, 1188 (1992) 30

Firestone v. Galbreath, 976 F.2d 279 13

Glickstein v. Sun Bank/Miami N.A., 922 F.2d 666 (11th Cir 1991) 26

Hartley v. Coker, 843 S.W.2d 743, 747-48 5

In re J.B. Hunt Transp., Inc., 492 S.W.3d 287 (Tex. 2016) 6

In re Sims, 88 S.W.3d 297, 303 (Tex. App.—San Antonio 2002, orig. proceeding) 6

McNally v. United States, 483 U.S. 350 (1987) 29

Pinkerton v. United States, 328 U.S. 640 28

Rotella V. Wood (No.98-896) 528 U.S. 549 (2000) 147 F.3d 438 26
San Miguel v. Bellows, 35 S.W.3d 702, 704 5
Sherry Lynn Johnson v. David Dexel et al., No. 4:16-cv-3215 21
Sweezy Constr., Inc. v. Murray, 915 S.W.2d 527, 531 5
United States v. Alexander, 741 F.2d 962, 964 (7th Cir. 1984) 29
United States v. Frazier, 880 F.2d 878, 886 (6th Cir. 1989) 28
United States v. Ginsburg, 773 F.2d 798 (7th Cir. 1985), cert. denied, 475 U.S. 1011 (1986) 29
United States v. James, 998 F.2d 74, 80 (2d Cir.), (1993) 28
United States v. Lemire, 720 F.2d 1327, 1335 (D.C. Cir. 1983) 29
United States v. Palozzale, 71 F.3d 1233, 1237 (6th Cir. 1995) 28
United States v. Superior Growers Supply, 982 F.2d 173, 178 (6th Cir. 1992) 28
Wyatt v. Shaw Plumbing Co., 760 S.W.2d 245, 248 (Tex. 1988) 5, 6
Wyatt, 760 S.W.2d at 247 6

Statutes

18 U.S.C. §1964(c) 22, 25
18 U.S.C. §1968(a) 7
Section 2523(f), Internal Revenue Code of 1986 4
Texas Civil Practice and Remedies Code §33.013 (2003) 17
Texas Estates Code §22.029 3
Texas Estates Code §31.001 4
Texas Penal Code §31.02 10
Texas Penal Code §31.03 10
Texas Penal Codes §§7.01 and 7.02 26
Texas Penal Codes §§7.01, 7.02 and 7.03 26
Texas Probate Code §2(e) 4
Texas Probate Code §3(bb) 3
Texas Probate Code §3(l) 3
Texas Probate Code §5 4

Other Authorities

Conspiracy CRM2482 26
Elements of Aiding and Abetting CRM 2474 26
Fiduciary Duty, and Honest Services, CRM 947 27
Hobbs Act Extortion CRM 2402 28
McNally and Intangible Rights, CRM 945 27
Tangible versus Intangible Property Rights, CRM 946 27

Rules

Federal Rule of Civil Procedure Rule 12(b)(6) 29
Federal Rules Of Civil Procedure Rule 54(c) 30
Texas Disciplinary Rules of Professional Conduct Rule 1.06(b)(6) 12, 20

Constitutional Provisions

Fifth Amendment, United StatesConstitution 23
United States Constitution, Article III 25

Curtis v Brunsting 704 F.3d 406

Curtis v Brunsting 704 F.3d 406 [ROA.2227][1] is controlling law in this case and the pivotal point of contention has already been decided by this court. Plaintiffs have accused Defendants of conspiring to loot inter vivos trusts under the pretext of probating a decedent's "estate". Defendants argue the claims arise from probate of the "*Estate of Nelva Brunsting*", and that Plaintiffs' claims are delusional: "*a bizarre, conspiracy-theory-laden attempt to seek revenge for being on the losing end of trust and estate determinations that have already been fully litigated in Texas state court*" [ROA.17-20360.181], [ROA.17-20360.193]. The disgruntled litigant theme is an established pattern and practice, commonly used in conjunction with the Rooker-Feldman doctrine, to prevent federal oversight into state court criminal enterprise operations. Appellants affirmatively pled the inapplicability of this artifice six weeks[2] before Jill Young filed her Motion to Dismiss. At no time have Defendants' pleadings challenged the authenticity of Plaintiffs' exhibits, yet they ask the Court

[1] All references are to ROA.17-20360 unless ROA.12-20164 is expressly stated

[2] Docket entry 26, [ROA.205], [ROA.209, item 17], originally filed as a Rule 60(b) Motion on 08/03/2016 in Candace Louise Curtis v Anita and Amy Brunsting Does 1-100, 4:12-cv-592, Doc. 115 [ROA.3078]. It was mailed on CDROM with the RICO complaint and later mailed in paper form.

to assume dispositive facts without pointing to the record to where these alleged facts were determined. They do not, because they cannot.

Adjudicative facts usually answer the questions of who did what, where, when, how, why, and with what motive or intent. Defendants propound a plethora of case law on entirely assumed facts, do not cite to the testimony of a single fact witness and do not point to a single finding of fact or conclusion of law in the record.

A Complete Absence of Subject Matter Jurisdiction

Plaintiff Appellants' RICO action arises from a courtroom in Harris County Texas, in part, but in no way does it arise from a probate matter, probate proceeding or probate case. The lawsuit that produced the opinion published Curtis v Brunsting 704 F.3d 406; "*Candace Louise Curtis v. Anita and Amy Brunsting Does 1-100, No. 4:12-cv-592 filed TXSD 2/27/2012*", is the matter Plaintiffs are in Texas on, is the matter from which these RICO claims arise, and is not now, has never been, and will never be a probate matter.

Plaintiffs Curtis and Munson are in Texas and this RICO suit arises in the context of the same breach of fiduciary lawsuit Curtis originally filed in February 2012, involving the same Defendant Appellees, Anita and Amy Brunsting; the same inter vivos Trusts; 1996 Trust, [ROA.12-20164.157, 160, 162] - [ROA.17-

20360.799, 1815, 2076]; 2005 Restatement [ROA.12-20164.179] - [ROA.17-20360.269, 861, 1876, 2037]; 2007 Amendment [ROA.12-20164.321] - [ROA.17-20360.357, 949, 1964, 2225]; 8/25/2010 QBDs [ROA.12-20164.350], [ROA.17-20360.957-993]; [ROA.17-20360.1059] same QBD theft extortion plot [ROA.12-20164.24, para 4], [ROA.17-20360.1420, ln.16-21]; same Decedents: Elmer [ROA.17-20360.2384] [ROA.12-20164.281]; Nelva [ROA.17-20360.2372] [ROA.12-20164.284] and the same probate exception argument[3] this Court has already unanimously rejected as it relates to the relationships between all of the above.

In "*Curtis*", this Court held that assets in the Brunsting inter vivos trusts are not assets belonging to a decedent's estate.[4] This is consistent with the applicable statutes, Texas Estates Code §22.029, Texas Probate Code §3(bb):

> *"The terms "probate matter," "probate proceedings," "proceeding in probate," and "proceedings for probate" are synonymous and include a matter or proceeding relating to a decedent's estate"*

"*Estate means a decedent's property*," Texas Estates Code §22.012, Texas Probate Code §3(l) ; "*The entire proceeding is a proceeding in rem*" Texas Probate

[3] See Amy and Anita's Appellees Brief Filed: 07/16/2012: Case: 12-20164 Doc: 00511922758
[4] Curtis v Brunsting 704 F.3d 406, 408, HN6 [ROA.2229]

Code §2(e). In proceedings in the statutory probate courts, the phrases "appertaining to estates" and "incident to an estate" relate only to those things defined in Texas Probate Code §5 and Texas Estates Code §31.001.

According to Texas Property Code §112.035, assets in the Brunsting Family Trust are considered not to have been contributed by Elmer or Nelva Brunsting; The Family Trust contains a spend thrift clause, (Art XI, Sec. A, p 11-1) [ROA.2193] as does Nelva's Will [ROA.2378], Section H; the Family Trust was an inter vivos marital trust that became irrevocable (Art III(c), p.3-1) [ROA.869] at the death of Elmer Brunsting April 1, 2009. The family Trust was treated as qualified terminable interest property under Section 2523(f), Internal Revenue Code of 1986, (Art XII, p.12-9) [ROA.930] [ROA.2376, sec. E]; Nelva remained a beneficiary after Elmer's death, (Art IX, p.9-1) [ROA.2175]. The Will, [ROA.2372] that none of the "probate matter" proponents bother to mention, deprives the executor of standing to file claims in a probate court and deprives a probate court of the jurisdiction to hear them. [ROA.2373, 2374]

The Estates Code, the Probate Code and the decision of this Court in Curtis v Brunsting 704 F.3d 406 (No. 12-20164) settle any question of probate court jurisdiction over the administration of the Brunsting trusts. It necessarily follows that Harris County Probate Court was unable to constitute itself a court of competent

jurisdiction over any matter involving the Brunsting inter vivos trusts. The question was never one of whether the probate court lacked subject matter jurisdiction. That was answered by this Court in January 2013. The question was, how far were these Defendants willing to go in their efforts to loot the Brunsting Trusts under the pretext of probate administration, when those trusts divested in equal shares to the five Brunsting Beneficiaries at the death of Nelva Brunsting on November 11, 2011.

Dominant Jurisdiction

The principle of "dominant jurisdiction" is well-established in Texas jurisprudence. The general rule is that, "if two lawsuits concerning the same controversy and parties are pending in courts of coordinate jurisdiction, the court in which suit was first filed acquires dominant jurisdiction to the exclusion of the other court." Sweezy Constr., Inc. v. Murray, 915 S.W.2d 527, 531 (Tex. App.—Corpus Christi 1995, orig. proceeding) (citing Wyatt v. Shaw Plumbing Co., 760 S.W.2d 245, 248 (Tex. 1988)); San Miguel v. Bellows, 35 S.W.3d 702, 704 (Tex. App.—Corpus Christi 2000, pet. denied); Hartley v. Coker, 843 S.W.2d 743, 747-48 (Tex. App.—Corpus Christi 1992, no writ); Curtis v. Gibbs, 511 S.W.2d 263, 267 (Tex. 1974) (citing Cleveland v. Ward, 285 S.W. 1063 (Tex. 1926)

Courts must answer the "dominant-jurisdiction question" only if there is an "inherent interrelation of the subject matter . . . in two pending lawsuits." In re J.B.

Hunt Transp., Inc., 492 S.W.3d 287 (Tex. 2016) (orig. proceeding) (citing Wyatt, 760 S.W.2d at 247)

Dominant jurisdiction excludes multiple courts from exercising jurisdiction over the same case. Curtis, 511 S.W.2d at 267. Once dominant jurisdiction is established, any subsequent lawsuit involving the same parties and controversy must be dismissed. Id.; In re Sims, 88 S.W.3d 297, 303 (Tex. App.—San Antonio 2002, orig. proceeding) (court that first acquires jurisdiction retains jurisdiction undisturbed by the interference of another court). Dominant jurisdiction supports the longstanding policy of Texas courts to "avoid a multiplicity of lawsuits." Wyatt, 760 S.W.2d at 246

Immunity

The attorney seeking dismissal based on attorney immunity is burdened to establish entitlement to the defense. See Cantey Hanger, LLP v. Byrd, 467 S.W.3d 477, 484. "Judges enjoy absolute judicial immunity from liability for judicial acts, no matter how erroneous the act or how evil the motive, unless the act is performed in the clear absence of all jurisdiction." Alpert v. Gerstner, 232 S.W.3d 117, 127 (Tex.App.-Houston [1st Dist.] 2006, pet. denied)

Clothing organized criminal conduct in the incorporeal gossamer of subject matter jurisdiction is a thin veil commonly referred to in the criminal context as a

legitimate front. Where, as here, there is a complete absence of subject matter jurisdiction, there is no court, there are no judges, there is no litigation, there can be no fully litigated determinations and there are no impunities.

These judge and attorney Defendants know this as a matter of law. That knowing, explains the absolute refusal to set dispositive hearings or rule on anything that would lead to review by another court.

Forgery, Obstruction and Collusion

Evidence to support Defendants' most important fact claim, has neither been introduced into, nor excluded from evidence because: 1) Curtis does not have possession; 2) Curtis is not claiming it exists or using it as license for theft; 3) Curtis does not have the burden of bringing forth evidence; and 4) Curtis was refused an evidentiary hearing on her demand for a show of proof [ROA.1406-1459]. There is substantial reason to doubt the instrument's authenticity and no rational reason to believe it has a legal existence, [ROA.623] [ROA.3081] see (RE-66 Tab 15) [ROA.644-646].

The forged instrument[5] is titled "*Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment under Living Trust Agreement*", [ROA.360, 957] allegedly signed by Nelva Brunsting alone on August 25, 2010, a.k.a. the "8/25/2010 QBD". Under this alleged instrument, Defendants Anita and Amy Brunsting claim Candace's trust "share" was to be retained in a personal asset trust after Nelva's demise, with Anita and Amy Brunsting in control of those assets as alleged trustees. [ROA.17-20360.614]

Plaintiffs were compelled to file a RICO suit because Curtis could not get an evidentiary hearing on her demand for a show of proof, [ROA.623] when the entire trust asset theft charade was born, lives and dies on the existence or non-existence of this single "forged" instrument [ROA.360], see item 20 [ROA.1059, 1081, 1808].

Candace Louise Curtis v Anita and Amy Brunsting Does 1-100, 4:12-cv-592 could be resolved very easily under 18 U.S.C. §1968(a), or similar order from this court, commanding Defendants to produce the archetype of the 8/25/2010 QBD and qualify it as evidence. [ROA.225, id, 105, 106], [ROA.228, id, 188-120]

[5] See Defendants' No-evidence Motion [ROA.243] and Curtis' Demand to Produce Evidence [ROA.624]

- The alleged 8/25/2010 QBD [ROA.12-20164.363-399] appears in the Record bearing three distinctly different notarized signature pages, [ROA.17-20360.644-646, 994-1003] and there is only one Notary log entry [ROA.648-652].
- When Nelva first learned of the 8/25/2010 QBD from Candace Curtis, in late October of 2010, she wrote Candy a note saying it was untrue and assured her that she would get her "share". [ROA.3081]
- Nelva also called Freed and instructed Freed to change it back. [ROA.779][6] The response of Anita and Amy Brunsting and Candace Freed was to force a very lucid Nelva Brunsting to undergo the indignity of a competency evaluation. [ROA.1041]
- On more than one occasion, Anita and Amy have each disavowed any knowledge of its creation. [ROA.246, 247, 1777, 2297]
- In Anita and Amy's Joint No-Evidence Motion [ROA.247]

> *"There is no evidence that Anita and/or Amy contacted Nelva's attorney, Ms. Freed, and prescribed the terms or even discussed the terms of the 8/25/10 QBD."*

- Anita Brunsting's Motion to Dismiss calls it a "Qualified Beneficiary Trust" (QBT) and claims it was drafted by Albert Vacek, Jr. at Nelva's request,

[6] Freed's notes disclosures verify Carole's participation in this phone conversation

[ROA.17-20360.1777], but the request to Candace Freed to "change the trust", [ROA.17-20360.2756], came from Anita Brunsting, not Nelva Brunsting.

Chronological Statement of the Case

Plaintiffs incorporate the concise history of the litigation they have already stated, beginning with the Motion for Partial Summary Judgment Curtis could not get a hearing on: see History of the Trust [ROA.718, Art VIII]; and History of the litigation [ROA.2063, items 14-21].

Defendant Appellee Jason Ostrom

In October of 2013, due to Plaintiff Munson's unavailability, Plaintiff Curtis was directed to retain an attorney, and ended up retaining Defendant Jason Ostrom. Ostrom immediately began undermining Plaintiff Curtis' lawsuit, first by polluting Diversity and then actively engaging in the criminal conversion of Curtis' exclusively trust related lawsuit into Bayless' "*Estate of Nelva Brunsting*" probate matter.

February 5, 2015, Ostrom filed an application for partial distribution from the "Estate of Nelva Brunsting" [ROA.2726]; February 6, 2015, Ostrom filed Notice of the federal injunction and Report of Master from Curtis' federal case [ROA.1099]; February 9, 2015, Ostrom files Notice of Curtis' original federal complaint, all of

which were concealed under an *Estate of Nelva Brunsting 412,249* Caption [ROA.776]; On February 12, 2015, Ostrom filed what he styled a Second Amended Complaint, using only an "*Estate of Nelva Brunsting 412,249* caption. [ROA.2280][7]

February 19, 2015, Bayless resigned her diminished capacity executor client Carl Brunsting, substituting Carl's wife Drina Brunsting as attorney-in-fact for Carl Individually, and nominating Curtis as successor Executrix. A new agreed Docket Control Order in *Estate of Nelva Brunsting 412,249-401* was also signed by Defendants Darlene Payne Smith, Jason Ostrom, Neal Spielman, Bobbie G, Bayless, and Bradley Featherston. [ROA.2295]

Conversion Agreement[8]

Between March 5 and March 16, 2015, Christine Butts, Jason Ostrom, Bobbie Bayless, Darlene Payne Smith, Neal Spielman and Bradley Featherston all signed an "Agreed Order to Consolidate Cases" in which *Candace Louise Curtis v Anita and Amy Brunsting Does 1-100, 4:12-cv-592,* represented as *Estate of Nelva Brunsting 412,249-402* is "moved" into *Estate of Nelva Brunsting 412,249-401.* Plaintiff

[7] The OstromMorris law firm has never had a letter of engagement with Plaintiff Curtis. [ROA.2286]
[8] Texas Penal Code §31.02, Conversion is theft, as defined in Texas Penal Code §31.03

Curtis' *"412,249-402"* matter is then closed. Who was representing the alleged Estate of Nelva Brunsting while all this was going on?

Bayless' Appellee Brief admits to conversion, (Answer Pg. 3 footnote 1)[9], calling Curtis' federal suit a "prior action" and then speaks as if conversion is customary.

> *"A prior action Plaintiff Curtis filed pro se in a different federal district court with the "assistance" of Plaintiff Munson was long ago transferred to the same Harris County probate court (ROA. 1148-49) and eventually consolidated with the Probate Proceeding (ROA. 2667-2675). That first federal court case only involved Curtis and two of her sisters, Anita Brunsting and Amy Brunsting (ROA. 2227-2233)."*

The ROA refers to an instrument titled "Agreed Order to Consolidate Cases". See [ROA.2667, RE-37] and [ROA.2672, RE-41]. One will note the agreement is to combine *Estate of Nelva Brunsting* 412249-401 with *Estate of Nelva Brunsting 412249-402,* leaving only *Estate of Nelva Brunsting* 412249-401. A lawsuit does not lose its identity after a transfer to another court or consolidation with another suit. *Curtis v Brunsting* 4:12-cv-592 filed TXSD 2/27/2012 is not a prior lawsuit, it is a current lawsuit, without a judicial forum, that remains unresolved, which these Defendants admit converting into Bayless' "probate matter". [ROA.2667]

---

[9] Doc: 00514171972 Filed: 09/26/2017

According to Trust and Estate Plan Attorney Defendants Vacek and Freed, (Appellee Brief P.1)

> *Curtis, along with her siblings, are presently involved in a dispute regarding their parents' estates in Probate Court No. 4 of Harris County, Texas. Curtis contends the Defendants are conspiring to deplete estate funds that otherwise may eventually go to a family trust of which she is one of the beneficiaries. [ROA.72]*

There are no estate funds to deplete. [ROA.2404] There is no family trust. The Brunsting Decedent and Survivor Trusts were fully funded long ago [ROA.2229, Id HN6], [ROA.1109-1147] but never independently expressed, and, unlike the litigants in Firestone v. Galbreath, 976 F.2d 279 (6th Cir. 1992), the Brunsting siblings are not heirs to the estate, the Brunsting trusts are inter vivos, not testamentary, and the Brunsting beneficiaries are vested, not residual. [ROA.311] How could Defendants Albert Vacek and Candace Kunz-Freed, the attorneys that drafted the Brunsting Trust and estate plan instruments, not know any of this?

Continuing the 8/25/2010 QBD Plan

Rather than attempt to meet their fiduciary burden of proof, properly account, distribute, or perform any fiduciary duties, Anita and Amy Brunsting and their counsel thought to disenfranchise Carl and Candace by attempting to validate their legendary 8/25/2010 QBD with a *No-evidence Motion for Partial Summary Judgment* [ROA.243] filed June 26, 2015.

Neal Spielman and Bradley Featherston

June 26, 2015, Neal Spielman and Bradley Featherston filed Anita and Amy Brunstings' No-Evidence Motion for Partial Summary Judgment, [ROA.243] thinking to complete the plan to disenfranchise Carl and Candace that was implemented by Candace Freed and Anita Brunsting, using the no-contest clause in the Amy and Anita forged and Candace Kunz-Freed notarized 8/25/2010 QBD. [ROA.12-20164.24 para 4] – [ROA.17-20360.243, 611, 623, 1406]

On or about July 3, 2015, Bradley Featherston mailed CD's containing private telephone recordings. [ROA.17-20360.670, 2530, 2737] and on July 9, 2015, Bobbie G. Bayless filed Carl Brunsting's Motion for Partial Summary Judgment in 412249-401. [ROA.17-20360.252]

July 13, 2015, Bobbie G. Bayless, Bradley Featherston and Neil Spielman all filed notices, setting their summary judgment motions for hearing in 412249-401, for August 3, 2015, [ROA.17-20360.621] the last day on which the agreed docket control order states dispositive motions must be heard.

Later on July 13, 2015, Plaintiff Curtis filed her Answer to the No-Evidence Motion, along with a demand that Defendants produce the actual 8/25/2010 QBD instrument and qualify it as evidence. [ROA.17-20360.623] Suddenly summary judgment hearings and trial disappeared like cockroaches when the lights come on.

It is not metaphysical speculation to suggest that this redirection and avoidance tactic is exactly what it looks like.

July 20, 2015, Bayless filed a motion for Protective Order regarding illegal wiretap recordings, [ROA.560] that had been mentioned originally in Curtis Affidavit filed 2/27/2012, [ROA.12-20164.23, para 4], [ROA.17-20360.,560, 670, 2337] but did not surface until five years later.

July 21, 2015, hearing was held in *Estate of Nelva Brunsting 412249,* on the question of filling the office of Executor. Carl's resignation nominated Candace Curtis. Amy precedes Candace in the list and a Temporary Administrator was agreed upon for the limited purpose of evaluating the estate's claims, but was clearly integrated into the event in furtherance of the 8/25/2010 QBD plot.

While Curtis was traveling back to California, summary judgment hearings were removed from calendar and replaced with Bayless' "Emergency Motion". [ROA.17-20360.560] Curtis and Munson had to cancel reservations at the last minute for which they suffered the loss of their advanced reservation payments.

The August 3, 2015 Summary Judgment hearings were thus converted into a battle of hearsay between the attorneys, after which -- nothing. [ROA.17-20360.670]

Implementing the Forged 8/25/2010 QBD No-Contest Artifice

Defendants Gregory Lester and Jill Willard Young

On September 1, 2015, Jill Willard Young filed her own request for authority to assist Gregory Lester and received a hearing in only nine days. [ROA.17-20360.2481] Plaintiffs are informed and believe, and therefore aver, Greg Lester and Jill Willard Young met with the attorneys that signed the conversion agreement on or about September 10, 2015, to arrange the content of that "impartial report". Based upon the dialog of Defendant Spielman March 9, 2016, there were some highly improper discussions at that meeting and without discovery we have no way of knowing whether Mr. Biamonte had been compensated for the absence of a transcript for that September 10, 2015 hearing?

January 14, 2016, Gregory Lester filed his report, never mentioning the Decedent's Will, heirship, standing of the parties or the subject matter jurisdiction of the probate court over the Brunsting inter vivos Trusts. [ROA.611]

January 25, 2016, Curtis filed a Motion for Partial Summary Judgment. [ROA.714] Curtis then emailed Defendant Clarinda Comstock asking to have dispositive motions placed back on calendar and to hear her motion to transfer the Kunz-Freed, co-conspirator case from the Harris County District court to probate No. 4. [ROA.1405]

A status conference was set for March 9, 2016. [ROA.1406] At the "status conference" Curtis was demanding her day in court [ROA.17-20360.1417, ln. 10]:

> *"I want my summary judgment motions heard, 11 and if we can do that without bringing the district 12 court case over here, then we should go ahead and do it. 13 But that's my purpose for coming here today, is to get 14 the summary judgment motions set for hearing. And I'm 15 not going to go to mediation, again, because there is no 16 point."*

Instead, she was threatened with complete loss of property interests by a bully mobs' contrived intimidation and avoidance scheme via the Lester/Young Report.

Defendant Neil Spielman

Defendant Spielman March 9, 2016: [ROA.17-20360.1413]

> *"We all, as attorneys or as pro se parties, 6 agreed that what the function that was designated to Mr. 7 Lester was important, was necessary, and that we were 8 going to live by and abide by the report that he wrote."*

What purpose would be served by agreement to abide by a "report" before it is written, without knowing the content? Defendant Spielman also had this to say about that [ROA.17-20360.1420].

> *"But, Your Honor, if you look at what Mr. Lester recommended/suggested/reported in his report, there's now the very real possibility that there isn't going to be a divide-by-five scenario because of the no-contest clauses that are recognized as being properly drawn by the Vacek & Freed Law Firm. And if that happens, Judge, then the trust is now spending its own money from those people,*

whether it be three or four, that are still going to get a portion of the estate, a portion of the trust proceeds when this is all said and done."

This is the very plot identified in Curtis' original affidavit filed 2/27/2012. [ROA.12-20164.24, para 4]

These Defendants apparently thought they could use the no contest clause in the fabled 8/25/2010 QBD, validated through the ipsi dixit of Gregory Lester and Jill Young, to threaten Curtis' property interests and coerce mediation, while avoiding an actual show of proof. This was not a show of good faith and honest intentions, but a display of bad faith and dishonorable intentions, provoking Plaintiff Appellants' RICO claims reaction. Plaintiff Curtis wants dominion and control over her property interests [ROA.1061 ln 10-21] and the only thing standing in her way is a forgery and the absence of a legitimate judicial forum for a show of proof. There is no room for compromise on this issue.

Prove Up or Shut Up

Anita and Amy Brunsting can either produce the 8/25/2010 QBD and qualify it as evidence, or they cannot. Either Anita and Any Brunsting have a legal and factual basis for claiming the right to control Curtis' assets, or they do not. There is no room for compromise on those points. They can either produce the archetype of that instrument and qualify it as evidence, or they are thieves, frauds, liars, forgers

and embezzlers, and every single one of these joint tortfeasor[10] Defendants knowingly participated, in pursuit of their own unjust self-enrichment. There is no legitimate excuse for this issue to remain unresolved after this extended period of time when the instrument is illicit even if it could be produced. How it came into existence takes us back to preparatory acts committed in June of 2008.

Defendant Spielman even went so far as to suggest Defendant Gregory Lester had been vested with the authority to decide the case and that it would be insulting to respond to Plaintiff Curtis' dispositive motions and Demand for a Show of Proof. [ROA.17-20360.1421, ln 2-12]

> *I'm rambling just a bit only because it's 3 such a circular discussion - is how do we get this case 4 finished, given, given the backtracking from everybody's 5 willingness to vest Mr. Lester with the authority to 6 proceed, and now the one person who doesn't like what he 7 said, after she filed motions for summary judgment that 8 are direct contradiction to the conclusions that he 9 reached. The very constant of having to come down here 10 and respond to those, to those motions for summary 11 judgment, the amount of money that that will waste is 12 insulting, is offensive to the parties.*

[10] Texas defendants who are more than 50 percent at fault and those who act with intent to harm, regardless of their proportionate share, are jointly and severally liable in tort. Texas Civil Practice and Remedies Code §33.013 (2003)

Defendants Clarinda Comstock and Christine Butts

Defendant Clarinda Comstock, knowing the probate court lacked subject matter jurisdiction, absolutely refused to join cases against co-conspirator Defendants Anita Brunsting and Candace Kunz-Freed. [ROA.17-20360.1406] Defendant Clarinda Comstock is the person one would need to go through to make changes to the hearing calendar and Defendant Clarinda Comstock absolutely refused to set dispositive motions, denying Plaintiff Curtis a hearing on the most pivotal issue in Curtis' exclusively trust related case.

Request for Judicial Notice of Undisclosed Conflicts

Trust and estate plan attorney Candace Kunz-Freed, betrayed the fiduciary duty of loyalty the Vacek and Freed P.L.L.C. law firm owed to Elmer and Nelva Brunsting and entered into a confidential relationship with Amy and Anita Brunsting. [ROA.721] Freed then began drafting a series of instruments that illicitly shifted power to Anita [ROA.717], undermining the estate plan products and services sold to Elmer and Nelva Brunsting, to the benefit of co-beneficiaries Anita and Amy Brunsting, and to the injury of the other three co-beneficiaries, Carl, Carole and Candace.

When the controversy Freed created became a lawsuit, Vacek and Freed staff attorney Bernard Mathews entered the fray representing Amy and Anita Brunsting

and taking sides against the three co-beneficiary victims disenfranchised by Candace Kunz-Freed's fraudulent works. Mathews concealed his conflict of interest under the letterhead of Greene and Mathews. [ROA.12-20164.1]

Defendant Appellee Bayless filed her "estate" claims alleging conspiracy against Amy and Anita Brunsting and Candace Kunz-Freed in two separate courts. Kunz-Freed is a defendant in the Harris County District Court and alleged co-conspirators, Anita and Amy Brunsting, are named defendants in Probate Court No. 4, where Clarinda Comstock is the Associate Judge.

Vacek and Freed are represented by Zandra Foley and Corey Reed in the Harris County District Court, while Clarinda Comstock is also represented by Zandra Foley and Corey Reed in *Sherry Lynn Johnson v. David Dexel et al., No. 4:16-cv-3215*. That case has been allowed to proceed.

Christine Butts is also a Defendant in *Sherry Lynn Johnson v. David Dexel et al., No. 4:16-cv-3215*, represented by Laura Beckman Hedge, who represents both Comstock and Butts in the matter presently before this Court.

Defendant Jason Ostrom appeared at the Motions hearing December 15, 2016 representing Co-Defendant Gregory Lester [ROA.3379].

All of these undeclared conflicts of interest are relevant to the organized crime family theme of the RICO mosaic and none of these Defendants have declared any conflicts of interest. See Texas Disciplinary Rules of Professional Conduct Rule 1.06(b)(6).

Article III Standing

Plaintiffs' simplified burden is to prove two predicate acts related to the over-all conspiracy. Title 18 U.S.C. 1962(c) requires a proximate injury, while 18 U.S.C. 1962(d) requires direct injury from at least one predicate act. Plaintiffs' Quid Pro Quo, "stream of benefits" theory of motive, is invariably inferred from the sequence of events as the only logical and rational explanation for the evident collusion amongst these participants [ROA.2022, 2037].

The quasi-judicial Defendants argue *"Curtis has—at best—an expectancy interest in inheritances she hopes to receive as beneficiary and heir of a trust and estate."* [Appellee brief Page: 21 Document: 00514235313] To make this claim, there would have to have been an "Estate" heirship determination that Defendants cannot cite to. Plaintiffs find no evidence step 3 in the statutory probate process has been performed, Texas Estates Code - §31.001. The Will names the family trust as heir, but the family trust divested into two sub-trusts at the death of Elmer Brunsting; the Elmer H. Brunsting Irrevocable Decedent's Trust, (A-Trust), and the Nelva E.

Brunsting Revocable Survivor's Trust (B-Trust). [ROA.295] Plaintiff Curtis is a de jure trustee [ROA.1048, 1059] that had Article III standing, as a vested trust beneficiary, to obtain a favorable opinion from the Fifth Circuit in No. 12-20164 with order for reverse and remand back to the Southern District of Texas. [ROA.17-20360.2227]

After remand to the Southern District of Texas, Plaintiff Curtis had Article III standing and met the high burden of proof required to obtain a preliminary injunction [ROA.17-20360.1970]. The facts upon which that injunction was issued have not changed, and there has been no hearing on [ROA.2734] "*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*", described by the honorable Kenneth Hoyt in his memorandum issued April 2013, [ROA.2730] or any other dispositive issue.

It necessarily follows that Curtis would have Article III standing to bring claims under 18 U.S.C §1964(c), for interference with her property and due process rights, the illicit conversion (theft) of her lawsuit: *Candace Louise Curtis v Anita and Amy Brunsting and Does 1-100 No. 4:12-cv-592* into Defendant Bobbie G. Bayless' non-existent probate matter, "*Estate of Nelva Brunsting 412249-401"* [ROA.17-20360.2289]; and for the illicit in-concert efforts to loot the assets in the Brunsting trusts under the pretext of administering a decedent's estate. All of Curtis'

exacerbated costs would not have been suffered but for these Defendants' participation in this conspiracy.

Curtis' injuries flow from the involuntary loss of control (theft) of her share of the Brunsting Trust properties, stolen by her siblings Anita and Amy Brunsting, using illicit instruments knowingly drafted by Candace Kunz-Freed. Curtis' injuries continue to flow as a direct and proximate result of third party interference with her efforts to protect her property interests, which has multiplied the litigation and the costs. Curtis' one-fifth share of both fully funded Brunsting Trusts became due to her upon the death of her mother Nelva Brunsting, on November 11, 2011. Distribution is not dependent upon any probate matter and Curtis' property has been unlawfully retained by Anita and Amy Brunsting, based entirely upon the alleged 8/25/2010 QBD they refuse to produce and qualify as evidence. Curtis has been unable to get a hearing on any substantive issue since her case was improperly remanded to the state probate court.

The record is clear. There is no 8/25/2010 QBD in evidence and these RICO Defendants have exhausted every effort to avoid substantive resolution, because every one of them knows that no fact witness claiming first-hand knowledge can qualify the instrument as evidence without perjury and self-incrimination, and they all know the significance of pleading the *Fifth Amendment* right to remain silent in

a civil action. They also know that without the archetype of the 8/25/2010 QBD, the entire trust busting sting falls apart, exposing these Defendant Appellees to potential criminal prosecution and professional disciplinary actions.

A breach of fiduciary lawsuit does not prevent a fiduciary from performing fiduciary duties; neither Amy nor Anita petitioned for letters of instruction; and the constraints of the injunction cannot possibly be the reason they cannot comply with the affirmative commands in that same preliminary federal injunction. [ROA.237] These Defendants, by their participation, have made themselves joint tort feasers and co-conspirators, and each is equally liable.

Munson and Curtis are financially interdependent and the Munson-Curtis household is and has been financing the defense of Curtis' property interests in Texas Courts for six years, not merely including cash outlay in various forms of expenses, but also in the redirection of labor, intellectual capital and other units of production away from local business profit potential, to the defense of Curtis' existing property interests in Texas.

Munson's RICO injuries do not flow from the underlying trust dispute, but from the racketeering conspiracy and attempt to convert Brunsting Trust Assets into estate assets that wrongfully multiplied Curtis' litigation expenses. These injuries, in the ordinary course, would not have been incurred if not for these Defendant

Appellees' illicit efforts to deprive Curtis of both property and remedy.[11] The Munson-Curtis household has not only spent their own money, but borrowed money from Munson's family and others in order to run a law office from home, pay for office supplies, postage, travel, lodging and other related expenses, in order for Curtis to plead, appear and otherwise protect her property interests in federal and state courts in Texas. These injuries are concrete and calculable, not speculative.

The dollar amount of injury is not the primary consideration under 18 U.S.C. §1964(c). Furtherance of the congressional objective is the primary consideration, "*to turn victims into prosecutors, "private attorneys general", dedicated to eliminating racketeering activity*", *Rotella v. Wood (No.98-896) 528 U.S. 549* (2000) 147 F.3d 438.

Any dollar amount of injury from whence one derives personal knowledge of organized crime is sufficient to establish Article III standing under the statute. Without Munson's assistance, Plaintiff Curtis would have been left at the mercy of these predatory Attorney Defendants and long ago deprived of her property interests.

[11] Plaintiffs are not required to exhaust state probate court remedies before filing their federal RICO complaint, Glickstein v. Sun Bank/Miami N.A., 922 F.2d 666 (11th Cir 1991).

Whether that is speculative and conclusory, or necessarily inferred from the record, is for this Court to determine.

If Not Probate, Then What?

These attorneys and judge Defendants were not engaged in an in rem proceeding relating to a decedent's "estate" as they unanimously claim. All of these self-proclaimed probate attorneys and probate judge Defendants, knew the probate court lacked subject matter jurisdiction over Curtis' exclusively trust related lawsuit when they attempted to convert Curtis' lawsuit into Bayless' "probate matter". This single observation invariably raises a question. If not conspiring together to loot inter vivos trusts under the pretext of administering an estate subject to probate, as Plaintiffs allege, then what were they doing?

Texas State Conspiracy Law

Under Texas Penal Codes §§7.01, 7.02 and 7.03, distinctions between principals and accessories have been abolished.

Federal Conspiracy Law

A defendant in a case charging a conspiracy may be liable for each of the substantive counts charged under three separate theories: 1) Actual commission of

the crime; 2) Participation in the crime as an aider or abettor;[12] 3) Liability under a Pinkerton theory. Pinkerton v. United States, 328 U.S. 640, 66 S.Ct. 1180, 90 L.Ed. 1489 (1946).[13] United States v. Palozzale, 71 F.3d 1233, 1237 (6th Cir. 1995). There is no requirement that there be an agreement in order to convict one of aiding and abetting. United States v. Frazier, 880 F.2d 878, 886 (6th Cir. 1989), cert. denied, 493 U.S. 1053, 110 S.Ct. 1142, 107 L.Ed.2d 1046 (1990). Conspiracy to commit a crime and aiding and abetting in the commission are distinct offenses. Id. See also United States v. Superior Growers Supply, 982 F.2d 173, 178 (6th Cir. 1992), United States v. James, 998 F.2d 74, 80 (2d Cir.), cert. denied, 510 U.S. 958, 114 S.Ct. 415, 126 L.Ed.2d 362 (1993). An aider and abettor, unlike an accessory after the fact, is punishable as a principal. Id.

Civil RICO is a criminal tort claim, not a civil tort claim. The distinctions are obvious. Crimes are public offenses whereas civil torts are strictly private. For this reason, Plaintiffs relied on the Department of Justice Criminal Resource Manual in alleging the particular predicate and non-predicate acts. For an Honest Services Fraud Conspiracy, see McNally and Intangible Rights, CRM 945.[14] *McNally v.*

[12] See DoJ Criminal Resource Manual Elements of Aiding and Abetting CRM 2474
[13] See DoJ Criminal Resource Manual Conspiracy CRM2482
[14] https://www.justice.gov/usam/criminal-resource-manual-945-McNally-and-intangible-rights

United States, 483 U.S. 350 (1987). See also Tangible versus Intangible Property Rights, CRM 946[15], and also Fiduciary Duty, and Honest Services, CRM 947.[16]

> *"Unlike traditional frauds which may arise regardless of the relationship between the defendant and the victim, frauds related to intangible rights stem from a fiduciary relationship between the defendant and the defrauded party or entity.". "At the core of the judicially defined 'scheme to defraud' is the notion of a trust owed to another and a subsequent breach of that trust." United States v. Lemire, 720 F.2d 1327, 1335 (D.C. Cir. 1983) ("But '[n]ot every breach of a fiduciary duty works a criminal fraud.'"*
>
> *Courts have held nonfiduciaries criminally liable for frauds related to intangible rights when a co-schemer or co-conspirator was a fiduciary. See United States v. Alexander, 741 F.2d 962, 964 (7th Cir. 1984) (an intangible rights scheme is cognizable when at least one of the schemers has a fiduciary relationship with the defrauded person or entity), overruled on other grounds by, United States v. Ginsburg, 773 F.2d 798 (7th Cir. 1985), cert. denied, 475 U.S. 1011 (1986)*

In this case there is a private fiduciary relationship between trustee and beneficiary; between client and counsel; and a public fiduciary relationship between the elected office of judge and the litigants who come before the court. Plaintiffs in this case have pled the necessary elements of honest services fraud in a civil RICO context, where the participants can be seen to knowingly embrace fiduciary defalcation and fraud with collective scienter.

---

[15] https://www.justice.gov/usam/criminal-resource-manual-946-tangible-versus-intangible-property-rights

[16] https://www.justice.gov/usam/criminal-resource-manual-947-fiduciary-duty

Hobbs Act Extortion CRM 2402 [17]

The Hobbs Act prohibits actual or attempted robbery or extortion affecting interstate or foreign commerce "in any way or degree."

> *The extortion offense reaches both the obtaining of property "under color of official right" by public officials and the obtaining of property by private actors with the victim's "consent, induced by wrongful use of actual or threatened force, violence, or fear," including fear of economic harm. See this Manual at 2405 and Evans v. United States, 504 U.S. 255, 265, 112 S.Ct. 1181, 1188 (1992)*

Conclusion

This Hobbs Act explanation is a description of the theme evidenced by the fabricated administrator report, [ROA.611] as shown by the March 9, 2015 transcript [ROA.1406]. A review of these events, in the context of the case chronology, Anita and Amy Brunsting's No-Evidence Motion for Partial Summary Judgment [ROA.243], Curtis' Demand to Produce Evidence [ROA.623], and Motion for Partial Summary Judgment [ROA.714], wiretap brief [ROA.2737], the complete absence of subject matter jurisdiction. and the complete absence of dispositive hearings or rulings, leaves little for the imagination.

[17] https://www.justice.gov/usam/criminal-resource-manual-2402-hobbs-act-generally

The District Court Order dismissing Plaintiffs' RICO action on Defendants' argument that the claims relate to a "probate matter", [ROA.3330] as Defendants' Motions argue, as they argued at the December 15, 2016 motions hearing, [ROA.3390] and as they continue to argue before this Court, is inconsistent with Federal Rule of Civil Procedure Rule 12(b)(6). The court is burdened by prevailing law to "accept the factual allegations of the complaint as true, view them in a light most favorable to the plaintiff, and draw all reasonable inferences in the plaintiff's favor", *Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

The general rule in appraising the sufficiency of a complaint for failure to state a claim is that a complaint should not be dismissed '***unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.' *Conley vs. Gibson* (1957), 355 U.S. 41, 45, 46, 78 S. Ct. 99, 102, 2LEd 2d 80; see, demand for judgment, Federal Rules Of Civil Procedure Rule 54(c), "***every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has not demanded such relief in his pleadings." *U.S. v. White County Bridge Commission* (1960), 2 Fr Serv 2d 107, 275 F2d 529, 535.

Not only have Appellants shown that they can prove facts in support of their claim, they have pointed to self-authenticating facts and plenary admissions in the

record and ask that those facts and admissions be moved into evidence. Plaintiffs firmly hold the belief that criminal conduct cannot be considered judicial or judicious. Further, Appellants respectfully request this Honorable Court enter findings of fact and conclusions of law based upon the record, with Order for Reverse and Remand to the District Court with instruction for further proceedings, including the resurrection of Plaintiff Curtis' federal breach of fiduciary lawsuit, enforcement of the federal injunction, and/or any other relief to which Plaintiffs or the public interest may be entitled.

Respectfully submitted,
/s/ Candace Louise Curtis,
/s/ Rik W. Munson

CERTIFICATE OF SERVICE

I hereby certify pursuant to Fed. R. App. P. 25(d) that a true and correct copy of the foregoing was filed into Action No. 17-20360 and served on this 2nd day of December, 2017, by U.S. Mail as indicated, and through the Appellate CM/ECF system, which constitutes service on all parties.

Cory S. Reed Thompson, Coe, Cousins
& Irons, L.L.P. Suite 1400, 1 Riverway
Houston, TX 77056-0000

Anita Brunsting
203 Bloomingdale Circle
Victoria, TX 77904

Amy Brunsting
2582 Country Ledge Drive
New Braunfels, TX 78132

/s/ Candace Louise Curtis

CERTIFICATE OF COMPLIANCE

1. Appellant certifies that this brief complies with the type-volume limit of Federal Rule of Appellate Procedure 32(7)(B)(ii) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f): this brief contains 6,274 words of text.
2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief was prepared in a proportionally spaced, serif typeface using Times New Roman 14-point font in text and Times New Roman 12-point font in footnotes and was produced using Microsoft Word 2016 software.

/s/ Rik W. Munson

Addendum of Statutes

Texas Estates Code §22.012 ESTATE

Sec. 22.012. ESTATE. "Estate" means a decedent's property, as that property:

(1) exists originally and as the property changes in form by sale, reinvestment, or otherwise;

(2) is augmented by any accretions and other additions to the property, including any property to be distributed to the decedent's representative by the trustee of a trust that terminates on the decedent's death, and substitutions for the property; and

(3) is diminished by any decreases in or distributions from the property.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014.

Texas Estates Code §22.029

PROBATE MATTER; PROBATE PROCEEDINGS; PROCEEDING IN PROBATE; PROCEEDINGS FOR PROBATE.

Sec. 22.029. The terms "probate matter," "probate proceedings," "proceeding in probate," and "proceedings for probate" are synonymous and include a matter or proceeding relating to a decedent's estate.

Added by Acts 2009, 81st Leg., R.S., Ch. 680 (H.B. 2502), Sec. 1, eff. January 1, 2014

Texas Estates Code §31.001

SCOPE OF "PROBATE PROCEEDING" FOR PURPOSES OF CODE.

The term "probate proceeding," as used in this code, includes:

(1) the probate of a will, with or without administration of the estate;

(2) the issuance of letters testamentary and of administration;

(3) an heirship determination or small estate affidavit, community property administration, and homestead and family allowances;

(4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;

(5) a claim arising from an estate administration and any action brought on the claim;

(6) the settling of a personal representative's account of an estate and any other matter related to the settlement, partition, or distribution of an estate; and

(7) a will construction suit.

Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec. 13(a), eff. January 1, 2014.

Texas Probate Code §2*(e)*

(e) Nature of Proceeding. The administration of the estate of a decedent, from the filing of the application for probate and administration, or for administration, until the decree of final distribution and the discharge of the last personal representative, shall be considered as one proceeding for purposes of jurisdiction. The entire proceeding is a proceeding in rem.

Texas Probate Code §3(l)

(l) "Estate" denotes the real and personal property of a decedent, both as such property originally existed and as from time to time changed in form by sale, reinvestment, or otherwise, and as augmented by any accretions and additions thereto (including any property to be distributed to the representative of the decedent by the trustee of a trust which terminates upon the decedent's death) and substitutions therefor, and as diminished by any decreases therein and distributions therefrom.

Texas Probate Code §3(bb)

> *(bb) "Probate matter," "Probate proceedings," "Proceeding in probate," and "Proceedings for probate" are synonymous and include a matter or proceeding relating to the estate of a decedent.*

Texas Probate Code §5(b)

JURISDICTION WITH RESPECT TO PROBATE PROCEEDINGS. (a) Repealed by Acts 2003, 78th Leg., ch. 1060, §16.

> *(b) In proceedings in the statutory probate courts, the phrases "appertaining to estates" and "incident to an estate" in this Code include the probate of wills, the issuance of letters testamentary and of administration, and the determination of heirship, and also include, but are not limited to, all claims by or against an estate, all actions for trial of title to land and for the enforcement of liens thereon, all actions for trial of the right of property, all actions to construe wills, the interpretation and administration of testamentary trusts and the applying of constructive trusts, and generally all matters relating to the collection, settlement, partition, and distribution of estates of deceased persons. All statutory probate courts may, in the exercise of their jurisdiction, notwithstanding any other provisions of this Code, hear all suits, actions, and applications filed against or on behalf of any heirship proceeding or decedent's estate, including estates administered by an independent executor; all such suits, actions, and applications are appertaining to and incident to an estate. This subsection shall be construed in conjunction with and in harmony with Section 145 and all other sections of this Code dealing with independent executors, but shall not be construed so as to increase permissible judicial control over independent executors. Except for situations in which the jurisdiction of a statutory probate court is concurrent with that of a district court as provided by Section 5(e) of this Code or any other court, any cause of action appertaining to estates or incident to an estate shall be brought in a statutory probate court. (c) to (e) Repealed by Acts 2003, 78th Leg., ch. 1060, §16*

Texas Property Code *§112.035*

(a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a "spendthrift trust" is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted by this subtitle.

(c) A trust containing terms authorized under Subsection (a) or (b) of this section may be referred to as a spendthrift trust.

(d) If the settlor is also a beneficiary of the trust, a provision restraining the voluntary or involuntary transfer of the settlor's beneficial interest does not prevent the settlor's creditors from satisfying claims from the settlor's interest in the trust estate. A settlor is not considered a beneficiary of a trust solely because:

(1) a trustee who is not the settlor is authorized under the trust instrument to pay or reimburse the settlor for, or pay directly to the taxing authorities, any tax on trust income or principal that is payable by the settlor under the law imposing the tax; or

(2) the settlor's interest in the trust was created by the exercise of a power of appointment by a third party.

(e) A beneficiary of the trust may not be considered a settlor merely because of a lapse, waiver, or release of:

(1) a power described by Subsection (f); or

(2) the beneficiary's right to withdraw a part of the trust property to the extent that the value of the property affected by the lapse, waiver, or release in any calendar year does not exceed the greater of the amount specified in:

(A) Section 2041(b)(2) or 2514(e), Internal Revenue Code of 1986; or

(B) Section 2503(b), Internal Revenue Code of 1986 .

(f) A beneficiary of the trust may not be considered to be a settlor, to have made a voluntary or involuntary transfer of the beneficiary's interest in the trust, or to have the power to make a voluntary or involuntary transfer of the beneficiary's interest in the trust, merely because the beneficiary, in any capacity, holds or exercises:

(1) a presently exercisable power to:

(A) consume, invade, appropriate, or distribute property to or for the benefit of the beneficiary, if the power is:

(i) exercisable only on consent of another person holding an interest adverse to the beneficiary's interest; or

(ii) limited by an ascertainable standard, including health, education, support, or maintenance of the beneficiary; or

(B) appoint any property of the trust to or for the benefit of a person other than the beneficiary, a creditor of the beneficiary, the beneficiary's estate, or a creditor of the beneficiary's estate;

(2) a testamentary power of appointment; or

(3) a presently exercisable right described by Subsection (e)(2).

(g) For the purposes of this section, property contributed to the following trusts is not considered to have been contributed by the settlor, and a person who would otherwise be treated as a settlor or a deemed settlor of the following trusts may not be treated as a settlor:

(1) an irrevocable inter vivos marital trust if:

(A) the settlor is a beneficiary of the trust after the death of the settlor's spouse; and

(B) the trust is treated as:

(i) qualified terminable interest property under Section 2523(f), Internal Revenue Code of 1986; or

(ii) a general power of appointment trust under Section 2523(e), Internal Revenue Code of 1986;

(2) an irrevocable inter vivos trust for the settlor's spouse if the settlor is a beneficiary of the trust after the death of the settlor's spouse; or

(3) an irrevocable trust for the benefit of a person:

(A) if the settlor is the person's spouse, regardless of whether or when the person was the settlor of an irrevocable trust for the benefit of that spouse; or

(B) to the extent that the property of the trust was subject to a general power of appointment in another person.

(h) For the purposes of Subsection (g), a person is a beneficiary whether named a beneficiary:

(1) under the initial trust instrument; or

(2) through the exercise of a limited or general power of appointment by:

(A) that person's spouse; or

(B) another person.

Texas Rule of Evidence §1002 Requirement of the Original

An original writing, recording, or photograph is required in order to prove its content unless these rules or other law provides otherwise.

Texas Rule of Evidence §1003 Admissibility of Duplicates

A duplicate is admissible to the same extent as the original unless a question is raised about the original's authenticity or the circumstances make it unfair to admit the duplicate.

Texas Rule of Evidence §1004 Admissibility of Other Evidence of Content

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

(a) all the originals are lost or destroyed, unless the proponent lost or destroyed them in bad faith;

(b) an original cannot be obtained by any available judicial process;

(c) an original is not located in Texas;

(d) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or

(e) the writing, recording, or photograph is not closely related to a controlling issue.

Texas Penal Code §31.02 Consolidation of Theft Offenses

Sec. 31.02 Theft as defined in Section 31.03 constitutes a single offense superseding the separate offenses previously known as theft, theft by false pretext, conversion by a bailee, theft from the person, shoplifting, acquisition of property by threat, swindling, swindling by worthless check, embezzlement, extortion, receiving or concealing embezzled property, and receiving or concealing stolen property.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

This section was amended by the 85th Legislature. Pending publication of the current statutes, see H.B. 1178, 85th Legislature, Regular Session, for amendments affecting this section.

Texas Penal Code §§7.01, 7.02, 7.03

TITLE 2. GENERAL PRINCIPLES OF CRIMINAL RESPONSIBILITY

CHAPTER 7. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER

SUBCHAPTER A. COMPLICITY

Sec. 7.01. PARTIES TO OFFENSES. (a) A person is criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or by both.

(b) Each party to an offense may be charged with commission of the offense.

(c) All traditional distinctions between accomplices and principals are abolished by this section, and each party to an offense may be charged and convicted without alleging that he acted as a principal or accomplice.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 7.02. CRIMINAL RESPONSIBILITY FOR CONDUCT OF ANOTHER. (a) A person is criminally responsible for an offense committed by the conduct of another if:

(1) acting with the kind of culpability required for the offense, he causes or aids an innocent or nonresponsible person to engage in conduct prohibited by the definition of the offense;

(2) acting with intent to promote or assist the commission of the offense, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense; or

(3) having a legal duty to prevent commission of the offense and acting with intent to promote or assist its commission, he fails to make a reasonable effort to prevent commission of the offense.

(b) If, in the attempt to carry out a conspiracy to commit one felony, another felony is committed by one of the conspirators, all conspirators are guilty of the felony actually committed, though having no intent to commit it, if the offense was committed in furtherance of the unlawful purpose and was one that should have been anticipated as a result of the carrying out of the conspiracy.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.

Sec. 7.03. DEFENSES EXCLUDED. In a prosecution in which an actor's criminal responsibility is based on the conduct of another, the actor may be convicted on proof of commission of the offense and that he was a party to its commission, and it is no defense:

(1) that the actor belongs to a class of persons that by definition of the offense is legally incapable of committing the offense in an individual capacity; or

(2) that the person for whose conduct the actor is criminally responsible has been acquitted, has not been prosecuted or convicted, has been convicted of a different offense or of a different type or class of offense, or is immune from prosecution.

Acts 1973, 63rd Leg., p. 883, ch. 399, Sec. 1, eff. Jan. 1, 1974. Amended by Acts 1993, 73rd Leg., ch. 900, Sec. 1.01, eff. Sept. 1, 1994.