

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Curtis et al.,	§	
Plaintiffs,	§	
	§	Civil Action NO. 4:16-CV-01969
v.	§	
	§	The Honorable Alfred Bennett
Kunz-Freed et al.,	§	
Defendants	§	

Plaintiffs’ Answer to Defendant Steven Mendel’s Motions to Dismiss (Dkt 36) Pursuant to Federal Rules of Civil Procedure 12(b)(6)

TABLE OF CONTENTS

I. INTRODUCTION 2

II. The Issues 3

III. Summary of the Argument 4

 Jurisdiction 4

 Metamorphosis 4

IV. Curtis v Brunsting Survived the Probate Exception, Is Not a Probate Matter and has nothing to do with the Administration of any Estate 4

 Immunity 5

 “Curtis v Brunsting” vs. “Estate of Nelva Brunsting” 7

 Jurisdiction 7

 Notice and Meaningful Opportunity to Be Heard 8

 Creative Pleading and Something Called a “QBT” 9

 Intimidation with the Extortion Instrument 10

 Mediation 12

 Wiretap Recordings 13

V. Defendant Displays a Penchant for Arguing His Own Misstatements 13

 The Estate of Nelva Brunsting 15

 The Brunsting Trusts 15

VI. STANDARD OF REVIEW..... 16
 VII. Conclusion..... 18

Cases

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555, 127 S. Ct. 1955 17
 Berkshire Fashions, Inc. v. M V. Hakusan II, 954 F.2d 874, 880 16
 Curtis v Brunsting 704 F.3d 406..... 4, 7
 Erickson v. Pardus, 551 U.S. 89, 93, 127 S. Ct. 2197, 2200 17
 Jones v. Greninger, 188 F.3d 322,324 (5th Cir. 1999) 18
 Oppenheimer v. Prudential Sec., Inc., 94 F.3d 189, 194 (5th Cir. 1996) 17
 Stockman v. Fed Election Comm'n, 138 F.3d 144, 151 (5th Cir. 1998) 16
 Stockman, 138 F.3d at 151 16
 Vantage Trailers, Inc. v. Beall Corp., 567 F.3d 745, 748 (5th Cir. 2009) 16

Statutes

18 U.S.C. §§1961-1968 2
 18 U.S.C. §1964(c) 2

Rules

Federal Rule of Civil Procedure 12(b)(1) passim
 Federal Rule of Civil Procedure 12(b)(6) passim
 Rule of Civil Procedure 12(h)(3) 16
 Rule of Civil Procedure 8(a)(2) 17

I. INTRODUCTION

1. On July 5, 2016, Plaintiffs filed a complaint into the Southern District of Texas individually and as private attorneys general alleging a public corruption conspiracy under the Racketeer Influenced Corrupt Organization Act at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c). (Dkt 1)

2. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a factual supplement incorporated into the RICO complaint by reference in response to Defendants Albert Vacek, Jr. and Candace Kunz-Freed's September 7, 2016 motions to dismiss (Dkt 19 and 20) claiming a want of specific factual allegations and other affirmative defenses.
3. On September 30, 2016, Defendant Steven Mendel filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6), (Dkt 36).
4. Mr. Mendel's motion also states that it is filed on behalf of Defendant Bradley Featherston. However, Mr. Featherston has refused to accept service and has not filed his waiver.

II. THE ISSUES

- A. Defendant Steven Mendel advances the Texas doctrine of attorney immunity;
- B. States that he never had an attorney-client relationship with either of the plaintiffs;
- C. States that he only served as attorney in the defense of co-trustee Anita Brunsting involving a "*related probate case pending in Harris County Probate Court No. 4, under C.A. No. 412249-401, Estate of Nelva Brunsting, Deceased*";
- D. States that the allegations are vague, conclusory and fail to provide him with sufficient notice;
- E. That Mr. Mendel is current counsel for Co-Trustee Anita Brunsting;
- F. That it is impossible for him and Mr. Featherston to have been involved in a sham mediation because no mediation occurred.
- G. Mendel, like Anita and Amy Brunsting, introduces a new appellation for the "extortion instrument" not previously found in any pleadings called a Qualified Beneficiary Trust or "QBT".

III. SUMMARY OF THE ARGUMENT

Jurisdiction

5. Each Defendant's motion to dismiss has thus far argued that the case before the court arises from a "probate matter" involving administration of an estate.

6. Plaintiffs challenge any claim of state court jurisdiction over Brunsting trust related matters. All of these Defendants' claims, including immunity, turn on inquiry into subject matter jurisdiction.

Metamorphosis

7. Plaintiff Candace Louise Curtis began this journey in the Southern District of Texas February 27, 2012 (4:12-cv-592). From there it evolved into a Fifth Circuit Appeal (12-20164) and returned to the Southern District of Texas January 9, 2013 (704 F.3d 406).

8. From there, Defendant Jason Ostrom arranged a remand to Harris County Probate Court No. 4, (first as 412249-402, then as 412249-401). Once in the probate court the Curtis v Brunsting trust litigation was mysteriously transformed into the "Estate of Nelva Brunsting" (Exhibit 1 and Dkt 34-9) and thereafter completely dissolved into the abyss like the docket control order and the scheduled trial that disappeared just as mysteriously.

IV. CURTIS V BRUNSTING SURVIVED THE PROBATE EXCEPTION, IS NOT A PROBATE MATTER AND HAS NOTHING TO DO WITH THE ADMINISTRATION OF ANY ESTATE

9. The Fifth Circuit Court of Appeals in *Curtis v Brunsting* 704 F.3d 406, 409-410, held,

No. 12-20164

In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust ("the Trust") for the benefit of their offspring. At

the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively “the Brunstings’ Wills”) appear to include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust.

Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust.

HN6 Assets placed in an inter vivos trust generally avoid probate, since such assets are owned by the trust, not the decedent, and therefore are not part of the decedent's estate. In other words, because the assets in a living or inter vivos trust are not property of the estate at the time of the decedent's death, having been transferred to the trust years before, the trust is not in the custody of the probate court and as such the probate exception is inapplicable to disputes concerning administration of the trust.

HN7 Any property held in a revocable living trust is not considered a probate asset. Avoidance of probate perhaps is the most publicized advantage of the revocable living trust. Assets in a living trust are not subject to probate administration

10. Curtis v Brunsting has been held not to be litigation related to the Estates of Elmer or Nelva Brunsting. Plaintiff Curtis is a beneficiary of inter vivos trusts and not an heir to either Estate, to which “The Trust” is the only heir in fact (Dkt 41-2 and 41-3).

Immunity

11. All immunity defense claims turn on the question of subject matter jurisdiction.

12. Mendel claims he only served as an attorney in the defense of “co-trustee” Anita Brunsting, in litigation involving a “*probate case pending in Harris County Probate Court No. 4, under C.A. No. 412249-401, Estate of Nelva Brunsting, Deceased*” and, thus, claims the protection of the Texas Attorney Immunity Doctrine.

13. While refusing resolution on the merits, these Defendants, in concert, attempted to intimidate Plaintiff Curtis into agreeing to mediate, to avoid rendering unfavorable determinations that would have subjected the Court's want of jurisdiction to scrutiny.

14. The effort to avoid the obvious want of jurisdiction in the probate court, and the deliberate attempts to imposter jurisdiction while avoiding determination on the merits, cannot rationally be denied as is firmly evidenced in the transcript of March 9, 2016. (Dkt 26-16)

15. Defendants portray this conduct as judicial and litigious, but it is neither and the conduct is evidenced by the various, self-authenticating, court records.

16. Defendants have attempted to overturn the federal Fifth Circuit after being on the losing end of a fully litigated federal appellate determination and have since attempted to erase the federal court rulings and the federal injunction, by subterfuge.

17. "The Trust" was inarguably under the in rem jurisdiction of a federal Court when related claims were filed in state courts in Harris County Texas in the name of the Estates of Elmer and Nelva Brunsting. (Dkt 34-5 and 34-7)

18. Mr. Mendel does not provide any exhibits to support his claims and Plaintiffs are unaware of any instance in which Mr. Mendel or anyone associated with his firm filed an appearance, filed a motion or filed a responsive pleading in "Curtis v Brunsting".

19. Defendants can only show they filed motions and pleadings in the "Estate of Nelva Brunsting" and even when cases are consolidated for all purposes they do not lose their separate identities. What happened to Curtis v Brunsting after the remand to state probate court?

“Curtis v Brunsting” vs. “Estate of Nelva Brunsting”

20. There are neither trustees nor beneficiaries involved in any “Estate” litigation and there are neither heirs nor executors nor inheritance expectancies involved in any “trust” related litigation. The alleged co-trustees only exist in the context of “the trust” and, as it relates to the estate, the trust is the only heir in fact.¹

21. As previously shown (Dkt 41, ln 25) Candace Curtis’ breach of fiduciary lawsuit against Anita and Amy Brunsting filed in the federal court on February 27, 2012, involves only the Brunsting trusts Curtis v Brunsting 704 F.3d 406, 409-410 (Dkt 26-17). Defendant Mendel cannot show where he ever responded to a Curtis v Brunsting motion (Dkt, 26-11, 26-14) even though all they ever addressed in the “estate of Nelva Brunsting” pleadings were the money cow trusts (Dkt 26-5, 6, 8, 9, 10, 13, 20).

22. The pleadings filed by Jason Ostrom in the probate court all bear the heading of “Estate of Nelva Brunsting” except notices of the federal pleadings and each of those bears an “Estate of Nelva Brunsting” cover page.

Jurisdiction

23. Because the trust res was under the in rem jurisdiction of a federal court when the estate lawsuit was filed in Harris County Probate 4, none of the Trust related claims were properly placed before that court.

24. As noted, the trust is the only heir to either estate and Carl Brunsting has no individual standing to bring any estate claims other than to challenge the wills, which he did not.

¹ Dkt 41-2 and 41-3 Wills of Elmer and Nelva Brunsting

25. When we strip away Trust related claims from Bayless' "Estate" complaint nothing remains of the estate lawsuit. All of Bayless probate court claims involve the Trust and nothing but the Trust.

26. Even the District Court suit against Freed was filed in a court that could not take cognizance of a res in the custody of the federal Court and although an argument could validly be made against Vacek and Freed in the name of Elmer and Nelva Brunsting's Estates, they would none-the-less need to have been brought in the court having jurisdiction over the res. The question of whether or not the heir-in-fact Trust was the real party in interest and not the Estates would also need to be resolved.

27. A proper consolidation motion would have Curtis v Brunsting at the top in the heading, with the later filed cases each listed separately below that, one atop the other. Defendants instead chose to play the trust buster game of dissolving the distinctions between trust and estate.

28. They claim there was no conspiracy, but how do they explain the inarguable existence of public records evidencing these facts?

29. Want of subject matter jurisdiction in the probate court over any trust related matters strips these defendants of their attorney immunity defense and their conduct is subject to scrutiny in these proceedings, unclothed in the a priori illusion of legitimacy.

Notice and Meaningful Opportunity to Be Heard

30. The cornerstone of Due Process is fundamental fairness. Inherent in the notion of fairness is the right to know the nature and cause of an action, to be apprised of the claims and to have a meaningful opportunity to defend by way of answer or explanation. This is the essence of Rule

12(b)(6). It is not necessary that Defendant understand the law or the elements of a RICO claim, but need only be apprised of the facts that Plaintiff relies upon for their claim.

31. In his Rule 12(b)(6) motion Mendel claims the complaint fails to apprise him of sufficient facts to provide him with notice, while at the same time claiming to act as counsel for opposing litigants with extensive knowledge of contrary facts.

32. It is difficult to conceive of how Mr. Mendel could have insufficient notice of facts when Plaintiffs, in response to motions making similar claims, simply point to public records in the very same actions Mr. Mendel claims to have been involved in as an attorney.

Creative Pleading and Something Called a “QBT”

33. Mr. Mendel’s Rule 12(b)(6) Motion, like Anita and Amy Brunsting’s, introduces for the first time in any pleadings, in any related action in any court, over a period of nearly five years, introduces something they call a “Qualified Beneficiary Trust” (QBT) allegedly drafted by Defendant Albert Vacek, Jr.

34. Defendants do not provide exhibits in support of this claim of facts and Docket entries 30, 35 and 36 are the only pleadings to be found in any court containing reference to a “QBT”.

35. Plaintiffs’ RICO complaint defines the “extortion instrument” at Claim number 24 paragraph 133, as “*the heinous 8/25/2010 “Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement” (hereinafter the “8/25/2010 QBD” or “Extortion Instrument”)*”.

36. One of the three versions of the 8/25/2010 QBD was filed by Defendant Anita Brunsting’s Counsel Bradley Featherston in the Estate of Nelva Brunsting 412249-401, on

December 8, 2014, and is included in the Addendum to Plaintiffs' RICO complaint with the other versions, Dkt 26-20 at E1349-E1386.

37. Plaintiffs' demand these Defendants produce this "QBT" and certify it for whatever it is they are claiming it to be and, while they are at it, Plaintiffs' demand they produce the 8/25/2010 QBD, the instrument referred to by Defendants Amy, Anita, Brad and Neal, in their joint June 26, 2015 no-evidence motion for partial summary judgment, and qualify it as evidence for whatever they claim it to be as well.

Intimidation with the Extortion Instrument

38. As stated in the Addendum, on June 26, 2015 Defendants Anita and Amy Brunsting, through their attorneys, Bradley Featherston and Neal Spielman, filed a "No-Evidence Motion for Partial Summary Judgment" (DKT 26-5) involving an instrument called "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" or "QBD".

39. Plaintiff Curtis responded by filing an "Answer with Motion and Demand to Produce Evidence" (Dkt 26-11). As the Addendum states, Defendants tried to make good on their "no-contest clause" extortion threats when they filed their Joint No-Evidence Motion for Partial Summary and Declaratory Judgement (Dkt 26-5) and then removed their no-evidence motion from calendar, with their tail between their legs, when Plaintiff Curtis filed her answer and demand to produce the archetype of the instrument. (Dkt 26-11).

40. Suddenly there is no more docket control order, no more dispositive motion hearings and no more trial date, allegedly because of an "emergency Motion" over the "dissemination" of illegal wiretap recordings by Anita Brunsting's counsel Bradley Featherston.

41. Neal Spielman and Stephen Mendel then show up on March 9, 2016 (Dkt 26-16 Transcript) waiving the Gregory Lester/Jill Willard Young report in the air (Dkt 26-9) and talking about how the no contest clause in the illicit QBD instrument had been held to have been validly drafted by Vacek & Freed, (according to the Gospel of Jill Willard and Gregory Lester), and that Plaintiffs Candace Curtis and Carl Brunsting would take nothing if the court were to rule on the no contest clause. It is literally impossible to view any of that as an estate matter.

42. Mr. Mendel was personally present at the September 10, 2015 hearing on Gregory Lester's application for authority to retain Jill Young and was personally present at the March 9, 2016 hearing scheduled as a result of Plaintiff Curtis request to have dispositive motions placed back on the hearing calendar (Dkt 26-15 Request for Hearing).

43. The only thing indisputable in that transcript of hearing (Dkt 26-16) is that every effort was made to pretend the court had jurisdiction, to avoid setting dispositive motions, to avoid producing the extortion instrument and determination on the merits, to avoid joinder of closely related cases, and to attempt intimidation to cause Plaintiff Curtis to think she needed to get out her check book to pay for a mediation to avoid taking nothing under the "no contest clause" of the heinous "QBD" extortion instrument Defendants refuse to produce. (Dkt 26-16)

44. It was Carole Brunsting and not Plaintiff Curtis who cancelled the scheduled mediation (Exhibit 2)

45. The Defendants have had almost five years to produce their precious "QBD" and after having refused or otherwise failed to do so, it has somehow become a "QBT".

46. The United States Attorney's Criminal Resource Manual CRM 2403 defines Extortion by Force, Violence, or Fear as follows:

In order to prove a violation of Hobbs Act extortion by the wrongful use of actual or threatened force, violence, or fear, the following questions must be answered affirmatively:

- 1. Did the defendant induce or attempt to induce the victim to give up property or property rights?*
- 2. Did the defendant use or attempt to use the victim's reasonable fear of physical injury or economic harm in order to induce the victim's consent to give up property?*

47. Both of these inquiries are answered by the transcript of the March 9, 2016 status conference, set because of Plaintiffs Curtis' request for setting. (Dkt 26-15)

48. Defendants Anita and Amy Brunsting and now Stephen Mendel have all filed motions to dismiss under Rule 12(b)(6), (Dkt 30, 35, 36) claiming they "believe" the instrument referred to as the extortion instrument is some Qualified Beneficiary Trust or "QBT".

Mediation

49. The chronology of events provided in the Addendum to Plaintiffs' complaint (Dkt 26) beginning at Item VIII, ln. 62, pg. 12, shows the sequence of events compelling Plaintiffs to bring claims involving impartial forum, access to the court and other due process, civil rights, fraud and related racketeering claims.

50. As the Complaint makes clear in Claims 16-21, illegal wiretap recordings were disseminated by certified mail (July 2015), among counsel for the parties to the Brunsting related lawsuits, after Defendants filed their June 26, 2015 no evidence motion (Dkt 26-5). There was no perceivable legal relationship between those recordings and any substantive matter then pending.

51. Dissemination of the recordings was none-the-less used as the excuse for suspending the litigation after Defendants had set their no-evidence motion for hearing and after Bayless had set her summary judgment motion for hearing, but were then used as an excuse to remove summary

judgement hearings and trial, without notice, without hearing and without an order, after Plaintiff Curtis filed her Answer and Demand to Produce Evidence (Dkt 26-11).

52. Suddenly, an emergency motion involving dissemination of irrelevant and illegally obtained private telephone communications replaces meritorious resolution of the controversy, and there is no evidentiary support for any scheduling changes in the record.

Wiretap Recordings

53. All three Defendants, Anita, Amy and Mendel offer a completely different version of the facts regarding wiretap recordings from that contained in the Complaint, as verified by the probate court record. As with all of the contrary factual assertions made by these Defendants, they do not provide any form of affidavit or exhibits in support of their claims.

54. Plaintiff Curtis' wiretap brief gives the lie to these claims (Exhibit 3 attached) as does Defendant Anita and Amy Brunsting's reply to Carl Brunsting's Emergency Motion for a Protective Order (Dkt 26-8). The other exhibits in the record relating to the wiretap recordings are Dkt 26-6-Carl Brunstings motion for protective order and, Dkt 26-12- transcript of protective order hearings.

V. DEFENDANT DISPLAYS A PENCHANT FOR ARGUING HIS OWN MISSTATEMENTS

55. Defendant Mendel misstates the Complaint and then makes facially-compelling arguments against the fallacy of his own claims (Dkt 36 Pg. 1, Ln. 1.2):

“By way of example and not as a limitation, Mr. Featherston is alleged to have engaged in illegal wiretapping”

56. Mr. Mendel does not quote any part of the Complaint nor does he reference any particular provisions of the Complaint with specificity. The claims relating to wiretap activity are numbered 16-21. Claims 16-19 specifically allege “manipulation” occurring in February of 2015 regarding four different recording segments, while claims 20 and 21 allege “in Concert Aiding and Abetting: Spoliation, Destruction and/or Concealing Evidence”.

57. While Mendel would lead the Court to believe the Complaint alleges Featherston was involved in the recordings themselves, the Complaint makes no such claim and no such claim is necessary to a claim of aiding and abetting.

58. The act of placing those recordings in the U.S. Mail amounts to participation, as those recordings were used in a conspiracy to deprive Plaintiff Curtis of the honest services of a court.

59. The RICO allegations include statements such as that contained in claim 21 at paragraph 129:

Implicit in the assertion the recordings were relevant and the content admissible, Defendants claimed to possess personal knowledge that: “(1) the recording device was capable of recording the events offered in evidence; (2) the operator was competent to operate the device; (3) the recording is authentic and correct; (4) changes, additions, or deletions have not been made in the recording; (5) the recording has been preserved in a manner that is shown to the court; (6) the speakers on the tape are identified; and (7) the conversation elicited was made voluntarily and in good faith, without any kind of inducement.”

60. Mendel however, at paragraph 1.2, refers to such statements as vague, speculative, and conclusory and based upon inference, which more accurately describes the motion to dismiss than the complaint.

61. Another example of Mendel’s proclivity for arguing his own misstatements is paragraph 127 as follows:

On or about July 1, 2015, in the Southern District of Texas and elsewhere within the jurisdiction of the Court, for the purpose of executing or attempting to execute the scheme and artifice to defraud and deprive, Defendants Anita Brunsting and Bradley Featherston, aided and abetted by persons known and unknown to Plaintiffs and aiding and abetting persons known and unknown to Plaintiffs, did unlawfully, willfully and knowingly cause illegal wiretap recordings of private telephone conversations between Carl Brunsting and his wife Drina Brunsting, to be delivered by certified mail to Plaintiff Curtis and the third party attorneys for parties in multiple pending lawsuits, in violation of 18 U.S.C. §2511(1)(c) and Texas Penal Code 16.02. The illegal wiretap recordings selectively disseminated on CD-ROM, are believed to have been made on or about March and April 2011. The CD contained items which were Bates numbered 5814 to 5840. Included among those items were the following four audio recordings:²

62. One is curious to know where Mendel gets the notion Featherston is “*alleged to have engaged in illegal wiretapping*”? Dissemination of illegally obtained wiretap recordings violates the wiretap laws, and is the actual participation Mr. Featherston is accused of.

The Estate of Nelva Brunsting

63. As has been shown, the Fifth Circuit (Dkt 34-4) distinguished between the Brunsting Trust litigation and any prospective probate of the Estates of Elmer or Nelva Brunsting, using the same information available to the probate court, “the Wills of Elmer and Nelva Brunsting” (Dkt 41-2 and 41-3) and in their analysis the Fifth Circuit determined that Brunsting trust assets were not property of either estate and that the trust was in fact the only estate heir.

The Brunsting Trusts

64. Plaintiff Curtis is a beneficiary of an inter vivos trust, not an heir to any estate.

65. Plaintiff Curtis’ beneficial interest is property, not an inheritance or expectancy.

66. The estate has no standing to bring claims against beneficiaries of the trust, alleging trespass against the heir in fact (trust), simply because the alleged trespass occurred during the

² Excerpted from Carl Brunstings Motion for Protective Order filed July 17, 2015.

lifetime of a grantor. The trust was also in the custody of the federal Court when all of the state court actions were filed.

VI. STANDARD OF REVIEW

67. Rule 12(b)(1) permits the dismissal of an action for the lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). "If [a federal] court determines at any time that it lacks subject-matter jurisdiction, [it] must dismiss the action." Fed. R. Civ. P. 12(h)(3); *see also Berkshire Fashions, Inc. v. M V. Hakusan II*, 954 F.2d 874, 880 n.3 (3rd Cir.1992) (citing *Rubin v. Buckman*, 727 F.2d 71, 72 (3d Cir. 1984)) (reasoning that "[t]he distinction between a Rule 12(h)(3) motion and a Rule 12(b)(1) motion is simply that the former may be asserted at any time and need not be responsive to any pleading of the other party.") Since federal courts are considered courts of limited jurisdiction, absent jurisdiction conferred by statute, they lack the power to adjudicate claims. *See, e.g., Stockman v. Fed Election Comm'n*, 138 F.3d 144, 151 (5th Cir. 1998) (citing *Veldhoen v. United States Coast Guard*, 35 F.3d 222, 225 (5th Cir. 1994)). Therefore, the party seeking to invoke the jurisdiction of a federal court carries "the burden of proving subject matter jurisdiction by a preponderance of the evidence." *Vantage Trailers, Inc. v. Beall Corp.*, 567 F.3d 745, 748 (5th Cir. 2009) (citing *New Orleans & Gulf Coast Ry. Co. v. Barrois*, 533 F.3d 321, 327 (5th Cir. 2008); *see also Stockman*, 138 F.3d at 151.

68. In this case, jurisdiction is challenged under both Rule 12(b)(1), and the lack of sufficient factual allegations under Rule 12(b)(6). Federal Rule of Civil Procedure 12(b)(6) authorizes a defendant to move to dismiss for "failure to state a claim upon which relief may be granted." Fed. R. Civ. P. 12(b)(6). Under the demanding strictures of a Rule 12(b)(6) motion, "[t]he plaintiff's complaint is to be construed in a light most favorable to the plaintiff, and the

allegations contained therein are to be taken as true." *Oppenheimer v. Prudential Sec., Inc.*, 94 F.3d 189, 194 (5th Cir. 1996) (citing *Mitchell v. McBryde*, 944 F.2d 229, 230 (5th Cir. 1991)). Dismissal is appropriate only if, the "[f]actual allegations [are not] enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965, 167 L.Ed.2d 929 (2007).

69. In light of Federal Rule of Civil Procedure 8(a)(2), "[s]pecific facts are not necessary; the [factual allegations] need only 'give the defendant fair notice of what the ... claim is and the grounds upon which it rests.'" *Erickson v. Pardus*, 551 U.S. 89, 93, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007) (per curiam) (quoting *Twombly*, 550 U.S. at 555, 127 S.Ct. at 1964. Evenso, "a plaintiffs obligation to provide the 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Twombly*, 550 U.S. at 555, 127 S. Ct. at 1964- 65 (citing *Papasan v. Allain*, 478 U.S. 265, 286, 106 S. Ct. 2932, 92 L.Ed.2d 209 (1986).

70. Therefore, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949, 173 L. Ed.2d 868 (2009) (quoting *Twombly*, 550 U.S. at 570, 127 S. Ct. at 1974). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft*, 556 U.S. at 678 (citing *Twombly*, 550 U.S. at 556, 127 S. Ct. at 1955). "But where the well-pleaded facts do not permit the court to infer more than the mere

possibility of misconduct, the complaint has to alleged-but it does not have to 'show -'that the pleader is entitled to relief.'" Ashcroft, 556 U.S. at 679 (quoting Fed. R. Civ. P. 8(a)(2)).

71. Nevertheless, when considering a 12(b)(6) motion to dismiss, the Court's task is limited to deciding whether the plaintiff is entitled to offer evidence in support of his or her claims, not whether the plaintiff will eventually prevail. Twombly, 550 U.S. at 563, 1969 n.8 (citing Scheuer v. Rhodes, 416 U.S. 232, 236, 94 S. Ct. 1683, 40 L. Ed.2d 90 (1974)); see also Jones v. Greninger, 188 F.3d 322,324 (5th Cir. 1999).

VII. CONCLUSION

72. The Honorable Kenneth Hoyt stated at the injunction hearing April 9, 2013 that all that was needed to wrap the trust litigation up was to distribute the assets, and he was correct.

73. Defendants Anita and Amy Brunsting refuse to honor any of the duties of the office while their attorneys use the 8/25/2010 QBD to threaten Plaintiff Curtis and her disabled brother Carl Brunsting with loss of property rights for bringing action to protect those rights and compel specific performance. Each of these Defendant attorneys fully intended to line their own pockets with filthy lucre at the expense of Plaintiff Curtis, her sister Carole, and her disabled brother Carl.

74. Probably the most alarming aspect of all this is that in a situation where the probate court actually had jurisdiction the exact conduct complained of here would all too often be granted Judicial and Texas Attorney Immunity without resort to the canons to consider whether such conduct is in fact judicial or litigious.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Motion to Dismiss (Dkt 36) filed by Defendant Stephen Mendel, September 30, 2016.

Respectfully submitted October 14, 2016,

/s/ Candace L. Curtis
Candace L. Curtis

/s/ Rik W. Munson
Rik W. Munson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on this 13th day of October, 14 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Rik W. Munson
Rik W. Munson

The purpose for creating an inter vivos trust is to keep attorneys from stealing assets under the usual probate charade. These attorneys with the blessings of the Probate Court have tried to erase those distinctions hoping to convert assets of the trust into assets involved in a controversy over the administration of an estate.