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 JILL WILLARD YOUNG, ALBERT VACEK JR, CANDACE KUNZ-FREED, CHRISTINE BUTTS, CLARINDA COMSTOCK AND TONY BAIAMONTES' MOTIONS TO STRIKE

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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 14, 2016, Defendant Jill Willard Young filed a Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(6). (Dkt 25)

3. On September 15, 2016, Plaintiffs filed an Addendum of Memorandum (Dkt 26) as a factual supplement to the RICO complaint. (Dkt 1).

4. On October 3, 2016 Defendant Jill Willard Young filed a Motion to Strike (Dkt 38) the Addendum to Plaintiffs' Complaint (Dkt 26).

5. On October 4, 2016 Defendants Albert Vacek, Jr. and Candace Kunz-Freed (Hereafter V&F) filed a Memorandum (Dkt 42) joining in Defendant Jill Willard Young's Motion to Strike the Addendum to Plaintiffs' Complaint.

6. On October 14, 2016 Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte filed a Motion to Strike the Addendum to Plaintiffs' Complaint (Dkt 60).

II. The Issues Presented

7. In this Motion Defendant Jill Willard Young claims:

a. The Addendum has no legal effect;

b. The "Addendum" does not change the merits of Ms. Young's Motion to Dismiss;

c. Plaintiffs' Addendum, like the Complaint, is too implausible to state a valid claim for relief;

d. Plaintiffs' Addendum fails to state facts sufficient to assert a RICO claim against Ms. Young;

e. Plaintiffs' Addendum cannot avoid the Texas Attorney Immunity Doctrine.

III. Plaintiffs' Reply to Motions to Strike

8. Federal Rule of Civil procedure 12(f) allows the Court to strike a pleading that is redundant, immaterial, impertinent, or contains scandalous matter.

9. Plaintiff's Addendum was properly filed as an appendage to the original complaint within twenty-one days of the filing of motions requiring a reply, as authorized by Federal Rule of Civil Procedure 15(a)(1).

10. The Addendum contains a short description of the chronology of the probate docket and copies of: unresolved motions from the probate court record, the preliminary federal injunction, motions and pleadings from the federal court, A Fifth Circuit opinion in this case, and transcripts of hearings. Every paragraph is numbered and every exhibit is labeled and paginated.

11. Defendants' challenge to Plaintiffs' Addendum are based entirely upon semantics and a desire to superimpose Defendants preferred definitions of the instrument over the declarations

provided by the instrument's authors. That definition is provided by the instrument itself (Dkt 26) at page one lines 4-6 as follows:

> *4. Plaintiffs, in response to these challenges, herein incorporate by reference the attached Motions as Memorandums of Points and Authorities in support of the above-referenced complaint, as if those motions had been fully set forth within the original complaint.*
>
> *5. The following motions are presented as Memorandums, to supplement the Rule 8(a) sufficient complaint.*
>
> *6. Plaintiffs hereby incorporate these motions as memorandums under authority of Federal Rule 15(a), for the purpose of satisfying the heightened factual pleading standards of Rule 9(b).*

12. Line four of the Addendum tells us that the Addendum is incorporated into the Complaint by reference as if fully expressed therein. This expression satisfies the "adoption" provisions of Federal Rule of Civil Procedure 10(c), which reads as follows:

> *c) Adoption by Reference; Exhibits. A statement in a pleading may be adopted by reference elsewhere in the same pleading or in any other pleading or motion. A copy of a written instrument that is an exhibit to a pleading is a part of the pleading for all purposes.*

13. By definition, an "Addendum" is a thing to be added. To the extent that it is added it is an amendment authorized by Rule 15(a)(1) and, by its own language, it is an appendage that incorporates but does not alter the portions of the Complaint that precede it.

14. Federal Rule of Civil Procedure 10 governs the "form of pleadings." The Rule seeks to provide a standardized and "easy mode" of pleadings, to facilitate notice to an opposing party, judicial review of the sufficiency of the pleadings, and efficient case management. *See, e.g. Stanard v. Nygren*, 658 F.3d 792, 797 (7th Cir. 2011);

15. Federal Rule of Civil Procedure 10(b) requires paragraphs to be numbered. Defendant's Motions to Strike, is an improper attempt to continue to argue the Federal Rule of Civil

Procedure 12(b) motions already filed and answered, contains redundant, immaterial, impertinent, and scandalous allegations without a single specific reference to any numbered paragraph or exhibit, does not contain numbered paragraphs, violates Rule 12(f) and fails to comport to the pleading requisites of Federal Rule of civil Procedure 10(b).

16. The Addendum is an adopted public record, contains a motion pending in a related case, and exhibits public record pleadings from matters in the various courts that are relevant, on point, and which Plaintiffs continually refer to in answers to Defendants Rule 12 motions to dismiss.

17. These Defendants claim they participated in those proceedings in a capacity that affords them some form of immunity from civil suit.

18. Defendants' Motions to strike do not challenge the 22 exhibits attached to the Addendum as not being what the Addendum claims, but simply seek to argue their own interpretation. There are also exhibits attached to the motions and thus subsumed within the Docket 26 exhibits themselves.

19. First Defendants claim the Complaint lacks sufficient factual matter to provide adequate notice of the claims and then, when facts are added to the Complaint by way of supplement, Defendants complain and proceed to rehash their Rule 12(b) arguments under the pretext of a Rule 12(f) motion to strike.

20. The probate court Defendants have adequate notice and the record will also show that in their pleadings V&F quoted from pleadings in the probate court and responded to pleadings in that Court (Exhibit 1) as non-parties and are also fully apprised of the facts upon which the RICO complaint relies.

IV. Docket Entry Twenty-Six

21. Docket 26, pages 3-26 provides a chronology of specific docket events supported by exhibits, including transcripts, motions and pleadings.

22. The Addendum of Memorandum which Defendants seek to attack tells the story of these Defendants' efforts to game the judicial process and contains only public records exhibits from the actions these Defendants claim to have been involved in.

23. Every one of Plaintiffs' replies to Defendants' Rule 12 Motions (Dkt 33, 34, 41, 45, 57 and 62), have shown the relevance of the Addendum by constant reference to Docket entry 26.

V. Defendants claim the Addendum has no legal effect

24. This is not a Rule 12(f) related argument. The Addendum adds detail to the Complaint's factual allegations.

25. The Addendum of Memorandum includes a Motion for Vacatur of the void remand order that directly addresses the Defendants' claims of immunity.

26. Jurisdiction is a foundational issue which must be addressed before any other question, and the proper court to vacate a void order or judgment is the court that entered it.

27. Thus, for all intents and purposes, the Addendum also acts as a form of estoppel in this Court, as it raises a foundational issue that must be resolved before all others.

VI. The "Addendum" does not change the merits of Ms. Young's Motion to Dismiss

28. This is a Rule 12(b) and not a Rule 12(f) related argument.

29. Ms. Young's motion to dismiss alleges Plaintiffs failed to plead adequate facts to place her on notice of the claims against her. Ms. Young's motion contained only one exhibit.

30. In response, Plaintiffs merely attached exhibits from the public record with explanations of the significance of each of those exhibits in relation to Ms. Young's "participation".

31. In Ms. Young's Rule 12(b)(6) Motion she included as an exhibit only the Order appointing Gregory Lester. She did not exhibit her application for Gregory Lester's authority to retain her firm, she did not exhibit the order granting Gregory Lester authority to retain Jill Young and she did not include the report she "assisted" Gregory Lester in producing.

32. Thus, while claiming lack of notice as to her part in the charade, she fails to exhibit what does connect her and asks this Court to strike what is, in essence, a public record.

VII. Plaintiffs' Addendum is too implausible to state a valid claim for relief

33. This appears to be a Rule 12(f) argument that the Addendum is immaterial.

34. These Defendants appear to like using words without comprehending what they actually mean. The 28-page Motion for Vacatur contains a statement of chronology supported with reference to the public record and contains excerpts from a March 9, 2016 hearing, supported by an official transcript also attached as an exhibit. The list of exhibits can be found at page 31.

35. Plaintiffs' answers to Defendants' Rule 12 Motions exhibit documents and records these Defendants had a duty to be familiar with and cannot claim ignorance of.

36. Basically the Defendants are asking the Court to strike the facts contained in the public record, placed before it in the form of an Addendum of Memorandum, and to look elsewhere for the same information under a lengthy request for judicial notice of external records containing the same exhibits, allegedly for the "convenience of the Court".

37. Defendants do not challenge the Addendum's exhibits as not being what they are represented to be, but instead claim the Addendum is vague, implausible and fails to raise a RICO claim.

38. Ultimately, Defendants ask the Court to strike fact and listen to "We Say" while viewing the Addendum in a vacuum where the Complaint is considered a separate instrument when in fact they combine to make one Complaint under Rules 10(c) and 15(a)(1).

39. What the 27-page Addendum tells the reader is that Plaintiff Curtis could not get an evidentiary hearing set in state court while being bullied with a false instrument in order to coerce an agreement for illicit reasons.

VIII. Plaintiffs' Addendum Cannot Avoid Texas's Attorney Immunity Doctrine

40. This is not a proper subject for a motion to strike and is an improper attempt to continue arguing the previous Rule 12(b)(1) motions already filed and answered.

41. Defendants' Texas Attorney Immunity claims fail at the threshold question of probate court jurisdiction. Prevailing on a claim that the probate court could assume jurisdiction over the Brunsting trusts in this case, would require reversing a unanimous Fifth Circuit Court of Appeals Opinion in the base case and the Supreme Court opinion the Circuit Court relied upon for their decision.

42. Defendants perpetually seek to avoid the unanimous opinion of the Fifth Circuit Court of Appeals in this case, that no court can take jurisdiction over a res in the custody of another court.

43. The fact that a federal Court issued an injunction regarding the Brunsting trusts the very day probate claims were filed, effectively disposes of any argument that the probate Court could assume subject matter jurisdiction over the Brunsting Trusts.

44. Where there is no subject matter jurisdiction there is no court and no judge and where there is no judge and no court there is no litigation. Judgements entered without or in excess of jurisdiction are nullities, subject to vacatur under both direct and collateral attack. Neither doctrine of laches nor statutes of limitations apply to judgments void for want of jurisdiction and

the very question is so fundamental that it does not come under the "Not Pressed Not Passed Upon Below Rule" and can even be raised for the first time on appeal.

45. The jurisdiction issue is pivotal. None of the motions in this RICO suit can be properly resolved without addressing the want of jurisdiction in the probate court.

46. Unless Defendants overcome centuries of precedent and the Fifth Circuit Opinion "in this case", Defendants' immunity claims fail on Plaintiffs' challenge to probate court jurisdiction over any Brunsting trust related matter.

47. All of these attorneys argue that they have been involved as attorneys in "Estate litigation" yet all the "Estate" pleadings ever mention is the trust and some of these Defendants claim to represent co-trustees, while they all claim to be involved in a probate case. This question was resolved in Plaintiff Curtis favor by the Fifth Circuit Court of Appeals and the entire notion of probate jurisdiction over the Brunsting trusts is fraud.

48. When all claims related to the Brunsting Trusts are removed from Bayless Probate Court Petition and the Gregory Lester, Jill Willard Young "Report" on the efficacy of the estate claims, nothing remains of either.

IX. Memorandum

Federal Rule of Civil Procedure Rule 15: Amended and Supplemental Pleadings

49. Rule 15 allows a party to amend its pleading after it has been filed with the court. In keeping with the flexibility of the federal rules, Rule 15 is generous. The policy is that by allowing the parties to "fix" their pleadings as they go along, the merits of the case will more readily be resolved. The parties will not waste precious time and resources squabbling over the mechanics of amending their pleadings. However, Rule 15's flexibility must also be balanced with fairness concerns for the opposing party. The need to amend generally arises when a party

has made an inadvertent omission or mistake in its pleading. In that case, if the party realizes its mistake fairly quickly, the amendment will generally be allowed under the rule. But, a party may also learn of new information and want to amend its pleading to add a new party or claim accordingly. Whether an amendment is allowed in that situation often turns on whether the statute of limitations for the underlying action has run. If it has, the rule requires more complex analysis to determine whether the amendment will be allowed. If it is, the new pleading will "relate back" to the original date of filing.

50. Rule 15 has four main sections. The first section, 15(a) sets out when and how a party can amend its pleading before trial; The second section, 15(b) allows the parties to amend the pleadings during and after trial; The third section, 15(c) prescribes when a party can amend to add a new claim or party even after the statute of limitations has run; Finally, the fourth section, 15(d) explains when a party can add claims that arise out of an event that occurred after the original pleading was filed.

51. Federal Rule 15(a)(1) allows a party to amend its pleading within 21 days after a responsive pleading requiring a reply and Rule 12(b) motions are just such motions. Not only was the Addendum filed as a Rule 15(a)(1) "Addendum", the RICO complaint itself is little more than a Rule 15(d) amendment to the original petition filed in 4:12-cv-592.

52. Defendants' Motion to Strike is an improper attempt at a second Rule 12(b) Motion to Dismiss. In her first such motion, (Dkt 25) Ms. Young admits to participation in the production of the Gregory Lester "Report of Temporary Administrator", but denies that the "report" is part of any conspiracy targeting the Brunsting Trusts under the pretext of estate litigation.

53. Defendant Jill Young asserted on the first page of her unnumbered Rule 12 motion (Dkt 25),

> *In reality, their Complaint is 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.*

54. Defendant Young did not support her claim with an exhibit or with specific reference to any state court determinations and none of the Defendants can point to such an event. Thus, while making knowingly disingenuous claims, Defendants seek to avoid the facts in the record.

X. In the Custody of a Federal Court

55. Plaintiff Candace Curtis and Plaintiff Munson are cohabitant partners. Plaintiff Candace Curtis filed her original petition in the TXSD February 27, 2012 (4:12-cv-592). That Petition was dismissed under the Probate Exception to federal Diversity Jurisdiction. The Fifth Circuit Court of appeals reversed and remanded back to TXSD on January 9, 2013[1]. The Brunsting trusts are not an asset of either "Estate" and are not subject to probate administration.

56. The Harris County District Court suit was filed January 29, 2013, raising only issues relating to the Trust then in the custody of the federal Court.

57. The state probate court suit was filed April 9, 2013, raising only issues relating to the Brunsting Trust, then in the custody of the federal Court, which is the same day Plaintiff Curtis obtained a federal injunction regarding the same Trust.

58. The probate suit raises no issues other than trust issues. Munson ended up in the hospital in a coma and Plaintiff Candace Curtis retained the assistance of a Houston attorney, Jason Ostrom, who had the federal case remanded to the probate court with no opposition from Defendants' counsel.

[1] Curtis v Brunsting 704 F.3d 406

XI. Reality Check

59. Anita Brunsting, with her silent partner Amy Brunsting, plotted and planned to steal the family trust. If not for Anita's over exuberant efforts none of the lawsuits would have been necessary. However, Anita Brunsting would have had to find another way except for the excellent assistance of Candace Kunz-Freed.

60. Candace Kunz-Freed had a fiduciary duty to Nelva Brunsting and if Nelva had asked for improper trust changes Freed had an obligation to inform Nelva that the changes she requested were not authorized under the law of the trust. There is no evidence Nelva requested those changes, but there is plenty of evidence that Anita did.

61. Without the illicit papers drafted by Candace Freed, Anita Brunsting would not have had the ability to run amok and none of the injuries and none of the litigation would have been possible.

62. If Defendant Bobbie Bayless had honorable intentions she would have filed Carl's Joinder as a beneficiary of the Trusts and that would have polluted diversity, causing a remand to the Harris County District Court where Plaintiff Curtis' suit would appear as the lead case on the Title Page. Instead Bayless filed two state court lawsuits in the name of the Estates of Elmer and Nelva Brunsting, raising only issues relating to the Trust in the custody of a federal court. If not for the illicit meddling of Bobbie Bayless and her sham state court litigation, all trust related litigation would have been resolved and everyone would have their property and gone on with their lives.

63. If Jason Ostrom had honorable intentions he would have moved for summary and declaratory judgment in the federal Court, but instead chose to facilitate a remand to a state probate court with no subject matter jurisdiction.

64. Once in probate court Ostrom immediately abandoned the Curtis v Brunsting litigation and began filing papers under the heading "Estate of Nelva Brunsting" asking for distributions from the trust to pay his "fees" while knowing full well the estate does not own any trust assets.

65. If not for Jason Ostrom's attempt to participate in Bayless' sham litigation, this case would have been resolved long ago.

66. The state probate Court had a duty to look to jurisdiction and the first place one looks for probate jurisdiction is in the Will of the Testator. The state Probate Court in looking to the Wills would have seen that the only heir in fact to either Estate is "the trust" and not being property of an "Estate" the Probate Court had a duty to dismiss trust related claims for want of jurisdiction.

67. When the remand was received by the state court the Order included reference to the federal injunction in place and all of the Defendants were aware of that injunction. The Notice of Injunction and Report of Master should have made it abundantly clear the probate court was without the jurisdiction to take cognizance of a trust in the custody of a federal court, on the very day a federal injunction was issued. Unfortunately all these Defendants were looking at was the money cow and like business as usual, were not really looking at the case with any other eyes.

68. What else would explain the absolute refusal of the probate court to set any evidentiary hearings and refusal to enter any orders at all?

69. This effort to coerce and intimidate Plaintiff Curtis with a fraudulent no contest clause threat to property interests on March 9, 2016, was an obvious effort to avoid the complete absence of jurisdiction.

70.

XII. Conclusion

71. Defendants reargue their claims of want of adequate notice, failure to state a claim, and challenge TO federal subject matter jurisdiction relying upon the various claims of immunity. None of these are Rule 12(f) arguments and while using noise words to condemn the Complaint (Dkt 1) and the Addendum (Dkt 26), Defendants to cite no paragraph numbers or exhibit numbers and refuse to number their pleadings to allow Plaintiffs to adequately and properly reply.

72. Defendants claim to have been involved in the very proceedings that Plaintiffs cite to as evidence in support of their claims, and Defendants, while claiming ignorance of facts, ask the Court to strike what is, in effect, the public record, containing the very facts they claim lack of notice of.

73. The Addendum of Memorandum is a proper supplement to the Complaint authorized by Federal Rule of Civil Procedure 15(a)(1) and 10(c) and Defendants' arguments are a non sequitur.

Wherefore, Plaintiffs respectfully move this Honorable Court for an Order denying Defendants' Motions to Strike (Dkt 38, 42, and 60).

Respectfully submitted, October 18, 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 18th day of October, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis

Candace L. Curtis

/s/ Rik W. Munson

Rik W. Munson

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
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ORDER

Upon due consideration, Defendants' Rule 12(f) Motions to Strike, filed on October 3,, 2016, by Defendant Jill Willard Young (Dkt 38), October 4, 2016, by Defendants Albert Vacek Jr. & Candace Kunz-Freed (Dkt 42) and the Motion to Strike filed by Defendants Christine Butts, Clarinda Comstock and Tony Baiamonte (Dkt 60) October 14, 2016, should be Denied.

It is SO ORDERED

_____ _____

Date

The Honorable Alfred H Bennet
United Stated District Judge