

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 DEFENDANTS ANITA AND AMY BRUNSTING’S  
MOTIONS TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE  
12(B)(6)**

**TABLE OF CONTENTS**

I. STANDARD OF REVIEW ..... 2

II. ISSUES PRESENTED..... 3

III. HISTORY OF THE CONTROVERSY ..... 3

IV. THE ARGUMENT ..... 4

V. FAILURE TO STATE A CLAIM ..... 5

VI. CONCLUSION..... 10

Certificate of Service ..... 11

**Cases**

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)..... 2, 3

Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007) ..... 2, 3

Curtis v Brunsting 704 F.3d 406..... 7

First Am. Title Co. v. Devaugh, 480 F.3d 438, 443 (6th Cir. 2007) ..... 3

Nat’l Hockey League Players Ass’n v. Plymouth Whalers Hockey Club, 419 F.3d 462, 468 (6th Cir. 2005) ..... 3

Resnick v. AvMed, Inc., 693 F.3d 1317, 1321–22 (11th Cir. 2012) ..... 2

**Statutes**

18 U.S.C. §§1961-1968 ..... 2

at 18 U.S.C. §1964(c) ..... 2

**Rules**

Federal Rule of Civil Procedure 12(b)(6) ..... passim

Federal Rule of Civil Procedure Rule 9(b) ..... 4

Federal Rule of Evidence 201 ..... 4

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 to the RICO complaint, in response to Defendant claims of a want of specific factual allegations and other affirmative defenses.

3. On September 16, 2016, Defendant Anita Brunsting filed a motion to dismiss under Federal Rule of Civil Procedure 12(b)(6) (Dkt 30).

4. On September 21, 2016, Defendant Amy Brunsting filed a Federal Rule of Civil Procedure 12(b)(6) motion to dismiss (Dkt 35).

**I. STANDARD OF REVIEW**

**Federal Rule 12(b)(6)**

5. When evaluating a motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), the court must take the facts alleged in the complaint as true and construe them in the light most favorable to the plaintiff. *Resnick v. AvMed, Inc.*, 693 F.3d 1317, 1321–22 (11th Cir. 2012). To survive Rule 12(b)(6) scrutiny, “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 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “[F]acial plausibility” exists “when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.* (citing *Twombly*, 550 U.S. at 556).

6. The standard of appellate review for a motion to dismiss pursuant to Rule 12(b)(6) is *de novo*, and the Court will employ the same standard as the district court. *First Am. Title Co. v. Devaugh*, 480 F.3d 438, 443 (6th Cir. 2007); *Nat’l Hockey League Players Ass’n v. Plymouth Whalers Hockey Club*, 419 F.3d 462, 468 (6th Cir. 2005).

## II. ISSUES PRESENTED

7. Both Amy and Anita Brunsting’s motions are brought pursuant to Rule 12(b)(6) and claim Plaintiffs have failed to provide sufficient factual allegations to place them on notice of the claims against them, a due process argument.

8. Defendants claim ignorance of facts, while at the same time presenting an opposing view of the facts.

9. Defendants also misstate Plaintiffs’ aiding and abetting claims and then deny their misstatements, and appear not to understand the allegations themselves.

## III. HISTORY OF THE CONTROVERSY

10. Plaintiffs hereby incorporate by reference the “Standards of Review”, “Contextual Summary”, “History of the Controversy”, and “History of the Litigation” (Dkt 33 sections I, II, III and IV) from Plaintiffs’ response to the Motions to Dismiss filed by Defendants Vacek & Freed, (Dkts 19 & 20) as if fully restated herein.

#### IV. THE ARGUMENT

11. In a Rule 12(b)(6) motion to dismiss Defendants do not have the pleasure of arguing the facts and the only issue after the finder of fact applies the law, is whether or not Plaintiffs have sufficiently pled their claims. If Plaintiffs have not fully pled their claims, the question becomes whether the complaint could be amended to satisfy the heightened pleading standards demanded by Federal Rule of Civil Procedure Rule 9(b).

12. While offering knowledge of opposing facts, Defendants ask the Court to believe they lack sufficient notice of facts to defend the claims against them.

13. In this case Plaintiffs have responded to each previous motion to dismiss, by simply pointing to the public records of proceedings in the state and federal court, many of which are contained in the attachments to Plaintiffs' Addendum of Memorandum (Dkt 26).

14. These two Defendants' motions to dismiss share an uncanny similarity and other than an occasional detour, individualized for the particular movant, and a little transposition in the order of appearance of the words, each strike the same chords with nearly identical expressions. Plaintiffs will therefore respond to both pleadings in harmony.

#### **Creative Pleading And Something Called A "QBT"**

15. These two Motions (Dkt 30 and 35), and Mr. Mendel's subsequent Rule 12(b)(6) Motion, (Dkt 36) for the first time in any pleadings, in any related action, in any court, over a period of four and one-half years, each introduce in their alternate claim of facts, something they call a "Qualified Beneficiary Trust" (QBT) allegedly drafted by Defendant Albert Vacek, Jr.

16. These two Defendants and their carousel of lawyers have steadfastly clung to an instrument they proclaim to be "the trust", allegedly signed by Nelva Brunsting on August 25, 2010. Plaintiffs do not need to rehash these unresolved motions to respond to these assertions.

17. In answer to these “QBT” assertions, Plaintiffs incorporate by reference and respectfully request the Court take Judicial notice of, pursuant to Federal Rule of Evidence 201, 1) Defendant Anita and Amy Brunstings’ No Evidence Motion for Partial Summary Judgment (Dkt 26-5), Plaintiff Curtis Answer and Demand to Produce Evidence (Dkt 26-11), The Report of Temporary Administrator Gregory Lester (Dkt 26-9), Plaintiff Curtis Motion for Partial Summary and Declaratory Judgment (Dkt 26-14), the (Request for setting A1 attached) the March 9, 2016 transcript (Dkt 26-16) and the Rule 60 Motion itself (Dkt 26)

#### **V. FAILURE TO STATE A CLAIM**

18. These Defendants state that they are litigants in estate related proceedings involving Plaintiff Curtis, profess ignorance of any wrongdoing, and claim they are not participants in any racketeering scheme.

19. In response to previous motions to dismiss for failure to state a claim, Plaintiffs have pointed only to the public record and particularly the motions and pleadings from the state court, and Defendants are clearly connected to those records, all of which have been served upon them through their respective agents.

20. Plaintiffs will continue to point to the public record in response to these two Motions.

21. A motion to dismiss is not a substitute for an answer and aside from claiming lack of knowledge and lack of notice, Defendants advance several affirmative claims of contrary facts. The substance of the motion is 1) want of sufficient information to satisfy notice requirements, 2) a general denial, and 3) an opposing view of the facts.

22. All of the facts necessary to meet Plaintiffs’ burden are contained in the public record and are cited with specificity throughout Plaintiffs’ original Complaint, Addendum, and Responses to Motions to Dismiss.

23. Plaintiffs' Addendum of Memorandum (Dkt 26) and Plaintiffs' prior Responses address the only relevant challenge under Rule 12(b)(6) and answers any questions of how each player fits into the enterprise operations puzzle. In response to Motions to Dismiss, Plaintiffs easily point to the record and how the individual exhibits concatenate to explain each participant's contribution to the overall mosaic.

24. The motives of the enterprise are greed and political aspirations, the means are described in the RICO complaint, and by refusing to honor any legal or moral obligations Anita and Amy Brunsting provide the opportunity for the rest of these Defendants to participate.

25. As alleged in the complaint, Anita Brunsting presents the other players with an exploitation opportunity. Anita Brunsting planned to hijack the family trust res, by improperly seizing control of the office of trustee.

26. Defendants exercised the powers of the office and refused to honor any of the duties of the office, which is how they became defendants in the first place.

27. To Plaintiffs' knowledge neither Amy nor Anita Brunsting has ever set foot inside the Harris County Probate Court #4 and apparently think hiring mercenaries to fight their battles removes them from the center of the controversy and the consequences of their attorney's acts as well. It does not.

28. The facts show Anita Brunsting violated the no contest clause in the 2005 Restatement, not when she misappropriated assets to her own benefit in violation of trust provisions, but when she advanced theories that those benefits were gifts, fees, and reimbursements thereby attempting to enlarge her share of the trust res.

29. In an exploitation game of lawyers playing the ends against the middle, as in the case at bar, this fact alone is significant.

30. On April 9, 2013, Honorable United States District Judge Kenneth Hoyt issued an injunction, not only enjoining Anita and Amy Brunsting from spending trust money or liquidating trust assets without the Court's prior approval, but also commanding specific performance. Defendants Anita and Amy are commanded by that injunction, to deposit income into an appropriate account for the beneficiary. To date, they have refused or otherwise failed to do so and continue to hold Plaintiff Curtis' property and that of siblings Carl and Carole Brunsting, without offering a single legal defense. (Dkt 26-11)

31. The absolute refusal of these two Defendants to honor any legal or moral obligations has opened the door of opportunity for the other Defendants to play their shakedown game against Plaintiff victim Candace Curtis and her victim siblings, Carl and Carole Brunsting.

#### **Probate of the Estate of Nelva Brunsting**

32. Defendants claim the matter before the Court is related to probate of the Estate of Nelva Brunsting.

33. The Fifth Circuit Court of Appeals in *Curtis v Brunsting* 704 F.3d 406 properly held that assets in an inter vivos trust are not property of a decedent's estate and that the suit filed in TXSD by Plaintiff Candace Louise Curtis February 27, 2012, No. 4:12-cv-0592, was related only to an inter vivos trust and not to an estate. The Circuit Court also noted that the wills of both Grantors bequeathed everything to "the trust" *Curtis v Brunsting* 704 F.3d 406, 409-410.

34. Because the only heir in fact to the Estate of Nelva Brunsting (Dkt 41-2, 41-3) is "the trust", Carl Brunsting had no standing to bring suit individually in the probate court as an heir to the Estate, as he is only a beneficiary of the heir in fact ("trust").

35. Trespass against the trust during the life of Nelva Brunsting created claims belonging to the cestui que. If Candace Freed's only liability for betraying Privity and the fiduciary duties she

owed Nelva Brunsting are to the estate, those claims belong to the injured cestui que (beneficiaries) of the heir in fact trust and are the duty of the trustees to pursue.

36. In any event, the trust res was in the in rem custody of a federal court when all of the trust related claims were filed in state courts under the disguise of the Estate of Nelva Brunsting, and those state court suits were filed after the Fifth Circuit Opinion in this case was published.

### **Wiretap Recordings**

37. Defendants assertions of alternate facts are irrelevant under Rule 12(b)(6), but are none-the-less interesting when compared against the public record and, thus, worthy of note.

38. The RICO complaint states that Anita Brunsting's counsel of record, Bradley Featherston, disseminated private third party telephone communication recordings on or about July 1, 2015 via certified U.S. Mail signed receipt required.(see Dkt 26-8, Carl's application for Protective Order); (Dkt 26-12, Transcript of the hearing on Carl's application for Protective Order); (Attached Exhibit A2, Defendants Joint opposition to the application for protective order); and (Plaintiff Curtis wiretap brief attached as Exhibit A3 with sub-exhibits A-G).

39. These Defendants also misstate the allegations in the complaint, (Dkt 1) which alleges that Anita Brunsting's counsel, Bradley Featherston, "disseminated" wiretap recordings by certified mail more than three and one-half years after Carl Brunsting's petition to take depositions before suit was filed, and a demand for such disclosures was first made. Defendants none-the-less attempt to conceal the disruptive purpose for the dissemination, as occurring in the ordinary course of discovery. Plaintiff Curtis' wiretap brief gives the lie to these claims (A3).<sup>1</sup>

### **False Affidavit**

40. Amy Brunsting claims she did not file a false affidavit in the federal court.

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<sup>1</sup> RICO Claim numbers 14 through 20 in the complaint specifically refer to the wiretap recordings.



41. Amy's affidavit, ascribed and sworn to before one authorized to accept an oath, was filed March 6, 2012 in the Southern District of Texas Case 4:12-cv-0592, attached to a motion for emergency order<sup>2</sup> to remove a lis pendens filed among the papers in the federal petition. The emergency motion resulted in sua sponte dismissal March 8, 2012 (TXSD 4:12-cv-0592 Dkt 11).

42. Plaintiffs respectfully request this Honorable Court take judicial notice, pursuant to Federal Rule of Evidence 201, of Dkt 120 in TXSD case 4:12-cv-0592, which is a Rule 11 Motion for Sanctions, filed August 5, 2015, against Defendants Anita and Amy Brunsting and their counsel, for continued violation of the federal injunction issued April 9, 2013. (Dkt 26-2)

43. The Honorable Kenneth Hoyt commented at the injunction hearing that all that was necessary to resolve the controversy was to distribute the assets, and the injunction Judge Hoyt issued commands immediate specific performance regarding the deposit of "income".

44. Defendants Anita and Amy Brunsting, aided and abetted by their attorneys, continue to thumb their noses at the dignity and authority of a federal Court, while simultaneously seeking a priori relief from related claims before this Court.

45. RICO Complaint Claim 37 directly addresses Amy Brunsting's false affidavit (Dkt 26-18) regarding establishment of the personal asset trusts, and no more need be stated on that topic here.

46. Participation in a racketeering conspiracy can be both active and passive and both the active and passive participation of these two Defendants has been central. If one removes Anita Brunsting from the equation, none of this could have happened. Amy Brunsting's active and passive participation is equally incriminatory.

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<sup>2</sup> Docket entries 10 and 10-1, Case 4:12-cv-0592 filed TXSD 2/27/2012

## VI. CONCLUSION

47. All of the evidence necessary to establish Plaintiffs' case is contained in the public record. Defendants profess to have been party to those proceedings, have professed personal knowledge of a contrary set of facts and cannot possibly claim want of notice of the facts contained in the records and pleadings in those events.

48. These Defendants are more than apprised of the specific conduct amounting to their participation in the racketeering conspiracy, whether ignorant of the law or unaware of the acts of their agents.

49. Defendants Anita and Amy Brunsting, facilitated by the excellent assistance of Defendant Candace Freed, and aided and abetted by the other Defendants, have shown nothing but wanton and willful disrespect for all legal and moral obligations. Without their absolute refusal to act, the original lawsuit would not have been filed, or, in the alternative, would have been resolved and the familial litigants would have gone on with their lives. Instead, the sibling beneficiaries are mired in a continuing lawyer orchestrated soap opera, all about manipulating the judicial process in order to bust the Brunsting trusts for their own personal financial gain.

50. Defendants' Rule 12(b)(6) Motions are just another attempt to avoid accountability. The motions to dismiss should both be denied for the reasons stated and these Defendants should be held to answer under the law.

Wherefore, Plaintiffs respectfully move this Honorable Court for an Oder denying Anita and Amy Brunsting's Rule 12(b)(6) motions to dismiss.

Respectfully submitted October 6, 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 October 6, 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  
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	Defendants	§	

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**ORDER**

Upon due consideration, the Rule 12(b)(6) Motion to Dismiss filed by Defendants Anita and Amy Brunsting, docket entries 30 and 35, should be Denied.

It is SO ORDERED

\_\_\_\_\_  
Date

\_\_\_\_\_  
The Honorable Alfred H Bennet  
United Stated District Judge