

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’ Joint Answer to Defendant Albert Vacek, Jr. and Defendant Candace Kunz-Freed’s Motions to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(1), 12(b)(6) and 9(b)

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I. INTRODUCTION

1. This is a private interest as well as a public interest lawsuit as the subject matter relates to the legitimate administration of justice.

2. 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 (RICO) at 18 U.S.C. §§1961-1968 and the right of claims provided at 18 U.S.C. §1964(c).

3. On September 7, 2016, Defendants Albert Vacek, Jr. and Candace Kunz-Freed, collectively V&F, filed motions to dismiss under Federal Rule of Civil Procedure 12(b)(6), (Dkt 19), and Federal Rule of Civil Procedure 12(b)(1) (Dkt 20).

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

5. Plaintiffs hereby incorporate the Addendum in response to Defendants' claim of a want of specific allegations against Vacek & Freed and the other affirmative defenses.

II. STANDARDS OF REVIEW

Federal Rule 12(b)(6)

6. 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).

7. 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).

Federal Rule 12(b)(1)

8. Whether or not a court has subject matter jurisdiction over a party is a question of law reviewed de novo; thus, a decision on a motion to dismiss under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction is an issue of law

reviewed de novo. *Hunter Douglas, Inc. v. Harmonic Design, Inc.*, 153 F.3d 1318, 1325, 47 U.S.P.Q.2d 1769, 1772 (Fed. Cir. 1998).

9. On a Rule 12(b)(1) Facial Attack the court evaluates whether the plaintiff “has sufficiently alleged a basis of subject matter jurisdiction” in the complaint and employs standards similar to those governing Rule 12(b)(6) review. *Houston v. Marod Supermarkets, Inc.*, 733 F.3d 1323, 1335 (11th Cir. 2013).

10. In contrast to a facial attack on subject matter jurisdiction, a Rule 12(b)(1) factual attack “challenge[s] the existence of subject matter jurisdiction in fact, irrespective of the pleadings, and matters outside the pleadings such as testimony and affidavits are considered.” *Lawrence v. Dunbar*, 919 F.2d 1525, 1529 (11th Cir. 1990) (internal quotation marks omitted).

11. When the attack is factual “the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case.” *Id.* Therefore, “no presumptive truthfulness attaches to plaintiff’s allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims.” *Id.*

12. The Denial of a motion to dismiss pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction is not immediately appealable. *Data Gen. Corp. v. Cnty. of Durham*, 143 N.C. App. 97, 100, 545 S.E.2d 243, 245-46 (2001).

III. ISSUES PRESENTED

13. Plaintiffs have not adequately pled the necessary predicate acts.

14. Plaintiffs have failed to allege an unlawful act against V & F.

15. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b).

16. Plaintiffs have failed to plead reliance in connection with their fraud related claims.

17. Plaintiffs have failed to plead a cognizable RICO enterprise.
 - a. Plaintiffs' enterprise allegations are too vague and conclusory.
 - b. Plaintiffs' alleged enterprise lacks continuity.
 - c. Plaintiffs have failed to adequately plead a pattern of racketeering activity.
 - d. Plaintiffs have not adequately alleged a conspiracy claim under § 1962(d).
 - e. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.
 - f. Plaintiffs' claims should be dismissed because a violation of the Hobbs act does not create a private cause of action.
 - g. Plaintiffs' claims should be dismissed because V & F cannot be civilly liable for aiding and abetting.
 - h. Plaintiffs' claims should be dismissed because Plaintiffs have not adequately pled a violation of Plaintiffs' civil rights.
 - i. Plaintiffs have not adequately pled a claim under § 1983.
 - j. Plaintiffs have not met the Nexus/joint-action test.
 - k. Plaintiffs have not met the public function/state coercion or encouragement tests.
 - l. Plaintiffs have not adequately pled a claim under § 1985.
 - m. Tortious interference with inheritance rights is not a recognized cause of action in Texas.

IV. CONTEXTUAL SUMMARY

18. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston, Texas. Other beneficiaries of the trusts include Plaintiff

Curtis' siblings: Carl, Carole, Amy and Anita Brunsting, and also includes the remaindermen grandchildren and great grandchildren of Grantors Elmer and Nelva Brunsting et al, per stirpes.

19. Plaintiff Curtis is not an heir to any estate and has no inheritance expectancy, is not party to any estate litigation and does not believe there is any estate litigation as a matter of law.

20. This RICO lawsuit is a culmination of 4 and one-half years of multi- jurisdictional litigation that began in the federal court as a simple breach of fiduciary under diversity jurisdiction¹ seeking accounting and fiduciary disclosures, went to the Fifth Circuit² and back to the TXSD and then to Harris County Probate (where no one has heard of it since³), and the controversy is now back in an honorable federal Court under federal question jurisdiction.

21. In response to Rule 12(b)(6) motions to dismiss, on September 15, 2016, Plaintiffs filed the Rule 11(b) and Rule 60 Motions previously filed in Judge Hoyt's Court,⁴ as an Addendum of Memorandum (Dkt 26), supplementing the original RICO complaint in this case.

V. HISTORY OF THE CONTROVERSY

According to the record:

22. In 1996, Elmer Brunsting and his wife Nelva Brunsting created the original Brunsting Family Living Trust for their benefit, for the benefit of their five primary issue, as well as for the remaindermen grandchildren and great grandchildren. (Exhibit A1 – Art. I Sec. (c) attached E1-E61)

23. The Brunstings restated their Trust in 2005 (A2 attached E62-E148) and amended the restatement in 2007 (A3 attached E149-E151).

24. Elmer Brunsting was declared incompetent in June 2008 and passed on April 1, 2009.

¹ Curtis v Brunsting 4:12-cv-592 filed TXSD February 27, 2012

² Curtis v Brunsting 704 F.3d 406 (2013)

³ Dkt 25 Motion to Dismiss filed by Jill Young wondering "What is Curtis v Brunsting?"

⁴ Curtis v Brunsting 4:12-cv-592 filed TXSD February 27, 2012

25. At the death of Elmer Brunsting the inter vivos “family” trust became irrevocable and divided its assets among an irrevocable decedent’s trust and a revocable survivor’s trust.

26. Nelva Brunsting passed on November 11, 2011 and a number of illicit instruments surfaced that had been drafted after Elmer Brunsting became incompetent and after he passed, that claim to have effected changes that could not have been made under the law of the trust. (Dkt 26-14)

27. The acting trustees, Anita and Amy Brunsting, refused to answer, account or provide disclosures and after two unsuccessful demand letters⁵ advising Defendants Anita and Amy Brunsting to do the right thing, Plaintiff Curtis brought suit.

VI. HISTORY OF THE LITIGATION

28. Plaintiff Curtis filed a Petition in the United States District Court for the Southern District of Texas, Houston Division, under Diversity Jurisdiction on February 27, 2012, claiming breach of fiduciary, seeking disclosures and a full, true, complete accounting⁶ and other lawful and equitable relief.

29. On March 6, 2012, Vacek & Freed staff attorney Defendant Bernard Mathews, appearing under the letterhead “Green and Mathews” filed a motion for an emergency order, accompanied by a false affidavit signed and verified by Defendant Amy Brunsting (A4 attached E152-E155), in which Mathews implied the existence of a probate exception to Plaintiff’s claims, knowing full well he had filed a nearly identical claim on behalf of plaintiff Reginald Parr, not in the probate court but in the Harris County District Court, only 3 days earlier.⁷

⁵ Exhibits 17 and 20 in the original federal complaint at pages 67-68, and 71-79 respectively.

⁶ Case 4:12-cv-592 Candace Louise Curtis v Anita and Amy Brunsting filed TXSD 2/27/2012

⁷ Parr v Dunegan 2012 13022 (190th Judicial District)

30. On March 8, 2012, in reliance upon the material misrepresentations contained in Defendants' Motion and Affidavit, Judge Hoyt dismissed Plaintiff Curtis' Pro se Petition sua sponte, under the probate exception to federal diversity jurisdiction. Plaintiff Curtis filed a timely notice of appeal and was forced to endure the delay and expense of that effort.

31. Then on March 9, 2012, Bobbie Bayless filed a petition for deposition before suit on behalf of Carl Brunsting in Harris County District Court.⁸

32. *On January 9, 2013*, the Fifth Circuit Court of Appeals, in a unanimous decision, reversed and remanded back to the Southern District of Texas clearly verifying that the Brunsting trust is not the estate of Nelva Brunsting.⁹

33. Plaintiff Curtis immediately filed for a protective order.

34. *On January 29, 2013*, Carl Brunsting, as Executor of the estate of Nelva Brunsting, filed suit against trust attorney Candace Kunz-Freed and Vacek & Freed P.L.L.C. in the Harris County District Court raising claims exclusively related to the Brunsting trusts then in the custody of the federal court.¹⁰

35. On April 9, 2013, in response to Plaintiff Curtis' application for a protective order, the Honorable Kenneth Hoyt issued an Order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's approval and commanding specific performance. (A5 attached E156-E160)

36. Also on April 9, 2013 Bobbie Bayless filed claims against Amy, Anita and Carole Brunsting in Harris County Probate Court No. 4, in the name of Carl Brunsting individually (412249-401) and as executor of the estate of Nelva Brunsting (412249) and after trailing and

⁸ 201214538 - (Court 080)

⁹ Curtis v Brunsting 704 F.3d 406

¹⁰ No. 2013-05455; Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164th Judicial District Court of Harris County, TX

dogging Plaintiff Curtis' litigation always one step behind, Bayless named federal Plaintiff Curtis a "Nominal Defendant" while alleging no claims. (A6 attached E161-E180)

37. Due to a change of circumstances in late 2013, Plaintiff Curtis retained Houston attorney Jason Ostrom to assist with her federal lawsuit.

38. Upon appearing in the matter Mr. Ostrom conceived of an arrangement by which Defendants agreed to modification of Plaintiff's Petition to include her brother Carl Henry Brunsting as an involuntary plaintiff, thus polluting diversity and facilitating a remand to Harris County Probate Court on May 22, 2014.(A7 attached E181-E185)

39. In exchange, Defendants agreed to abide by the federal injunction and all orders of the federal Court and on that basis the Court approved the amended complaint and entered an Order for Remand to the Harris County Probate Court. (A8 attached E186-E187)

40. The Motion granting Plaintiff Curtis' remand was filed in the estate of Nelva Brunsting, No. 412249 on June 6, 2014, and the Harris County Clerk assigned Curtis v Brunsting auxiliary number 412249-402.

41. The Defendants ask the Court to believe Plaintiffs are responsible for a myriad of lawsuits, but Probate No. 4 has three cases on record and Harris County District Court has two more. Only one of these suits was filed by Plaintiff Curtis and it was filed in the federal court on February 27, 2012. The state court cases are:

- a. No. 201214538 – 80th Judicial District Court of Harris County Texas, Carl Henry Brunsting and the estate of Nelva Brunsting Petition to take depositions before suit.
- b. No. 412249 Carl Henry Brunsting executor of the estate of Nelva Brunsting, vs Amy, Anita and Carole Brunsting.
- c. No. 412249-401 Carl Henry Brunsting Individually vs Amy, Anita and Carole Brunsting, and

- d. No. 412249-402 Candace Curtis v Anita and Amy Brunsting, filed TXSD February 27, 2012, remanded from the federal court to the state probate court May 9, 2014.
- e. No. 2013-05455 - Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164th Judicial District Court of Harris County Texas. (A9 attached E188-E207)

VII. THE HEINOUS EXTORTION INSTRUMENT

42. An instrument called “Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement” (QBD) allegedly signed by Nelva Brunsting and notarized by Candace Kunz-Freed on August 25, 2010, was propped up as an amendment to the irrevocable trust agreement after Elmer’s death, when the trust agreement could only be amended or revoked by a court of competent jurisdiction. (Exhibit A2 @ E69) (See also Dkt26-4 QBD signature page anomalies)

43. The record shows the QBD was drafted and notarized by Defendant Candace Freed. This instrument has been the object of numerous unresolved motions for summary and declaratory judgment in the state probate court (Dkt 26-5, 26-11, 26-14) and those motions remain unresolved because the probate court refused to rule on any substantive issues. There would be a logical reason for that, albeit not an ethical one.

44. Plaintiffs hereby incorporate the Addendum of Memorandum filed September 15, 2016 (Docket entry 26) as if fully restated and would ask the Court to review (Dkt 26-5 E20-E28), (Dkt 26-8 E343-E393), (Dkt 26-11 E406-E452), (Dkt 26-14 E497-E1187), and (Dkt 26-19 E1252-E1253) as follows:

- a. Dkt 26-5 is Defendant(s) Anita and Amy Brunsting’s joint no evidence motion for partial summary judgment, filed in the state probate court June 26, 2015, claiming the Plaintiffs could produce no evidence of the invalidity of the extortion

instrument also known as the August 25, 2010 QBD. That motion was scheduled to be heard on the last day set for summary judgment motions, August 3, 2015 but has never been heard. (Dkt 26-19)

- b. Dkt 26-11 (E406-E452) is Plaintiff Curtis' answer to Exhibit 26-5, along with motion and demand to produce the QBD and qualify it as evidence so one could discuss its efficacy or the lack thereof. Those motions have never been heard.
 - c. Dkt 26-7 (E289-E342) is the federal Injunction Hearing Transcript
 - d. Dkt 26-8 is Carl Brunsting's Motion for Protective Order (E343-E393) regarding wiretap recordings.
 - e. Dkt 26-14 (E497-E1187) is an unresolved motion for partial summary and declaratory judgment that expressly seeks to have the illicit instruments, drafted by Candace Freed, at the request of Anita Brunsting, including the heinous extortion instrument, declared invalid. The probate court has refused to set these motions for hearing.
 - f. Dkt 26-16 (E1189-E1242) March 9, 2016 ambush hearing transcript.
 - g. Dkt 26-19, the agreed upon Docket Control Order.
45. As the Rule 60 Motion states (Dkt 26 pgs 3-31) Defendant(s)' Amy and Anita Brunstings' joint No-Evidence motion was removed from the calendar along with Bayless' "Carl Brunsting" Motion for Partial Summary Judgement and Curtis' Motion and demand to produce evidence, allegedly to hear an emergency motion for protective order (Dkt 26-8 E343-E393 and transcript of hearing Dkt 26-12 E453-E494) regarding wiretap recordings disseminated by Anita Brunsting's counsel, Defendant Bradley Featherston, via certified mail on or about July 1, 2015.

46. All of the motions regarding the legitimacy of instruments and actions were kicked to the curb along with the Docket Control Order (Dkt 26-19 E1252-E1253) and the scheduled trial date, while Plaintiff Curtis was on an airplane home from the July 22, 2015 hearing appointing Temporary Administrator Gregory Lester. (Dkt 25-A). There is no order in the probate record that would explain any changes to the docket scheduling Order.

47. Plaintiff Curtis then filed her motion for partial summary and declaratory judgment (Dkt 26-14) and asked to have dispositive motion hearings placed back on the Calendar (Dkt 26-15 E1188) asking, as well, to have the case of Anita and Amy Brunsting's co-conspirator Defendant Candace Freed, transferred from the Harris County District Court and consolidated in the probate Court with the rest of the co-conspirators.

VIII. DEFENDANTS' RULE 12(B)(6) AND 9(B) ARGUMENTS

48. Defendants Vacek and Freed (V&F), in support of their Rule 12(b)(6) Motion to Dismiss (Dkt 19) offer the detailed background statement from their accompanying Rule 12(b)(1) Motion (Dkt 20) claiming facts inapposite to those of the complaint and whereas an alternative set of facts may be pled and considered under a Rule 12(b)(1) factual attack, no such authority exists with a Rule 12(b)(6) challenge.

49. Defendants seek to incorporate their alternate claim of facts presented under Rule 12(b)(1) but do not support those claims by affidavit, exhibits or specific reference to any evidentiary hearings in which such matters were judicially determined, because there have not been any evidentiary hearings or substantive issues decided since the injunction hearing, April 9, 2013, in the federal Court (Dkt 26-7 E289-E342).

50. After 2 and one-half years in the Probate Court, the only place in the record of any related proceeding where one can actually see findings of fact and conclusions of law is in the federal injunction issued by the Honorable District Judge Kenneth Hoyt April 9, 2013.

51. In Section A of Defendants' Arguments and Authorities V&F claim Plaintiffs have not adequately pled a violation of the RICO Act and in support they cite to the elements necessary to plead 18 U.S.C. 1962(b). Plaintiffs agree they have not pled a violation of 1962(b), as Plaintiffs plead 1962(c) claims, which are substantially different from the 1962(b) claims filed against several judges of the Harris County Probate Court in the Sheshtawy, Peterson, Rizk RICO suit filed March 18, 2016¹¹. The motions to dismiss in that case were taken under advisement by that Court September 12, 2016, and this case is related by continuity.

52. Defendants use RICO as a blanket general term when the RICO statutes are each very narrow and prohibit four separate and specific kinds of activity. The elements of 18 U.S.C. §1962(a), §1962(b) and §1962(c) are distinguishable, and elements of one cannot be merged with those of another under the generalized term RICO.

53. Ultimately Defendants insist Plaintiffs are pleading claims not contained within the four corners of the RICO complaint, such as malpractice, or that Plaintiffs failed to meet the evidentiary particulars that concatenate each Defendant's conduct to a pattern of racketeering activity.

54. Defendants ask the court to view the complaint in a vacuum, while simultaneously asking the court to assume a contrary view of the facts by proxy under their unsupported companion Rule 12(b)(1) factual challenge (Dkt 20).

¹¹ Case 4:16-cv-00733 filed TXSD 3/18/2016

IX. DEFENDANTS' RULE 12(B)(1) ARGUMENTS

55. Defendants' first allegory is that the matter before the court is merely the latest lawsuit filed in some "Brunsting Sibling Saga" and "Plaintiff Candace Louise Curtis' second attempt to have a federal judge consider these issues".

56. Defendants fail to mention that the first federal Court issued an injunction in response to Plaintiff Curtis' application, finding the four necessary criteria to have been met, including a likelihood of prevailing on the merits. That hearing was held before the Honorable Kenneth Hoyt, April 9, 2013, and represents the only evidentiary hearing amongst a plethora of state court lawsuits filed by Bobbie Bayless in name of Carl Brunsting and the estate of Nelva Brunsting.

57. When Plaintiffs filed this RICO suit there was no docket control order in any state court, no trial date, the probate Court refused to set hearings on the pending dispositive motions, and Plaintiff Curtis was, and is, continually being threatened with deprivation of property, under the illicit QBD instrument drafted by Defendant Candace Kunz-Freed, that Defendants Amy and Anita Brunsting perpetually refuse to produce and qualify as evidence. (Dkt 26-7)

58. Defendants V&F at page 2 plead that Curtis' first federal lawsuit alleged similar claims, but fail to mention that nothing substantive has been resolved in the original suit 4:12-cv-592, and that those unresolved claims are subsumed within the RICO matter that is currently before this Court, because the state court has refused Plaintiff Curtis access to the court and due process of law, refusing to exercise jurisdiction while pretending they had it to begin with.

59. Plaintiff will admit that both suits arise from a common set of facts and that the facts necessary for the pending RICO complaint were developed over the course of the Defendants' perpetual efforts to avoid evidentiary hearings and especially any situation where they would

have to actually produce the archetype of the QBD instrument, drafted and notarized by Candace Freed, and qualify it as evidence.

60. Defendants assert at item 15 that:

On July 24, 2015 Judge Butts appointed Greg Lester ("Lester"), as a temporary administrator, to determine the merits of the claims asserted in the various lawsuits.

61. On January 20, 2016 Lester provided a report, (Dkt 26-9) wherein he concluded:

- *All of the legal actions taken by Nelva were within her authority;*
- *Any damages for unequal distribution can be resolved by equalizing the distributions to all siblings; and*
- *Recommended that the Probate Court should uphold the "No Contest" Clause*

62. What the Lester Report actually says is “All of the legal actions taken by Nelva were within her authority under the broad language of the restatement.” Mr. Lester fails to list the actions allegedly taken by Nelva Brunsting which he concludes to have been “legal actions” nor does he cite to any specific language in any trust instrument in support of his vague assertions, while ignoring the specific language of the trust and the existing record.

63. Defendants V&F also cite that Mr. Lester “Recommended that the Probate Court should uphold the "No Contest" Clause.” Plaintiffs are certain V&F and Lester each refer to the “Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement” (the alleged 8/25/2010 QBD a.k.a. the extortion instrument).

64. Rather than argue over facts not in evidence, Plaintiffs will simply quote the closing paragraph of Plaintiffs’ Addendum of Memorandum at line 120¹². (Dkt 26)

¹² Case 4:12-cv-00592 Document 115 Filed in TXSD on 08/03/16 Page 1 of 27 and as an Addendum to the Complaint filed in 4:16-cv-1969 in TXSD 7/05/2016

120. If there is such a magical document as this 8/25/2010 QBD, that trumps federal injunctions and the Orders of a federal Judge, renders remand agreements nugatory, removes fiduciary obligations, forecloses beneficial interests, taints the blood of innocent remaindermen, amends what can only be amended by a court of competent jurisdiction and revokes what can only be revoked by a court of competent jurisdiction, the Defendants and their attorneys should be brought before an honorable Court where they will actually be compelled to produce the supernatural thing and qualify it as evidence.

65. If any Defendant could have produced the instrument and qualified it as evidence, they would have done so long ago. Instead, they pull their joint no evidence motion from calendar on the very last day for summary judgement hearings and negate the agreed upon docket control order, and then show up March 9, 2016 acting as if the thing had been held to be valid. (Dkt 26-16)

66. Defendants argue that similar claims are currently pending in a malpractice suit in state court, but no state court ever had the capacity to assume in rem jurisdiction over the Brunsting trust res in the custody of a federal court.

67. Whether or not the facts are common, professional carelessness is not an element of a racketeering lawsuit and Defendants cling to their claim of professional negligence because it is the only thing that gives them any hope of hiding their enterprise participation behind the Doctrine of Privity.

X. STANDING

68. Defendants' Motion seeks to down-play participation in a lawyer-run wealth redistribution enterprise, asking the Court to believe the matter at issue is no more than a family dispute, as if the betrayal of fiduciary obligations and the violation of property laws was a mere soap opera. Nothing could be further removed from reality. Every Judge in the Harris County

Probate Court is being sued in the Southern District of Texas, under either racketeering or civil rights, or both, and that does not appear to be a coincidence.

69. One thing Plaintiffs and Defendants appear to agree on is that Munson is not a party to any of the prior lawsuits nor is he a beneficiary of the Brunsting Family of Trusts, and that: “It is inconceivable that he could be injured as a result of V&F’s drafting of the estate planning documents.” Unfortunately Defendants seek to discolor the facts while omitting the obvious.

70. Plaintiffs filed as Private Attorneys General under the Racketeer Influenced Corrupt Organization statutes, individually and on behalf of the public interest.

71. A recent Carnegie report (Exhibit A10 attached E208-E245) cites judicial corruption as a major factor affecting domestic security and international trade, because companies are reluctant to invest in foreign trade or set up foreign offices in nations with low human rights ratings because of the inability to depend on the protections of law.

72. Because Plaintiff Munson’s standing has been specifically challenged, the following information is in order. Munson is also a victim of public corruption in his local environment and believes public corruption conspiracies are infectious social diseases, and that the single greatest threat to the security of a free state comes from a corrupt judiciary as the judiciary is the final vestige for seeking remedy within the established system.

73. There are three variations on the private attorney general and those are the substitute, the simulated and the supplemental. A supplemental private attorney general is generally a private attorney who acts to supplement the public prosecutorial function, which is what Congress envisioned in fashioning 18 U.S.C. 1964(c) after the 1914 Clayton Act. The RICO statutes are an example of the Private Attorney General as a “Supplemental Law Enforcer”, and the only place

in our law where a private citizen can be a private attorney general without also being an attorney.

74. In claiming Munson lacks standing, Defendants' motion claims that he has suffered no tangible injury to his business or property but, unlike Defendants, Plaintiff Munson does not so easily put a dollar and cents price tag on public justice nor is required to do so. Conspiracies involving public corruption of this type, adversely affects not only the public interest generally but also individual claimants and the efficacy of the work product of honest legal professionals.

75. The People are offended by the mere notion that the public suffers no tangible injury as a direct and proximate result of public corruption and do not accept the idea that public offenses do not injure the morals of the society or that members of the public have no standing to prosecute public corruption. A tangible injury need not be significant for standing purposes and every member of the body politic has a property interest in honest government. Any conduct that injures trade is also injurious to the public trust. Congress created the private right of remedy at 18 U.S.C. 1964(c) specifically for the purposes stated herein.

76. All of these Defendants are converting our court rooms, institutions, and resources intended for the administration of public justice, into a place of conducting illicit private business for personal gain, thus diminishing and often eliminating the availability of those resources for the honest administration of public justice, while also injuring individual members of the public as part of their enterprise operations.

77. *Curtis v Brunsting* is not the estate of Nelva Brunsting,¹³ a beneficiary of a trust is not an heir and a racketeering conspiracy is not malpractice.

¹³ *Curtis v Brunsting* 704 F.3d 406

XI. CONCLUSION

78. Curtis v Brunsting is not an isolated specific instance but merely one example of a variation on a shakedown practiced over and over again against elder, disadvantaged and familial victims.

79. Each of these Defendants will claim that Plaintiffs failed to plead a particular act that implicates them in a conspiracy, but Candace Kunz-Freed was the architect of this entire fiasco (Dkt 26-11 and 26-14) and the very real fact here is that Defendant Candace Kunz-Freed is accused of using the Vacek Design in drafting and notarizing the illicit documents that provided Anita Brunsting with the appearance of authority used to commit numerous specifically alleged predicate acts.

80. Another very real fact is that without those falsified and illicitly drafted documents, none of these other Defendants would have had the opportunity to perform their part in the color of litigation racketeering conspiracy.

81. It would be improper for the Court to dismiss a Petition unless the claimant can prove no set of facts that would entitle it to relief. That is clearly not the case here. Plaintiff Curtis' original complaint made a prima facia claim by affidavit and 46 attached exhibits, (4:12-cv-592 filed TXSD 2/27/2010), and each has maintained its veracity throughout. The fiduciaries in that earlier action, Anita and Amy Brunsting, have yet to meet their burden of bringing forth evidence.

82. The notion that Vacek & Freed can betray Privity, enter into and cultivate conflicting interests undermining the efficacy of the products and services sold to Elmer and Nelva Brunsting, and still cling to the protection of the doctrine of privacy, is an interesting concept that begs an audience.

Wherefore Plaintiffs move this Honorable Court for an Order denying the Motions to Dismiss filed by Defendants Albert Vacek, Jr. and Candace Kunz-Freed, August 7, 2016. (Dkt 19 and 20).

Respectfully submitted,

/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 27th day of September, 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
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	
v	§	Civil Action No. 4:16-cv-01969
	§	
Kunz-Freed, et al	§	
Defendants	§	

ORDER

Upon due consideration, Defendants Rule 12(b)(1) and 12(b)(6) Motions to Dismiss filed on August 7, 2016 by Defendants Albert Vacek Jr. & Candace Kunz-Freed in the above styled cause (Dkt #19 & 20) should be Denied.

It is SO ORDERED

Date

The Honorable Alfred H Bennet
United States District Judge

Attached Exhibits

A1 - Original 1996 Trust	E1-E61
A2 - 2005 Restatement	E62-E148
A3 - 2007 Amendment	E149-E151
A4 – Amy March 6, 2012 Affidavit	E152-E155
A5 - 2013-04-09 Preliminary Federal Injunction	E156-E160
A6 - PBT-2013-115617 Bayless Probate Petition filed 4/9/2013	E161-E180
A7 - 2014-05-09 Ostrom Motion for Remand	E181-E185
A8 - 2014-05-22 PBT-2014-170812 Federal Order Granting Remand	E186-E187
A9 – Bayless District Court Petition filed 1/29/2013	E188-E207
A10 - Carnegie Corruption and Security Report	E208-E245