

Case No. 20-20566

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

CANDACE LOUISE CURTIS,
Plaintiff – Appellant

V.

ANITA KAY BRUNSTING and AMY RUTH BRUNSTING
Defendants – Appellees

On appeal from the United States District Court
for the Southern District of Texas, Houston Division

APPELLEE’S SUPPLEMENTAL RECORD EXCERPTS

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TABLE OF CONTENTS

Exhibit 1	02/27/2012 Plaintiff's Original Petition, Complaint & Application for Ex Parte Temporary Restraining Order, Asset Freeze, Temporary & Permanent Injunction. (Without Exhibits).
Exhibit 2	03/08/2012 Order of Dismissal (<i>Sua Sponte</i>).
Exhibit 3	02/05/2013 Fifth Circuit Court of Appeals Opinion Reversing the District Court Determination of the Probate Exception.
Exhibit 4	05/01/2013 Order Striking Plaintiff's First Amended Complaint.
Exhibit 5	05/01/2013 Plaintiff's Motion for Joinder of Parties.
Exhibit 6	05/01/2013 Plaintiff's Verified Affidavit in Support of Amended Complaint & in Support of Application for Joinder.
Exhibit 7	05/22/2013 Order Denying Motion for Joinder & to Amend Complaint.
Exhibit 8	02/28/2014 Order Following Telephone Scheduling Conference that Amendment of the Complaint may Destroy Diversity Jurisdiction.
Exhibit 9	05/09/2014 Unopposed Plaintiff's Motion for Leave to File First Amended Petition.
Exhibit 10	05/09/2014 Plaintiff's First Amended Complaint & Jury Demand.
Exhibit 11	05/09/2014 Unopposed Plaintiff's Motion to Remand.
Exhibit 12	05/15/2014 Order Granting Leave to File First Amended Petition.
Exhibit 13	05/15/2014 Order Granting Motion to Remand to Harris County Probate Court.
Exhibit 14	08/03/2016 Plaintiff's Motion for Relief from Order Pursuant to Fed. R. Civ. P. 60(b)(6) & 60(d)(3).



Exhibit 15	05/08/2019 Order Following Telephone Scheduling Conference re Court No Longer Has Jurisdiction.
Exhibit 16	07/17/2020 Plaintiff's Motion for Relief from Judgment Pursuant to Fed. R. Civ. P. 60(b). 
Exhibit 17	06/03/2014 Probate Court Order Accepting Transfer (Exhibit to the July 2020 Rule 60(b) Motion.
Exhibit 18	08/28/2020 Plaintiff's Motion to Reopen the Case.
Exhibit 19	09/10/2020 Order Following Telephone Conference Reopening Case for Limited Purpose to Consider the Rule 60(b) Motion.
Exhibit 20	09/23/2020 Order Denying the July 2020 Rule 60(b) Motion.
Exhibit 21	10/23/2020 Plaintiff's Notice of Appeal.
Exhibit 22	Transcript of the September 10, 2020 Hearing.

Exhibit 1

Exhibit 1

United States Court
Southern District of Texas
FILED

FEB 27 2012

David J. Bradley, Clerk of Court

United States District Court
for the
Southern District of Texas

CANDACE LOUISE CURTIS,
Plaintiff,

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VS.

Civil Action No. _____

ANITA KAY BRUNSTING, and
AMY RUTH BRUNSTING
And Does 1-100
Defendants

Jury Trial Demanded

PLAINTIFF'S ORIGINAL PETITION, COMPLAINT AND APPLICATION FOR EX
PARTE TEMPORARY RESTRAINING ORDER, ASSET FREEZE, TEMPORARY
AND PERMANENT INJUNCTION.

I.
Parties

1. Plaintiff, Candace Louise Curtis, is a citizen of the State of California.
Defendant Anita Kay Brunsting, is a citizen of the State of Texas and
Defendant Amy Ruth Brunsting a citizen of the State of Texas.

II.
Jurisdiction and Venue

2. This Court has federal subject matter and diversity jurisdiction of the
state law claims alleged herein pursuant to 28 USC §1332 (a) (1) - 28 USC
§1332 (b) and 28 USC §1332 (C) (2) in that this action is between parties who

are citizens of different states and the amount in controversy exceeds the sum or value of \$75,000, exclusive of interests and costs.

3. The Res in this matter is the Brunsting Family Living Trust (the Trust). Known real property of the Trust is located in Texas and Iowa. No known actions have been previously filed with any court involving the Trust or the trust Res and neither the Will nor the Pour Over Will of either Settlor has been filed with any court for probate.

4. Defendant Anita Brunsting resides in the county of Victoria and Defendant Amy Brunsting resides in the county of Comal. The United States District Court for the Southern District of Texas is the proper venue under 28 USC §1391(a)(1).

III.

Nature of Action

5. This is a diversity action alleging breach of fiduciary duty, extrinsic and constructive fraud and intentional infliction of emotional distress. The nature of action in breach is focused upon failures to disclose and failures to give notice. Plaintiff reserves the right to amend this complaint to add additional causes at any time prior to judgment.

IV.

CAUSES OF ACTION COUNT ONE

Breach of Fiduciary Obligation

Breach of Trust

It is settled law that no more than affidavits are necessary to make a prima facie case, U.S. V. Kis, 658 F. 2d 536 (CA7, 1981 Cert den, 50 U.S.L.W. 2169 (1982))

6. Attached Declaration of Candace Louise Curtis is incorporated herein by reference as if fully restated.

7. Plaintiff alleges that Defendant(s) Anita Brunsting and Amy Brunsting have accepted the appointment and are acting jointly as co-trustees for the Brunsting Family Living Trust (the Trust) of which I am a beneficiary and named successor beneficiary.

8. Defendant(s) Anita Brunsting and Amy Brunsting acting as co-trustees for the Trust owe a fiduciary duty to plaintiff, under the common law and under the property statutes of Texas, to provide all beneficiaries and successor beneficiaries of the Trust with information concerning trust administration, copies of trust documents, and semi-annual accounting. As co-trustees for the Trust both defendants owe a fiduciary duty to provide notice to all beneficiaries prior to any changes to the trust that would affect their beneficial interest.

9. Defendant(s) Anita Brunsting and Amy Brunsting acting individually and severally as co-trustees for the Trust have exercised all of the powers of trustees while refusing or otherwise failing to meet their first obligation under that power, to provide full, accurate, complete and timely accounting to the beneficiaries, to provide copies of material documents or other information relating to administration of the Trust, and to provide notice to all beneficiaries and successor beneficiaries of proposed changes to the trust that may tend to affect their beneficial interests.

10. Defendant(s) individually and severally damaged Plaintiff through their breach of fiduciary obligations. Upon information and belief, Defendant(s)

individually and severally benefited through their breach of fiduciary obligations to Plaintiff.

11. Defendant(s) Anita Brunsting and Amy Brunsting are liable for all of the damages, both general and special, caused by the breach of fiduciary duties owed to Plaintiff by Defendants.

12. Defendant(s) Anita Brunsting and Amy Brunsting are liable for punitive damages arising from wrongful acts constituting breach of fiduciary duties insofar as conduct in furtherance of wrongful acts as set forth above amounted to egregious and intentional and/or reckless conduct carried out by Defendant(s) as fiduciaries against Plaintiff, whom they intentionally kept in an inferior position of knowledge.

COUNT TWO

Extrinsic Fraud

13. Attached Declaration of Candace Louise Curtis and all previous allegations are incorporated herein by reference as if fully re-alleged and restated.

14. Defendant(s) Anita Brunsting and Amy Brunsting acting individually and severally as co-trustees for the Trust have refused or otherwise failed to meet their obligations to provide full, accurate, complete and timely accounting or to provide copies of material documents or notification of material facts relating to trust administration, the concealing of which constitutes extrinsic fraud.

15. Defendant(s) individually and severally damaged Plaintiff through their breach of fiduciary obligations. Upon information and belief, Defendant(s) individually and severally benefited through their breach of fiduciary obligations.

16. Defendant(s) Anita Brunsting and Amy Brunsting are liable for all of the damages caused by the breach of fiduciary duties owed to Plaintiffs through their fraudulent concealment.

17. Defendant(s) Anita Brunsting and Amy Brunsting are liable for punitive damages arising from wrongful acts constituting breach of fiduciary duties insofar as conduct in furtherance of wrongful acts as set forth above amounted to egregious and intentional and/or reckless conduct carried out by Defendant(s) as fiduciaries against Plaintiff, whom they intentionally kept in an inferior position of knowledge.

COUNT THREE

Constructive Fraud

18. Attached Declaration of Candace Louise Curtis and all previous allegations are incorporated herein by reference as if fully re-alleged and restated.

19. Plaintiff alleges the existence of conflicts of interest in that both Defendant(s), acting individually and severally as co-trustees for the Trust, were at all times complained of herein, beneficiaries or successor beneficiaries of the Trust.

20. Plaintiff further alleges the existence of conflicts of interest in that Anita Brunsting, while being a successor beneficiary to the Trust, held a general Power of Attorney for Settlor Nelva Brunsting, an original trustee who at some point resigned making Defendant Anita Brunsting her successor trustee.

21. Defendant Anita Brunsting acting as a successor trustee for the Trust has transgressed the limitation placed upon her authority by the Trust and by the rule of law and has refused or otherwise failed to meet her obligations to provide full, accurate, complete and timely accounting or to provide copies of material documents and facts relating to trust administration, the concealing of which, coupled with multiple conflicts of interest constitute manifest acts of constructive fraud.

22. Defendant(s) individually and severally damaged Plaintiff through their breach of fiduciary obligations. Upon information and belief, Defendant(s) individually and severally benefited through their breach of fiduciary obligations.

23. Defendant(s) Anita Brunsting and Amy Brunsting are liable for all of the damages caused by the breach of fiduciary duties owed to Plaintiff through their fraudulent concealment.

24. Defendant(s) Anita Brunsting and Amy Brunsting are liable for punitive damages arising from wrongful acts constituting breach of fiduciary duties insofar as conduct in furtherance of wrongful acts as set forth above amounted to egregious and intentional and/or reckless conduct carried out by Defendant(s) as fiduciaries against Plaintiff, whom they intentionally kept in an inferior position of knowledge.

COUNT FOUR

Intentional Infliction of Emotional Distress

25. Attached Declaration of Candace Louise Curtis and all previous allegations are incorporated herein by reference as if fully re-alleged and restated.

26. Defendant(s) Anita Brunsting and Amy Brunsting acting individually and severally as co-trustees for the Trust have refused or otherwise failed to meet their obligations to provide full, accurate, complete and timely accounting or to provide copies of material documents and facts relating to trust administration.

27. Since the death of Nelva Brunsting, plaintiff has attempted verbally, via email, and by certified mail to obtain information from Defendant(s) regarding the Trust and the Trust's administration. Defendant co-trustee Amy Brunsting has remained totally silent and her part in the perceived fraud may be limited. Defendant co-trustee Anita Brunsting has been disingenuous and manipulative while avoiding answer and disseminating limited numbers of documents in piecemeal fashion. Defendant co-trustee Anita Brunsting is the principal defendant in this action.

28. As detailed in the attached Declaration of Candace Louise Curtis, Defendant(s) acted intentionally or recklessly and the conduct was both extreme and outrageous. The acts of Defendant(s) caused and continue to cause Plaintiff to suffer severe emotional distress.

29. Defendant(s) Anita Brunsting and Amy Brunsting are liable to plaintiff for damages caused by their reprehensible and egregious acts of intentionally inflicting emotional distress and suffering upon Plaintiff.

V.

MEMORANDUM OF POINTS AND AUTHORITIES

For present purposes little more is needed than Restatement of the Law of Trusts 2nd

DISCLOSURE BY A FIDUCIARY/TRUSTEE OUTSIDE FORMAL DISCOVERY: NON-TRADITIONAL RULES AND ALTERNATIVE METHODS

1. INTRODUCTION

This paper contains an analysis of a trustee's duty to disclose information to trust beneficiaries. While it is outside the scope of this paper, many of these duties apply to other fiduciaries such as executors and administrators. The duty of a trustee to disclose information is an **equitable duty**. Enforcement of this duty should therefore be through an **equitable remedy** rather than by the formal legal remedies that are set forth in the Texas Rules of Civil Procedure and apply to legal causes of action. Many Texas courts, however, have trouble recognizing this distinction.

2. AN OVERVIEW OF THE TRUSTEE'S DUTY TO DISCLOSE

The Commentators

American Law Institute, *Restatement Of The Law, Trusts 2d*, §173 states that:

"The trustee is under a duty to the beneficiary to give him upon his request at reasonable times complete and accurate information as to the nature and amount of the trust property, and to permit him, or a person duly authorized by him, to inspect the subject matter of the trust and the accounts and vouchers and other documents relating to the trust."

William E. Fratcher, *Scott On Trusts*, §173 (Fourth Edition) states that:

"The trustee is under a duty to the beneficiaries to give them on their request at reasonable times complete and accurate information as to the administration of the trust. The beneficiaries are entitled to know what the trust property is and how the trustee has dealt with it. They are entitled to examine the trust property and the accounts and vouchers and other documents relating to the trust and its administration. Where a trust is created for several beneficiaries, each of them is entitled to information as to the trust. Where the trust is created in favor of successive beneficiaries, a beneficiary who has a future interest under the trust, as well as a beneficiary who is presently entitled to receive income, is entitled to such information, whether his interest is vested or contingent."

George Gleason Bogert and George Taylor Bogert,

The Law of Trusts and Trustees, § 961(Revised Second Edition) explain this duty in the following manner:

“The beneficiary is the equitable owner of the trust property, in whole or in part. The trustee is the mere representative whose function is to attend to the safety of the trust property and to obtain its avails for the beneficiary in the manner provided by the trust instrument. That the settlor has created a trust and thus required that the beneficiary enjoy his property interest indirectly does not imply that the beneficiary is to be kept in ignorance of the trust, the nature of the trust property and the details of its administration. **If the beneficiary is to be able to hold the trustee to proper standards of care and honesty and to obtain the benefits to which the trust instrument and doctrines or equity entitle him, he must know what the trust property consists and how it is being managed.** (emphasis supplied)

From these considerations it follows that the trustee has the duty to inform the beneficiary of important matters concerning the trust and that the beneficiary is entitled to demand of the trustee all information about the trust and its execution for which he has any reasonable use. It further follows that the trustee is under a duty to notify the beneficiary of the existence of the trust so that he may exercise his rights to secure information about trust matters and to compel an accounting from the trustee. **For the reason that only the beneficiary has the right and power to enforce the trust and to require the trustee to carry out the trust for the sole benefit of the beneficiary, the trustee’s denial of the beneficiary’s right to information consists of a breach of trust.** (emphasis supplied)

If the beneficiary asks for relevant information about the terms of the trust, its present status, past acts of management, the intent of the trustee as to future administration, or other incidents of the administration of the trust, and these requests are made at a reasonable time and place and not merely vexatiously, it is the duty of the trustee to give the beneficiary the information which he is asked. Furthermore, the trustee must permit the beneficiary to examine the account books of the trust, trust documents and papers, and trust property, when a demand is made at a reasonable time and place and such inspection would be of benefit to the beneficiary.”

2. The Cases

In examining Texas cases involving this duty it is important to distinguish between cases that relate to transactions where a trustee has some personal dealing with a beneficiary (which impose very harsh disclosure requirements) from those cases that relate to disclosure in general. The following cases relate to the general disclosure rules.

In *Shannon v. Frost National Bank*, 533 S.W.2d 389 (Tex. App. - San Antonio, 1975, writ ref’d n.r.e), the court stated that: “However, it is well settled that a trustee owes a duty to give to the beneficiary upon request complete and accurate information as to the administration of the trust. 2 Scott, Trusts §173 (3rd. ed. 1967).”

In *Montgomery v. Kennedy*, 669 S.W.2d 309 (Tex. 1984) the Texas Supreme Court held that: "As trustees of a trust and executors of an estate with Virginia Lou as a beneficiary, Jack Jr. and his mother owed Virginia Lou a fiduciary duty of full disclosure of all material facts known to them that might affect Virginia Lou's rights....The existence of strained relations between the parties did not lessen the fiduciary's duty of full and complete disclosure..... The concealment of a material fact by a fiduciary charged with the duty of full disclosure is extrinsic fraud."

30. FURTHER, the Texas legislature has codified the common law duty a trustee owes to a beneficiary in the Texas Property Code.

§ 113.060. INFORMING BENEFICIARIES. The trustee shall keep the beneficiaries of the trust reasonably informed concerning:

- (1) the administration of the trust; and
- (2) the material facts necessary for the beneficiaries

to protect the beneficiaries' interests.

Added by Acts 2005, 79th Leg., ch. 148, § 15, eff. Jan. 1, 2006.

§ 113.151. DEMAND FOR ACCOUNTING. (a) A beneficiary by written demand may request the trustee to deliver to each beneficiary of the trust a written statement of accounts covering all transactions since the last accounting or since the creation of the trust, whichever is later. If the trustee fails or refuses to deliver the statement on or before the 90th day after the date the trustee receives the demand or after a longer period ordered by a court, any beneficiary of the trust may file suit to compel the trustee to deliver the statement to all beneficiaries of the trust.

The court may require the trustee to deliver a written statement of account to all beneficiaries on finding that the nature of the beneficiary's interest in the trust or the effect of the administration of the trust on the beneficiary's interest is sufficient to require an accounting by the trustee. However, the trustee is not obligated or required to account to the beneficiaries of a trust more frequently than once every 12 months unless a more frequent accounting is required by the court. If a beneficiary is successful in the suit to compel a statement under this section, the court may, in its discretion, award all or part of the costs of court and all of the suing beneficiary's reasonable and necessary attorney's fees and costs against the trustee in the trustee's individual capacity or in the trustee's capacity as trustee.

(b) An interested person may file suit to compel the trustee to account to the interested person. The court may require the trustee to deliver a written statement of account to the interested person on finding that the nature of the interest in the trust of, the claim against the trust by, or the effect of the administration of the trust on the interested person is sufficient to require an accounting by the trustee.

Added by Acts 1983, 68th Leg., p. 3332, ch. 567, art. 2, § 2, eff. Jan. 1, 1984.
Amended by Acts 2003, 78th Leg., ch. 550, § 3, eff. Sept. 1, 2003.

(b) Notwithstanding Subsection (a)(9), a person other than a beneficiary who, without knowledge that a trustee is exceeding or improperly exercising the trustee's powers, in good faith assists a trustee or in good faith and for value deals with a trustee is protected from liability as if the trustee had or properly exercised the power exercised by the trustee.

Added by Acts 2005, 79th Leg., ch. 148, § 21, eff. Jan. 1, 2006.

VI
PRAYERS FOR RELIEF

32. **WHEREFORE**, Plaintiff prays for judgment and relief as follows, where applicable, including but not limited to the following:
33. Awarding compensatory damages in favor of Plaintiff against Defendant(s) for the damages sustained as a result of the wrongful conduct alleged as will be established through discovery or at trial, together with interest thereon, in an amount in excess of \$75,000 from each Defendant for each offense found,
34. Awarding punitive damages to Plaintiff against the Defendant(s) for the egregiously wrongful conduct alleged herein,
35. Granting declaratory and/or injunctive relief as appropriate,
36. Awarding legal fees and costs to plaintiff and,
37. Such other and further relief as the Court may deem equitable and proper.

REQUEST FOR EX-PARTE TEMPORARY RESTRAINING ORDER

38. Further, Plaintiff seeks an emergency order for injunctive relief and herein alleges irreparable harm will occur unless the court prevents the trustees from wasting the estate, and compels the trustees to produce a full, true and complete accounting of all assets.

Financial Misconduct and Need for Accounting

39. A cursory review of the preliminary accounting spreadsheet of the Trust assets provided the Plaintiff reveals possibly significant discrepancies in the value of some trust assets, while other previously known trust assets are unaccounted for.

As trustees for the survivor's trust, created under the Brunsting Family Living Trust after the death of the first Settlor, Anita Brunsting and Amy Brunsting are responsible for maintaining accurate books and records for the survivor's trust created under the Brunsting Family Living Trust. Under the terms of the Trust trustees are to provide an accounting to the beneficiaries every 6 months. Even under Texas law an accounting to the beneficiaries is required annually. No proper accounting has ever been received.


40. Further, Anita Brunsting, holding Power of Attorney for Nelva Brunsting, and serving as successor trustee for the Nelva E. Brunsting Survivor's Trust, had an ongoing duty to account and, as a successor beneficiary of the Trust and its sub trusts, had an even greater level of loyalty and fidelity owed to the other four successor beneficiaries. Anita Brunsting had an ongoing obligation to report and account to the other successor beneficiaries, and to seek their approval before accepting gifts from Nelva Brunsting or the Trust.

41. By the acts alleged herein, Anita Brunsting and Amy Brunsting have breached fiduciary duties of loyalty, care and good faith owed directly to Plaintiff as co-trustees for the BFLT by acting in bad faith and for the purpose of benefiting themselves and harming Plaintiff; by misappropriating trust

property; and by failing to keep and maintain accurate and reliable books and accounting records; and by failing to report on the administration of the Trust; and by failing to notice Plaintiff of actions adversely affecting Plaintiff's rights and beneficial interest in the Trust Res.

42. Due to the lack of proper inventory, accounting and disclosure it is imperative that this court act quickly to protect the Trust property and assets, and to ascertain the reasons for the trustees' refusal to answer and to account.

Tuesday, February 21, 2012



Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

Exhibit 2

Exhibit 2

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,

Plaintiff,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

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CIVIL ACTION NO. H-12-592

ORDER OF DISMISSAL
(Sua Sponte)

I.

Before the Court is the defendants, Amy Ruth Brunsting and Anita Kay Brunsting’s emergency motion for removal of *Lis Pendens* filed by the plaintiff, Candace Louise Curtis. After a phone conference and discussion with the plaintiff and counsel for the defendants, the Court determines that it lacks jurisdiction over the parties and subject matter of this litigation.

II.

Generally, the facts will show that the plaintiff and defendants are sisters and, along with other siblings, are beneficiaries of the Brunsting Family Living Trust. It appears from the pleadings and colloquy between the plaintiff and counsel for the defendants, that the plaintiff’s father and mother, Elmer H. and Nelva E. Brunsting, established the Brunsting Family Living Trust for the benefit of their offspring in 1996. Elmer H. Brunsting died on April 1, 2009, and Nelva E. Brunsting died on November 11, 2011. The plaintiff’s dispute arises out of the administration of the family Trust.

III.

The plaintiff contended, during the phone conference, that she is suing her sisters, the trustees, in their individual capacities. However, in her pleadings, the plaintiff asserts that she is

suing her sisters individually and severally as co-trustees for the Trust because they have failed . . . “to meet their first obligation under that power, to provide full, accurate, complete and timely accounting to the beneficiaries.” Therefore, the plaintiff alleges claims for breach of fiduciary obligations, fraud, constructive fraud and intentional infliction of emotional distress.

In its motion for removal of *Lis Pendens*, the defendants argue that the Court lacks subject matter jurisdiction over the dispute because it is, in truth, a probate matter and falls under the Probate Exception to federal court jurisdiction. *See Marshall v. Marshall*, 126 S. Ct. 1735, 1748 (2006). Responding to the defendants’ motion, the plaintiff seeks to satisfy the jurisdictional issue of the amount in controversy by stating that the *res* is the Trust. Yet, the plaintiff argues the controversy is a personal one, not a dispute about the Trust.

IV.

The Court is of the opinion that the Probate Exception to federal jurisdiction applies. *Marshall*, 126 S. Ct. at 1748. The plaintiff admits this fact, yet only to avoid the Court removing her *lis pendens* filing. *See* [Response Doc. No. ____; citing *Lepard v. NBD Bank*, 384 F. 3d 232, 237 (6th Cir. 2004)]. Hence, because the plaintiff’s suit is a dispute over the distribution of the family Trust, the Court lacks jurisdiction and the case must be DISMISSED. To the extent that a *lis pendens* has been filed among the papers in federal Court in this case, it is cancelled and held for naught.

It is so Ordered.

SIGNED at Houston, Texas this 8th day of March, 2012.



Kenneth M. Hoyt
United States District Judge

Exhibit 3

Exhibit 3

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

United States Court of Appeals
Fifth Circuit

FILED

January 9, 2013

Lyle W. Cayce
Clerk

No. 12-20164

CANDACE LOUISE CURTIS,

Plaintiff-Appellant

v.

ANITA KAY BRUNSTING; DOES 1-100; AMY RUTH BRUNSTING,

Defendants-Appellees

Appeal from the United States District Court
for the Southern District of Texas

Before HIGGINBOTHAM, SMITH, and ELROD, Circuit Judges.

PATRICK E. HIGGINBOTHAM, Circuit Judge:

This appeal concerns the scope of the probate exception to federal subject-matter jurisdiction in the wake of the Supreme Court's decision in *Marshall v. Marshall*.¹ The Plaintiff contends that, under *Marshall*, her claims for breach of fiduciary duty against the co-trustees of an inter vivos trust do not implicate the probate exception. We agree.

¹ 547 U.S. 293 (2006).

I.

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.² 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.

Candace Curtis, Anita Brunsting, and Amy Brunsting are siblings. In February 2012, Candace Curtis (“Curtis”) filed a complaint in federal district court against Anita Brunsting and Amy Brunsting (collectively “the Defendants”) based on diversity jurisdiction. In that complaint, she alleged that Anita and Amy, acting as co-trustees of the Trust, had breached their fiduciary duties to Curtis, a beneficiary of the Trust. Specifically, she alleged that Anita and Amy had misappropriated Trust property, failed to provide her documents related to administration of the Trust, and failed to provide an accurate and timely accounting. The complaint alleged claims for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. Curtis sought compensatory damages, punitive damages, a temporary restraining order against “wasting the estate,” and an injunction compelling both an accounting of Trust property and assets as well as production of documents and accounting records.

On March 1, 2012, the district court denied Curtis’s application for a temporary restraining order and injunction because the Defendants had not

² The signed copies of the Brunstings’ Wills are not included in the record, but Curtis provided unsigned copies, which we assume match the signed versions that have been admitted to probate.

been served with process. In the order, the district court judge noted that it “appears that the court lacks subject matter jurisdiction over the claim(s) asserted.” On March 6, 2012, in response to the lis pendens Curtis had filed related to property in Texas and Iowa, Anita and Amy filed an emergency motion to remove the lis pendens. The motion noted that it was subject to the Defendants’ contention that the federal district court lacked subject matter jurisdiction under the probate exception to federal court jurisdiction, an issue that the Defendants said would be raised in a separate Rule 12(b) motion to dismiss. On March 8, 2012, following a telephone conference with the parties, the district court judge entered a *sua sponte* order dismissing the case for lack of subject matter jurisdiction. In doing so, he concluded that the case falls within the probate exception to federal diversity jurisdiction. This appeal followed.

II.

This Court reviews *de novo* a district court’s dismissal for lack of subject-matter jurisdiction.³

III.

Although a federal court “has no jurisdiction to probate a will or administer an estate,”⁴ in *Markham v. Allen*, the Supreme Court recognized that the probate exception does not bar a federal court from exercising jurisdiction over all claims related to such a proceeding:

[F]ederal courts of equity have jurisdiction to entertain suits ‘in favor of creditors, legatees and heirs’ and other claimants against a decedent’s estate ‘to establish their claims’ so long as the federal court does not interfere with the probate proceedings or assume

³ *Borden v. Allstate Ins. Co.*, 589 F.3d 168, 170 (5th Cir. 2009).

⁴ *Markham v. Allen*, 326 U.S. 490, 494 (1946).

general jurisdiction over the probate or control of the property in the custody of the state court.

Similarly while a federal court may not exercise its jurisdiction to disturb or affect the possession of property in the custody of a state court, it may exercise its jurisdiction to adjudicate rights in such property where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court.⁵

Sixty years later, in *Marshall v. Marshall*, the Supreme Court expressed concern with lower courts' interpretation of *Markham*, noting that "[l]ower federal courts have puzzled over the meaning of the words 'to interfere with the probate proceedings,' and some have read those words to block federal jurisdiction over a range of matters well beyond probate of a will or administration of a decedent's estate."⁶ Thus, the Supreme Court clarified the "distinctly limited scope" of the probate exception,⁷ explaining:

[W]e comprehend the 'interference' language in *Markham* as essentially a reiteration of the guiding principle that, when one court is exercising *in rem* jurisdiction over a *res*, a second court will not assume *in rem* jurisdiction over the same *res*. Thus, the probate exception reserves to state probate courts the probate or annulment of a will and the administration of a decedent's estate; it also precludes federal courts from endeavoring to dispose of property that is in the custody of a state probate court. But it does not bar federal courts from adjudicating matters outside those confines and otherwise within federal jurisdiction.⁸

The *Marshall* Court concluded that the federal district court had subject-matter jurisdiction, and the probate exception did not apply, reasoning: "[The claimant]

⁵ *Id.* (internal citations omitted).

⁶ 547 U.S. at 311.

⁷ *Id.* at 310.

⁸ *Id.* at 311–12.

seeks an *in personam* judgment against [the Defendant], not the probate or annulment of a will. Nor does she seek to reach a *res* in custody of a state court.”⁹ After *Marshall*, the probate exception only bars a federal district court from (1) probating or annulling a will or (2) “seek[ing] to reach a *res* in custody of a state court” by “endeavoring to dispose of [such] property.”¹⁰

As we see it, to determine whether the probate exception deprives a federal court of jurisdiction, *Marshall* requires a two-step inquiry into (1) whether the property in dispute is estate property within the custody of the probate court and (2) whether the plaintiff’s claims would require the federal court to assume *in rem* jurisdiction over that property. If the answer to both inquiries is yes, then the probate exception precludes the federal district court from exercising diversity jurisdiction. Here, we find the case outside the scope of the probate exception under the first step of the inquiry because the Trust is not property within the custody of the probate court.

As a threshold matter, the probate exception only applies if the dispute concerns property within the custody of a state court. The federal court cannot exercise *in rem* jurisdiction over a *res* in the custody of another court. Both of the Brunstings’ Wills were admitted to probate after the district court dismissed the case, and probate proceedings are ongoing.¹¹ However, nothing suggests that the Texas probate court currently has custody or *in rem* jurisdiction over the Trust. It likely does not. Assets placed in an inter vivos trust generally avoid probate, since such assets are owned by the trust, not the decedent, and

⁹ *Id.* at 312 (internal citations omitted).

¹⁰ *Id.* at 312–13.

¹¹ At the time the district court dismissed the case, no probate proceedings had been initiated. As such, there was no possibility that the case fell within the probate exception. Nevertheless, we must consider whether, upon remand, the federal district court would have subject-matter jurisdiction now that probate proceedings are ongoing.

therefore are not part of the decedent's estate.¹² 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. The record also indicates that there would be no probate of this Trust's assets upon the death of the surviving spouse.¹³ Finding no evidence that this Trust is subject to the ongoing probate proceedings, we conclude that the case falls outside the scope of the probate exception. The district court below erred in dismissing the case for lack of subject-matter jurisdiction.

IV.

For the reasons set forth above, we REVERSE the district court's dismissal of the case and REMAND for further proceedings. REVERSED AND REMANDED.

¹² See 3 TEX. PRAC. GUIDE WILLS, TRUSTS, AND EST. PLAN. § 10:83 ("Any property held in a revocable living trust is not considered a probate asset . . ."); 2 EST. TAX & PERS. FIN. PLAN. § 19:15 ("Avoidance of probate perhaps is the most publicized advantage of the revocable living trust."); 18 EST. PLAN. 98 ("Assets in a living trust are not subject to probate administration . . .").

¹³ Any assets "poured over" from the decedents' estates into the Trust would have to go through probate, but that does not change the fact that the Trust property over which the Defendants have been acting as Trustees would not be subject to probate, having been transferred to the Trust prior to the parents' deaths.

Exhibit 4

Exhibit 4

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Court
Southern District of Texas
FILED

MAY 1 2013

David J. Bradley, Clerk of Court

CANDACE LOUISE CURTIS §
Individually and as Co-Trustee §
Plaintiff, §
versus §
ANITA KAY BRUNSTING, §
AMY RUTH BRUNSTING, §
CAROLE ANN BRUNSTING, §
CANDACE L. KUNZ-FREED, §
ALBERT E. VACEK, JR., §
VACEK & FREED, PLLC, §
THE VACEK LAW FIRM §
BERNARD LILSE MATHEWS III, §
And DOES 1 – 94 §
Defendants. §

CIVIL ACTION NO. 4:12-cv-00592
Jury

PLAINTIFF'S FIRST AMENDED COMPLAINT
Motion to Amend Complaint

PARTIES

1. Plaintiff, Candace Louise Curtis, is a citizen of the State of California.
2. Defendant Anita Brunsting resides in the county of Victoria; Defendant Amy Brunsting resides in the county of Comal; Defendant Carole Brunsting resides in the county of Harris; Defendant Bernard Mathews practices law as a partner in the firm of Green and Mathews LLP in the county of Harris, and is concurrently listed on the Vacek & Freed website as a staff attorney; Defendant(s)

Albert E. Vacek, Jr. and Candace L. Kunz-Freed conduct business as Vacek & Freed PLLC in the county of Harris.

3. Defendants Amy, Anita, and Carole Brunsting are the siblings of Plaintiff Curtis and, along with brother Carl Brunsting, co-successor beneficiaries under their Parents' trust and estate plans.

JURISDICTION AND VENUE

JURISDICTION

4. This matter was originally brought in equity as breach of fiduciary and related equitable claims that included a common law tort claim under diversity jurisdiction pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2). Plaintiff hereby incorporates those claims by reference as if fully restated herein, but with newly discovered evidence presents additional and alternate claims. Additionally, Plaintiff is informed and believes Defendants are not de jure trustees.

5. This complaint now alleges violations of the wire, mail and securities laws of the United States as expressed in Chapter 63 of Title 18 of the United States Code, and Plaintiff is seeking to pursue additional remedies under 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act").

6. This court has federal question jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1367 and Section 27 of the Exchange Act¹ (15 U.S.C. §78aa) and exclusive jurisdiction over these claims, as this action arises under Section 10(b) of the Exchange Act (15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5) and the causes of action implied therefrom.

7. In connection with the acts and omissions alleged in this complaint Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the internet, the mails, interstate telephone communications, and the facilities of the national securities markets.

VENUE

8. The acts complained of involve alleged administration of the family trust(s) established by Elmer and Nelva Brunsting of Houston Texas. The United States District Court for the Southern District of Texas, Houston Division, is therefore a proper venue under 28 USC §1391(a)(1).

¹ Securities Exchange Act of 1934, 15 U.S.C. §§78a-78kk (1982)

9. Venue is proper in this District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. §1391(b) and (c), in that substantial acts in furtherance of the alleged fraud and/or its affects have occurred within this District.

NATURE OF ACTION

10. This action was brought as a diversity action alleging breach of fiduciary duty, extrinsic and constructive fraud, and intentional infliction of emotional distress, but Plaintiff now pleads additional and alternative causes.

HISTORY OF THE CASE

11. In 1996 Elmer Brunsting and his wife Nelva Brunsting created a living trust for their benefit and for the benefit of their 5 children. The stated co-successor beneficiary distribution was to be equal, 1/5 for each of the five Brunsting children: Candace, Carole, Carl, Amy, and Anita. The trust was also structured to preserve the Brunsting legacy for Elmer and Nelva's grandchildren.

12. Elmer and Nelva Brunsting restated their trust in 2005 and amended it for the first time in 2007. The 2007 amendment was the last known trust instrument signed by both Elmer and Nelva, and it changed references from Anita Riley to Anita Brunsting, and amended section IV replacing Amy Brunsting with Candace Curtis as co-successor trustee with Carl Brunsting.

13. Plaintiff Curtis' father Elmer H. Brunsting died April 1, 2009, at which time the family trust became irrevocable, pursuant to Article III.

14. On or about August 25, 2010 a number of documents were drawn up by the firm of Vacek & Freed, wherein changes to the trust were implemented without notice to Curtis. These alleged amendments disrupt the dispositive provisions of the irrevocable family trust and the irrevocable decedent's trust, which had been created from the family trust upon the death of Elmer Brunsting.

15. On October 23, 2010 Curtis received a number of trust documents in pdf format, attached to emails from Anita Brunsting. These had been requested by Plaintiff in anticipation of an upcoming conference call regarding changes to the trust.

16. On October 25, 2010 a teleconference was organized by Candace Kunz-Freed and Vacek & Freed employee, Summer Peoples². The call was held behind Nelva's back and it became apparent that the intent was to have Nelva declared incompetent, rather than to discuss changes to the trust. Co-trustee Carl Brunsting, the personal representative of both Elmer and Nelva's estates, was also not present and is believed to have been intentionally excluded from that teleconference. The

² Plaintiff's Exhibit 6 with original Affidavit.

purported changes to the trust had already been made two months prior to the conference call.

17. In December of 2011, in response to demands for accounting, Curtis received certified mail copies of the alleged same trust documents as the pdf documents received on October 23, 2010, along with other previously undisclosed documents dated December 21, 2010.³

18. On February 27, 2012, Curtis filed a pro se complaint in the United States District Court for the Southern District of Texas alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud and intentional infliction of emotional distress alleging that defendants, Anita and Amy, acting as trustees for their Parents' trust, failed to notice her of actions adversely affecting her beneficial interests, refused to provide copies of non-protected trust instruments and refused to account for trust assets, or to report on any other acts of administration.

19. On March 8, 2012 Curtis' complaint was dismissed under the probate exception to federal diversity jurisdiction and Curtis promptly filed notice of appeal.

20. On March 9, 2012 Curtis brother Carl Brunsting filed a petition for depositions before suit in the Harris County District Court, case #2012-14538.

³ While this matter was pending appeal it was brought to Curtis' attention that signature pages for the alleged same copy of trust documents bear different signatures raising questions of authenticity.

21. On April 2, 2012 the Houston firm of Vacek and Freed filed the Will of Elmer Brunsting [#412248] and a purported Will for Nelva Brunsting [#412249] with the Harris County Probate Court.
22. On or about April 5, 2012 Plaintiff received a number of documents by email, addressed to herself, Carl's attorney Bobbie Bayless, and Carole Brunsting, from Defendants' counsel Bernard Mathews, in response to the state court filing by Carl Brunsting.
23. These documents were allegedly offered to satisfy accounting requirements under the Texas Property Code and included spreadsheet like pages labeled as Schedules A through J. These flat spreadsheet looking documents show an enormous number of asset transfers and include evidence of self-dealing and comingling of trust assets.
24. On August 15, 2012 Carl Brunsting filed an application to probate wills and issue letters testamentary into the Harris County Probate Court [#412248 & #412249] and on August 28, 2012 the Harris County Probate Court issued letters testamentary naming Carl Henry Brunsting independent executor.
25. On December 26, 2012 Maureen McCutcheon of Mills Shirley filed an appearance in the Probate court on behalf of Defendants Amy and Anita as trustees, but did not identify any particular trust.

26. On January 9, 2013 the Fifth Circuit Court of Appeals published their opinion Reversing and Remanding for further proceedings.
27. On January 29, 2013 Bobbie Bayless of the Houston based law firm of Bayless and Stokes filed a civil suit against Candace Kunz-Freed and the law firm of Vacek & Freed on behalf of Carl Brunsting as executor of the Brunsting Estate, alleging violations of the DTPA, Violations of the Texas Penal Code and other civil claims.
28. This matter was returned from the Fifth Circuit on January 30, 2013 for further proceedings. Plaintiff Curtis then reapplied for an injunction and the court set the matter for hearing on April 9, 2013, wherein a hearing was held and injunctive relief ordered.
29. After the April 9 hearing in the federal District Court an action was filed in the Harris County Probate Court [#412249401] naming Amy, Anita and Carole Brunsting as defendants and seeking injunctive relief over the trust in the custody of this Court.

DEFENDANTS

DEFENDANTS ANITA, AMY, AND CAROLE BRUNSTING

30. It is unclear and will have to be more specifically ascertained as to when each individual defendant involved themselves in the conspiracy, or to what extent

they are liable or culpable, but there is evidence of each of their involvement to varying degrees despite every effort to obfuscate and conceal their conduct.

31. The three Defendants Brunsting entered together into a conspiracy with the Defendant Lawyer/Notary Candace Kunz-Freed to defraud Nelva Brunsting, the Brunsting estate and the Brunsting family of trusts, in order to loot the trusts for their own unjust self-enrichment.

32. Defendants did secretly and fraudulently displace Nelva Brunsting from her proper standing as Trustee of the family trusts and did transfer assets to the benefit of one or more defendants and to the detriment and injury of Plaintiff, Nelva Brunsting, the Brunsting estate and the Brunsting family of trusts.

33. Defendants acted maliciously, intentionally, and with reckless indifference to the rights of Plaintiff, Nelva Brunsting, the Brunsting estate and the Brunsting family of trusts.

34. Defendants are individually and severally liable to Plaintiff, to Carl Brunsting, the Brunsting estate and to the Brunsting family of trusts, for real damages to the trust(s) plus \$1,000 per theft incident under the Texas Theft Liability Act at Title 6, Chapter 134 Civil Practice and Remedies Code. Further, Defendants are liable to Plaintiff for Exemplary Damages due to the malicious, indifferent and wholly uncivilized nature of their egregious acts.

DEFENDANT CAROLE BRUNSTING

35. Carole is alleged to have held a medical power of attorney for Nelva Brunsting and signature authority on an account labeled Carole/Mom which was apparently set up as a joint right of survivorship account. The account appears on the schedules released in April 2012 and may have been used to pay the personal obligations of Carole Brunsting.

36. The full extent of Carole's involvement is still under investigation but she is none-the-less named herein as a joint tortfeasor based upon evidence of her participation at various stages.

DEFENDANT CANDACE KUNZ-FREED

37. Defendant Candace Kunz-Freed is an attorney with the Vacek Law firm and a partner in Vacek & Freed PLLC. Defendant Candace Kunz-Freed is also a public official in that she is a Texas Notary Public.

38. Plaintiff is informed and believes Candace Kunz-Freed assisted Defendants Brunsting in rupturing the Brunsting family of trusts by creating documents improperly disrupting the dispositive provisions of Elmer and Nelva's estate plan.

39. Defendant Candace Kunz-Freed provided substantial assistance in such conspiracy resulting in the transfer of assets for the benefit of one or more Defendants to the injury of Plaintiff, and did do so knowingly, willfully and with

reckless indifference to the rights of Plaintiff and did receive compensation for her participation in said conspiracy.

40. Defendant Candace Kunz-Freed cultivated conflicting interests and when she did she left the law. When she left the law her public office and her license to practice law did not follow her. Candace Kunz-Freed did not simply assist the fraud, she enabled it, as without her involvement the injuries complained of would not have occurred.

DEFENDANT ALBERT R. VACEK, JR

41. Defendant Albert Vacek Jr. is an attorney with and the presumed owner of the Vacek Law firm, and a partner in Vacek & Freed PLLC.

42. Albert Vacek Jr., conducting business as Vacek & Freed PLLC and the Vacek Law Firm, advertises and sells estate planning products and services. Vacek warrants the merchantability of his products as protecting clients' assets from outsiders who might "want to take them"⁴ and as protection for families and beneficiaries from predators "who want to take their inheritance away from them, to shield families and heirs from creditors, con artists, death and estate taxes, lawsuits, probate, divorce and other threats to maintaining and passing personal wealth.

⁴ http://www.vacek.com/files/3-21__3-23_embassy.pdf

43. Albert Vacek Jr. places a copyright notice on his trust instruments thereby claiming full rights and responsibilities in warranting his products' merchantability and fitness.

44. Albert Vacek Jr. actively markets his products and services through seminars. Elmer and Nelva Brunsting were consumers⁵ and Albert Vacek Jr., Vacek & Freed PLLC, and the Vacek Law Firm are vendors of products and services.

45. Elmer and Nelva Brunsting, in reliance upon Vacek's seminar assurances, "spiced with interesting examples and anecdotes"⁶, purchased the Vacek & Freed estate, asset, and beneficiary protecting products that included a family trust and other estate planning instruments.

DEFENDANTS VACEK & FREED PLLC AND THE VACEK LAW FIRM

46. Vacek & Freed, PLLC, the Vacek Law Firm, and Albert Vacek Jr. are liable under the doctrine of Respondeat Superior.

DEFENDANT BERNARD LILSE MATHEWS III

47. Defendant Bernard Lilse Mathews III provided substantial assistance in such conspiracy, by seeking to improperly influence the Court by misstating both law

⁵ As this term is defined by the applicable statutes and just plain common sense.

⁶ Quote taken from Vacek Seminar advertisement on web site. Vacek.com

and fact, resulting in improper dismissal and nearly a full year delay, during which time additional injurious actions were taken by Defendants for their own unjust self-enrichment, to the harm of Plaintiff. It has come to Plaintiff's attention that Mr. Mathews is listed as a staff attorney on the Vacek & Freed letterhead and website, despite the fact that he enters this matter under the letterhead of Green and Mathews. Further, Mr. Mathews knew or should have known that he was substantially assisting the conspiracy involving Defendants Brunsting and the firm of Vacek & Freed PLLC, when he misstated the law after having filed an identical lawsuit on behalf of the plaintiff, in the Harris County District Court. The trust documents in both cases were drawn up by Vacek & Freed PLLC. Whether or not Mr. Mathews' conduct can be considered a predicate act will be determined through discovery or established at trial.

ACTS OF AGENTS

48. When it is alleged that defendants did any act, it is meant that defendants performed or participated in the act, or defendants' officers, agents or employees performed or participated in the act on behalf of, in concert with, and/or under the authority of, defendants.

49. Plaintiff is informed and believes Defendants are either liable as principals or did substantially assist fraud, fraudulent misrepresentation, misapplication of

fiduciary, breach of fiduciary, theft, conversion, extortion, falsification of legal documents (forgery), fraudulent concealment, undue influence, elder abuse, identity theft, tortious interference with beneficial interests, tortious interference with expectancy, tortious interference with fiduciary obligations, unjust self-enrichment, misfeasance of a public officer, malfeasance of a public officer, aiding and abetting the misfeasance and malfeasance of a public officer, wire, mail, and securities fraud with full scienter, and did conspire to accomplish such acts and/or did substantially aid the commission of such acts or are liable for such acts by the application of doctrines of Respondeat Superior, under the common law doctrines of Aiding and Abetting, and pursuant to state and federal statute including but not limited to: the Texas Deceptive Trade Practices Act (DTPA) and Title 15 U.S.C. §52 - Dissemination of false advertisements and 15 USC § 45 - Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce,⁷

CAUSES OF ACTION AND CLAIMS

CONSPIRACY AND FRAUD

Plaintiff is informed and believes:

⁷ Not presently alleged or plead herein, but potentially falling under Title 18 sections 1961-1968.

50. Defendants conspired to rupture the Irrevocable Brunsting Family Trust and in fact ruptured, looted, and despoiled that trust.

51. Defendants conspired to rupture the Irrevocable Elmer H. Brunsting Decedent's Trust and, in fact, did rupture, loot and despoil that trust.

52. Defendants conspired to rupture the revocable Nelva E. Brunsting Survivor's Trust and, in fact, did rupture, loot, and despoil that trust.

53. Defendants conspired to rupture the Brunsting Family of trusts for their own benefit and to the injury of Plaintiff and by such conspiracy did wrongfully effect the electronic transfer of assets, including cash, and securities traded under the laws of the United States, for their own use and benefit and to the injury of Plaintiff.

54. Defendants either participated directly as principals in the conspiracy or provided substantial assistance to such conspiracy, resulting in the transfer of assets for the benefit of one or more Defendants and to the injury of Plaintiff, and did so participate knowingly, willfully, maliciously and with reckless indifference to the rights of Plaintiff.

55. Plaintiff is informed and believes that Defendants, acting individually and in concert, conspired to wrongfully remove Nelva Brunsting from her lawful and proper position as sole trustee for the Brunsting Family of trusts and to insert Anita and Amy in her stead. In order to accomplish their scheme, documents were drawn

up by employees of Vacek & Freed PLLC that removed Nelva as trustee and disrupted the dispositive provisions of Elmer and Nelva Brunsting's estate plan. Neither Nelva Brunsting, nor successor co-trustees Carl or Candace, were noticed of the actions of Defendants.

56. Securities in the form of Exxon stocks were transferred out of the name of the Brunsting family trust, with Nelva Brunsting as trustee, into accounts held in the name of Anita Brunsting as trustee for the Decedent's and Survivor's trusts. Assets were then distributed amongst Amy, Anita, Carole, and Candace in uneven proportions, and there is no evidence of any distribution to brother Carl Brunsting. These asset transfers and distributions were not noticed to, and no detailed information regarding those acts was ever conveyed to Plaintiff.

57. Curtis' attempts to obtain information from Defendants Brunsting have been met with silence, and silence can only be equated with fraud where there is a duty to speak.

CONSTRUCTIVE FRAUD AND FRAUDULENT CONCEALMENT

58. Until April 9, 2013, with only the two exceptions noted in Plaintiff's renewed application for injunction, Defendants Brunsting have been absolutely silent in all matters regarding trust property and administration.

59. Defendants Anita and Amy are co-beneficiaries and also claim to be trustees, meaning they are conflicted, and they failed to notice co-beneficiary Curtis of actions allegedly changing her standing by removing her as successor co-trustee and appointing Defendants in her stead.

60. Defendants papers claim Curtis' beneficial and other interest in the Irrevocable Brunsting Family Living Trust, the Elmer H. Brunsting Irrevocable Decedent's Trust, and the Nelva E. Brunsting Survivor's Trust have been diminished, but failed to inform Curtis of those alleged changes prior to their implementation.

61. Plaintiff did not receive advance notice of alleged actions diminishing her beneficial interest or obligations as Defendants concealed those actions, and due to conflicts of interest have committed constructive fraud rendering those instruments void.

62. Plaintiff did not receive advance notice and did not grant approval for self-dealing asset transfers, as Defendants concealed those actions.

63. Defendants acted to diminish Plaintiff's rights without notice and concealed those actions from Curtis. The acts of constructive fraud benefited one or more Defendants to the injury of Plaintiff, and Defendants participated in the fraud knowingly, willfully, maliciously, and with reckless indifference to the rights of Plaintiff.

64. The Constructive Fraud Doctrine requires Defendants to show proof that Plaintiff received advance notice of those alleged actions. In the absence of notice Defendants are liable for constructive fraud and the vitiated instruments are void ab initio, and fall as a matter of right.

ELDER ABUSE, UNDUE INFLUENCE, FALSE INSTRUMENTS

Plaintiff is informed and believes:

65. Nelva Brunsting was diagnosed with cancer in October of 2009. She was in her eighth decade and thus of advanced age.

66. Defendants Amy, Anita, and Carole Brunsting are the issue of Elmer and Nelva Brunsting and, as such, owed the most basic of fiduciary duties to Elmer and Nelva Brunsting.

67. Defendants Brunsting exploited their confidential relationship with Nelva and her frail, weak and deteriorating physical condition, to exercise dominion and control over Nelva, her estate and the family trusts, improperly seizing control and secretly transferring assets to themselves.

68. By virtue of the confidential relationship and the Defendants' dominance over Nelva Brunsting, Defendants conspired with trust lawyer Candace Kunz-Freed to create documents which were not the intent or desire of Elmer or Nelva and were designed solely for the benefit of the Defendants.

69. These documents, in the form in which they were received, appear to contain digital images where there should be a copy of an actual signature, leading Plaintiff to question the authenticity and validity of certain critical documents affecting her interests.

70. When Nelva was informed of Defendants' acts she contacted Freed to correct the situation. Defendants subsequently made arrangements to have the competency of a very lucid Nelva Brunsting examined, but no declaration of incompetence was forthcoming from her doctors.

71. Defendants Brunsting used their falsified instruments to improperly seize control of the family trusts and to transfer assets to themselves. The bulk of the assets Defendants Brunsting improperly liquidated and/or transferred to themselves were securities traded under the laws of the United States, and the circumstances surrounding the mechanics of certain asset transfers makes Defendants' knowledge of the impropriety of their acts evident and, therefore, conclusive of scienter.

72. The bulk of the assets Defendants Brunsting improperly liquidated for their own benefit and/or transferred to themselves without Nelva's knowing consent, were securities traded under the laws of the United States. The transactions were mostly effected electronically.

BREACH OF FIDUCIARY DUTY

73. Plaintiff and Defendants Brunsting are siblings. Plaintiff was designated successor co-trustee with her brother Carl in the last valid amendment to the Family Trust, when both Elmer and Nelva Brunsting replaced Amy Brunsting with Candace Curtis in the list of successor trustees.

74. Defendants' true standing is in question, but Defendant Amy Brunsting filed a declaration into this Court claiming that she and her sister Anita are co-trustees for the Brunsting family of trusts.

75. Defendants Amy and Anita Brunsting have exercised the powers of trustees, whether de jure or de facto, and have assumed the obligations of trustees in addition to the fiduciary obligations of the sibling relationship.

76. Defendants Amy and Anita Brunsting owe fiduciary duties to Plaintiff under the law of the Trusts, whether trustees de jure or de facto.

77. Defendants Amy and Anita Brunsting owe fiduciary duties to Plaintiff under the common law as applicable to trusts in general, whether trustees de jure or de facto.

78. Defendants Amy and Anita Brunsting owe fiduciary duties to Plaintiff under the Texas property statutes, whether trustees de jure or de facto.

79. Defendants Amy and Anita Brunsting breached their fiduciary duties to Plaintiff and said breaches proximately caused injury to the Plaintiff and/or benefited one or more Defendants.

Breach of Duties of Loyalty

80. The obligations a trustee owes to a beneficiary are first defined by the trust instrument itself, second are the obligations prescribed by statute and third but not least are the obligations defined by the common law, as exemplified in treatise and case law decisions. Each act or omission resulting in a breach of fiduciary often violates more than one duty trustees owed to Plaintiff.

81. Every act or omission complained of herein violates a particularized duty owed to Plaintiff and is also a breach of the duty of loyalty, the duty of good faith and fair play, and the duty to avoid conflicts of interest, in addition to the specific acts complained of herein.

Breach of Duty to Inform and to Notice

82. See Constructive Fraud and Fraudulent Concealment – paragraphs 58-64.

Breach of Duty to Account

83. Defendants failed to account biannually as required by the trust.

84. Defendants failed to account after a written request, as required by statute, and failed to account annually, as required by statute.

85. Defendants failed to provide a full, true, complete and accurate accounting as required by the terms of the trust and the common law, and failed to meet the minimum requirements as defined by statute.

Breach of Duty to Keep and Maintain Accurate Books and Records

86. Defendants failed to establish, keep or maintain accurate books and records as required by the trust, common law and statute, and thus cannot account easily, if at all.

Breach of Duty of Impartiality

87. Defendants self-dealt and comingled assets to the exclusion of other beneficiaries without notice and consent.

Breach of Duty to Administer the Trust in the Best Interest of Beneficiaries

88. There is no evidence that Defendants considered the wellbeing or needs of the Plaintiff in any way whatsoever and substantial evidence that Defendants Brunsting placed their own personal interests above those of Nelva Brunsting.

AIDING AND ABETTING BREACH OF FIDUCIARY

Plaintiff is informed and believes:

89. Defendant Candace Kunz-Freed substantially assisted Defendants Brunsting in facilitating the improper seizure of control over the family trusts and the improper transfer of assets to Defendants.

90. Defendant Candace Kunz-Freed knowingly participated with Defendants in breaching fiduciary duties and the misapplication of fiduciary, and is thus liable as a principal, for substantially aiding and abetting the improper acts.

91. Without the substantial assistance of Candace Kunz-Freed, the damages complained of herein would not have been suffered.

TORTIOUS INTERFERENCE WITH FIDUCIARY OBLIGATIONS

92. Carl Brunsting fell ill from encephalitis and Curtis lives in California. Defendants used that opportunity to improperly seize control of Nelva Brunsting, The Brunsting Estate and the Brunsting family of trusts.

93. Defendants used falsified instruments to imposter themselves as trustees and to improperly seize control of Nelva Brunsting, the Brunsting Estate and the Brunsting family of trusts, thus tortiously interfering with Plaintiff Curtis' fiduciary obligations as a named successor co-trustee for the Brunsting family of trusts.

10(b) 10(b)-5.3 SECURITIES EXCHANGE ACT OF 1934

94. Defendants conspired to create deceptive instruments and those instruments were used to improperly effect the transfer of publicly traded securities in

contravention of the securities laws of the United States. Plaintiff suffered loss by these acts and is thus entitled to recovery under the implied causes of action pursuant to 10(b) and 10(b)-5 of the Securities Exchange Act of 1934 (15 USC 78(j) and the right of claims implied therefrom (17 C.F.R. § 240.10b-5).

95. Further, Anita Brunsting is believed to have made false statements of qualification and eligibility to engage in securities transactions, and that she knowingly forged and participated in the forgery of the signatures of others to improperly buy, sell and effect the transfer of publicly traded securities.

96. Anita Brunsting performed these acts with complete scienter.

VIOLATION OF TEXAS PENAL CODE §32.45 (B) & (C)(7)

MISAPPLICATION OF FIDUCIARY IN EXCESS OF \$200,000.00

97. An offense under this section is not merely a civil tort but a felony in the second degree if the value of property is \$100,000.00 or more but less than \$200,000.00, and a felony in the first degree if the value of property is more than \$200,000.00.

98. Defendants violated this Texas penal statute by misapplying fiduciary property to their own benefit when that property was owned by various trusts and was held for the benefit of Nelva Brunsting and her estate.

99. Plaintiff, as a named successor co-trustee and co-successor beneficiary, suffered damages proximately caused by Defendants' violation of these penal statutes while Defendants profited from these acts and are thus liable to Plaintiff for a variety of damages including but not limited to the Texas Theft Liability Act.

UNJUST SELF ENRICHMENT, TORTIOUS INTERFERENCE WITH BENEFICIAL INTERESTS, TORTIOUS INTERFERENCE WITH EXPECTANCY

100. Defendants unjustly enriched themselves ultimately injuring Plaintiff's expected enjoyment of beneficial interests. Defendants acted intentionally, maliciously and for their own benefit without regard for the rights of Plaintiff or the fiduciary obligations they volunteered to owe Plaintiff.

TORTIOUS INTERFERENCE WITH FIDUCIARY OBLIGATIONS

101. Defendants Brunsting entered into a conspiracy with Candace Freed to improperly seize control of the Brunsting family of trusts and in pursuit thereof did falsify instruments claiming to appoint themselves as trustees and did thereby seize control of the family of trusts, tortiously interfering with Plaintiff's fiduciary obligations as a de jure successor trustee. Defendants all had conflicts of interest and chose to serve themselves to the exclusion of those for whom they owed fiduciary obligations and such conduct is the proximate cause of Plaintiff's injuries both directly and indirectly.

TRESPASS DE BONIS, REPLEVIN AND TROVER

102. Amy and Anita entered into a conspiracy with Candace Freed to falsify documents and did use those documents to trespass upon the office of trustee thereby exercising wrongful control over assets belonging to Nelva Brunsting and the Brunsting family of trusts and did self-deal and also comingle trust assets with their own so as to be in some instances inseparable.

103. Defendants Brunsting's trespasses were the proximate cause of the injuries complained of and the burden is upon Defendants to separate comingled trust property from their own, as Plaintiff is entitled to recovery and repatriation of all comingled assets with awards of damages. Plaintiff is entitled to recovery under all three theories of trespasses above stated and also under the theory of conversion.

CONVERSION

104. Defendants by way of conversion have retained money and personal property of Nelva Brunsting, the Brunsting Estate and the Brunsting Family of Trusts and have exercised dominion and control over such property as their own to the exclusion of the rightful owners.

105. On numerous occasions Defendants converted to Defendants' personal use property owned by the Brunsting family of trusts including the Family trust, the

Elmer H. Brunsting Irrevocable Decedent's Trust, the Nelva E. Brunsting Survivor's Trust.

106. The property consists of real estate, cash, and various stocks, including Exxon and Chevron, and other securities traded through Edward Jones.

107. The property is worth in excess of \$300,000.00 Therefore, the Plaintiff demands judgment against the Defendants for repayment of actual value, plus estimated lost income, plus interest, plus costs, plus \$1,000.00 per incident under the Texas Theft Liability Act.

108. Plaintiff is informed and believes Carole Brunsting engaged and participated in various acts of conversion and was involved in the conspiracy.

DECEPTIVE CLAIMS AND FALSE ADVERTISEMENTS,

109. Albert Vacek Jr., Candace L. Kunz-Freed, Vacek & Freed, PLLC, and The Vacek Law Firm are liable to Plaintiff under the Texas Deceptive Trade Practices Act and Title 15 U.S.C. §52 - Dissemination of false advertisements and 15 USC § 45 - Unfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce.

110. Albert Vacek Jr., the Vacek Law Firm and Vacek & Freed, PLLC (Vacek), has placed a copyright on the form and content of the trust instruments sold to Elmer and Nelva. Vacek products are advertised as trust and estate management and asset protection vehicles. Through his web site and through seminars Vacek

tells prospective clients of the advantages of purchasing the firms products and services.

111. Vacek sells “peace of mind” with a myriad of assurances. The firm sold “peace of mind” to Elmer and Nelva Brunsting while actively cultivating conflicting associations and undertaking activities in direct conflict of interest with the fiduciary obligations owed and assurances of merchantability made to Elmer and Nelva Brunsting.

112. Vacek advertises its products and services as estate planning instruments and managerial services, facilitating avoidance of litigation, avoidance of excess taxes and the legitimate avoidance of the costs and delay associated with probate proceedings. As can be seen in the Harris County Probate Court, various Harris County District Court actions, in Candace Curtis' federal suit, and as exemplified by the very structure and form of the instruments themselves, it is clear that Vacek's design is either intentionally flawed and intended to foster and assure trust and estate looting and litigation, or so carelessly and negligently designed as to guarantee it.

113. Candace Kunz-Freed actively participated with Amy and Anita Brunsting in falsifying documents improperly removing control of the Brunsting trusts from Nelva Brunsting, the true and rightful trustee, and facilitating the improper transfer

of control away from Nelva Brunsting and facilitating the transfer of assets to imposter trustees Amy and Anita Brunsting, and others.

114. Elmer and Nelva Brunsting were consumers and Vacek & Freed were manufacturers, retailers and vendors under the above state and federal statutes and under the Uniform Commercial Code. The five Brunsting heirs were amongst the class of intended beneficiaries of the Vacek & Freed estate planning products as stated therein and, passing their wealth and legacy was the secondary purpose for which the Vacek products were purchased by Elmer and Nelva Brunsting.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff prays for judgment and relief as follows:

115. Plaintiff demands a show of proof and seeks an order from this honorable Court directing Defendants, individually and severally, to produce and certify before this Court the alleged original documents signed by Nelva Brunsting on August 25, 2010 and December 21, 2010 along with the other original trust documents in the proposed order attached.

116. Plaintiff prays the Court grant declaratory and injunctive relief as appropriate.

117. Plaintiff prays the Court award compensatory damages in favor of Plaintiff against Defendant(s) for the actual damages sustained as a result of the wrongful

conduct alleged, in an amount to be determined, as established through discovery or at trial, together with interest thereon, from each Defendant for each offense found, and

118. Plaintiff prays for an amount in total damages for all claims and all theories of recovery including multiples from Defendants in an aggregate amount greater than \$5,000,000.00 (Five Million Dollars), or such damages as are fair and reasonable, against each Defendant in personam and against each Defendant in proportion to his or her adjudged measure of the liability as determined by this Court, or by jury as the case may be.

119. Plaintiff prays this Court award legal fees and costs to Plaintiff.

Plaintiff prays for such other and further relief as the Court may deem equitable and proper.

DECLARATORY JUDGEMENT

120. Plaintiff herein alleges that that she is informed and believes sufficient evidentiary basis exists for questioning the validity of trust amending instruments created after the death of Elmer Brunsting April 1, 2009. Plaintiff herein joins in and approves the request of Probate Court appointed Executor Carl Brunsting in his Probate Court Petition seeking declaratory relief from Defendants Brunsting.

CONSTRUCTIVE TRUST

121. Plaintiff herein joins the request of Carl Brunsting in his Probate Court Petition in seeking the imposition of a constructive trust over the assets to which Plaintiff is entitled, including all property improperly transferred by Anita and Amy, including, but not limited to, the property received by Anita, Amy, Carole, and their insiders or other entities, as well as the profits Defendants received as a result of the transfer of those assets. Plaintiff also seeks the imposition of a constructive trust over the assets of Anita, Amy, and Carole's trusts to the extent needed to reverse the improper transfers.

DISGORGEMENT OF FEES

122. Plaintiff requests that all compensation paid to the alleged trustees be disgorged and that triple the attorney's fees paid by the trust to Vacek & Freed PLLC be disgorged and returned to the trusts because of the reduced value of the services provided.

COMPENSATORY AND OTHER DAMAGES

123. Defendants in this case have fraudulently concealed their activities from Plaintiff and the damages are thus impossible to predict in advance of Defendants' full, true, and complete disclosure and accounting or, in the alternative, a detailed forensic investigation.

124. Plaintiff is entitled to treble damages under the Texas Deceptive Trade Practices Act and is entitled to recovery of costs, and therefore prays for such damages as are fair and reasonable in light of all the facts as revealed through discovery or shown at trial.

EXEMPLARY DAMAGES

125. Plaintiff herein claims exemplary damages are justified by fraud, malice and/or gross negligence and prays for an award of such damages as are fair and reasonable⁸.

PUNITIVE DAMAGES

126. Plaintiff cannot ascertain the damages thus concealed and therefore prays for such damages as are fair and reasonable in regards to all remedies.

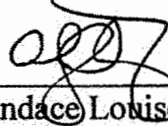
127. Plaintiff prays for fees and costs in addition to all claims for damages.

Plaintiff's attached Addendum to Affidavit is hereby incorporated herein as if fully restated.

⁸ TEXAS CIVIL PRACTICE AND REMEDIES CODE § 41.003

April 29, 2013

Respectfully submitted,



Candace Louise Curtis
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Martinez, CA 94553
925-759-9020
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Exhibit 5

Exhibit 5

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

MAY - 1 2013

David J. Bradley, Clerk of Court

CANDACE LOUISE CURTIS
Plaintiff,

§
§
§
§
§
§
§

v

CIVIL ACTION NO. 4:12-cv-00592

Jury

ANITA KAY BRUNSTING, et al.
Defendants.

APPLICATION FOR JOINDER OF PARTIES AND ACTIONS
DEMAND FOR SHOW OF PROOF OF STANDING

PARTIES

1. Plaintiff, Candace Louise Curtis, is a citizen of the State of California.
2. Defendant Anita Brunsting resides in the county of Victoria. Defendant Amy Brunsting resides in the county of Comal. Parties to be joined either reside or conduct business in the county of Harris.

NATURE OF ACTION

3. This action was brought as a diversity action alleging breach of fiduciary duty, extrinsic and constructive fraud, and intentional infliction of emotional distress, against Defendants who claim to be trustees of the family trusts. The action now appears to include violations of state and federal criminal statutes that consist of the improper transfer of securities traded under the securities laws of the United States.

JURISDICTION

4. This matter was originally brought in equity, as breach of fiduciary and related equitable claims, and included a common law tort claim under diversity jurisdiction pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2).

5. Plaintiff is now informed and believes this Court has federal question jurisdiction over the subject matter of this equity action pursuant to 28 U.S.C. §§1331 and 1367 and 27 of the Exchange Act¹ (15 U.S.C. §78aa), and that this Court has exclusive jurisdiction over these claims, as there now appears to be cause for claims arising under Section 10(b) of the Exchange Act of 1934 (15 U.S.C. §§78j(b)) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5), and the right of claims implied therefrom, as hereinafter more fully appears.

6. In connection with the newly discovered acts and omissions alleged in this Application for Joinder, Plaintiff is informed and believes Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the internet, the mails, interstate telephone communications, and the facilities of the national securities markets to improperly transfer securities traded under the laws of the United States.

¹ Securities Exchange Act of 1934, 15 U.S.C. §§78a-78kk (1982)

VENUE

7. Venue is proper in this District pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. §1391(b) and (c). Substantial acts in furtherance of the alleged fraud and/or its effects have occurred within this District.

8. The acts complained of involve alleged administration of the family trust(s) established by Elmer and Nelva Brunsting of Houston, Texas. The United States District Court for the Southern District of Texas Houston Division is, therefore, a proper venue under 28 USC §1391(a)(1).

HISTORY OF THE CASE - OVERLAPPING STATE ACTIONS

9. This action involves a dispute over changes made to a family trust and damages resulting therefrom.

10. On February 27, 2012, Plaintiff Curtis filed a pro se complaint in the United States District Court for the Southern District of Texas, seeking an accounting and alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud and intentional infliction of emotional distress in that Defendants, her siblings Anita and Amy Brunsting, acting as trustees for their parents' trust, failed to notice her of actions adversely affecting her beneficial interests, refused to provide copies of non-protected trust instruments, refused to account for trust assets or to report any other activities related to the family trusts. The case was dismissed March 8, 2012 and Curtis filed an appeal.

11. On January 9, 2013 the Fifth Circuit Court of Appeals published their opinion Reversing and Remanding to this Court for further proceedings.
12. On January 29, 2013 Bobbie Bayless, of the Houston based law firm of Bayless and Stokes, filed a civil suit in the Harris County District Court #2012-05455, against Candace Kunz-Freed and the law firm of Vacek & Freed, on behalf of Carl Brunsting as executor of the Brunsting Estate alleging violations of the DTPA, Violations of the Texas Penal Code, and other civil claims.
13. This matter was returned from the Fifth Circuit on January 30, 2013 for further proceedings. Plaintiff Curtis then reapplied for an injunction and the court set the matter for hearing on April 9, 2013, wherein a hearing was held and injunctive relief ordered.
14. After the hearing in the federal District Court an action was filed in the Harris County Probate Court #412249 naming Amy, Anita and Carole Brunsting as defendants and seeking injunctive relief over the trust in the custody of this Court.

PENDENT JURISDICTION

15. The Supreme Court shaped the contours of the modern pendent jurisdiction doctrine in United Mine Workers v. Gibbs². The Court held that when a federal court has subject matter jurisdiction over a substantial federal claim, it has the

² United Mine Workers v. Gibbs 383 U.S. 715 (1966). The Court expanded the "unnecessarily grudging" approach to pendent jurisdiction set forth in Hurn v. Oursler, 289 U.S. 238 (1933). 383 U.S. at 725. In Hurn, the Court held that a federal court had power to hear the entire case only when federal and state claims were "in support of a single cause of action." 289 U.S. at 246.

discretionary power to adjudicate state law claims arising out of “a common nucleus of operative facts”.³ This federal court thus has jurisdiction over the subject matter of the state court proceedings, as this federal claim and the state law claims derive from the same operative set of facts.

EXCLUSIVE FEDERAL JURISDICTION

16. Courts have long assumed the existence of exclusive federal jurisdiction over private actions implied from section 10(b) of the Securities Exchange Act of 1934⁴ and rule 10(b)-5.3

1. Section 10(b) [15 U.S.C. §78j(b)] provides:

It shall be unlawful for any person, directly or indirectly, by the use of any means or instrumentality of interstate commerce or of the mails, or of any facility of any national securities exchange-

(b) To use or employ, in connection with the purchase or sale of any security registered on a national securities exchange or any security not so registered, any manipulative or deceptive device or contrivance in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors.15 U.S.C. §78j(b)(1982) [hereinafter 10(b)].

2. Securities Exchange Act of 1934, 15 U.S.C. §§ 78a-78kk (1982) [hereinafter 1934 Act].

3. Rule 10b-5, promulgated by the Securities and Exchange Commission ("SEC") in 1942, provides: It shall be unlawful for any

³ 383 U.S. at 725, 726.

⁴ Securities Exchange Act of 1934, 15 U.S.C. §§78a-78kk (1982)

person, directly or indirectly, by the use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange,

(a) To employ any device, scheme, or artifice to defraud,

(b) To make any untrue statement of a material fact or to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading, or

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person, in connection with the purchase or sale of any security.

Whether a court has supplemental jurisdiction is determined by the following test: "a federal court has jurisdiction over an entire action, including state-law claims, wherever the federal-law and state law claims in the case 'derive from a common nucleus of operative fact' and are 'such that [a plaintiff] would ordinarily be expected to try them all in one judicial proceeding.'" ***Once the court has determined supplemental jurisdiction is proper under subsection (a) or (b), subsection (c) provides the list of circumstances under which the court can decline to exercise such supplemental jurisdiction:

(c) The district court may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction;

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

SUPPLEMENTAL JURISDICTION

17. Section 27 as currently codified provides:

The district courts of the United States, and the United States courts of any Territory or other place subject to the jurisdiction of the United States shall have exclusive jurisdiction of violations of this chapter or the rules and regulations thereunder, and of all suits in equity and actions at law brought to enforce any liability or duty created by this chapter or the rules and regulations thereunder. Any criminal proceeding may be brought in the district wherein any act or transaction constituting the violation occurred. Any suit or action to enforce any liability or duty created by this chapter or the rules and regulations thereunder, or to enjoin any violation of such chapter or rules and regulations, may be brought in any such district or in the district wherein the defendant is found or is an inhabitant or transacts business, and process in such cases may be served in any other district of which the defendant is an inhabitant or wherever the defendant may be found. Judgments and decrees so rendered shall be subject to review as provided in sections 1254, 1291 and 1292 of title 28. No costs shall be assessed for or against the Commission in any proceeding under this chapter brought by or against it in the Supreme Court or such other courts.

DEMAND FOR SHOW OF PROOF OF STANDING

18. Plaintiff Curtis is informed and believes that Nelva Brunsting signed neither the documents dated August 25, 2010, nor the documents dated December 21, 2010.
19. The alleged copies of trust documents received from Defendant Anita Brunsting October 23, 2010, and some of the hard copies of the alleged same documents received on or about December of 2011, bear distinctly different

signatures⁵. Curtis is informed and believes that some pertinent documents have been digitally altered and that they are not photo copies of the original, wet signed documents, nor do they bear valid digital signature stamps.

20. Federal Rules of Evidence 1002 requires production of the original documents, and because of a genuine question as to the authenticity of the alleged copies, Rule 1003, providing for the admissibility of duplicates, does not apply.

21. If Defendants cannot produce valid documents actually signed by Nelva Brunsting, demonstrating they have standing before this equitable Court as de jure trustees, then it must be presumed that they are not.

22. Candace Kunz-Freed is believed to have drawn up documents dated August 25, 2010 and December 21, 2010, that Defendants are using to claim to be trustees, and Freed is also the notary public that verified the alleged signatures of Nelva Brunsting on those instruments.

PRAYER FOR RELIEF

JOINDER

23. FRCP Rule 19 requires the joinder of necessary parties and Rule 20 allows joinder of parties.

⁵ See attached page 37 from the Qualified Beneficiary Designation and page 14-6 from the 2005 Restatement.

WHEREFORE, Plaintiff prays this honorable Court take judicial notice of state court proceedings filed subsequent to this federal complaint, as explained herein, and exercise its Supplemental Jurisdiction⁶ over the state court actions and remove those actions to this Court as (1) those actions are founded upon the same set of operative facts involving the same nucleus of persons (2) there is no concurrent state court jurisdiction over 10(b)-5 actions and, thus, this Court has exclusive jurisdiction over such claims and (3) without joinder separate courts issuing findings of facts and conclusions of law upon the same set of operative facts may produce contradictory and confusing results and (4) in consideration of res judicata, collateral estoppel, economy of the courts and uniformity of decision.

24. Plaintiff requests this Court order state court actions be joined before this Court, that state court plaintiff Carl Brunsting is joined in this Court as a co-plaintiff and that state court defendants be joined in this action as co-defendants for all claims, findings of facts and conclusions of law.

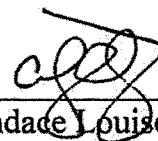
25. That the Securities Exchange Act violations alleged upon information and belief and the right of private claims implied therefrom be incorporated into the complaint before this Court.

⁶ 28 USC 1367, The language of 1367(a) gives court's jurisdiction over joinder of parties when joinder is not within 1332.

26. That Defendants be ordered to produce before this court the wet signed original documents dated August 25, 2010 and December 21, 2010 alleged to have been signed by Nelva Brunsting.

27. Plaintiff so moves this court.

Respectfully submitted, April 29, 2013



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Exhibit 6

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

MAY - 1 2013

David J. Bradley, Clerk of Court

Candace Louise Curtis §
Individually and as Co-Trustee §
Plaintiff, §
versus §
Anita Kay Brunsting, et al. §
Defendants. §

CIVIL ACTION NO. 4:12-cv-00592
Jury

PLAINTIFF'S VERIFIED AFFIDAVIT IN SUPPORT OF AMENDED COMPLAINT AND IN SUPPORT OF APPLICATION FOR JOINDER

This is an Addendum to my initial Affidavit and is to be considered as a continuation and not a replacement.

In my original Affidavit and Complaint I stated that all of the information in this case was uniquely in the possession of the Defendants, who had assumed the office of co-trustees. I also stated that there was no legitimate reason why my sisters would refuse to answer, account or even speak about the family trusts, either before or after the death of our Mother on November 11, 2011. They repeatedly insisted that I not discuss the trust with our brother Carl, who I believe is a proper successor co-trustee based upon the last instrument actually signed by both of our Parents.

After my request for information I received no current meaningful information and was forced to file suit on February 27, 2012 in order to compel answer and accounting. There was nothing else I could do to protect my beneficial interests. The action was dismissed in March 2012 and in April 2012 I received the first shocking evidence of impropriety and the reasons for all of the secrecy

became dreadfully apparent. They were stealing the family inheritance while our Mother was weakening and dying of cancer.

The Brunsting family trust assets lost value of more than half a million dollars in the last 15 months of our Mother's life, not including the lost income and dividends, or the tax liabilities created.

Primary amongst all of the ridiculous excuses for the Brunsting Defendants' self-dealing, comingling, and outright theft, was "that was a gift" from Mother. Anita had the audacity to claim that over \$40,000.00 in what appear to be her own personal credit card obligations, paid via electronic funds transfer directly from Mother's trust bank account, was justified by an imaginary compensation agreement she had with Mother for 2% of the value of the trust. The problems with that excuse are that none of them bothered to tell Carl or I before the fact, and because they are in a position of conflicting interests. Their failure to notice that they were accepting or taking anything unequally is the determining factor under which their conduct is judged.

In a March 2011 email from Anita¹ she says,

"I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her... I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl."

¹ Plaintiff Exhibit 9 USCA5 p51

If Mother was no longer trustee and no longer had access to the trust, how did she gift anything from the trust? If Mother had instructed Vacek & Freed to make changes to the trust, why would Anita have to explain the changes to her?

Amy, Anita and Carole each had a duty to notify the other beneficiaries before accepting any unusual benefits from the trust and trust law, like property law, makes this very simple. Whether or not Defendants Amy and Anita were ever de jure or de facto trustees makes no difference. Because of the conflict of interest, taking from the trust without notifying those equally stationed and equally entitled is stealing, and we need look no further than the question of consent. They never noticed me of their acts, and their self-dealing and co-mingling are all tainted by constructive fraud.

Let's talk about the original trust documents. Where are they? Amy and Anita's attorney filed his objection to discovery with his exhibits electronically, just prior to the hearing on my application for injunction on April 9, 2013. I was provided with a copy of Mr. Vie's exhibits at the hearing and did not have an opportunity to review the exhibits then, nor the pleadings he had filed electronically just before the hearing, nor any of the 4,922 pages of "voluntary disclosure" contained on a CD Mr. Vie also gave me at the same time. Mr. Vie filed his objection to disclosure the morning of the injunction hearing and handed me the CD acknowledging the fact that even under discovery it was the last day for compliance.

Exhibit 1 contained major portions of the Irrevocable Life Insurance Trust, for which Anita was the sole trustee². My original Affidavit addresses Anita's incompetence and infidelity regarding that trust. However, that trust is no longer in existence and is not part of this litigation.

² Plaintiff's original exhibit 24 (USCA5 Pages 90-156)

That exhibited document, the Irrevocable Life Insurance Trust, does not contain the signature page for the Irrevocable Life Insurance Trust at Article XI page 11-4, but it does contain portions from the 2005 Restatement of the Brunsting Family Living Trust beginning with Article XII and ending with the signature page, page 14-6, from the 2005 restatement³.

This alleged signature page is distinctly different from signature page 14-6 on the 2005 restatement⁴ that I received as an email attachment from Anita on October 23, 2010. Plaintiff Exhibit 24 was received by US mail more than 12 months after Exhibit 29 was received as an email attachment. The obvious question here is why is there more than one alleged original signature page for the 2005 Restatement?

There are numerous other signature page anomalies that have to be addressed here. While this action was pending appeal it was brought to my attention that some of the 12 documents received from Anita Brunsting⁵ via email⁶ as pdf attachments, on October 23, 2010, contained different signatures from the signature pages on the hard copies of the alleged same documents received from Anita Brunsting by certified mail sometime around December of 2011.

Page 14-6 was the second anomaly discovered. The first anomaly brought to my attention was signature page 37 of the Qualified Beneficiary Designation⁷ dated August 25, 2010. The copy I filed with the court was the one received October 23, 2010 via email, as a digital pdf, and the one received as a hard copy more than one year later was printed double sided, as mentioned in my original

³ Plaintiff original Exhibit 24 Located at page 155 of the Record on Appeal in USCA5 12-20164

⁴ Plaintiff Exhibit 29 Located at page 276 of the Record on Appeal in USCA5 12-20164

⁵ Affidavit list of documents received USCA5 p.27, also emails @ Plaintiff exhibit 7 ROA-USCA5 p.42-47.

⁶ The digital copies were received October 23, 2010 from akbrunsting@suddenlink.net and were emailed to occurtis@sbcglobal.net.

⁷ Plaintiff Exhibit P-40 ROA USCA5 pgs. 363-399

Affidavit, when it was mistaken for a duplicate of Plaintiff Exhibit 40⁸. It is not a duplicate because the signature pages are different⁹.

My assistant Rik Munson is a retired senior network engineer, certified by both Novell (CNE/CNA) and Microsoft (MCSE). He conducted an analysis of the digital documents received October 23, 2010 and discovered what appeared to be digital signature stamps on nearly every signature page, indicating that these were not photo copies (or scanned copies) of original wet signed documents.

Based upon these anomalies thought to signify forgery and fraud, on November 26, 2012, in compliance with Title 18 §4, Munson filed complaint TCR1353937817850 with the Securities and Exchange Commission (SEC) alleging possible improper transfer of securities. This complaint was updated in January 2013 with TCR1360513046085 alleging forgery of documents used by Anita Brunsting to transfer various securities to accounts in her name and into the names of others.

In the midst of these two SEC complaints, Munson opened an online support ticket with Adobe Systems Incorporated¹⁰, the owner of the patent on the portable document format (pdf), and uploaded selected digital documents from the October 23, 2010 pdf attachments for further analysis.

Adobe Systems technical support confirmed Munson's belief that the signatures on the examined documents were scanned to pdf, stamped with a digital image of a signature, printed and then rescanned to digital pdf files.

After updating his TCR with the SEC, Munson called the corporate offices for Adobe Systems Incorporated in San Jose California, specifically requesting a top level information systems technical analysis of the digital documents for

⁸ Plaintiff Exhibit 48

⁹ Plaintiff Exhibit 47

¹⁰ Plaintiff Exhibit 58

litigation purposes in this federal court suit. After receiving a call back from an Adobe engineer and following instructions to upload one of the suspicious files, Munson received a call back from the same engineer a couple days later. After an extended discussion it was determined that Munson's initial observation was most likely correct and that an examination of the original documents would be needed to verify their authenticity.

I then instructed Munson to obtain copies of the notary logs from Candace Kunz-Freed for August 25, 2010 and for December 21, 2010, which are public record. Upon request¹¹, Freed's initial response was an indication of obfuscation¹² and we were forced to send a second request¹³. The log pages we received¹⁴ raise a number of additional questions of document authenticity.

Since our brother Carl became ill in July 2010, my sisters have used various tactics to distract from their activities and to break down my relationships and communications, first with Carl and his family, and then with Mother¹⁵.

Consequently I did not receive any of the information obtained by Carl's attorney Bobbie Bayless eight or 9 months ago, until my assistant took it upon himself to contact her directly. On March 28, 2013, just twelve days before the injunction hearing, Carl's attorney was very gracious in sharing information.

Amongst the documents I was seeing for the first time was a forgery of my very own signature, two times, on an Exxon stock transfer form dated June 8, 2011¹⁶. The only way I know about this document now is because Bobbie Bayless obtained it from Computershare in Carl's petition for deposition before suit.

¹¹ Plaintiff Exhibit 61

¹² Plaintiff Exhibit 62

¹³ Plaintiff Exhibit 63

¹⁴ Plaintiff Exhibits 64 and 65

¹⁵ Plaintiff Exhibit 67

¹⁶ Plaintiff Exhibit 59

At the injunction hearing on April 9, 2013, the deadline for compliance with discovery, George Vie handed me a CD containing 4,922 Bates stamped documents. This is the same day he filed an objection to "Discovery" saying it was not due. Mr. Vie is apparently unaware that I am entitled to the same information as every other beneficiary, before any question of compelling disclosure by litigation enters into the equation. I am still trying to get some specific information.

Upon review of the CD, it is now crystal clear that Anita was an original successor trustee¹⁷ and that she was removed by our Parents and replaced with Carl and Amy as successor co-trustees in the 2005 restatement¹⁸. It is also clear that Amy was removed by our Parents and replaced with Carl and me in the 2007 amendment¹⁹. What also seems apparent is that the only information we have validating Amy and Anita's claim to have been returned to the office of successor co-trustee are documents of questionable authenticity.

Exhibit 51, received from Defendants, shows an account titled NELVA E BRUNSTING SURVIVORS TRUST AMY RUTH BRUNSTING TRTEE ANITA K BRUNSTING TRTEE U/A 11/22/2011. Mother died 11/11/11. Why was a new survivor's trust created eleven days after the demise of the surviving grantor?

Exhibits 55-57 contain an article and advertisements from the Vacek.com website promising everything he did not deliver in this case.

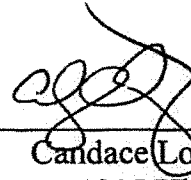
Exhibit 60 shows Anita verifying her net worth excluding her primary residence at 1.7 Million Dollars, and her occupation as a homemaker, for purposes of trading in Edward Jones securities.

¹⁷ Plaintiff Exhibit 66

¹⁸ Plaintiff Exhibit 29 USCA5 p178-279

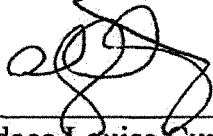
¹⁹ Plaintiff Exhibit 35 USCA5 321-322

Respectfully submitted,

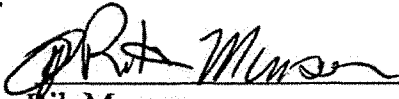


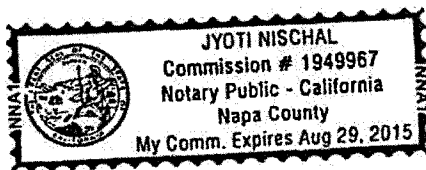
Candace Louise Curtis
1215 Ulfinian Way
Martinez, CA 94553
925-759-9020
occurtis@sbcglobal.net

I, the undersigned affiant Candace Louise Curtis, declare and state under penalty of perjury that the statements made herein and those made in my amended complaint are true, correct and based upon personal knowledge except for those things alleged upon information and belief and as to those things, I believe they are true as well.


Candace Louise Curtis

I, the undersigned affiant Rik Munson, declare and state under penalty of perjury that the statements made by Mrs. Curtis herein regarding the matters stated are true and correct as they relate to my activities.


Rik Munson



State of California County of
NAPA
Subscribed and sworn to (or affirmed)
before me on this 29 day of APRIL, 2013, by
RIK MUNSON
proved to me on the basis of satisfactory evidence
to be the person(s) who appeared before me.
Signature Jyoti Nischal
(Print)

CALIFORNIA JURAT

STATE OF: CALIFORNIA

COUNTY OF: CONTRA COSTA

SUBSCRIBED AND SWORN TO (OR AFFIRMED) BEFORE ME

ON THIS 29th DAY OF APRIL, 2013 BY

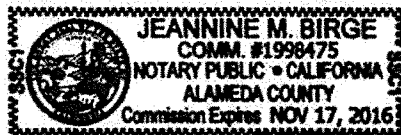
CANDACE LOUISE CURTIS,

PROVED TO ME ON THE BASIS OF SATISFACTORY EVIDENCE

TO BE THE PERSON(S) WHO APPEARED BEFORE ME.

Jeannine M. Birge

SIGNATURE: JEANNINE M. BIRGE, NOTARY PUBLIC



SEAL

PLAINTIFF'S VERIFIED AFFIDAVIT IN SUPPORT OF AMENDED
TITLE OF DOCUMENT: COMPLAINT AND IN SUPPORT OF APPLICATION FOR JUDICIAL

TOTAL NUMBER OF PAGES INCLUDING ATTACHMENT: TEN

NOTARY COMMISSION EXPIRATION DATE: NOVEMBER 17, 2016

NOTARY COMMISSION NUMBER: 1998475

AO 187 (Rev. 7/87) Exhibit and Witness List

UNITED STATES DISTRICT COURT

Southern

DISTRICT OF

Texas

Candace Curtis

EXHIBIT AND WITNESS LIST

V.

Anita Brunsting et al,

Case Number: 2012-00592

PRESIDING JUDGE					PLAINTIFF'S ATTORNEY	DEFENDANT'S ATTORNEY
Kenneth Hoyt					Pro se	George Vie III
TRIAL DATE (S)					COURT REPORTER	COURTROOM DEPUTY
March 3, 2014						
PLF. NO.	DEF. NO.	DATE OFFERED	MARKED	ADMITTED	DESCRIPTION OF EXHIBITS* AND WITNESSES	
9		2/27/2012			email admissions of Anita withholding trust docs and explaining trust changes to Nelva	
24		2/27/2012			Signature page 14-6 of the 2005 restatement Located at page 155 of the Record on Appeal	
29		2/27/2012			Signature page 14-6 of the 2005 restatement Located at page 276 of the Record on Appeal	
40		2/27/2012			Signature Page 37 from QBD 8/25/2010 received Oct 23,2010 at email attached pdf	
47		4/29/2013			Signature Page 37 from QBD 8/25/2010 received US mail December 2011 double sided	
48		2/27/2012			Original affidavit in support of complaint Page 10 of 13	
49		4/29/2013			Another digital image of an alleged Nelva signature	
50		4/29/2013			Signature page 11-4, Irrevocable life insurance trust	
51		4/29/2013			Brunsting000065, BofA_ New survivors trust re; agreement 11/22/11	
52		4/29/2013			Brunsting002439 Edward Jones Wired funds Withdrawal Notification	
53		4/29/2013			Brunsting000077, Online Banking Decedents trust	
54		4/29/2013			Brunsting000074, Survivors trust bank statement (established 11/22/11	
55		4/29/2013			Vacek.com Advertisement	
56		4/29/2013			Vacek.com Advertisement	
57		4/29/2013			Vacek.com Article on using In Terrorem Clause to disinherit	
58		4/29/2013			Adobe Portal Support Incident printout Case 0184064797 & 0183862056	
59		4/29/2013			Forgery of Plaintiff's signature	
60		4/29/2013			Edward Jones Statement to Verify information on account. Anita worth 1.7 Million	
61		4/29/2013			Notary Log Request letter to Freed	
62		4/29/2013			Freed reply to request	
63		4/29/2013			2nd request for Freed Notary Log	
64		4/29/2013			Freed notary log request compliance letter	

* Include a notation as to the location of any exhibit not held with the case file or not available because of size.

Print

From: Candace Curtis (occurtis@sbcglobal.net)
To: occurtis@sbcglobal.net;
Date: Sat, February 18, 2012 11:29:12 AM
Cc:
Subject: Fw: New Development

----- Forwarded Message -----

From: Anita Brunsting <akbrunsting@suddenlink.net>
To: Candace Curtis <occurtis@sbcglobal.net>; Amy <at.home3@yahoo.com>; Carole Brunsting <cbrunsting@sbcglobal.net>
Sent: Tue, March 8, 2011 7:15:32 PM
Subject: RE: New Development

I got the same TM from Tino. I hesitate to promise them anything in writing about money. Rather than a monthly payment, I would rather grant them a certain amount each year, but only through the direct payment of their bills - for example; mom could gift Carl \$13,000/year, but only if they send me the bill statements to pay directly, and only for bills for living/medical expenses - when the trust has paid \$13,000 in bills for the year, that's the end of the money for that year. We could ask them to sign for this money against his inheritance, but then we'd have another form that we'd have to get them to sign (probably notarized), and as we don't know if she's had Carl declared incompetent, the validity of any form he signs might be questionable.

I do like the idea of a letter telling Drina that she may have no contact w/ mom (physical, verbal, visual, phone or electronic means) and she is not to enter mom's house. She can bring Carl to visit mom, but she must remain outside the house - any violation of this letter will be considered harassment and the police will be called if she does not comply. I would also like to add in the letter that Carl's inheritance will be put into a Personal Asset Trust for his care and living expenses - I think this information might be enough to tip her hand.

I would also like to ask Candace, what this letter would do for us legally - like if we did end up calling the police would the letter lend any credence to our case?

I won't do anything until we can come upon an agreement as what to do - I can also write this letter in the role of mom's power of attorney (which she signed last year).

I spoke w/ mom about the whole situation; she listens to reason and can understand our concerns for Carl, and will sign the changes to the trust next week. I have been very forthright in explaining the changes in the trust to her, and that they would be done in order to minimize any pathway that Drina might have to Carl's money. The changes are not to penalize Carl, but to ensure the money goes for his care. I told her to "just say No" to Carl or Drina if they brought up the trust or money and to refer them to me. I reminded her that she isn't trustee anymore and doesn't have access to the trust accounts - she seems fine w/ everything, and expressed no desire to put Carl back on as a trustee. I told her that in the event she did that, that it would not be fair to the rest of us, as we would end up having to deal w/ Drina, not Carl. Mom begrudgingly admits to knowledge of the unpleasantness of this whole situation and Drina's past behavior since Carl has been ill, but I think she is really naive regarding the lengths to which Drina may go through to get Carl's inheritance.

P-9

Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005


ELMER H. BRUNSTING, Founder


NELVA E. BRUNSTING, Founder


ELMER H. BRUNSTING, Trustee


NELVA E. BRUNSTING, Trustee

Section S. Elective Deductions

A Trustee will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Trustee's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of this trust or the estate of a deceased beneficiary.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this trust declaration and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. This instrument is to be effective upon the date recorded immediately below.

Dated: January 12, 2005


ELMER H. BRUNSTING, Founder


NELVA E. BRUNSTING, Founder


ELMER H. BRUNSTING, Trustee


NELVA E. BRUNSTING, Trustee

Case 4:12-cv-00592 Document 50-1 Filed on 05/01/13 in TXSD Page 7 of 18

Case 4:12-cv-00592 Document 1-13 Filed in TXSD on 02/27/12 Page 7 of 20

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Founder and Beneficiary

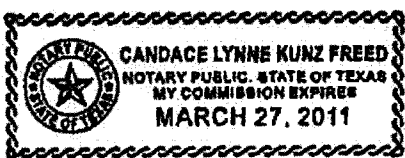
ACCEPTED and effective on August 25, 2010.

Nelva E. Brunsting

NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.



Candace Lynne Kunz Freed

Notary Public, State of Texas

EXHIBIT
P-40_p37

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

EXECUTED and effective on August 25, 2010.



NELVA E. BRUNSTING,
Founder and Beneficiary

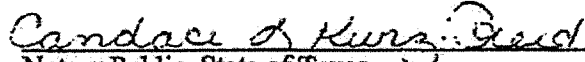
ACCEPTED and effective on August 25, 2010.



NELVA E. BRUNSTING,
Trustee

STATE OF TEXAS
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.



Notary Public, State of Texas

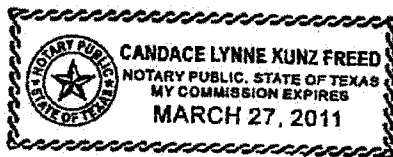


EXHIBIT
P-47

beneficiary and not from the trustees, who still refuse to fully answer, and the bulk of which were obtained from Anita in October 2010.

Ordered by Document Date

AKB denotes documents received via email from Anita on 10/23/10

CHB denotes documents received from Carl in January 2012

All other documents were received from Anita pursuant to my demand letters, and received on the date noted

AKB Quit Claim Deed, State of Iowa, signed by EHB and NEB 10/29/96 and recorded in Sioux County Iowa 11/18/96 (P-23, 7 pgs.), which contained 3 asset schedules, A, B, C, all blank

The Brunsting Family Irrevocable Trust dated February 12, 1997 (life insurance trust) received from Anita on or about 1/26/2011, Anita Kay Riley trustee. (P-24, 53 pgs.)

AKB Affidavit of Trust made 1/12/2005 (only first page) (P-25)

AKB Certificate of Trust dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees. (P-26, 2 pgs.)

AKB Certificate of Trust dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees **UNSIGNED WITH AMY RUTH TSCHIRHART CROSSED OUT** (P-27, 2 pgs.)

AKB Affidavit of Trust made 1/12/05, with selected provisions attached, Article IV Our Trustees, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed) (P-28, 32 pgs.)

AKB The Restatement of The Brunsting Family Living Trust, dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed) (P-29 102 pgs.)

The Restatement of The Brunsting Family Living Trust, dated 1/12/05, Carl Henry Brunsting and Amy Ruth Tschirhart successor co-trustees with Amy Ruth Tschirhart crossed out. (I do not know when it was crossed out – before or after it was signed), received from Anita Kay Brunsting on or about 12/21/11 (duplication of P-29, printed front and back – copy omitted)

AKB Transfer To Grantor Trust Subject To Withdrawal Contribution Agreement, **UNSIGNED**, dated 01/12/05 (P-30, 2 pgs.)

AGREED AND UNDERSTOOD
3/11/11, 2011:

Nelva E. Brunsting
NELVA E. BRUNSTING, Grantor and Founder, under the
BRUNSTING FAMILY LIVING TRUST, dated October 10,
1996, as amended

AGREED AND UNDERSTOOD
March 10, 2011:

Anita Brunsting
Anita Brunsting, Trustee, under the BRUNSTING FAMILY
LIVING TRUST, dated October 10, 1996, as amended

EXHIBIT
P-49

BRUNSTING002349
20-20566.708

Section M. Generation Skipping Transfers

The Trustee, in the Trustee's sole discretion, may allocate or assist either Founders' personal representatives or trustees in the allocation of any remaining portion of either Founder's GST exemptions to any property as to which such Founder is the transferor, including any property transferred by such Founder during life as to which such Founder did not make an allocation prior to his or her death and/or among any generation skipping transfers (as defined in Section 2611 of the Internal Revenue Code) resulting under this trust declaration and/or that may later occur with respect to any trust established under this trust declaration, and the Trustee shall never be liable to any person by reason of such allocation, if it is made in good faith and without gross negligence. The Trustee may, in the Trustee's sole discretion, set apart, to constitute two separate trusts, any property which would otherwise have been allocated to any trust created hereunder and which would have had an inclusion ratio, as defined in Section 2642(a)(1) of the Internal Revenue Code, of neither one hundred percent nor zero so that one such trust has an inclusion ratio of one hundred percent and the other such trust has an inclusion ratio of zero. If either Founder's personal representative or trustee and/or the Trustee exercises the special election provided by Section 2652(a)(3) of the Internal Revenue Code, as to any share of either Founder's property that is to be held in trust under this trust declaration, then the Trustee is authorized, in the Trustee's sole discretion, to set apart property constituting such share in a separate trust so that its inclusion ratio of such trust is zero.

We, ELMER H. BRUNSTING and NELVA E. BRUNSTING, attest that we execute this irrevocable trust agreement and the terms thereof will bind us, our successors and assigns, our heirs and personal representatives, and any Trustee of this trust. We approve this irrevocable trust agreement in all particulars and request the Trustee to execute it. This instrument is to be effective upon the date recorded immediately below.

Dated: February 12, 1997


ELMER H. BRUNSTING, Founder


NELVA E. BRUNSTING, Founder


ANITA KAY RILEY, Trustee

H

NELVA E BRUNSTING SURVIVORS TRUST
 AMY RUTH BRUNSTING TRTEE
 ANITA K BRUNSTING TRTEE U/A 11/22/2011

Page 2 of 4
 Statement Period
 01-10-12 through 02-07-12
 B 05 E I E P I 5

Account Number: 5860 2756 3523

Regular Checking Additions

<u>Deposits and Other Additions</u>	<u>Date Posted</u>	<u>Amount(\$)</u>
Deposit	01-11	6,215.87
Total Deposits and Other Additions \$6,215.87		

Regular Checking Subtractions

<u>Check #</u>	<u>Posting Date</u>	<u>Amount(\$)</u>	<u>Check #</u>	<u>Posting Date</u>	<u>Amount(\$)</u>
111	01-25	425.94	113*	01-23	740.77
Total Checks Posted \$1,166.71					

* Gap in sequential check numbers.

<u>Other Subtractions</u>	<u>Date Posted</u>	<u>Amount(\$)</u>
Hc Prop Tax Des:hcpt1000 ID:b-0985600000031	01-19	1,285.05
Indn:Nelva Brunsting Surviv Co ID:40223600 Ppd		
Stream Energy-TX Bill Payment	01-20	59.96
AT&T Bill (Sbc-AR,K,S,MO,OK,TX) Bill Payment	01-31	86.00
Bank Of America Credit Card Bill Payment	02-02	269.84
Total Other Subtractions \$1,700.85		

Daily Balance Summary

<u>Date</u>	<u>Balance(\$)</u>	<u>Date</u>	<u>Balance(\$)</u>	<u>Date</u>	<u>Balance(\$)</u>
Beginning	18,740.79	01-20	23,611.65	01-31	22,358.94
01-11	24,956.66	01-23	22,870.88	02-02	22,089.10
01-19	23,671.61	01-25	22,444.94		

**EXHIBIT
P-51**

BRUNSTING000065

12555 Manchester Road
St. Louis, MO 63131-3710
www.edwardjones.com

Edward Jones

November 22, 2011

ANITA KAY BRUNSTING TTEE
U/A DTD 10/10/1996
NELVA E BRUNSTING SURVIVORS TR
NELVA E BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904-3049

NC_W

Account: 653-13555-1-6

WIRED FUNDS WITHDRAWAL NOTIFICATION

In our ongoing efforts to achieve quality, accuracy and protect your assets, this letter is being provided to confirm activity that recently occurred in your account. If the following information is correct, no further action is necessary.

Wired funds were issued from your account.

Date	November 21, 2011
Bank Name	BANK OF AMERICA NT AND SA NEW
Bank Account Registration	ANITA KAY BRUNSTING TTEE
Amount	\$25,112.57
Fees	\$25.00

This letter is intended to confirm the above specific activity and may not reflect all transactions for a given date. Please refer to your monthly statement for a complete transaction listing.

If this information is correct, no further action is necessary. If this information does not match your records, please direct inquiries to:

Client Relations Department
Phone Number: 1-800-803-3333
Monday - Friday 7 a.m. - 7 p.m. Central

Thank you for allowing Edward Jones to assist with your financial needs.

Sincerely,

Client Relations

EXHIBIT
P-52

BRUNSTING002439

20-20566.711

Bank of America



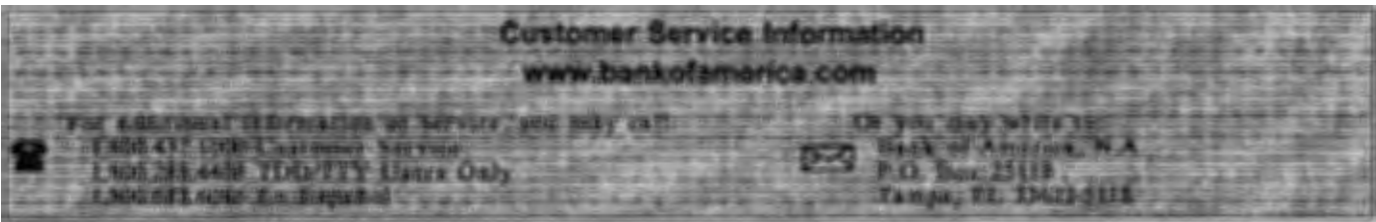
Bank of America, N.A.
 P.O. Box 25118
 Tampa, FL 33622-5118

Page 1 of 3
 Statement Period
 11-22-11 through 12-12-11
 B 07 0 A P PA 7 0138066
 Number of checks enclosed: 0
 Account Number: 5860 2756 3536

13099 001 SCM999 I 4 0

ELMER H BRUNSTING DECEDENTS TRUST
 ANITA K BRUNSTING TRTEE
 AMY RUTH BRUNSTING TRTEE U/A 10/10/1996
 203 BLOOMINGDALE CIR
 VICTORIA, TX 77904-3049

Our Online Banking service allows you to check balances, track account activity and more.
 With Online Banking you can also view up to 18 months of this statement
 online and even turn off delivery of your paper statement.
 Enroll at www.bankofamerica.com.



Deposit Accounts

Regular Checking

ELMER H BRUNSTING DECEDENTS TRUST ANITA K BRUNSTING TRTEE
 AMY RUTH BRUNSTING TRTEE U/A 10/10/1996

Your Account at a Glance

Account Number	5860 2756 3536
Beginning Balance on 11-22-11	\$ 0.00
Deposits and Other Additions	+ 381.32
Ending Balance on 12-12-11	\$ 381.32

Regular Checking Additions

Deposits and Other Additions	Date Posted	Amount(\$)
Deposit	11-22	381.32
		Total Deposits and Other Additions \$381.32

**EXHIBIT
 P-53**

BRUNSTING000077
 20-20566.712

H

NELVA E BRUNSTING SURVIVORS TRUST
 AMY RUTH BRUNSTING TRTEE
 ANITA K BRUNSTING TRTEE U/A 11/22/2011

Page 2 of 4
 Statement Period
 03-10-12 through 04-09-12
 B 05 B I E P I 5

Account Number: 5860 2756 3523

Regular Checking Additions

<u>Deposits and Other Additions</u>	<u>Date Posted</u>	<u>Amount(\$)</u>
Deposit	03-12	100.00
Online Banking transfer from Chk 3536 Confirmation# 4049713782	03-12	10,000.00
Deposit	03-13	10,040.00
Deposit	03-13	10,000.00
Deposit	03-13	237.16
Deposit	03-14	433,129.32
Deposit	03-23	162.73

Total Deposits and Other Additions \$463,669.21

Regular Checking Subtractions

<u>Check #</u>	<u>Posting Date</u>	<u>Amount(\$)</u>	<u>Check #</u>	<u>Posting Date</u>	<u>Amount(\$)</u>
116	03-19	2,175.00	118*	03-21	14.80

Total Checks Posted \$2,189.80

* Gap in sequential check numbers.

<u>Service Charges and Other Fees</u>	<u>Date Posted</u>	<u>Amount(\$)</u>
Returned Item Chargeback Fee	03-16	12.00

Total Service Charges and Other Fees \$12.00

<u>Other Subtractions</u>	<u>Date Posted</u>	<u>Amount(\$)</u>
Online Banking transfer to Chk 3536 Confirmation# 1875543361	03-14	20,000.00
Cpenergy Entex Des:Cpe ACH Check #:0117 Indn:000003850291 Co ID:9413994001 Arc	03-15	158.09
Return Item Chargeback	03-16	70.30
Stream Energy-TX Bill Payment	03-26	39.19

Total Other Subtractions \$20,267.58

Daily Balance Summary

<u>Date</u>	<u>Balance(\$)</u>	<u>Date</u>	<u>Balance(\$)</u>	<u>Date</u>	<u>Balance(\$)</u>
Beginning	5,035.86	03-15	448,384.25	03-23	446,274.88
03-12	15,135.86	03-16	448,301.95	03-26	446,235.69
03-13	35,413.02	03-19	446,126.95		
03-14	448,542.34	03-21	446,112.15		

**EXHIBIT
P-54**

BRUNSTING000074

Are you **CONCERNED** about **PROTECTING YOUR ESTATE and YOUR BENEFICIARIES?**

If your estate plan is out of date or based on a simple will (or no will at all), you should review and update it. But first, attend this free seminar, especially if you:

- ▣ Have a **handicapped or disabled child** or other beneficiary
- ▣ Have a **child who is not a good money manager**
- ▣ Have a **successful child** who has a sizable net worth
- ▣ Have a **child whose marriage is rocky**
 - ▣ Are in **poor health** and concerned about who will make decisions
- ▣ **Own real estate** in several counties or states
 - ▣ **Own property in joint tenancy**
 - ▣ **Want to know how to avoid guardianships**
- ▣ Have both **community and separate property issues**
 - ▣ **Have children by a prior marriage**
- ▣ Are concerned about **in-laws and step-children**
 - ▣ **Have large tax-deferred accounts (IRA's, Annuities, etc.)**
- ▣ **Don't want HIPAA to sabotage your estate plan**
- ▣ **Want to protect you and your assets and property from outsiders** who might want to take them away from you
- ▣ **Want to minimize death taxes on taxable estates**

COMMENTS FROM PREVIOUS ATTENDEES ABOUT THE PRESENTATION

"Very excellent presentation-spiced with interesting examples and anecdotes", D.L.C., Houston, TX

"Well organized, informative, useful and practical seminar presented in an interesting and even entertaining manner!", L.A.H., Baytown, TX

"Very well done, interesting and educational – time passed by so fast - Great, Thanks!", J.K.M., Hempstead, TX

"This was incredibly enlightening. An excellent presentation, thank you for opening this to the public." A.P., Houston, TX

"Sure wish I'd had this seminar before I had my trust created. Excellent presentation and Q & A", J.B., Baytown, TX

“...excellent presentation—spiced with interesting examples and anecdotes.” D.L.C., Houston, TX

**SAFEGUARD YOUR ESTATE!
AVOID COMMON AND COSTLY MISTAKES
MANY PEOPLE MAKE**

Learn how a properly designed estate plan can protect from:

- Forcing your family through court if you are *disabled*
- Forcing your family through court if you *die*
- Falling prey to the uncertainty of the new “permanent” death tax law
- Failing to protect your beneficiaries from predators who want to take their inheritance away from them (divorce, lawsuits, creditors, etc.)
- Allowing HIPAA to sabotage your estate plan
- Failing to assure that your beneficiaries take advantage of the **maximum income tax “stretch out”** and protecting your loved ones from losing your IRA to divorce, lawsuits, creditors, etc.
- Failing to protect you **and** your assets and property from outsiders who might want to take them away from you
- Failing to minimize death taxes on taxable estates



Mr. Vacek is Board Certified as a specialist in Estate Planning and Probate Law by the Texas Board of Legal Specialization

Act Now! Space is Limited • Call 281-531-5800 To Reserve Your Seat

Attorney Albert E. Vacek, Jr. has practiced estate planning for over 41 years and has designed and prepared customized estate plans for over 9,000 people. *It's no coincidence that many families have turned to his law firm to set up their trust or upgrade their original trust when they wanted greater asset protection for their loved ones!*

You'll definitely want to hear what he has to say -- and take action soon

**Thursday, March 21 at 7:00 pm or Saturday, March 23 at 10:00 am
EMBASSY SUITES (I-10 and Kirkwood)
11730 Katy Freeway
Houston, Texas 77079**

Vacek & Freed, PLLC
Attorneys at Law
Phone: 281.531.5800 1.800-229-3002
11777 Katy Freeway, Suite 300 South, Houston, Texas 77079
www.vacek.com

in_terrorem_clause_article.pdf

http://www.vacek.com/files/in_terrorem_clause_article.pdf



'In terrorem' clause is one way to cut heir out of will

By ALBERT E. VACEK JR.
HOUSTON CHRONICLE

Nov. 6, 2008, 10:42PM

Curry Glassell, the daughter of oilman and arts benefactor Alfred Glassell, is disputing his last will in a high-profile Houston court battle that will have serious consequences for Houston's arts groups as well as for the Glassell family. One of the issues at stake is what is called an "in terrorem" clause in the will (also known as a forfeiture clause) that provides that anyone who contests the will is to lose whatever bequest has been granted to him or her — hence, the "terror" that will result if one does not follow the directives of the will. The will of the recently and tragically deceased John O'Quinn also contains a no contest clause.

Many people who are not specialists in estate planning law would tend to take such a clause at face value and believe that, if their lawyer includes such a clause in their will, their chosen heirs will be protected forever from the possibility of litigation challenging the will. Unfortunately, this is not the case.

An "in terrorem" clause sounds great and offers apparent reassurance to those who rely on a will, but it is no panacea. In fact, a new Texas law that went into effect on June 19, 2008, reduces the effectiveness of these clauses even further by clarifying that they do not apply if an attack on the will is made and maintained in good faith and on the basis that probable cause exists. On the other hand, an "in terrorem" clause may still apply if a lawsuit challenging a will is deemed to be just a frivolous nuisance suit designed to extort more money from the beneficiaries.

Unhappy heirs or potential heirs who decide to challenge a will often do so either on the basis that the testator was unduly influenced by a beneficiary, or that he or she was suffering from diminished capacity at the time the will was made and did not really know

what he was doing — as in the recent New York case involving the estate of wealthy socialite and philanthropist Brooks Astor. In that case, the jury agreed with prosecutors that Brooke Astor's son took advantage of her reduced mental capacity to trick her into changing her will to his benefit.

There are other, better ways to protect a will from a challenge than just relying on an "in terrorem" clause. One method is to, in a sense, buy off a potential challenger by leaving him or her something of value so that he or she will be tempted to take the money rather than file a lawsuit and await the uncertain outcome of litigation.

Another tactic is for the testator (the person making the will) to be entirely frank with heirs and potential heirs while he or she is still alive, and let them know exactly what to expect, so there will be no nasty surprises or disappointment down the road. If a potential heir is to be disinherited or left very little in comparison to others, the will should state that fact plainly, so that a challenger cannot claim that the testator was not in his or her right mind and simply forgot about his oldest son or youngest grandchild. Such a clause might state that the testator had adequately provided for the heir during his lifetime, or that he is leaving the potential heir some small amount, or even that the potential heir is to receive nothing, in the words of the infamous Leona Helmsley will, "for reasons well known to them."

In every case, all the required formalities should be carefully observed, such as, for example, making sure the will is signed in the presence of impartial witnesses. It's also a good idea for any testator to design and execute a plan to provide for heirs well in advance of serious illness and death so there can be little question later that he or she didn't know what he was doing.

Testators should also consider a living trust as a

EXHIBIT
P-57

in_terrorrem_clause_article.pdf

http://www.vacek.com/files/in_terrorrem_clause_article.pdf



valuable tool to minimize the possibility of a contest. Typically, living trusts are harder to contest than wills.

Few testators have \$500 million to bequeath, as did Alfred Glassell, or the many millions probably involved in the John O'Quinn estate.

But whatever amount a testator may have to leave to loved ones, whether large or small, a proper will should include every possible protection to ensure that his or her wishes will be observed.

Vacek is a board-certified estate planning and probate attorney who has been practicing in Houston for more than 38 years.

EXHIBIT
P-57_2 of 2

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Rik Munson, 1600 Riviera drive Walnut Creek, Walnut Creek

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**EXHIBIT
P-58**

3/29/2013 8:29 AM
20-20566.718

Computershare

Computershare
P.O. Box 43078
Providence, RI, 02940-3078

New Holder/Recipient Information

Account 1

Account Type	Individual	Shares to Transfer	160		
	Holder	SSN/EIN	457-25-1860		
First Name	Anita	Middle Initial			
Last Name	Brunsting				
Street Address	203 Bloomingdale Circle				
City	Victoria	State	TX	Zip	77904

*Form W-8: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
 Certification: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer identification number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of Holder: Anita Brunsting Date (mm/dd/yyyy): 04/07/2011

Investment Plan Enrollment - The shares being transferred to you were enrolled by the prior owner in the Company's investment plan. The terms and conditions of the plan are available online or by calling us at the number listed on the reverse side of this form. By signing below, you agree to keep the shares in the plan and to be bound by the plan's terms and conditions. NOTE: IF THE PLAN PROVIDES FOR REINVESTMENT OF DIVIDENDS, SHARES HELD IN THE PLAN WILL BE SUBJECT TO FULL REINVESTMENT. If you do not sign below, whole shares will be placed in IRS book entry form and not enrolled in the plan and a check will be mailed to you for any fractional shares.

Signature of New Holder/Recipient: Anita Brunsting Date (mm/dd/yyyy): 06/07/2011

Account 2

Account Type	Individual	Shares to Transfer	160		
	Holder	SSN/EIN	509-56-6240		
First Name	Candace	Middle Initial			
Last Name	Curtis				
Street Address	1215 Uffman Way				
City	Martinez	State	CA	Zip	94553

*Form W-8: This section must be signed by the NEW HOLDER/RECIPIENT, as shown above, whose SSN/EIN is entered above.
 Certification: Under penalty of perjury, I certify that (1) the number shown on this form is my correct Taxpayer identification number, and (2) I am not subject to backup withholding because (a) I am exempt from backup withholding or (b) I have not been notified by the IRS that I am subject to backup withholding as a result of failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and (3) I am a US citizen or other US person.

Certification Instructions: You must cross out item (2) in the above paragraph if you have been notified by IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return.

Signature of Holder: Candace Curtis Date (mm/dd/yyyy): 06/08/2011

Investment Plan Enrollment - The shares being transferred to you were enrolled by the prior owner in the Company's investment plan. The terms and conditions of the plan are available online or by calling us at the number listed on the reverse side of this form. By signing below, you agree to keep the shares in the plan and to be bound by the plan's terms and conditions. NOTE: IF THE PLAN PROVIDES FOR REINVESTMENT OF DIVIDENDS, SHARES HELD IN THE PLAN WILL BE SUBJECT TO FULL REINVESTMENT. If you do not sign below, whole shares will be placed in IRS book entry form and not enrolled in the plan and a check will be mailed to you for any fractional shares.

Signature of New Holder/Recipient: Candace Curtis Date (mm/dd/yyyy): 06/08/2011

EXHIBIT
P-59

Page 2 of 2
+

1245 JJ Kelley Memorial Dr.
St. Louis, MO 63131-3600
(314) 515-6240
www.edwardjones.com

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072369 ECV001B4
ANITA KAY BRUNSTING TTEE
U/A DTD 10/10/1996
ELMER H BRUNSTING DECEDENTS TR
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904-3049

May 22, 2012

Thank you for continuing to let Edward Jones help you prepare for your financial future. In order to provide you with quality service, we are required to verify the information we have on file related to this account. This helps Edward Jones better assist you in making financial decisions.

We're contacting you because either your financial advisor recently updated your account information or it has been three years since we last verified your information.

Please review the enclosed pages, which list your account information. If the information is correct, you do not need to return this letter. However, if changes are needed, please print the new information on the attached pages and sign and return them in the postage-paid return envelope or fax to 877-888-0981 so that we can update our records. **Please do not enclose cash, checks or other securities with this letter.** Please note that any information you share with Edward Jones is confidential. For more information on our privacy policy, please visit www.edwardjones.com. We have also enclosed information titled "Account Safety" that provides helpful reminders for maintaining account records.

As the primary account holder, you will receive all correspondence. You may elect to access all your Edward Jones accounts, updated every day with the latest information, through Edward Jones Online Account Access. This free service, available at www.edwardjones.com, allows you to select electronic delivery for certain types of information, specifically statements, proxies, etc.

Again, thank you for your business and your confidence in Edward Jones. We look forward to serving your investment needs.

Sincerely,

Ronald L. Gorgen
Principal, Compliance Division

EXHIBIT
P-60_1 of 4



BRUNSTING003982

20-20566.720

072369 ECV001B4 010773

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EXHIBIT
P-60_2 of 4

BRUNSTING003983

20-20566.721

1245 JJ Kelley Memorial Dr.
St. Louis, MO 63131-3600
(314) 515-6240
www.edwardjones.com



Account Type: TRUST
Account Number: 653-13579
Branch Number: 06539

Date: May 22, 2012

Enter current information for all persons listed on the account. Please sign and return in the postage-paid envelope or fax to 877-888-0981 only those pages requiring updates to the information you see printed. For your protection, do not enclose cash, checks, securities or other material.

- 1. **Name and MAILING Address (first, middle, last):**
ANITA KAY BRUNSTING TTEE
U/A DTD 10/10/1996
ELMER H BRUNSTING DECEDENTS TR
203 BLOOMINGDALE CIRCLE
VICTORIA TX 77904-3049
- 2. **Account Objectives** (see definition of terms):
You have selected an Edward Jones Advisory Solutions - Fund Model account. Your account objectives were determined by information provided when you completed the Advisory Solutions Investment Objective Questionnaire and are contained on your Advisory Solutions Client Agreement. If you do not believe you have selected an Edward Jones Advisory Solutions - Fund Model account, or your objectives have changed, please make a note on this letter and return in the postage paid envelope.
- 3. **Net Worth** (must exclude value of primary residence):
\$1,700,000
- 4. **Annual Income:**
\$64,000
- 5. **Prior Investment Experience** (see definition of terms):
(4) Extensive Experience
- *6. **Risk Profile** (see definition of terms):
(3) MODERATE
- 7. **Approximate dollar amount of assets held in the account expected to be withdrawn within three years:**
\$0
- *8. **Investment Time Horizon** (see definition of terms):
(C) 6-10 Years
- 9. **Is any account holder:**
 - a. an Edward Jones employee or related to an Edward Jones employee? NO
 - b. employed or related to someone employed by an NYSE (New York Stock Exchange) member financial institution? NO
 - c. employed or related to someone employed by an NASD (National Association of Security Dealers) member financial institution? NO

Client's Signature: _____ Date: _____

EXHIBIT
P-60_3 of 4

BRUNSTING003984

20-20566.722



072288 ECV001B4 010774

1245 JJ Kelley Memorial Dr.
St. Louis, MO 63131-3600
(314) 515-6240
www.edwardjones.com



Account Type: TRUST
Account Number: 653-13579
Branch Number: 06539

Date: May 22, 2012

Enter current information for all persons listed on the account. Please sign and return in the postage-paid envelope or fax to 877-888-0981 only those pages requiring updates to the information you see printed. For your protection, do not enclose cash, checks, securities or other material.

1. Legal Name & Home Address, no PO Box:
(first, middle, last)

ANITA KAY BRUNSTING
203 BLOOMINGDALE CIRCLE
VICTORIA, TX 779043049

2. Date of Birth: 08/07/1963

3. Home Telephone Number: 361-550-7132

4. Current Occupation: HOMEMAKER

5. Current Employer Name: NA

Client's Signature: _____

Date: _____

EXHIBIT
P-60_4 of 4

BRUNSTING003985

20-20566.723

Rik Munson
218 Landana Street
American Canyon CA 94503

To
Candace Kunz-Freed
14800 St Marys Ln Ste 230
Houston, Tx 77099

Tuesday, December 11, 2012
Certified Mail #7012 2210 0000 1342 6586

Dear Ms. Kunz- Freed

I will need to see your notary log book entries for August 25, 2010 and for December 21, 2010.

According to the Secretary of State the maximum fee is fifty cents per page. I am enclosing a money order for \$10.00 as a deposit for fees along with a self addressed return envelope with postage fully prepaid.

If the number of pages exceeds 20 please notify me that I may make the necessary fee adjustment.

Respectfully

Rik Munson
218 Landana St
American Canyon CA 94503

EXHIBIT
P-61
20-20566.724

VACEK & FREED, PLLC

ALBERT E. VACEK, JR.*
SUSAN S. VACEK
CANDACE L. KUNZ-FREED
PAUL J. BROWER
JULIE A. MATHIASON
BERNARD L. MATHEWS, III, *Of Counsel*
*Board Certified Estate Planning and Probate Law
Texas Board of Legal Specialization

11777 Katy Freeway, Suite 300 South
Houston, Texas 77079

(281) 531-5800
1-800-229-3002

Telefax (281) 531-5885
E-mail Address: consult@vacek.com

December 19, 2012

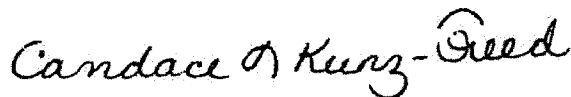
Mr. Rik Munson
218 Landana St.
American Canyon, CA 94503

Dear Mr. Munson:

I am in receipt of your request for copies of my notary pages that correspond to book entries for August 25, 2010 and December 21, 2010. Unfortunately, I am unable to fulfill your request for said copies in order to protect the privacy and maintain the confidentiality of my other clients who also signed documents those dates and thus signed my notary book. If you will be so kind as to identify the specific client for whom you are interested in obtaining these public records, then I will redact the other clients' names and personal information with which you are not concerned.

Enclosed you will find your envelope and money order, which are being returned to you. Please note that any check payable to me for a copy of my notary records should be made payable to the law firm, VACEK & FREED, PLLC. There are four (4) pages total that correspond to these dates you request, so please remit payment of \$2.00 for these copies. Finally, note that we have moved offices and our current office address is as identified in the letterhead above.

Sincerely,



Candace L. Kunz-Freed

CLF/sp
Enclosures

EXHIBIT
P-62

Rik Munson
218 Landana Street
American Canyon CA 94503

To
Candace Kunz-Freed
11777 Katy Freeway Ste 300 S.
Houston, Tx 77079

cc: John Steen
Notary Public Unit
Secretary of State
P.O. Box 13375
Austin, Texas 78711-3375

Certified Mail #7012 2210 0000 1342 6593

Dear Ms. Kunz- Freed

You recently responded to certified mail letter 7012 2210 0000 1342 6586, wherein I requested copies of your notary log book entries for August 25, 2010 and for December 21, 2010.

I received a reply on December 24, 2012 in which you expressed concerns over the privacy of certain of your clients. You further intimated that any check payable for a copy of your notary records should be made payable to the law firm, VACEK & FREED, PLLC.

Ms. Freed your Texas State Bar Association number is 24041282 and your Texas state Notary ID is 126053214. I should not have to instruct you on the notary laws in Texas. You renewed your Notary license when it expired in March 2011 and the address you gave to the Secretary of State is 14800 St Marys Ln, Ste 230, Houston, TX 77099. If this is not correct please update your information with the Secretary so that it is correct.

The Secretary of State has addressed your concerns and long since posted the information on the government's website for all to see¹. The notary book belongs to the notary public. The employer is not the owner of a notary's record book or

¹ <http://www.sos.state.tx.us/statdoc/forms/notary-public-ed-info.pps>

EXHIBIT
P_63

seal, even if the employer paid for the materials. Tex. Atty. Gen. Op. GA-0723. A Texas notary public is required by law to maintain a record book containing information on every notarization performed and is required to authenticate every official act with the seal of office. The record book is public information and a notary is required to produce copies of the book upon request. Therefore, the book and seal should remain in the possession of the notary at all times.

The Attorney General Opinion cited above may be found on the Attorney General's website². For more information on the records of notaries public, consult the Secretary of State. As their FAQ says, Texas notaries public are governed by Chapter 406 of the Government Code³, Chapter 121 of the Civil Practice and Remedies Code⁴ and the secretary of state's administrative rules found in 1 Texas Administrative Code Chapter 87⁵, as well as other applicable state and federal laws.

Under section 406.014 of the Texas Government Code, a notary public is required to maintain a record book which includes the following information:

1. Date of each instrument notarized;
2. Date of the notarization;
3. Name of the signer, grantor or maker;
4. Residence of the signer, grantor or maker;
5. Whether the signing party was personally known, identified by a governmental identification card, or was introduced and the name of the introducing party;
6. Name and residence of the grantee; and Brief description of the instrument.

These requests concern any and all log book pages containing entries for August 25, 2010 and all log book pages containing entries for December 21, 2011. Please also inform me of the number of pages and the cost to produce copies of your notary log from June 1, 2010 through April 15, 2012 inclusive.

Please be advised that this request is being made on behalf of John Q. Public who is the owner of the information in the requested public records. Both the object and the subject of these requests are the official acts entered by the Notary Public Candace Kuntz-Freed as evidenced by the notary log required by the Texas Government Code cited above. The law requires the notary to produce copies of the public records containing the legally required information without redaction.

² <https://www.oag.state.tx.us/opinions/opinions/50abbott/op/2009/htm/ga-0723.htm>

³ <http://www.statutes.legis.state.tx.us/Docs/GV/htm/GV.406.htm>

⁴ <http://www.statutes.legis.state.tx.us/Docs/CP/htm/CP.121.htm>

⁵ [http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tac_view=4&ti=1&pt=4&ch=87](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tac_view=4&ti=1&pt=4&ch=87)

EXHIBIT
P-63

If Mr. Public experiences any further difficulties in obtaining a suitable reply to this request he will file a notary complaint. If you have any further reservations in complying with this request I suggest you might direct your questions and concerns directly to Texas Secretary of State John Steen.

According to the Secretary the maximum fee is fifty cents per page. I am enclosing the same money order for \$10.00 as a deposit for fees along with a self addressed return envelope with postage fully prepaid. Payment is made to Candace Kunz-Freed the Notary Public to whom these requests are made and not to the law firm of Vacek & Freed having nothing to do with these requests.

If the number of pages exceeds 20 please notify me that I may make the necessary fee deposit adjustments.

I will expect your compliance with this inquiry within fifteen days of your receipt of this second request as required by Texas state law.

Respectfully

Rik Munson
218 Landana St
American Canyon CA 94503

EXHIBIT
P-63

Page 3 of 3

VACEK & FREED, PLLC

ALBERT E. VACEK, JR.*
SUSAN S. VACEK
CANDACE L. KUNZ-FREED
PAUL J. BROWER
JULIE A. MATHIASON
BERNARD L. MATHEWS, III, *Of Counsel*
*Board Certified Estate Planning and Probate Law
Texas Board of Legal Specialization

11777 Katy Freeway, Suite 300 South
Houston, Texas 77079

(281) 531-5800
1-800-229-3002

Telefax (281) 531-5885
E-mail Address: consult@vacek.com

January 15, 2013

Mr. Rik Munson
218 Landana St.
American Canyon, CA 94503

Dear Mr. Munson:

Per your request, enclosed are copies of my notary pages for book entries dated August 25, 2010 and December 21, 2010. The additional pages you request for dates June 1, 2010 through April 15, 2012 total 24 pages. Please remit the exact fee of \$12.00 for these additional pages, if you so request them. You will need to once again provide a self-addressed return envelope for these additional copies.

Finally, you will find a check for \$8.00 payable to you for the return of the money order you previously submitted, less the cost of the four pages included herein. I am unable to hold these funds on account.

Sincerely,

Candace L. Kunz-Freed
Candace L. Kunz-Freed

CLF/sp
Enclosures

EXHIBIT
P-64

Notarization Date/Time	Document Date	Type of Notarization	Name of Signer	Signer's Signature	Signer's Address and Telephone Number
11/29/10	11/29/10		Shelley Jones	<i>Shelley Jones</i>	4811 Islandwood Dr Houston TX 77056
11/24/10	11/24/10		Eloy Stockdick	<i>Eloy Stockdick</i>	4011 Franz Katy TX 77423
11/24/10	11/24/10		Rosanne Lopez	<i>Rosanne Lopez</i>	11454 Valley Spring Houston TX 77045
12/11/10	12/11/10		Dr. C.V. Begettel	<i>Dr. C.V. Begettel</i>	21521 Redwood Houston/Katy TX 77056
12/14/10	12/14/10		Irene Kovar	<i>Irene Kovar</i>	13030 Presnell Houston TX 77056
12/29/10	12/29/10		Anita Brunsting	<i>Anita Brunsting</i>	203 Bloominglee Cir Victoria, TX 77904
12/29/10	12/29/10		Kyung Jacobs	<i>Kyung Jacobs</i>	8326 45th Grande Ct. Houston TX 77083
12/29/10	12/29/10		Tina Burns	<i>Tina Burns</i>	108021 Woodway Houston TX 77056
11/03/11	11/03/11		Kyung Jacobs	<i>Kyung Jacobs</i>	9326 Ash Garden Ct. Houston TX 77083
12/11/10	12/11/10		John Sutherland	<i>John Sutherland</i>	11454 Valley Spring Houston TX 77045
12/11/10	12/11/10		Ellen Sutherland	<i>Ellen Sutherland</i>	Poole ne Binacco 58090 Scanline (CR) Italy
12/11/10	12/11/10		Rose Lee Cook	<i>Rose Lee Cook</i>	21210 Pearl & ...
12/11/10	12/11/10		M. Chan	<i>M. Chan</i>	21326 Rose Hollow Ln Katy TX 77450

EXHIBIT

Page 15 of 23

Filed on 05/01/13 in TXSD

Document 502

99592

5041

Personal Knowledge

Type of Identification <input type="checkbox"/> D.L. <input type="checkbox"/> I.D. Card <input type="checkbox"/> Personally Known <input type="checkbox"/> Credible Witness <input type="checkbox"/> Passport <input type="checkbox"/> Other	Description of Document, Additional Information, or Comments	Fee	Signer's Right Thumbprint	
Personal Knowledge	HIPAA - PAT TRUSTEES DESIGNATION OF SUCCESSOR TEE Certi. of Tr.	\$ 0	Top of Thumbprint	161 162
Personal Knowledge	Qualified Benef. Design.	\$	Top of Thumbprint	163 164
Personal Knowledge	Appt. of Succ Trustees Qualified Benef. Designation	\$	Top of Thumbprint	165 166
Personal Knowledge	Funding Pkg. COTs (ST) DT, LT (3) Med POA, HIPAA, WBD, APPT SUCC TEE Sub's and AS KNOWL.	\$	Top of Thumbprint	167 168
Personal Knowledge	Amended Affidavit/Oath	\$	Top of Thumbprint	169 170
Personal Knowledge	Appt. of Succ Tee Resignation documents.	\$	Top of Thumbprint	171 172
Personal Knowledge	COT's (3) Acceptance as ^{SUCC} Trustee	\$	Top of Thumbprint	173 174
Personal Knowledge		\$	Top of Thumbprint	175 176
Personal Knowledge	Beneficiary form for Chase IRA	\$	Top of Thumbprint	175 176
Personal Knowledge	Birth Certificate Correction	\$	Top of Thumbprint	175 176
Personal Knowledge	Farmers Insurance Claim Trustee Stmt for LT	\$	Top of Thumbprint	175 176
Personal Knowledge	Resignation of Tee Med POA	\$	Top of Thumbprint	175 176
Personal Knowledge	Accept of Succ Co Tee COT, Delegation of Auth	\$	Top of Thumbprint	175 176
Personal Knowledge	Accept of Succ Co Tee Accept of Delegation COT	\$	Top of Thumbprint	175 176
Personal Knowledge	Funding (PMZ) Med POA; COT'S (3) Deed HS, Deed other, Assign P/P.	\$	Top of Thumbprint	175 176

Notarization Date/Time	Document Date	Type of Notarization	Name of Signer	Signer's Signature	Signer's Address and Telephone Number
7/23/10	7/23/10	IN office	Robert Holmes	<i>Robert Holmes</i>	13218 Verbena HOUSTON TX 77083
7/23/10	7/23/10	IN office	Nancy Konismayr	<i>Nancy Konismayr</i>	1873 Birchwood Dr. Okenos ME 04864
7/21/10	7/21/10		Carol L. Hayes	<i>Carol L. Hayes</i>	6206 Summerfield Dr Spring, TX 75839
7/21/10	7/21/10		Karen Renee Noyes	<i>Karen Renee Noyes</i>	13819 Cady Court HOUSTON, TX 77077
7/21/10	7/21/10		Lisa Hanney	<i>Lisa Hanney</i>	5706 Foxe Vaden Burgin, TX 77335
7/21/10	7/21/10	IN office	Lauree Godbold	<i>Lauree Godbold</i>	8148 Willow Forest Dr. Tomball TX 77375
8/10/10	8/10/10	" "	" "	<i>Irene R. Godbold</i>	" "
8/17/10	8/17/10		Irene R. Godbold	<i>Irene R. Godbold</i>	1510 Brezy Bend Katy TX 77494
			Fred Ben Hinzburg	<i>Fred Ben Hinzburg</i>	
			Patricia Rene Mullins	<i>Patricia Rene Mullins</i>	
			Suzan Faye Skinger	<i>Suzan Faye Skinger</i>	
			Phyllis Hinzburg Delano	<i>Phyllis Hinzburg Delano</i>	
8/26/10			Nelva Braunstroog	<i>Nelva Braunstroog</i>	15430 Piping Rock HOUSTON TX 77079
8/26/10			Betty Jean Brancy	<i>Betty Jean Brancy</i>	8915 Opelika HOUSTON TX 77080
9/8/10			Mark R. Yarbrough	<i>Mark R. Yarbrough</i>	4301 Monterey Ave Austin, TX 78749
9/8/10			Jeffrey S. Yarbrough	<i>Jeffrey S. Yarbrough</i>	2617 Piping Rock Tr. Austin TX 78748

Type of Identification <input type="checkbox"/> DL <input type="checkbox"/> Credit Witness <input type="checkbox"/> ID, Card <input type="checkbox"/> Passport <input type="checkbox"/> Other	Description of Document, or Comments	Fee	Signer's Right Thumbprint	
Personal Knowledge	Merrill Lynch DT Merrill Lynch ST	\$	Top of Thumbprint 129	Top of Thumbprint 130
Personal Knowledge	COT for Naples FL	\$	Top of Thumbprint 131	Top of Thumbprint 132
Personal Knowledge	COT for Naples FLT	\$	Top of Thumbprint 133	Top of Thumbprint 134
Personal Knowledge	COT for Naples Summary COTS (G) Funding Bks.	\$	Top of Thumbprint 135	Top of Thumbprint 136
Personal Knowledge	Funding forms	\$	Top of Thumbprint 137	Top of Thumbprint 138
Personal Knowledge	Funding Bk.	\$	Top of Thumbprint 139	Top of Thumbprint 140
Personal Knowledge	P.K.	\$	Top of Thumbprint 141	Top of Thumbprint 142
Personal Knowledge	QBD, COTS(G) MEDPOA, DSDPA, APT SURC TEE, DEED	\$	Top of Thumbprint 143	Top of Thumbprint 144
Personal Knowledge	COT for Naples Vehicle (a)	\$	Top of Thumbprint	Top of Thumbprint
Personal Knowledge	SS4 AFF. Heirship for Mtr. Veh(a)	\$	Top of Thumbprint	Top of Thumbprint

Certificate of Trust

The undersigned Founders hereby certify the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER H. BRUNSTING and NELVA E. BRUNSTING, Founders and initial Trustees. Either Founder while acting as Trustee may conduct business on behalf of the trust without the consent of any other Trustee. The full legal name of our trust for purposes of transferring assets into the trust, holding title of assets and conducting business for and on behalf of the trust, shall be known as:

ELMER H. BRUNSTING or NELVA E. BRUNSTING, Trustees, or the successor Trustees, under the BRUNSTING FAMILY LIVING TRUST dated October 10, 1996, as amended.

2. Should either original Trustee fail or cease to serve as Trustee by reason of death, disability or for any reason, the remaining original Trustee will continue to serve alone.
3. If both of the original Trustees fail or cease to serve as Trustee by reason of death, disability or for any reason, then the following individuals or entities will serve as Trustee in the following order:

First, ANITA KAY RILEY
Second, CARL HENRY BRUNSTING
Third, AMY RUTH TSCHIRHART

4. The Trustee(s) under the trust agreement are authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in trust name. All powers of the Trustee(s) are fully set forth in Article Twelve of the trust agreement.
5. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee(s) over trust property.
6. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance. A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certify that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on October 10, 1996.

Elmer H. Brunsting
ELMER H. BRUNSTING,
Founder and Trustee

Nelva E. Brunsting
NELVA E. BRUNSTING,
Founder and Trustee

STATE OF TEXAS
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on October 10, 1996, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.

Witness my hand and official seal.

Shannon E. Sweeney
Notary Public, State of Texas



SHANNON E. SWEENEY
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
FEB. 25, 1998

**EXHIBIT
P-66**

BRUNSTING001517

Print

<http://us.mg204.mail.yahoo.com/dc/launch?partner=sbc&gx=1&ran...>

From: Candace Curtis (occurtis@sbcglobal.net)
To: at.home3@yahoo.com; akbrunsting@suddenlink.net; cbrunsting@sbcglobal.net;
Date: Tue, November 8, 2011 11:38:04 AM
Cc:
Subject: Mother

I am sorry for any animosity I have created over the last week. I have only been seeking information about her status. When I am unable to reach her by phone I never know why because I am not in the information loop.

I have been trying to call Mother just to say hello. The phone numbers I have been given are never answered. If she is unable to talk, please let me know and I will stop trying. If one of you, or a caregiver, is with her and she's awake, I would really appreciate a cell phone call so I could say hi to her. If it's not already too late, it may be the last time I speak to her while she still knows who I am.

My fears are based upon information I have gathered speaking to one of you, or Tino, or Robert. It appears that everyone sees the situation in a slightly different light. I have no idea what is best for Mother. All I know is that when I put myself in Mother's shoes I become Dorothy - "THERE'S NO PLACE LIKE HOME"

C

EXHIBIT
P-67

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Candace Louise Curtis	§	
Individually and as Co-Trustee	§	
Plaintiff,	§	
versus	§	CIVIL ACTION NO. 4:12-cv-00592
	§	Jury
Anita Kay Brunsting, et al.	§	
	§	
Defendants.	§	

PROPOSED ORDER FOR SUPPLEMENTAL JURISDICTION AND JOINDER

Having considered Plaintiff's Motion to Amend Complaint and Join Additional Parties, the Court being fully advised, and good cause shown:

IT IS HEREBY ORDERED that Plaintiff's Motion to Amend Complaint is GRANTED; Plaintiff having demonstrated that compelling justification exists to warrant an amendment to verified complaint.

IT IS HEREBY ORDERED that Plaintiff is granted leave to file Verified Amended Complaint with this Court.

Plaintiff's Motion for Joinder is GRANTED; Plaintiff having demonstrated that compelling justification exists to warrant the exercise of Supplemental Jurisdiction and Joinder of state court actions to this suit.

IT IS HEREBY ORDERED that Plaintiff is granted leave to join the following state court actions and parties pursuant to Fed. R. Civ. P. 19(a):

(1) Carl Brunsting vs. Candace Kunz-Freed

Harris County District Court Case No. 2013-05455

(2) Carl Brunsting vs. Anita Kay Brunsting, Amy Ruth Brunsting and Carole

Ann Brunsting Defendants; Candace Curtis Nominal Defendant

Harris County Probate Case No. 412-249401

IT IS HEREBY ORDERED that Plaintiff is granted leave to join the

following parties (a):

(1) Carole Ann Brunsting Defendant

(2) Candace Kunz-Freed Defendant

(3) Albert Vacek Jr. Defendant

(4) Vacek & Freed PLLC Defendant

(5) Bernard Lisle Mathews Defendant

(6) Carl Brunsting Plaintiff

SIGNED on the _____ day of _____, 2013, at Houston, Texas.

Kenneth M. Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Candace Louise Curtis	§	
Individually and as Co-Trustee	§	
Plaintiff,	§	
versus	§	CIVIL ACTION NO. 4:12-cv-00592
	§	Jury
Anita Kay Brunsting, et al.	§	
Defendants.	§	

PROPOSED ORDER FOR PRODUCTION OF ORIGINAL DOCUMENTS

The Court has reviewed Plaintiff's Application for exercise of Supplemental Jurisdiction and Joinder, and good cause having been shown, the Court issues the following order:

Defendants are to produce before the Court the documents physically signed by Elmer and/or Nelva Brunsting identified below, verified under penalty of perjury to be the original wet signed trust instruments.

- (1) The Brunsting Family Living Trust (BFLT) dated October 10, 1996
- (2) Restatement of the Brunsting Family Living Trust dated January 12, 2005
- (3) Affidavit of Trust dated January 12, 2005
- (4) Certificate of Trust dated January 12, 2005
- (5) (Pour-Over Will) Last Will of Elmer H. Brunsting January 12, 2005
- (6) Living Will of Nelva Brunsting January 12, 2005
- (7) Durable Power of Attorney for Nelva Brunsting
- (8) First Amendment to BFLT dated September 6, 2007
- (9) Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment under Living Trust Agreement dated June 15, 2010.
- (10) Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment under Living Trust Agreement dated August 25, 2010
- (11) Appointment of Successor Trustees dated August 25, 2010

- (12) Certificate of Trust for the Nelva E Brunsting Survivor's Trust dated August 25, 2010
- (13) Certificate of Trust for the Elmer H Brunsting Decedent's Trust dated August 25, 2010
- (13) Certificate of Trust for the Brunsting Family Living Trust dated August 25, 2010
- (14) Information Concerning Medical Power of Attorney dated August 25, 2010.
- (15) Resignation of Nelva Brunsting dated December 21, 2010
- (16) Appointment of Successor Trustee dated December 21, 2010
- (17) Acceptance of Appointment as Trustee for Anita Brunsting dated December 21, 2010
- (18) Acceptance of Appointment as Trustee for Amy Brunsting
- (19) Any Power of Attorney for Nelva Brunsting
- (20) Agreement dated 11/22/11

SIGNED on the _____ day of _____, 2013, at Houston, Texas.

Kenneth M. Hoyt
United States District Judge

Exhibit 7

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

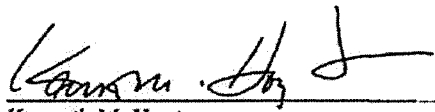
CANDACE LOUISE CURTIS	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	4-12-CV-00592
	§	
	§	
ANITA KAY BRUNSTING, and	§	
AMY RUTH BRUNSTING	§	
<i>Defendants.</i>	§	

ORDER DENYING PLAINTIFF'S
"APPLICATION FOR JOINDER OF PARTIES AND ACTIONS"
AND TO MOTION TO AMEND COMPLAINT

BEFORE THE COURT is Plaintiff's Application for Joinder and Amended Complaint. The Court has considered the Application, the proposed amendment to the Original Complaint, and the Response of Defendants Anita Kay Brunsting and Amy Ruth Brunsting to the Application and any Motion for Leave to Amend.

After consideration of the Application and the Amended Complaint, and other matters, the Court finds the Application for Joinder of Parties, and Claims and leave to file the proposed Amended Complaint, should be DENIED. The Amended Complaint, having been docketed by the Clerk of the Court as Inst. #48 before leave was granted for its filing, is STRICKEN from the docket.

SIGNED on this 22nd day of May, 2013.



 Kenneth M. Hoyt
 United States District Judge

Exhibit 8

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,

Plaintiff,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

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CIVIL ACTION NO. 4:12-CV-592

**ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE
HELD ON February 28, 2014 at 8:30 AM**

Appearances: Jason B. Ostrom, George William Vie, III

The following rulings were made:

Pursuant to phone conference conducted this day, the plaintiff, who determines that additional parties and claims may be necessary for a complete resolution of the case, also fears loss of diversity jurisdiction on the part of the Court. In this regard, and with an eye toward resolving these concerns, the plaintiff is to report the nature and extent of this progress to the Court on or before March 30, 2014. Docket call is cancelled.

It is so ORDERED.

SIGNED on this 28th day of February, 2014.



Kenneth M. Hoyt
United States District Judge

Exhibit 9

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS,
PLAINTIFF

VS.

ANITA KAY BRUNSTING,
AMY RUTH BRUNSTING,
AND DOES 1-100,
DEFENDANTS

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CIVIL ACTION No. 4:12-cv-00592
JUDGE KENNETH M. HOYT

JURY TRIAL DEMANDED

MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candice Louis Curtis and files this Motion for Leave to File First Amended Petition pursuant to Federal Rule of Civil Procedure 15(a), and in support thereof would respectfully show as follows:

I. INTRODUCTION

1. In light of recently discovered evidence in this case, Plaintiff moves this Court to permit her to file an amended complaint. The proposed amendment asserts an additional legal theory grounded in the same basic facts as the existing complaint, but that will ensure that all parties to be impacted by the ultimate judgment are participants. Moreover, because the claim to be asserted in the amendment appears to be meritorious, it would be in the interests of justice for this claim to be included in the case.

II. BACKGROUND

2. In her Original Petition, Plaintiff brought causes of action against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust, stemming from

actions they took with regard to the Trust and Trust assets that harmed Plaintiff.

3. Through reviewing the hundreds of documents produced, Plaintiff has discovered that the Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment (“Modification Documents”) executed by Nelva Brunsting after her husband’s death improperly attempted to change the terms of the then-irrevocable Trust. Plaintiff now seeks leave to file a Declaratory Judgment Action as to the validity of the Modification Documents.

III. ARGUMENTS AND AUTHORITY

4. Leave to amend the pleadings “shall be freely given when justice so requires.” FED. R. CIV. P. 15(a). The United States Supreme Court has long instructed that “this mandate is to be heeded.” *Foman v. Davis*, 371 U.S. 178, 183 (1962). The Ninth Circuit, moreover, has stated that the policy of permitting amendments “should be applied with ‘extreme liberality.’” *DCD Programs, Ltd. v. Leighton*, 833 F.2d 183, 186 (9th Cir. 1987).
5. Rule 15(a) reinforces one of the fundamental policies underlying the Federal Rules - that pleadings are not an end in themselves, but instead are only a means of helping ensure that each case is decided on its merits. *See* 6 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1473, at 521 (2nd ed. 1990). Thus, “if the underlying facts relied upon by a plaintiff may be a proper subject for relief, he ought to be afforded an opportunity to test his claim on the merits.” *Foman*, 371 U.S. at 182; *see also Frost v. Perry*, 919 F. Supp. 1459, 1468 (D. Nev. 1996) (stating that Rule 15 should be interpreted “very liberally, in order to permit meritorious actions to go forward, despite inadequacies in the pleadings”).
6. Quite appropriately, “courts have not imposed any arbitrary timing restrictions on a party’s request for leave to amend and permission has been granted under Rule 15(a) at various

stages of the litigation: following discovery; after a pretrial conference; . . . when the case is on the trial calendar and has been set for a hearing by the district court; at the beginning, during, and at the close of trial; after a judgment has been entered; and even on remand following an appeal.” 6 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 1488, at 652-57 (2d ed. 1990) (citations omitted). Thus, delay - either in seeking to amend or occasioned by an amendment - in itself cannot justify denial of leave to amend. *See, e.g., DCD Programs*, 833 F.2d at 186.

7. Given the liberal policy toward amendments, the burden of demonstrating why leave to amend should not be granted falls squarely on the nonmoving party. *See id.* at 187; *Frost*, 919 F. Supp. at 1469. In deciding whether the nonmovant has carried this burden, courts commonly consider the following four factors: (1) bad faith or dilatory motive on the part of the movant; (2) undue delay in filing the motion; (3) prejudice to the opposing party; and (4) the futility of the proposed amendment. *See, e.g., Roth v. Marquez*, 942 F.2d 617, 628 (9th Cir. 1991).
8. Plaintiff has not unduly delayed submitting the proposed amendment, as the evidence supporting the claim has only recently come to light. These facts warrant an amendment of the Plaintiff's pleadings.
9. The Defendants would not be unfairly prejudiced by such an amendment, and their counsel has indicated that he is not opposed to our Motion for Leave.
10. Plaintiff therefore seeks leave to file the First Amended Complaint attached hereto as Exhibit “A.” Justice requires that Plaintiff be afforded an opportunity to test the merits of that claim.

IV. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) grant leave to file the First

Amended Complaint attached hereto as Exhibit "A," and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/Sain

A limited Liability Partnership

BY: */s/ Jason B. Ostrom*

JASON B. OSTROM

(Fed. Id. #33680)

(TBA #24027710)

NICOLE K. SAIN THORNTON

(TBA #24043901)

5020 Montrose Blvd., Ste. 310

Houston, Texas 77006

713.863.8891

713.863.1051 (Facsimile)

Attorneys for Plaintiff

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has conferred with opposing counsel and they are unopposed to this motion to amend the complaint.

/s/ Jason B. Ostrom

Jason B. Ostrom

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ Jason B. Ostrom

Jason B. Ostrom

Exhibit A

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS,
PLAINTIFF

VS.

ANITA KAY BRUNSTING,
AMY RUTH BRUNSTING,
AND DOES 1-100,
DEFENDANTS

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CIVIL ACTION NO. 4:12-CV-00592
JUDGE KENNETH M. HOYT

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED PETITION

I. PARTIES

1. Plaintiff, Candice Louis Curtis is a citizen of the State of California.
2. Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has answered and appeared herein.
3. Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has answered and appeared herein.
4. Necessary Party and involuntary plaintiff is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas and is expected to waive the issuance of citation. He is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.
5. Necessary Party is Carole Ann Brunsting, who is a citizen of the State of Texas, and who can be served with citation at 5822 Jason St., Houston, Texas 77074. She is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.

II. JURISDICTION AND VENUE

6. This Court had jurisdiction of the state law claims alleged herein pursuant to 28 USC § 1332(a)(1) – 28 USC § 1332(b), and 28 USC § 1332(C)(2) in that this action is between parties who are citizens of different states and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs. Jurisdiction may be destroyed if all necessary parties are joined.
7. The Res in this matter includes assets belonging to the Brunsting Family Living Trust (“Trust”) and assets belonging to the Estate of Nelva Brunsting, Deceased, under the care and control of Necessary Party Carl Brunsting.

III. NATURE OF ACTION

8. This action arises out of the misappropriate and mismanagement of assets that belonged to Nelva Brunsting during her life and of assets that belonged to the Brunsting Family Trust, and the execution of invalid documents seeking to amend the Brunsting Family Trust.

IV. CAUSES OF ACTION

9. Breach of Fiduciary Duty. Defendants Anita Brunsting and Amy Brunsting are Co-Trustees of the Trust and owed to Plaintiff, Carl Brunsting, and Carole Brunsting, a fiduciary duty, which includes : (1) a duty of loyalty and utmost good faith; (2) a duty of candor; (3) a duty to refrain from self-dealing; (4) a duty to act with integrity of the strictest kind; (5) a duty of fair, honest dealing; and (6) a duty of full disclosure. Defendants have violated this duty by engaging in self-dealing, by failing to disclose the existence of assets to Plaintiff, by failing to account to Plaintiffs for Trust assets and income, by failing to place Plaintiff’s interests ahead of their own, and by making distributions that deviate from the strict language of the Trust. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment

interest and costs of court.

10. Fraud. Defendants Anita Brunsting and Amy Brunsting made misrepresentations of material facts with the intent that Plaintiff rely upon them, and Plaintiff did rely upon such misrepresentations to her detriment. Such misrepresentations included statements regarding the Trust, Trust assets, and her right to receive both information and Trust assets. On information and belief, Defendants made fraudulent misrepresentations to Nelva Brunsting upon which she relied to her detriment and to the ultimate detriment of her Estate. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest both on behalf of herself, and on behalf of the Estate of Nelva Brunsting, Deceased.
11. Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.
12. Money Had and Received. Defendants have taken money that belongs in equity and good conscience to Plaintiff, and has done so with malice and through fraud. Plaintiff seeks her actual damages, exemplary damages, pre- and post-judgment interest and court costs.
13. Conversion. Defendants have converted assets that belong to Plaintiff as beneficiary of the Brunsting Family Trust, assets that belong to the Brunsting Family Trust, and assets that belonged to Nelva Brunsting and that should be a part of her Estate. Defendants have

wrongfully and with malice exercised dominion and control over these assets, and has damaged Plaintiff, the Brunsting Family Trust, as well as the Estate of Nelva Brusting by so doing. Plaintiff seeks actual damages, exemplary damages, pre- and post-judgment interest and court costs, both individually and on behalf of the Decedent's Estate.

14. Tortious Interference with Inheritance Rights. A cause of action for tortious interference with inheritance rights exists when a defendant by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received. Defendants herein breached their fiduciary duties and converted funds that would have passed to Plaintiff through the Brunsting Family Trust, and in doing so tortiously interfered with Plaintiff's inheritance rights. Plaintiff seeks actual damages as well as punitive damages.
15. Declaratory Judgment Action. The Brunsting Family Trust was created by Nelva and Elmer Brunsting, and became irrevocable upon the death of Elmer Brunsting. After his death, Nelva executed a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment ("Modification Documents"), which attempted to change the terms of the then-irrevocable Trust. Upon information and belief, Nelva did not understand what she was signing when she signed the Modification Documents, and signed them as a result of undue influence and/or duress. Plaintiff seeks a declaration that the Modification Documents are not valid, and further that the *in terrorem* clause contained therein is overly broad, against public policy and not capable of enforcement. Plaintiff further seeks a declaration as to her rights under the Brunsting Family Trust. Plaintiff contends and will show that she has brought her action in good faith.
16. Demand for Accounting. Plaintiff seeks a formal accounting from Defendants in compliance

with the Texas Property Code.

V. JURY DEMAND

17. Plaintiff hereby makes her demand for a jury trial in this matter.

VI. PRAYER

18. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

OSTROM/Sain

A limited Liability Partnership

BY: /s/ Jason B. Ostrom

JASON B. OSTROM

(Fed. Id. #33680)

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Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ Jason B. Ostrom
Jason B. Ostrom

Exhibit 10

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS,
PLAINTIFF

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VS.

CIVIL ACTION NO. 4:12-cv-00592
JUDGE KENNETH M. HOYT

ANITA KAY BRUNSTING,
AMY RUTH BRUNSTING,
AND DOES 1-100,
DEFENDANTS

JURY TRIAL DEMANDED

PLAINTIFF'S FIRST AMENDED PETITION

I. PARTIES

1. Plaintiff, Candice Louis Curtis is a citizen of the State of California.
2. Defendant Anita Kay Brunsting is a citizen of the State of Texas, who has answered and appeared herein.
3. Defendant Amy Ruth Brunsting is a citizen of the State of Texas, who has answered and appeared herein.
4. Necessary Party and involuntary plaintiff is Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting, who is a citizen of the State of Texas and is expected to waive the issuance of citation. He is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.
5. Necessary Party is Carole Ann Brunsting, who is a citizen of the State of Texas, and who can be served with citation at 5822 Jason St., Houston, Texas 77074. She is being added to effectuate complete relief regarding the claims and to avoid the risk of inconsistent judgments being rendered.

II. JURISDICTION AND VENUE

6. This Court had jurisdiction of the state law claims alleged herein pursuant to 28 USC § 1332(a)(1) – 28 USC § 1332(b), and 28 USC § 1332(C)(2) in that this action is between parties who are citizens of different states and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interests and costs. Jurisdiction may be destroyed if all necessary parties are joined.
7. The Res in this matter includes assets belonging to the Brunsting Family Living Trust (“Trust”) and assets belonging to the Estate of Nelva Brunsting, Deceased, under the care and control of Necessary Party Carl Brunsting.

III. NATURE OF ACTION

8. This action arises out of the misappropriate and mismanagement of assets that belonged to Nelva Brunsting during her life and of assets that belonged to the Brunsting Family Trust, and the execution of invalid documents seeking to amend the Brunsting Family Trust.

IV. CAUSES OF ACTION

9. Breach of Fiduciary Duty. Defendants Anita Brunsting and Amy Brunsting are Co-Trustees of the Trust and owed to Plaintiff, Carl Brunsting, and Carole Brunsting, a fiduciary duty, which includes : (1) a duty of loyalty and utmost good faith; (2) a duty of candor; (3) a duty to refrain from self-dealing; (4) a duty to act with integrity of the strictest kind; (5) a duty of fair, honest dealing; and (6) a duty of full disclosure. Defendants have violated this duty by engaging in self-dealing, by failing to disclose the existence of assets to Plaintiff, by failing to account to Plaintiffs for Trust assets and income, by failing to place Plaintiff’s interests ahead of their own, and by making distributions that deviate from the strict language of the Trust. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment

interest and costs of court.

10. Fraud. Defendants Anita Brunsting and Amy Brunsting made misrepresentations of material facts with the intent that Plaintiff rely upon them, and Plaintiff did rely upon such misrepresentations to her detriment. Such misrepresentations included statements regarding the Trust, Trust assets, and her right to receive both information and Trust assets. On information and belief, Defendants made fraudulent misrepresentations to Nelva Brunsting upon which she relied to her detriment and to the ultimate detriment of her Estate. Plaintiff seeks actual and exemplary damages, together with pre- and post-judgment interest both on behalf of herself, and on behalf of the Estate of Nelva Brunsting, Deceased.
11. Constructive Fraud. Constructive fraud exists when a breach of a legal or equitable duty occurs that has a tendency to deceive others and violate their confidence. As a result of Defendants' fiduciary relationship with Plaintiff and with Nelva Brunsting, Defendants owed Plaintiff and Nelva Brunsting legal duties. The breaches of the fiduciary duties discussed above and incorporated herein by reference constitute constructive fraud, which caused injury to both Nelva Brunsting's Estate and Plaintiff. Plaintiff seeks actual damages, as well as, punitive damages individually and on behalf of Nelva Brunsting's Estate.
12. Money Had and Received. Defendants have taken money that belongs in equity and good conscience to Plaintiff, and has done so with malice and through fraud. Plaintiff seeks her actual damages, exemplary damages, pre- and post-judgment interest and court costs.
13. Conversion. Defendants have converted assets that belong to Plaintiff as beneficiary of the Brunsting Family Trust, assets that belong to the Brunsting Family Trust, and assets that belonged to Nelva Brunsting and that should be a part of her Estate. Defendants have

wrongfully and with malice exercised dominion and control over these assets, and has damaged Plaintiff, the Brunsting Family Trust, as well as the Estate of Nelva Brusting by so doing. Plaintiff seeks actual damages, exemplary damages, pre- and post-judgment interest and court costs, both individually and on behalf of the Decedent's Estate.

14. Tortious Interference with Inheritance Rights. A cause of action for tortious interference with inheritance rights exists when a defendant by fraud, duress, or other tortious means intentionally prevents another from receiving from a third person an inheritance or gift that he would otherwise have received. Defendants herein breached their fiduciary duties and converted funds that would have passed to Plaintiff through the Brunsting Family Trust, and in doing so tortiously interfered with Plaintiff's inheritance rights. Plaintiff seeks actual damages as well as punitive damages.
15. Declaratory Judgment Action. The Brunsting Family Trust was created by Nelva and Elmer Brunsting, and became irrevocable upon the death of Elmer Brunsting. After his death, Nelva executed a Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment ("Modification Documents"), which attempted to change the terms of the then-irrevocable Trust. Upon information and belief, Nelva did not understand what she was signing when she signed the Modification Documents, and signed them as a result of undue influence and/or duress. Plaintiff seeks a declaration that the Modification Documents are not valid, and further that the *in terrorem* clause contained therein is overly broad, against public policy and not capable of enforcement. Plaintiff further seeks a declaration as to her rights under the Brunsting Family Trust. Plaintiff contends and will show that she has brought her action in good faith.
16. Demand for Accounting. Plaintiff seeks a formal accounting from Defendants in compliance

with the Texas Property Code.

V. JURY DEMAND

17. Plaintiff hereby makes her demand for a jury trial in this matter.

VI. PRAYER

18. WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that upon final trial in this matter, she will take judgment for her actual and exemplary damages, actual and exemplary damages will be awarded to the Estate of Nelva Brunsting, that pre- and post-judgment interest and costs of court will be assessed against the Defendants, and that she be granted such other and further relief to which she may show herself justly entitled.

Respectfully Submitted,

OSTROM/Sain

A limited Liability Partnership

BY: /s/ Jason B. Ostrom

JASON B. OSTROM

(Fed. Id. #33680)

(TBA #24027710)

NICOLE K. SAIN THORNTON

(TBA #24043901)

5020 Montrose Blvd., Ste. 310

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713.863.8891

713.863.1051 (Facsimile)

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ Jason B. Ostrom
Jason B. Ostrom

Exhibit 11

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS,
PLAINTIFF

VS.

ANITA KAY BRUNSTING,
AMY RUTH BRUNSTING,
AND DOES 1-100,
DEFENDANTS

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CIVIL ACTION NO. 4:12-cv-00592
JUDGE KENNETH M. HOYT

JURY TRIAL DEMANDED

MOTION TO REMAND

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candice Louis Curtis and files this Motion to Remand pursuant to Federal Rule of Civil Procedure 15(a), and in support thereof would respectfully show as follows:

I. INTRODUCTION

1. Plaintiff filed her Original Petition bringing causes of action against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust. Diversity jurisdiction existed between Plaintiff and Defendants.
2. Contemporaneously with this Motion, Plaintiff is filing her Motion for Leave to File First Amended Petition, which will add necessary parties to this case in order to have complete adjudication of all matters and to avoid inconsistent judgments. Necessary parties include Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased and Carole Brunsting.
3. Plaintiff believes that the filing of the First Amended Petition and addition of necessary parties will destroy the diversity jurisdiction that is required by 28 U.S.C. § 1332(a).
4. Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased, is currently a party to

an action pending in Harris County Probate Court Number Four involving the same parties.

Similar issues of fact and law are pending in that court.

II. ARGUMENTS AND AUTHORITIES

5. Here, the interests of justice and comity with State courts counsel in favor of this Court abstaining from exercising further jurisdiction over this Action and remanding it to Harris County Probate Court Number Four.
6. The First Amended Petition seeks a declaration as to certain Trust documents, and complete relief as to this issue cannot be granted without the addition of necessary parties, which will destroy diversity jurisdiction.
7. If this Court retains this case despite the lack of diversity, it is possible that inconsistent judgments may be reached as between this Court and Harris County Probate Court Number Four where the Estate of Nelva Brunsting, Deceased is pending and where similar issues of fact and law are currently pending.
8. Because diversity jurisdiction will be destroyed via the First Amended Petition and because similar issues of fact and law are pending before Harris County Probate Court Number Four, equity mandates that this cause be remanded to Harris County Probate Court Number Four and consolidated with the cause pending under Cause Number 412,249.
9. Counsel for Defendants Anita Brunsting and Amy Brunsting has been consulted and is not opposed to the remand.

IV. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) remand this cause of action to Harris County Probate Court Number Four to be consolidated into Cause Number 412,249 and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/Sain

A limited Liability Partnership

BY: */s/ Jason B. Ostrom*

JASON B. OSTROM

(Fed. Id. #33680)

(TBA #24027710)

NICOLE K. SAIN THORNTON

(TBA #24043901)

5020 Montrose Blvd., Ste. 310

Houston, Texas 77006

713.863.8891

713.863.1051 (Facsimile)

Attorneys for Plaintiff

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies that he has conferred with opposing counsel and they are unopposed to this motion to remand.

/s/ Jason B. Ostrom

Jason B. Ostrom

CERTIFICATE OF SERVICE

The undersigned hereby certifies that service on known Filing Users will be automatically accomplished through the Notice of Electronic Filing. Additionally, this document will be served by copy to any attorney-of-record for those parties in state court litigation.

/s/ Jason B. Ostrom

Jason B. Ostrom

UNITED STATES DISTRICT COURT
FOR THE
SOUTHERN DISTRICT OF TEXAS

CANDACE LOUISE CURTIS,
PLAINTIFF

VS.

ANITA KAY BRUNSTING,
AMY RUTH BRUNSTING,
AND DOES 1-100,
DEFENDANTS

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CIVIL ACTION NO. 4:12-cv-00592
JUDGE KENNETH M. HOYT

JURY TRIAL DEMANDED

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be granted.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are

opposed to this remand and that no parties have filed any objection thereto. It is, therefore,

ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429. It is further,

ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

JUDGE PRESIDING

Exhibit 12

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,

Plaintiffs,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

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CIVIL ACTION NO. 4:12-CV-592

ORDER GRANTING MOTION FOR LEAVE TO FILE FIRST AMENDED PETITION

On this day, the Court considered the plaintiff's motion for leave to file first amended petition. The Court, having considered the same, is of the opinion and finds that plaintiff's request to amend should be GRANTED.

It is therefore, ORDERED that the plaintiff is hereby granted leave to amend her original petition by filing her first amended petition in its stead.

SIGNED on this 15th day of May, 2014.



Kenneth M. Hoyt
United States District Judge

Exhibit 13

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,

Plaintiffs,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

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CIVIL ACTION NO. 4:12-CV-592

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15th day of May, 2014.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge

Exhibit 14

United States District Court
Southern District of Texas
FILED

AUG 03 2016

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

David J. Bradley, Clerk of Court

CANDACE LOUISE CURTIS
Plaintiff,

v

ANITA KAY BRUNSTING, et al
Defendants

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Civil Action No. 4:12-cv-00592

**PLAINTIFF CANDACE LOUISE CURTIS'
MOTION FOR RELIEF FROM ORDER PURSUANT TO FED. R. CIV. P.
60(b)(3), FED. R. CIV. P. 60(b)(6) AND FED. R. CIV. P. 60(d)(3)**

CONTENTS

MOTION FOR RELIEF 2

I. GROUND FOR PETITION 3

II. JURISDICTION AND STATUTES OF LIMITATIONS 4

III. STANDARD OF REVIEW 5

IV. NATURE AND STAGE OF THE PROCEEDINGS 6

V. THE PROCEEDINGS ARE IN STASIS BY DESIGN 8

VI. IN THE HARRIS COUNTY PROBATE COURT 10

VII. VACANCY IN THE OFFICE OF ADMINISTRATOR 12

VIII. THE PENDING DISPOSITIVE MOTIONS 12

IX. THE FIRST COLLUSION 13

X. SCHEME AND ARTIFICE TO DEFRAUD 14

 Transcript March 9, 2016 16

XI. THESE DISCUSSIONS WERE HIGHLY IMPROPER 19

 Transcript of March 9, 2016 Page 15 lines 16-21: 20

XII. FRAUD UPON PLAINTIFF AND THIS COURT 20

XIII. REQUEST FOR JUDICIAL NOTICE 22

XIV. CONCLUSION 24

Cases

Barlow v. Colgate Palmolive Co. 772 F.3d 1001, 1010 (4th Cir. 2014) 4

Statutes

18 U.S.C. §§1341..... 12
18 U.S.C. §1951(b)..... 11
18 U.S.C. §2..... 11
18 U.S.C. §2511..... 12
28 U.S.C. §1447(d)..... 4
Tex. Ev. Cd. §§1002, 1003 15
Texas Penal Code §16.02..... 12
Texas Penal Codes §§31.02 & 31.03 11

Rules

Federal Rule of Civil Procedure Rule 60(b) Throughout
Federal Rule of Civil Procedure 52(a)..... 5

MOTION FOR RELIEF

1. Plaintiff Candace Louise Curtis (Curtis) respectfully moves this honorable Court, pursuant to Fed. R. Civ. P. 60(b)(3), Fed. R. Civ. P. 60(b)(6), and Fed. R. Civ. P. 60(d)(3), praying for relief from this Court’s order of July 22, 2014, approving Jason Ostrom’s Motion for leave to file an amended complaint and Order to Remand the above captioned matter to Harris County Probate Court No. 4¹.

¹ Document Nos. 107, 111 and 112 in this Court’s Record

2. This Motion relates to intentional misrepresentations made by Counsel before this Court, in effort to secure a remand to state court, as revealed by conduct in state court after that relief was granted.

I. GROUND FOR PETITION

3. The above captioned matter was remanded from this Court to the Harris County Probate Court pursuant to a stipulation between the parties, accepted and approved by this Honorable Court.² That stipulation involved Plaintiff amending her complaint to pollute diversity in order to facilitate a remand and, in return, Defendants agreed the federal injunction and all orders of this Court would remain in full force and effect as if there had been no remand. (Exhibit 1: E1-E4)

4. Counsel represented to this Court that the purpose for the remand was to afford complete relief to the parties. Conduct by Defendants, the attorneys, and the state Court manifest the exact opposite intentions. Once in the state probate Court, Defendants immediately ignored this Court's rulings and the injunction, as if the injunction had never been issued, and now act as if the matter had never been before this honorable Court at all.

5. Defendants perpetrated a fraud upon this Court and upon Petitioner, in that they had no intentions of honoring the remand agreement, but promised to do so for the purposes of evading this Court's judgments and orders, thereby depriving Plaintiff of a legitimate judicial forum.

²Harris County Probate Court No. 4, case: 412249, 412249-401, 412249-402 6/6/2014 order granting Plaintiff's motion to remand, signed May 15, 2014 PBT-2014-188311

II. JURISDICTION AND STATUTES OF LIMITATIONS

6. 28 U.S.C. §1447(d) does not prevent a district court from vacating a remand order that was obtained through fraud or misrepresentation.³ The circumstances in which an order may be vacated pursuant to Rule 60(b) are as reasonably applied to remand orders as to any other orders procured by fraud.

7. Vacatur in this case would not be adverse to the goals of §1447(d) and would preserve the integrity of federal judicial proceedings.

8. A federal Court has inherent jurisdiction to vindicate its dignity and authority and such power has been held to be organic, requiring neither statute nor rule for its invocation.

9. This Court specifically retained jurisdiction to enforce the remand agreement, as reflected in the remand order.

10. The twelve month statute of limitations applicable to F.R.C.P. Rule 60(b)(3) does not apply in this case, as this Court retained jurisdiction through the end of the controversy between these parties by stipulation, as reflected in the Remand Order.

11. Even without the Court's order for continuing jurisdiction there is no statute of limitations applicable to F.R.C.P. Rule 60(b)(6) and 60(d)(3) relief, as those statute sections follow the general law of voids.

12. Fraud vitiates everything it touches and a judgement or order procured by intentional deception is recognized by these rules as void ab initio.

³Barlow v. Colgate Palmolive Co. 772 F.3d 1001, 1010 (4th Cir. 2014) (en banc).

III. STANDARD OF REVIEW

13. Federal Rule of Civil Procedure 60(b) allows a party to seek relief from a final judgment for "(1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other reason justifying relief from the operation of judgment."

14. Motions filed under subsection (1), (2) or (3) must be made "no more than a year after the entry of the judgment or order or the date of the proceeding" from which relief is sought, while those filed under subsection (6) must instead be made "within a reasonable time". (Fed. R. Civ. P. 60(c)(1))

15. The standard of review on orders granting or denying Rule 60(b) relief is abuse of discretion. For findings of fact the standard of review is clear error⁴ and for conclusions of law the standard for review is de novo.

16. Rule 60 motions should only be granted where (i) extraordinary circumstances exist and (ii) there is a showing that justice demands it.

17. Plaintiff is not a disgruntled litigant against whom adverse judgements have been entered. Plaintiff is a litigant whose motions cannot be answered by the Defendants or ruled against by the Court without reversal on appeal. Plaintiff is a litigant against whom the probate Court and the attorney officers of that Court have conspired against in effort to cheat justice and that is a matter of record.

18. A Motion under Rule 60(b)(6) brought within 120 days of obtaining proof of a fraud upon the federal Court is timely and the facts supporting this motion epitomize the very concept of extraordinary circumstances. Justice clearly demands vacatur as there is no other

⁴ Federal Rule of Civil Procedure 52(a)

remedy available to Plaintiff within the context of this lawsuit and equity will not suffer a right to go without remedy.

19. Plaintiff seeks an honest judicial forum in which to pursue her claim of right, nothing more and nothing less.

IV. NATURE AND STAGE OF THE PROCEEDINGS

20. Plaintiff Curtis filed a Pro se Petition in the United States District Court for the Southern District of Texas, Houston Division, on February 27, 2012, claiming breach of fiduciary, seeking disclosures and a full, true, complete accounting.

21. On March 6, 2012 Vacek & Freed staff attorney 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. (Exhibit 18: E1249-E1251)

22. In reliance upon the material misrepresentations contained therein, on March 8, 2012, this Honorable Court dismissed Plaintiff Curtis' Pro se Petition sua sponte under the probate exception to federal diversity jurisdiction. Plaintiff Curtis filed a timely notice of appeal.

23. On April 2, 2012 Vacek & Freed filed the Will of Elmer Brunsting [#412248] and a purported Will for Nelva Brunsting [#412249] with the Harris County Clerk at the insistence of Carl Brunsting's attorney Bobbie Bayless.

24. On March 9, 2012 Carl Brunsting, individually and on behalf of the estate of Nelva Brunsting, filed a petition to take depositions before suit in the Harris County District Court.

25. On January 9, 2013 the Fifth Circuit Court of Appeals in a unanimous decision reversed and remanded to this Court.⁵ Plaintiff Curtis immediately filed for a protective order.

⁵ Candace Curtis v Anita Brunsting et al., 710 F.3d 406

26. On January 29, 2013 Carl Brunsting filed suit against trust attorney Candace Kunz-Freed and Vacek & Freed P.L.L.C. in the Harris County District Court, as Executor of the estate of Nelva Brunsting.

27. On April 9, 2013 this Honorable Court issued a protective order enjoining Defendants Amy and Anita Brunsting from spending trust funds or liquidating trust assets without the Court's approval. (Exhibit 2: E5-E9)

28. Also on April 9, 2013 Carl Brunsting filed suit against Amy, Anita and Carole Brunsting in Harris County Probate Court No. 4, individually (412249-401) and as executor of the estate of Nelva Brunsting (412249).

29. Carl Brunsting's attorney, Bobbie Bayless, filed estate claims in the Harris County District Court against Candace Freed and Vacek & Freed P.L.L.C. alleging conspiracies involving Anita, Carole and Amy Brunsting, and then filed suit against Anita, Carole and Amy Brunsting in the Harris County Probate Court alleging a conspiracy involving Candace Freed. Not only did Bayless file claims against co-conspirators in separate Courts, she named federal Plaintiff Curtis a nominal defendant in her probate Court complaint.

30. Hearing on Plaintiff Curtis' Application for Order to Show Cause in the federal Court was held on or about October 2, 2013, however, due to a medical emergency Plaintiff Curtis' assistant was hospitalized in a coma and Plaintiff was unable to obtain the briefing materials before the hearing. Plaintiff was attempting to compel Defendants to bring forth the archetype of an instrument referred to as the "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", allegedly signed by Nelva Brunsting on 8/25/2010 (Hereinafter the 8/25/2010 QBD). (Exhibit 4: E11-E19)

31. This instrument is the subject of Defendants' pending no-evidence Motion for Partial Summary Judgment, which Defendants removed from calendar after Plaintiff Curtis filed answer with Motion and demand to produce evidence. Defendants continue to use the instrument to threaten the Plaintiffs while perpetually refusing to produce it and qualify the alleged instrument as evidence. The 8/25/2010 QBD instrument is of dubious origin and doubtful validity, but plays very prominently in Defendants' disingenuous posturing as hereinafter more fully appears.

32. At the hearing October 2, 2013 this Court expressed concern over Plaintiff's lack of preparation and directed Pro se Plaintiff Curtis to retain counsel so that the discovery process could proceed. Plaintiff Curtis had difficulty finding counsel within the Court's time frame and had the misfortune of retaining Jason Ostrom.

33. 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, thus polluting diversity and facilitating a remand to the Harris County Probate Court.

34. 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. (Exhibit 3: E10)

V. THE PROCEEDINGS ARE IN STASIS BY DESIGN

35. Curtis v Brunsting is a lawsuit related only to the Brunsting Trusts.

36. There is no docket control order and no trial date in place in the trust litigation or in any related matter pending in the state courts. (Exhibit 19: E1252-E1253)

37. The office of Executor for the estate is vacant and the probate of the estate is the only claim the probate Court has to jurisdiction over the Brunsting trust litigation.

38. Defendant co-conspirators, Attorneys Vacek & Freed, are sequestered in the District Court, where there is no plaintiff, and the probate Court has refused to join the suits.

39. The Defendants' attorneys and Plaintiff Brunsting's attorney have scheduled summary judgment hearings and un-scheduled those hearings, but Curtis cannot get a hearing set on dispositive motions in that Court.

40. The probate Court has clearly colluded with the lawyers to validate the 8/25/2010 QBD without an evidentiary hearing, to create delay, to avoid evidentiary hearings, to exacerbate Plaintiff's costs and to apply Hobbs Act pressure. There is a clear "stream of benefits" at play here.

41. There is no current or proper accounting and no balance sheet has ever been produced.

42. Other than an Order modifying the federal injunction, in the two years this case has been in Harris County Probate Court No. 4 there have been no evidentiary hearings and no orders or judgements have been entered on the record.

43. Rather than set dispositive motions for hearing on Plaintiff Curtis' request, Plaintiff was ordered to a second mediation, with Defendants who have established an intractable record of having no intentions of honoring any legal or moral obligations.

44. Neither the lawyers nor the probate Court will make a distinction between the trust and the estate.

45. Resolution of the litigation and distributions from the trust are being held hostage to the payment of attorneys' fees in direct defiance of this Court's express orders and the purposes for the trust.

46. Defendants absolutely refuse to deposit income into an appropriate account for the beneficiary as ordered by this Court's injunction and continue to flaunt the law in their effort to game the judicial process as hereinafter more fully appears.

VI. IN THE HARRIS COUNTY PROBATE COURT

47. Upon remand to the Harris County Probate Court, Defendants' Counsel filed a motion to modify the injunction to allow Defendants to pay the quarterly and annual taxes without the expense of petitioning the Court each time and a limited modification was granted relating only to payment of taxes and associated professional fees.

48. Jason Ostrom agreed to provide Plaintiff Curtis with a review of documents before they were filed, but did not communicate before, or even copy her after pleadings were filed. Plaintiff was forced to data mine to try to discover what was happening in the probate Court and received much of her information via email from Carl Brunsting.

49. The five Brunsting siblings then attended a mediation that ended with no prospect for resolution. Immediately thereafter, Defendants' attorneys with Mills Shirley filed a petition to be relieved as counsel of record, citing to non-specific conflicts of interest.

50. Then, without conferring and having never submitted a single invoice to Plaintiff Curtis, Jason Ostrom filed application for a distribution of \$25,000 from the trust to pay his attorney fees and Carole Brunsting's attorney, Darlene Payne Smith, objected.

51. Ostrom then filed a second motion for a distribution of \$45,000, after discussion with Curtis, and both Anita and Carole objected.

52. Anita's new counsel, Brad Featherston, argued that the trust was not liable to pay the attorney creditors of the beneficiary. (Exhibit 20: E1254-E1409) Anita attached a "version" of the alleged 8/25/2010 QBD and a copy of the 2005 Restatement.

53. Carole's objection contained as an exhibit, a "true and correct copy" of the 8/25/2010 QBD. Three distinctly different true and correct copies of the one alleged 8/25/2010 QBD are now in the record bearing different signature page 37's, as the attached exhibit shows. (Exhibit 4: E11-E19)

54. Mr. Ostrom was repeatedly advised that complete consolidation with Carl Brunsting was not authorized or proper because of a conflict of interest with Carl Brunsting's Counsel, Bobbie Bayless.

55. Curtis was also emphatic that her mother did not lack capacity but discovered in her data mining that the cases had been consolidated upon a verbal motion made at a previous hearing and, without notice to or consent from Plaintiff Curtis, against direct and adamant insistence from Plaintiff Curtis that her mother was not incompetent, Jason Ostrom filed an amended complaint in the probate Court raising question as to the competency of a very lucid Nelva Brunsting.

56. Plaintiff Curtis then discovered, after the fact, that Mr. Ostrom, in total and absolute disregard for his instructions, had moved in secret to re-plead, consolidate and had again compromised Plaintiff's claims.

57. Not only did Ostrom attempt to dissolve the distinction between the trust and the estate by using the estate heading in his "amended complaint", the changes made by Ostrom are the only basis for Defendants' attorneys and the probate Court to threaten Plaintiff Curtis with disinheritance, using violation of the no contest provisions in the alleged 8/25/2010 QBD (the forged extortion instrument⁶).

⁶ In violation of 18 U.S.C. §1951(b) and 18 U.S.C. §2 and Texas Penal Codes §§31.02 & 31.03

58. Plaintiff Curtis immediately discharged Mr. Ostrom and resumed personal control of the litigation, but more than substantial damage had already been done by moving the matter to a corrupt Harris County Probate Court, as hereinafter more fully appears.

VII. VACANCY IN THE OFFICE OF ADMINISTRATOR

59. At a brutal deposition before trial in the District Court, Carl Brunsting was unable to answer questions, clearly having failed to fully recover from the encephalitis illness and coma that created the Defendants' opportunity for all of the untoward conduct that spawned the causes for this litigation.

60. Carl thereafter resigned as executor on February 2, 2015, leaving the office vacant. The office remains vacant.

61. Defendants in the District Court, Vacek & Freed, immediately filed a motion for summary judgment citing Carl's disability as the equivalent of no evidence.

VIII. THE PENDING DISPOSITIVE MOTIONS

62. On June 26, 2015 Defendants' new attorneys in Probate Court No. 4 filed a No-Evidence Motion for Partial Summary Judgment claiming that there is no evidence that the 8/25/2010 QBD is invalid. (Exhibit 5: E20-E28)

63. On or about July 1, 2015 Defendants disseminated a CD containing illegally obtained wiretap recordings⁷ which were received by Plaintiff Curtis from Anita's counsel, Brad Featherston, via certified mail with signature required.

64. July 7, 2015 Carl Brunsting filed a Motion for Protective Order regarding the illegally obtained wiretap recordings. (Exhibit 8: E343-E393)

⁷ It should be noted that this conduct violates Texas Penal Code §16.02 and 18 U.S.C. §§1341, 2511 and constitutes predicate acts.

65. On July 9, 2015 Carl Brunsting filed a motion for partial summary judgment focusing on improper financial transactions, but did not respond to Defendants' no-evidence motion. (Exhibit 6: E29-E288)

66. On July 13, 2015 Attorneys for Plaintiff Carl Brunsting and the Defendants filed notices setting hearing on their dispositive motions for August 3, 2015. (Exhibit 10: E404-E405)

67. Also on July 13, 2015 Plaintiff Curtis filed an answer to Defendants' no-evidence motion, with a motion and demand to produce evidence, demanding Defendants produce the archetype of the alleged 8/25/2010 QBD and qualify it as evidence. Defendants cannot produce the forged 8/25/2010 QBD instrument and qualify it as evidence and have steadfastly refused to do so for more than four years. (Exhibits 4: E11-E19 and 11: E406-E452)

IX. THE FIRST COLLUSION

68. On July 22, 2015, while Plaintiff Curtis was in flight home to California, Carl Brunsting's counsel, Bobbie Bayless, arranged with Defendants' counsel to remove the summary judgment and demand to produce evidence motions from the August 3, 2015 calendar to hear an emergency motion for protective orders regarding the wiretap recordings.

69. The August 3, 2015 hearing thus became a hearing on the motion for a protective order to prevent further dissemination of the illegal wiretap recordings. (Exhibit 12: E453-E494)

70. On January 14, 2016 Temporary Administrator Gregory Lester filed a fabricated report to the court, and rather than confine himself to evaluating the merits of the estate's claims he took it upon himself to trespass on the individual litigation brought by Carl and Candace as beneficiaries of the Brunsting trusts. (Exhibit 9: E394-E403)

71. The "Report" attempts to legitimize all of Defendants' misapplications of fiduciary, attempts to legitimize Defendants' baseless claims, and relies heavily on the forged 8/25/2010 QBD, specifically referring to the "no contest clause" concluding that, if the Court ruled on the no contest clause Carl and Candace would "take nothing" and suggesting mediation to resolve the pending lawsuits.

72. In essence, the Gregory Lester report concludes that the estate's claims have no merit. If true, the probate Court would have no claim to jurisdiction over the inter vivos trust litigation. In point of fact the report of Temporary Administrator Gregory Lester is fraudulent and cannot be supported under the law of the trust, the record of the various lawsuits, the common law, or the trust code.

73. On January 25, 2016 Plaintiff Curtis filed a motion for summary judgment (Exhibit 14: E497-E1187) and emailed a request for setting to Judge Comstock asking to have all the dispositive motions set for hearing. (Exhibit 15: E1188)

74. Curtis' Motion also contains petitions for declaratory judgement regarding illicit instruments drafted by Candace Freed and used by Anita Brunsting to commit fraud.

75. As a necessary consideration to hearing of the declaratory judgment motions, Plaintiff Curtis also filed a separate motion to transfer the District Court case to probate Court No. 4, so that Defendant Candace Freed could defend her works and all of the accused co-conspirators would be in the same Court.

76. The Court set a hearing for March 9, 2016 to hear the transfer motion and for a status conference.

X. SCHEME AND ARTIFICE TO DEFRAUD

77. Remand to state Court May 2014.

78. September 2014 Mills Shirley withdrew as counsel for Amy and Anita Brunsting.

79. February 2, 2015 Carl Brunsting resigned as executor of the estate, leaving the office vacant.

80. Plaintiff Curtis terminated the services of Jason Ostrom March 24, 2015.

81. On July 21, 2015 a hearing was held regarding the vacancy of the office of executor. Defendant Amy Brunsting and Plaintiff Candace Curtis are the next listed successor executors, but to avoid argument the parties agreed to the appointment of one Greg Lester, previously unknown to Plaintiff and recommended by the court, as an "independent" temporary administrator for the limited purpose of evaluating the estate claims.

82. On July 22, 2015, while Curtis was in flight home to California, the hearings on the dispositive motions and Curtis' Demand to Produce Evidence (Tex. Ev. Cd. §§1002, 1003) of the 8/25/2010 QBD were removed from calendar without notice to, or consent from, Plaintiff Curtis.

83. The August 3, 2015 hearing thus became a hearing on Carl Brunsting's **emergency** motion for a protective order regarding illegal wiretap recordings that had been disseminated in July 2015. (Exhibit 12: E453-E494)

84. On September 1, 2015 Temporary Administrator Greg Lester filed an application to retain counsel to assist him with his duties to the estate.

85. Hearing was set on Gregory Lester's Motion for September 10, 2015 and no transcript of that hearing has been made available. (Exhibit 13: E495-E496)

86. A March 9, 2016 status conference was scheduled on Curtis request to set the dispositive motions for hearing and on Curtis' application to snatch the district Court case.

87. At the March 9, 2016 status/setting conference Attorney Neal Spielman makes numerous disingenuous statements in opposition to Curtis' request to set the pending motions for summary judgement, but then he says things that are as revealing as they are troubling. (emphasis added for easy reference):

Transcript March 9, 2016

88. Page 12 beginning at line 22 (Exhibit 16: E1200)

MR. SPIELMAN : We all, collectively, the parties and their counsel at the time, we all agreed to Mr . Lester taking the role that he was taking. And Ms. Curtis, herself, I believe, on the record, spoke of having done her due diligence into every person that was suggested by any attorney that was in this room to serve in Mr. Lester's role, and it was Ms. Curtis' opinion that only Mr. Lester can serve in that role

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

The problem that I see right now, and one of the reasons I suspect why Mr. Mendel suggested that we go to mediation is in deference to and with respect for what Mr. Lester said in his report and what he seems to be trying to suggest to the parties as to what the future of this lawsuit might hold.

I think that what we're seeing now is an effort to backtrack from the direction that Mr. Lester tried to set us on and some of the conclusions or recommendations that he made as to what some of these claims, particularly the ones that Ms. Curtis is attempting to bring forward in summary judgment, are going to actually look like.

I think the effort to backtrack from what Mr. Lester was instructed to do/ordered to do and what he did, in retrospect, you have to wonder what was the point of even having done that if the parties, or a party, is now going to try to back away from the impact of what that was done?

89. At Page 14 (E1203) beginning at Line 3 Spielman makes a revealing and disturbing statement indicating additional collusions:

One of the reasons we thought that mediation, like Mr. Lester suggested that mediation might work, is that the right mediator, he talked to talked about the idea of using a former judge -I think we talked about that in the courtroom last time -that the right mediator might help to explain, to educate, to unentrench anybody -whether that be me, whether that be Mr. Mendel, whether that be Ms.

Bayless, whether that be Ms. Brunsting, Ms. Curtis, whomever. I think Mr. Lester saw the wisdom in mediation. I think we see the wisdom in mediation. But the consternation or the concern at this point, again, is this issue that Ms. Curtis seems to be unwilling to appreciate, adapt, recognize, embrace what Mr. Lester concluded or recommended in his report; and if that's the case, then I wonder if, if spending the money that it takes to go to mediation makes sense.

Frankly, Judge, the most interesting thing that I heard Ms. Curtis say was on the issue of attorneys fees and that that doesn't matter to her; and that is exactly part of the point. I think you were in the courtroom, Judge, the last time when Carole Brunsting made a very impassioned plea or explanation to the Court about how Ms. Curtis' pro se status and her, her need to be a lawyer and her failure to appreciate what it costs, what the costs of this lawsuit are, is never going to lead to this being resolved. I lost my train of thought there for a second. I may have. But the point here, Judge, is there seems to be no accountability on Ms. Curtis' behalf for the amount of money that is being spent in this case. Parties have, in the past, suggested, oh, let's not worry about the attorneys fees because that will all even out at the end of the story when everybody decides to divide by five, the corpus of the trust, and the winning parties or the prevailing parties can everything can be adjusted through the division of that estate. But, Your Honor, if you look at what Mr. Lester recommended/suggested/reported in his report, there's now the very real possibility that there isn't going to be a divide-by-five scenario because of the no-contest clauses that are recognized as being properly drawn by the Vacek & Freed Law Firm. And if that happens, Judge, then the trust is now spending its own money from those people, whether it be three or four, that are still going to get a portion of the estate, a portion of the trust proceeds when this is all said and done.

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

I'd love to come up with a creative idea to create some accountability/ perhaps, if it comes in the form of a sanction or perhaps it comes in the form of some kind of bond being posted so that if it turns out that one of the parties who is blowing things up as it were and creating this increased attorneys fees no longer has an interest in the estate with which we can even that out by the end of the day. Perhaps if Ms. Curtis is ordered to post a bond against her claims or to protect against the ability --our ability to recover fees from her if, as and when she loses her case perhaps then we can move forward with additional hearings additional motions and so forth.

90. Page 17 (E1205) lines 1-13:

Keep in mind, Judge, that it's not simply --it's not as simple as getting a date for Ms. Curtis' summary judgment motions. There's been no discovery, in terms of depositions done in this case, not the least of which will be depositions from, perhaps, even from the lawyers in the other district court case who drafted the documents that can explain what all went into those documents, what Nelva Brunsting's state of mind was at the time. There's no way to respond to those summary judgment motions right now without the full weight of the discovery process moving forward and all of the money that that's going to cost.

91. These claims are in direct opposition to the claims Defendants made in their No-evidence Motion. In Defendants' June 25, 2015 No-Evidence Motion for Partial Summary Judgment at page 1 item I (E20):

I. Summary of the Argument

This litigation started more than thirty-eight (38) months ago. Plaintiffs had sufficient time for discovery in this suit and the three (3) other actions related to the 8/25/10 QBD (defined below). Plaintiffs challenge the 8/25/10 QBD on the following grounds, for which there is no evidence:

foot note:

I Those three other proceedings are: (1) No. 4:12-CV-00592; Candace Louise Curtis v. Anita Kay Brunsting; United States District Court for the Southern District of Texas, Houston Division; (2) CA No. 2012-14538; In re Carl Brunsting (202 Petition); 80TH Judicial District Court of Harris County, TX; and (3) CA No. 2013-05455; Carl Henry Brunsting v. Candace Freed & Vacek & Freed; 164TH Judicial District Court of Harris County, TX.

92. However, the most disturbing thing in Mr. Spielman's diatribe were the references to dialogs at a previous hearing involving Mr. Lester, when there was no previous hearing involving Mr. Lester where these matters were properly before the Court.

One of the reasons we thought that mediation, like Mr. Lester suggested that mediation might work, is that the right mediator, he talked to talked about the idea of using a former judge -I think we talked about that in the courtroom last time -that the right mediator might help to explain, to educate, to unentrench anybody -

... I think you were in the courtroom, Judge, the last time when Carole Brunsting made a very impassioned plea or explanation to the Court about how Ms. Curtis' pro se status and her, her need to be a lawyer and her failure to appreciate what it costs, what the costs of this lawsuit are, is never going to lead to this being resolved

XI. THESE DISCUSSIONS WERE HIGHLY IMPROPER

93. Plaintiff Curtis is an heir and an interested person but not a party to the estate litigation.

94. Candace Louise Curtis v Anita Brunsting et al., (Curtis v Brunsting) was filed in the federal Court fourteen months prior to the first estate claims and having survived dismissal under the Probate Exception to federal diversity jurisdiction, it is inarguably established that Curtis v Brunsting is not connected to the probate of the estate (Exhibit 17: E1243-E1248) and is not subject to probate administration.

95. The only hearing that involved Greg Lester prior to March 9, 2016 was the September 10, 2015 hearing on Greg Lester's September 1, 2015 application to retain counsel to assist him in his fiduciary duties to the estate.

96. The only matter properly before the court on September 10, 2015 was whether or not Mr. Lester should have the authority to retain Jill Willard Young to assist him in his administration obligations to the estate.

97. Neither individual Plaintiff Candace Curtis nor individual Plaintiff Carl Brunsting was in attendance September 10, 2015, as neither is party to the estate litigation and neither objected to Mr. Lester retaining Jill Young to assist with his fiduciary duty to evaluate the estate's claims. That was the only issue properly before the Court on September 10, 2015 and did not include the matters Mr. Spielman states were discussed and where there was apparently an agreement made to treat the Gregory Lester report as if it were a jury verdict before it was even written.

98. Plaintiff has been unsuccessful in attempts to obtain a transcript of this September 10, 2015 hearing.

99. The inescapable conclusion here is that there were improper discussions outside of the presence of the Plaintiffs who were prejudiced by those discussions, involving matters not properly before the Court, wherein there were agreements made between the Court, Jill Willard Young, Neal Spielman, Bradley Featherston, Stephen Mendel and Gregory Lester to produce a fictitious report. They all apparently agreed to follow the as of yet unwritten report as if it were factual, that the false report would be used to further the extortion plot, that mediation would be forced upon Plaintiffs, that the costs of litigation for Plaintiff Curtis would be exacerbated, that there would be extended delay and, that another crony had been hand selected to act first as mediator and then as arbiter. First to “unentrench” Plaintiff Curtis from her stand upon rights and reliance upon the rule of law in the face of this all too obvious public corruption conspiracy and second, to deprive Plaintiff of substantive due process and access to the Court.

100. Defendants continue to use the forged 8/25/2010 QBD (extortion instrument) to threaten Plaintiffs with disinheritance, going so far as to refer to the September 10, 2015 conspiracy for the proposition that the instrument has been held valid:

Transcript of March 9, 2016 Page 15 (E1203) lines 16-21:

But, Your Honor, if you look at what Mr. Lester recommended/suggested/reported in his report, there's now the very real possibility that there isn't going to be a divide-by-five scenario because of the no-contest clauses that are recognized as being properly drawn by the Vacek & Freed Law Firm.

XII. FRAUD UPON PLAINTIFF AND THIS COURT

101. After Defendants claimed there was no evidence the forged 8/25/2010 QBD was invalid, Defendants removed their no-evidence motion from calendar knowing they cannot answer Plaintiff Curtis' demand to produce the thing, explain away the anomalies, and qualify it as evidence, and yet they continue to threaten Plaintiffs with the bogus instrument's “no contest

clause” with the transparent collusion of involuntary Plaintiff Carl Brunsting’s Attorney and the probate Court.

102. The probate plan is thus, according to Mr. Spielman, to subject Plaintiffs to endless delay and expense until the Plaintiff victims agree to pay fee ransoms to the attorneys who are holding the beneficiaries’ property hostage.

103. Defendants have not willingly honored any agreements, not the trust agreement, not the remand agreement, and cannot be expected to honor any mediated settlement agreement.

104. Defendants knew when they agreed to honor the federal injunction and the Orders entered by this Court as a condition of the remand, that they had no intentions of honoring any legal or moral obligations. Defendants refuse to honor the federal injunction and the orders of this Court even after having promised to do so as a condition of the remand stipulation and Defendants’ own pleadings in the probate Court are conclusive evidence of the existence of that fact.

105. Defendants will not, because they cannot, bring forth the archetype of the 8/25/2010 QBD and qualify the thing as evidence. If they could answer Plaintiff Curtis’ Motion and Demand to Produce Evidence they certainly would have done so.

106. Instead, Defendants’ attorneys conspired with the Court to avoid evidentiary hearings knowing they cannot produce the forged 8/25/2010 QBD extortion instrument and qualify it as evidence, and continue to use it to threaten and intimidate Plaintiffs Curtis and Carl Brunsting.

107. Mr. Spielman confessed on March 9, 2016 that the attorneys conspired at the hearing on application to retain Jill Young, with the probate Court Judges, the Court’s crony administrator Gregory Lester, and Jill Young, entering into an illicit agreement to produce a

fictitious “report” and to subsequently treat the fiction as if it were the equivalent of a jury verdict, and this all occurred before the “Report” was even written.

108. Thus, after removing their no-evidence summary judgement motion from calendar knowing their precious 8/25/2010 QBD is a forgery and that they cannot produce the heinous thing and qualify it as evidence, Defendants’ attorneys none-the-less continued to use the no-contest clause ruse in the forged 8/25/2010 “extortion instrument”, to threaten and attempt to intimidate the Plaintiff victims, who they know full well are owed fiduciary obligations by these Defendants.

109. It is important to note that there are known trust assets that remain unaccounted for. For example, none of the quasi-accountings received from the Defendants reflect the accounts receivable for a \$100,000 loan Anita received from the trust in 1999.⁸

110. Moreover, an amendment to the 1996 trust dated April 30, 1999, disclosed by Vacek & Freed in the District Court lawsuit, specifically identifies the \$100,000 loan as an advance on Anita’s inheritance. That trust amendment was never disclosed by Anita Brunsting in the course of Curtis v Brunsting or the estate suits in the probate Court.

111. A covert letter to the Special Master dated July 15, 2015⁹ claims Nelva wanted to continue a history of gifting by paying off Amy and Carole’s homes as “she and her husband did the same for Anita in approximately 2005” (Exhibit 21: E1410-E1412) when the public record shows the loan occurred July 1, 1999.

XIII. REQUEST FOR JUDICIAL NOTICE

112. Plaintiff Curtis respectfully asks this Court to take Judicial Notice of her first amended complaint filed Pro se May 1, 2013. That amendment was rejected for filing because

⁸ Victoria County Clerk Official Records Instrument #199908618 dated July 1, 1999

⁹ Case 4:12-cv-00592 Document 67-1 Filed in TXSD on 08/27/13

Plaintiff Curtis failed to document her efforts to obtain Defendants' consent for the amended complaint. Plaintiff at that time was asking to amend her complaint to bring the matter under federal question jurisdiction based upon evidence obtained after the initial filing. The Jurisdictional Statement in that pre-Ostrom amendment to Curtis' complaint reads as follows:¹⁰

4. *This matter was originally brought in equity as breach of fiduciary and related equitable claims that included a common law tort claim under diversity jurisdiction pursuant to 28 USC §1332 (a) (1) - 28 USC §1332 (b) and 28 USC §1332 (C) (2). Plaintiff hereby incorporates those claims by reference as if fully restated herein, but with newly discovered evidence presents additional and alternate claims. Additionally, Plaintiff is informed and believes Defendants are not de jure trustees.*

5. *This complaint now alleges violations of the wire, mail and securities laws of the United States as expressed in Chapter 63 of Title 18 of the United States Code, and Plaintiff is seeking to pursue additional remedies under 10(b) of the Securities Exchange Act of 1934 (the "Exchange Act").*

6. *This court has federal question jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§1331 and 1367 and Section 27 of the Exchange Act (15 U.S.C. §78aa) and exclusive jurisdiction over these claims as this action arises under Section 10(b) of the Exchange Act (15 U.S.C. §§78j(b) and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5) and the causes of action implied therefrom.*

7. *In connection with the acts and omissions alleged in this complaint, Defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including, but not limited to, the internet, the mails, interstate telephone communications, and the facilities of the national securities markets.*

113. Attorney Jason Ostrom represented to this Court that the purpose for a remand was to afford complete relief to the parties. When Mr. Ostrom made those representations he was well acquainted with the Harris County Probate Court and its officers, and knew full well there would be no remedy flowing from that Court for anyone but attorneys and court cronies.

114. Ostrom's true motivation for remand was apparently to obstruct justice in pursuit of attorney fees, not to provide any form of relief to the parties.

¹⁰ Document No. 48 in this Court's Record

115. Every attorney who has been involved in this case has tried to get the Brunsting Trust removed from an honorable federal Court to Harris County's Probate Court. The reasons at this juncture are crystal clear and have nothing to do with the honest administration of justice.

XIV. CONCLUSION

116. Both Plaintiffs' and Defendants' attorneys' intentional misrepresentations before this honorable Court, that the purpose for a remand was to provide complete relief to the parties, unfairly and unnecessarily polluted diversity to procure the Remand Orders, and in so doing deprived Plaintiff Curtis of a legitimate judicial forum to which she was and is entitled in this case.

117. Everyone involved in this case except Plaintiff Curtis has taken advantage of Carl Brunsting's illness, the Defendants, the Defendants' attorneys, the District Court Defendants and the probate Court.

118. There have been no evidentiary hearings and no rulings have been entered on any substantive issues in the probate Court. The Defendants are paying exorbitant trust income taxes due to the refusal to deposit income into an appropriate account for the beneficiary, as this honorable Court's injunction commands.

119. The attorneys have docketed and un-docketed motions for summary judgment but Plaintiff Curtis cannot buy a hearing, or a scheduling order or a trial date, or an accounting, or respect for the federal injunction, nor respect for any of her rights, and there appears to be no remedy for the parties to be found at the hands of the Harris County Probate Cartel.

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.

121. Wherefore Plaintiff Curtis respectfully requests that the Court vacate the order granting filing of the amended complaint¹¹ for fraud upon Plaintiff Curtis and upon this honorable Court, in the interest of justice pursuant to Rules 60(b)(3), (b)(6) and (d)(3) of the Federal Rules of Civil Procedure, voiding the subsequent Remand Order¹² as a matter of right, and restoring this case to this honorable Court's docket.

122. Wherefore Plaintiff Curtis further prays the Court issue the attached proposed order or issue its own orders upon such terms as the Court deems most beneficial to the purposes of Equity and Justice and most beneficial to the public policy considerations in upholding the dignity and authority of this Honorable Court.

Plaintiff/Petitioner so moves,

Petitioner hereby verifies, under penalty of perjury pursuant to the laws of the United States of America and Federal Rules of Civil Procedure Rule 11, that the above statements based upon personal knowledge are true and correct, and as to those things asserted on information and belief, affiant believes those things to be true as well.

[Signatures on the following page]

¹¹ Document No. 111 in this Courts record

¹² Document No. 112 in this Courts record

Respectfully submitted,



Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 2ND day of July 2016, to the following via U.S.P.S. Priority Mail:

Attorneys for Anita Kay Brunsting

Stephen A. Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
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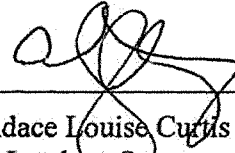
Attorneys for Amy Ruth Brunsting:

Neal E. Spielman
Griffin & Matthews
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Houston, Texas 77079
nspielman@grifmatlaw.com



CANDACE L. CURTIS

Respectfully submitted,



Candace Louise Curtis
218 Landana Street
American Canyon CA 94503
925-759-9020
occurtis@sbcglobal.net

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 1st day of August 2016, to the following via U.S.P.S. Priority Mail:

Attorneys for Anita Kay Brunsting

Stephen A. Mendel
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nspielman@grifmatlaw.com



CANDACE L. CURTIS

Exhibit 15

Exhibit 15

United States District Court
Southern District of Texas

ENTERED

May 09, 2019

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,

Plaintiffs,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

§
§
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§
§

CIVIL ACTION NO. 4:12-CV-00592

**ORDER FOLLOWING TELEPHONE SCHEDULING CONFERENCE
HELD ON May 8, 2019 at 9:15 AM**

Appearances: Candace Curtis (*pro se*)
(Court Reporter: J. Sanchez)
(No appearance by the defendants)

The following rulings were made:

Before the Court is the *pro se* plaintiff's, Candace Curtis, motion for an order directed to certain defendants to show cause why they should not be held in contempt for violating the Court's Preliminary Injunction entered on April 19, 2013.

The Court is of the opinion that, having transferred the case to the Harris County Probate Court, it no longer has jurisdiction of the case. Therefore, the relief requested is Denied.

It is so ORDERED.

SIGNED on this 8th day of May, 2019.



Kenneth M. Hoyt
United States District Judge

Exhibit 16

Exhibit 16

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS

Plaintiff,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

§
§
§
§
§
§
§

CIVIL ACTION NO. 4:12-CV-592

EX PARTE MOTION FOR RELIEF

I. MOTION

Plaintiff Candace Louise Curtis (Curtis) respectfully moves this honorable Court, pursuant to Fed. R. Civ. P. 60(b)(6), (Rule 60(b)(6)) and Fed. R. Civ. P. 60(d)(3), (Rule 60(d)(3)) praying for relief from this Court's order of July 22, 2014, remanding the above captioned matter to Harris County Probate Court #4.

II. JURISDICTION

"On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for any reason that justifies relief", Fed. R. Civ. P. 60(b)(6). The type of relief provided by Rule 60(b) does not involve the "review" proscribed by 28 U.S.C. §1447(d).

III. GROUND FOR PETITION

The ground for this petition is fraud upon the court. Fraud upon the court is ground for relief under the residual clause of the rule and must be raised within a "reasonable time" after entry

of the judgment, FED. R. Civ. P. 60(b)(6); Wilson, 873 F.2d at 872, citing Rozier, 573 F.2d at 1338, but a saving clause in Rule 60(b) provides: "This rule does not limit the power of a court to entertain an independent action . . . to set aside a judgment for fraud upon the court." See Dausuel v. Dausuel, 90 U.S.App.D.C. 275, 195 F.2d 774 (1952).” Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 n. 1 (5th Cir. 1978) A federal Court always retains the inherent jurisdiction to vindicate its dignity and authority.

IV. PETITIONER’S BURDEN

"[In] order to set aside a judgment or order because of fraud upon the court under Rule 60(b) . . . it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision." England v. Doyle, supra, 281 F.2d at 309. See also United States v. Standard Oil Co. of Calif., 73 F.R.D. 612, 615 (N.D.Cal. 1977). Rozier v. Ford Motor Co., 573 F.2d 1332, 1338 (5th Cir. 1978).

*Brown v. Bilek, C.A. No. H-09-2193, at *21-22 (S.D. Tex. Aug. 20, 2009) ("Rule 60(b) provides an extraordinary remedy because it can weaken the principle of finality and "the desire for a judicial process that is predictable." Carter v. Fenner, 136 F.3d 1000, 1007 (5th Cir. 1998) (quoting Bailey v. Ryan Stevedoring Company, Inc., 894 F.2d 157, 160 (5th Cir. 1990). Rule 60(b) relief based on fraud upon the court is reserved for only "the most egregious misconduct." Wilson v. Johns — Manville Sales Corp., 873 F.2d 869, 872 (5th Cir. 1998). Fraud upon the court is a narrow concept that should include only those types of fraud that do, or attempt to, defile the court itself," or frauds that are "perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication. Kerwit Medical Products, Inc. v. N. H. Instruments, Inc., 616 F.2d 833, 837 (5th Cir. 1980). In First National Bank v. Lustig, 96 F.3d 1554 (5th Cir. 1996), this Court further described the kinds of conduct that could constitute a fraud on the court:*

To describe fraud on the court, it is necessary to show an unconscionable plan or scheme which is designed to improperly influence the court in its decision. Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated, will constitute a fraud on the court. Less egregious misconduct, such

as nondisclosure to the court of facts allegedly pertinent to the matter before it will not ordinarily rise to the level of fraud on the court. Id. at 1573 (internal quotation marks and citations omitted). The very first test for fraud on the court under Rule 60 is "whether the action in question prevented a party from fully and fairly litigating its case." Id.)

The misconduct upon which this petition for relief is based is not merely an unconscionable plan preventing Petitioner from fully and fairly litigating her case, but a willful and callous scheme designed to improperly influence the court in its decision, and exactly the type of egregious misconduct by an officer of this court as will constitute a fraud on the court warranting relief within the meaning of Rule 60(b)(3).

V. STANDARD OF REVIEW

RULE 60: Decisions on Rule 60 motions are reviewed for abuse of discretion. "A district court abuses its discretion if it bases its decision on an erroneous view of the law or on a clearly erroneous assessment of the evidence." *Kennedy v. Texas Utilities*, 179 F.3d 258, 265 (5th Cir. 1999) (quoting *Esmark Apparel, Inc. v. James*, 10 F.3d 1156, 1163 (5th Cir. 1994)).

In general, an abuse of discretion occurs when (1) a relevant factor that should have been given significant weight is not considered, (2) an irrelevant or improper factor is considered and given significant weight, or (3) all proper factors, and no improper ones, are considered, but the trial court commits clear error of judgment in weighing those factors. The phrase "abuse of discretion" means that the court has a range of choices, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law. The trial court is thus given a "zone of choice within which [it] may go either way."

CLEARLY ERRONEOUS: Petitioner bears the burden of establishing substantial evidence. This Court's view of the evidence is reviewed for clear error. "Review under the clearly erroneous standard is significantly deferential." *Concrete Pipe and Prods. v. Construction Laborers Pension Trust*, 508 U.S. 602, 623 (1993). The appellate court must accept the trial court's findings unless it is left with the "definite and firm conviction that a mistake has been committed." *Inwood Laboratories, Inc. v. Ives Laboratories, Inc.*, 456 U.S. 844, 855 (1982).

SUBJECT MATTER JURISDICTION: Subject matter jurisdiction is reviewed de novo. *Pillow v. Bechtel Const., Inc.*, 201 F.3d 1348, 1351 (11th Cir. 2000).

NATURE AND STAGE OF THE PROCEEDING

Pro se Petitioner Candace Louise Curtis (Curtis) filed the above titled breach of fiduciary action in this court on February 27, 2012, in order to compel required accounting and fiduciary disclosures. The matter was dismissed sua sponte under the probate exception to federal diversity jurisdiction [Doc 14] then reversed by the Circuit Court [No. 12-20164] and remanded to this Court for further proceedings. *Curtis v Brunsting* 704 F.3d 406 (Jan 9, 2013).

On January 29, 2013, while Plaintiff Curtis' action was in transit between the Fifth Circuit and the Southern District of Texas, Attorney Bobbie G. Bayless (TBA No. 01940600) filed legal malpractice claims against the late Settlor's estate planning attorneys in Harris County District Court 164 [No. 2013-05455] styled:

*Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting
and Nelva E. Brunsting
Vs.
Candace Kunz-Freed and Vacek & Freed, PLLC f/k/a/ the Vacek Law Firm*

Upon returning to the Southern District of Texas, Plaintiff Curtis renewed her earlier application for a preliminary injunction and hearing was had April 9, 2013. Also on April 9, 2013, Attorney Bobbie G. Bayless filed claims in Harris County Probate Court (No. 412249-401) styled:

“Carl Henry Brunsting Individually and as Independent Executor of the Estates of Elmer H Brunsting and Nelva E Brunsting”

vs

ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, as attorney-in-fact for Nelva E. Brunsting, and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust; AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS”

VI. THIS COURT’S PRELIMINARY INJUNCTION [DOC 45]

This Court announced the decision to issue the injunction at the April 9 hearing and published the order on April 19, 2013. The preliminary injunction established the existence of a fiduciary relationship between Plaintiff and Defendants, that Defendants owed fiduciary duties to Plaintiff and that Defendants had failed to perform fiduciary duties owed to Plaintiff.

The Report of a Special Master, appointed by this Court [Doc 62] to create books and records of accounts, revealed both injury to the Plaintiff and benefit to Defendants, thus establishing the fourth and final element of a breach of trust cause of action.

VII. ATTORNEY OSTROM - FRAUD UPON THE COURT

Procuring an Order for Remand under False Pretext

In late 2013 Plaintiff Curtis retained Houston attorney Jason Bradley Ostrom (TBA #24027710) (Ostrom) made his appearance on January 6, 2014 [Doc 95]. Ostrom never followed his client's instructions, never sent copies of pleadings and did not respond to efforts to communicate. Plaintiff Curtis was forced to keep up with Ostrom's activities by data mining and monitoring the dockets.

Ostrom manipulated the administrative side of this Court to evade the judicial side by filing an unopposed motion [Doc 107] seeking to amend Plaintiff Curtis' complaint to add Carl Brunsting as an involuntary plaintiff, [Doc 108 ln 4] thus polluting diversity. Ostrom's professed purpose was to consolidate Plaintiff Curtis' case with state court Plaintiff Carl Brunsting's case pending in the probate court, "*in order to provide complete relief to the parties*". Ostrom thus obtained an order remanding Plaintiff Curtis' cause to Harris County Probate Court #4 [Doc 112]. It should be noted that remand is a post removal statute (28 U.S. Code § 1447). Plaintiff Curtis had never been in a state court in Texas and this case was not removed to the federal court from a probate court.

Failure to Serve Citation

Ostrom's amended complaint [Doc 108] portends to have added Petitioner's brother, Carl Brunsting, as an involuntary plaintiff thus polluting diversity and depriving this Court of subject matter jurisdiction. The amended complaint also stated that "*it is anticipated Carl will waive service of summons*".

Examination of the Clerk's record in this Court reveals that a summons to involuntary Plaintiff Carl Brunsting was never issued and no proof or waiver of service of citation was ever perfected and made a part of this Court's record.

Colorable Transfer and Criminal Conversion

Ostrom never had the docket of this Court prepared for certification to the state court. Instead, Ostrom filed a motion in the probate court asking to enter a transfer order, not as the above captioned cause but as "*Estate of Nelva Brunsting 412249-401*" (Exhibit A). Cause Number 412249-401 is the case brought by *Carl Henry Brunsting Individually and as Independent Executor of the Estates of Elmer H Brunsting and Nelva E Brunsting*. Plaintiff Curtis was named a nominal defendant in that cause. (Exhibit B)

Moreover, the motion for remand was granted by this Court on May 15, 2014, but a docket entry for the case was not created in the probate court until February 15, 2015, nine months later. The cause was also styled "*Estate of Nelva Brunsting No. 412249-402*".

On February 19, 2015, four days after the ancillary case was opened, Carl Brunsting resigned as independent executor due to lack of capacity.

"the estate is an "indispensable party" to any proceeding in the probate court. The estate's presence is required for the determination of any proceeding that is ancillary or pendent to an estate." Goodman v. Summit at West Rim, Ltd., 952 S.W.2d 930, 933 (Tex. App. 1997) Smith's Inc. v. Sheffield No. 03-02-00109-CV (Tex. App. Jan. 30, 2003), Johnson v. Johnson, No. 04-19-00500-CV (Tex. App. Jan. 15, 2020)

March 9, 2015, with the office of executor vacant, the 412249-402 file was closed under the auspice of an agreed order to consolidate "*Estate of Nelva Brunsting 412249-402*" with "*Estate of Nelva Brunsting 412249-401*". (Exhibit C)

This agreed order completed the apparent disappearance of “federal Plaintiff Curtis” and completed her conversion into “probate court Defendant Curtis”, a “nominal” defendant of Carl individually and a “nominal” defendant of the Estate of Nelva Brunsting.

Plaintiff terminated Ostrom when data mining revealed the conversion agreement. Unfortunately, the damage had already been done. Plaintiff was left without a pending lawsuit and everything that followed was a game of attrition, obstruction, evasion, intimidation, and abuse, but nothing that could be legitimately called litigation. Ostrom did not surrender the file when terminated and an examination of the docket reveals that he never even bothered to file an appearance in the state court.

VIII. CONCLUSION

Carl Brunsting is a cross plaintiff, not a co-plaintiff. Citation to involuntary Plaintiff Carl Brunsting was not issued, served or waived. An involuntary plaintiff was not added to the above styled action and diversity was not polluted. The record was never certified for transfer to the state court, was never transferred to the state court and was never received by the state court. Candace Louise Curtis vs. Anita and Amy Brunsting No. 4:12-cv-592 never left this court as a matter of law or as a matter of fact.

November 11, 2019 marked the eighth year since the passing of the last Settlor, when rights in property vested equally in each of the five beneficiaries, and the eighth consecutive year that not one dime has been distributed to any income beneficiary of the Brunsting trusts.

February 27, 2020 marked eight years since trust beneficiary Candace Curtis filed suit against Anita and Amy Brunsting in the Southern District of Texas seeking required accounting

and mandatory fiduciary disclosures in order to obtain information about her beneficial interest in an inter vivos trust.

February 19, 2020 marked the fifth consecutive year that the office of independent executor for the Estate of Nelva Brunsting has been vacant. There has been no personal representative for either estate for more than five years and it is not debatable that without an estate there have been no proceedings in the probate court since before Petitioner terminated Ostrom in March of 2015.

May 22, 2020 marked the sixth year since Attorney Jason Ostrom had Candace Curtis' **non-probate matter** transferred from the Southern District of Texas to Probate Court #4 and the end of the sixth year in Probate Court #4 without an evidentiary hearing to resolve even one substantive issue relating to the trust.

The Circuit Court in No. 12-20164 held the trust property in question to be non-estate property before any state court cases were filed, and held this case (*Candace Louise Curtis vs. Anita and Amy Brunsting 4:12-cv-592*) to be outside the probate exception to federal diversity jurisdiction, *Curtis v Brunsting 704 F.3d 406* (Jan. 2013).

April 9, 2020 marked the seventh anniversary of the filing of Ancillary Matter 412249-401 in probate court #4 and the seventh year in which no dispositive issue has been determined in that Court beginning with:

- a. What are the instruments that created the trust the estate poured over into at the death of Nelva Brunsting November 11, 2011?
- b. Who are the trustees?

- c. What affirmative obligations does the trustee owe the beneficiary in relation to the trust property?
- d. Have the trustees performed those obligations?

April 19, 2020 marked the seventh consecutive year in which the portion of this Court's preliminary injunction commanding that income be deposited into an "*appropriate account for the beneficiary*" has been ignored.

On April 12, 2019 Plaintiff sought remedy in this Court, seeking to enforce this Court's injunctive order [Doc 124]. The Court denied the petition for remedy [Doc 127] stating:

"The Court is of the opinion that, having transferred the case to the Harris County Probate Court, it no longer has jurisdiction of the case. Therefore, the relief requested is Denied."

Plaintiff/Petitioner has been trapped in a procedural purgatory and a substantive Hades where she has been subjected to threats, (Exhibit D) sanctions for seeking to enforce this Court's injunction in this Court, (Exhibit E) and where her property has been held hostage to Defendants' attorney fee ransom demands, while Defendants defalcate, flout accountability and disrespectfully ignore this Court's injunctive Order [Doc 45].

At the injunction hearing April 9, 2013, this Court stated at page 40:

8 *THE COURT: "That's it.*
9 *So, I want this resolved within 90 days. And*
10 *if I have to appoint a trustee or somebody to handle this*
11 *and get it done, I'll do it. It will cost the estate. And*
12 *if I find that there has been mischief, it is going to cost*
13 *individuals. And that will be a separate and distinct*
14 *hearing.*
15 *So what I am telling the parties, and I am*
16 *saying to you and to all those who have ears to hear, that*

17 *this matter is going to get resolved. It's not going to turn*
18 *into one of these long, drawn-out episodes like the ones we*
19 *see on TV that go on for years where lawyers make money and*
20 *people walk away broke”*

Not only was that more than seven years ago, but that is exactly the kind of case attorneys Jason Ostrom (TBA #24027710), Bobbie G. Bayless (TBA 01940600) , Stephen Mendel (TBA#13930650), Neal Spielman (TBA#00794678) and others have worked in concert to make of it, under the label “*Estate of Nelva Brunsting*”.

Notwithstanding Petitioner having been sanctioned by the state court for seeking to have this Court’s injunction enforced in this Court, (Exhibits F and G) Petitioner herein renews her March 20, 2019 Application for Orders to Show Cause with Motion for Sanctions, [Doc 124] incorporated herein by reference, because this Court is the only court of competent jurisdiction in which Plaintiff Curtis has a docketed action.

This Court’s Plaintiff, Candace Curtis, does not have a cause in probate court #4. There have been no dispositive rulings on any relevant substantive issue, favorable or otherwise, in any court but this Court. Those determinations established the law of the case and are entitled to full faith and credit.

For the above stated reasons Petitioner prays this Honorable Court will vacate and set aside the first Amended Complaint filed by Attorney Ostrom [Doc 108], vacate the Order approving Ostrom’s Motion for Remand [Doc 112], and restore the above styled cause to the active docket.

Respectfully submitted, July 15, 2020

Candice Schwager

Candice Leonard Schwager

PROOF OF SERVICE

Pursuant to Fed. R. Civ. P. 5(a)(1)(D) an ex parte pleading may be heard without notice to opposing parties.

Candice Schwager

Candice Leonard Schwager

Case 4:12-cv-00592 Document 128-1 Filed on 07/17/20 in TXSD Page 1 of 7

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5/28/2014 5:40:39 PM
Stan Stanart
County Clerk
Harris County

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CAUSE NO. 412,249-401

PROBATE COURT 4

IN RE: ESTATE OF
NELVA E. BRUNSTING,
DECEASED

§
§
§
§
§

IN THE PROBATE COURT
NUMBER FOUR (4) OF
HARRIS COUNTY, TEXAS

MOTION TO ENTER TRANSFER ORDER

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candace Louis Curtis and files this Motion to Enter Transfer Order, and in support thereof would respectfully show as follows:

I. BACKGROUND

Plaintiff filed an Original Petition in the Federal Court for the Southern District of Texas against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust. She subsequently sought and was granted leave to amend her pleading to include necessary parties Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased and Carole Brunsting. Although necessary, the addition of these two new parties destroyed federal diversity jurisdiction. Because similar issues of fact and law are currently pending before this Court, the Federal Court entered an order remanding Plaintiff's Federal Case to this Court. *See Ex. A, Order of Remand.*

II. TRANSFER

Pursuant to Texas Estates Code Sections 32.005, 32.006 and 32.007, this Court has jurisdiction over the parties and the claims alleged in Plaintiff's First Amended Petition. Accordingly, Plaintiff requests that this Court enter an order accepting the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*

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Case 4:12-cv-00592 Document 128-1 Filed on 07/17/20 in TXSD Page 2 of 7

06052014:0759:PO098

III. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) accept the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/sain
A limited Liability Partnership

BY: 

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(TBA #24043901)
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713.863.1051 (Facsimile)

Attorneys for Plaintiff

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Case 4:12-cv-00592 Document 128-1 Filed on 07/17/20 in TXSD Page 3 of 7

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 28 day of May, 2014:

Ms. Bobbie Bayless
2931 Ferndale
Houston, Texas 77098
713.522.2224
713.522.2218 (Facsimile)

Ms. Darlene Payne Smith
1401 McKinney, 17th Floor
Houston, Texas 77010
713.752.8640
713.425.7945 (Facsimile)

Mr. George W. Vie III
1021 Main, Suite 1950
Houston, Texas 77002
713.225.0547
713.225.0844 (Facsimile)


Jason B. Ostrom

06052014:0759: P0099

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Case 4:12-cv-00592 Document 128-1 Filed on 07/17/20 in TXSD Page 4 of 7

Case 4:12-cv-00592 Document 112 Filed in TXSD on 05/15/14 Page 1 of 2

06052014:0759:P0100

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al.*,

Plaintiffs,

VS.

ANITA KAY BRUNSTING, *et al.*,

Defendants.

§
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§

CIVIL ACTION NO. 4:12-CV-592

ORDER GRANTING PLAINTIFF'S MOTION TO REMAND

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

Exhibit A

Case 4:12-cv-00592 Document 128-1 Filed on 07/17/20 in TXSD Page 5 of 7

Case 4:12-cv-00592 Document 112 Filed in TXSD on 05/15/14 Page 2 of 2

It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15th day of May, 2014.



Kenneth M. Hoyt
United States District Judge

06052014:0759:P0101

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Case 4:12-cv-00592 Document 128-1 Filed on 07/17/20 in TXSD Page 6 of 7

PROBATE COURT 4

06052014:0759:P0102

CAUSE NO. 412,249-401

IN RE: ESTATE OF
NELVA E. BRUNSTING,
DECEASED

vs

IN THE PROBATE COURT
NUMBER FOUR (4) OF
HARRIS COUNTY, TEXAS

ORDER OF TRANSFER

On this day came to be considered the Motion to Enter Transfer Order filed by Plaintiff Candace Curtis, seeking to have this Court accept the Order to Remand entered by the Federal Court for the Southern District of Texas and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.* The Court is of the opinion that it has jurisdiction over the parties and claims pending under Cause Number 4:12-CV-00592 finds that the Motion to Enter Transfer Order should be granted. It is, therefore,

ORDERED that the Order of Remand entered by the Federal Court for the Southern District of Texas in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, is hereby accepted. It is further,

ORDERED that the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, be and hereby are transferred to this Court to be held under Cause Number 412,249-401.

SIGNED on this 3 day of June, 2014.

Christine Bouter
JUDGE PRESIDING

Stan Starnick
COUNTY CLERK
HARRIS COUNTY, TEXAS


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2014 JUN -4 AM 10:35

Case 4:12-cv-00592 Document 128-1 Filed on 07/17/20 in TXSD Page 7 of 7

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APPROVED AS TO FORM:

OSTROM/*Sain*
A limited Liability Partnership

BY: 

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(TBA #24043901)
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713.863.8891
713.863.1051 (Facsimile)

Attorneys for Plaintiff

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Probate

Case Number	Court	Status
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Party Attorney Company

Last Name	First Name	Middle Name
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10 Record(s) Found.

Case	File Date	Type Desc	Subtype	Style	Status	Judge	Court	View All
412249-401	04/09/2013	ANCILLARY (LAWSUITS CASES) - CONVERSION		NELVA E. BRUNSTING, DECEASED	Open	JAMES HORWITZ	4	Parties

FIRST 1 2 LAST

Role	Party	Attorney
Other	Neal E Spielman 1155 DAIRY ASHFORD SUITE 300 HOUSTON TX 77079	
Other	BOBBIE G. BAYLESS 2931 FERNDAL STREET HOUSTON TX 77098	
Deceased	NELVA E BRUNSTING	
Plaintiff	CARL HENRY BRUNSTING	



Defendant	ANITA KAY BRUNSTING	MCCUTCHEN, MAUREEN K. Mills Shirley, LLP 2228 Mechanic Street, 400 Washington Building P. O. Box 1943 Galveston TX 77553 Phone 409-761-4023 Fax 409-763-2879
Defendant	AMY RUTH BRUNSTING	
Defendant	CAROLE ANN BRUNSTING	WALSH, LORI A. P.O. Box 2113 Mont Belvieu TX 77580 Phone 832-729-8461 Fax 832-201-0618
Defendant	CANDACE LOUISE CURTIS	SAIN THORNTON, NICOLE K. 5020 MONTROSE BLVD, SUITE 310 HOUSTON TX 77006 Phone 713-863-8891 Fax 713-863-1051
Other	BRAD FEATHERSTON 1155 DAIRY ASHFORD SUITE 104 HOUSTON TX 77079	MENDEL , STEPHEN A. 1155 DAIRY ASHFORD SUITE 104 HOUSTON TX 77079 Phone 281-759-3213 Fax 281-759-3214
Respondent	CANDACE L KUNZ-FREED	REED, CORY S ONE RIVERWAY STE 1400 HOUSTON TX 77056 Phone 713-403-8200 Fax 713-403-8299

^

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3/5/2015 3:21:27 PM
Stan Stanart
County Clerk
Harris County

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PROBATE COURT 4

CAUSE No. 412,249 - 401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CAUSE No. 412,249 - 402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

AGREED ORDER TO CONSOLIDATE CASES

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this 16 day of March, 2015.

Clemmie Butler
JUDGE PRESIDING

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03092015:0815:P0003

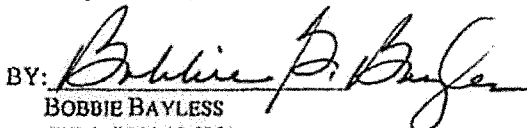
APPROVED AS TO FORM:

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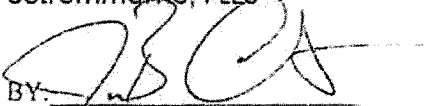
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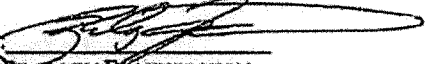
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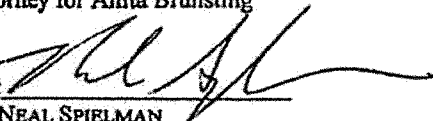
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Attorney for Amy Brunsting

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS
_____	§	
CARL HENRY BRUNSTING, et al	§	
v.	§	
ANITA KAY BRUNSTING, et al	§	

**AMY BRUNSTING’S & ANITA BRUNSTING’S
ORIGINAL COUNTERCLAIM**

TO THE HONORABLE JUDGES HORWITZ AND COMSTOCK:

AMY BRUNSTING (“Amy”) and ANITA BRUNSTING (“Anita”) (collectively “Co-Trustees”) have been sued individually and in various capacities by their sister, Candace Louise Curtis (“Curtis”) and their brother, Carl Henry Brunsting (“Carl”), each of whom has amended and/or supplemented their petitions on numerous prior occasions.

In light of the numerous amended and/or supplemental petitions filed by Curtis and Carl, Co-Trustees file these Original Counterclaims, individually and in various identified capacities, including without limitation, as Co-Trustees of The Restatement of The Brunsting Family Living Trust (the “Brunsting Family Living Trust”).

Each allegation, assertion, claim or cause of action made by Amy and/or Anita in this Original Counterclaim is in addition to and/or in the alternative to any other allegation, assertion, claim or cause of action made by them in this Original Counterclaim.

I. BACKGROUND FACTS

The Brunsting Family Living Trust was created by Elmer Henry Brunsting and Nelva Erleen Brunsting (together, “Founders” or “Trustors” and each a “Founder” or “Trustor”), on or about October 10, 1996. Over time, additional documents pertaining to The Brunsting Family Living Trust were executed by one or both of the Founders, including without limitation, a Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement executed by Nelva E. Brunsting on or about June 15, 2010 (the “June 2010 QBD”), and another Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment Under Living Trust Agreement executed by Nelva E. Brunsting on or about on August 25, 2010 (the “August 2010 QBD”). Elmer Henry Brunsting was not a party to either document, as he died on April 1, 2009.

Through the Brunsting Family Living Trust and the August 2010 QBD, the Founders set out a number of different terms, conditions and instructions to be implemented and followed by the trustees and beneficiaries. Included among these terms, conditions and instructions were rules intended for the “protection of beneficial interests”, including without limitation rules dictating that the Founders’ instructions were not to be contested.

This “no-contest” language appears in both the Brunsting Family Living Trust and the August 2010 QBD, and was included because the Founders did not want to burden the trust with the costs of a litigated proceeding to resolve questions of law or fact, unless originated by a trustee or with a trustee’s written permission. The penalty for those who violated the no-contest provision was the forfeiture of any amounts the violator is or may have been entitled to receive. In such an event, a violator’s interest would pass as if the violator(s) had predeceased the Founders.

The Founders identified certain specific acts which, if taken, would trigger a forfeiture. Prohibited acts include but are not limited to originating (or causing to be instituted) a judicial proceeding:

- To construe or contest the trust(s);
- To resolve any claim or controversy in the nature of reimbursement;
- Seeking to impress a constructive or resulting trust;
- Alleging any theory, which if assumed as true, would enlarge (or originate) a claimant's interest in the trust or the Founder's Estates;
- Unsuccessfully challenging the appointment of any person named as a Trustee or unsuccessfully seeking the removal of any person acting as a Trustee;
- Objecting to any action taken or proposed to be taken in good faith by the Trustee, if such action is determined to have been taken in good faith;
- Objecting to any construction or interpretation of the trust, or any amendment to it, and such objection is later adjudicated to be an invalid objection; and/or
- In any other manner contesting the trust or any amendment to it, including its legality or the legality of any provision thereof, on the basis of incapacity, undue influence or otherwise, or in any other manner attacking or seeking to impair or invalidate the trust or any amendment, or any of their provisions.

The Founders further expressed their intentions regarding application and enforcement of these prohibited acts by including other instructions and conditions in the Brunsting Family Living Trust and/or the August 2010 QBD. These other instructions and conditions include but are not limited to:

- Application of the forfeiture penalty even if it is determined that the judicial proceeding was initiated in good faith, with probable cause;
- Application of the forfeiture penalty even if is determined that the judicial proceeding was initiated to do nothing more than construe the application of the no-contest provision;
- Cautioning a trustee against settling any contest, attack or attempt to interfere with the Founders' estate plan; and

- Requesting that the Court take into account the Trustor’s firm belief that no person contesting or attacking the Trustor’s estate plan should take or receive any benefit from the estate.

Against the backdrop of these forfeiture provisions, Curtis and Carl each elected to proceed with the origination of their respective judicial proceedings. By way of summary, but not limitation, Carl and Curtis’ respective claims have included/currently include:

<u>Carl’s Claims</u>	<u>Curtis’s Claims</u>
<p>(1) Construction of Trust and Suit for Declaratory Judgment; (2) Demand for Trust Accounting; (3) Breach of Fiduciary Duties; (4) Conversion; (5) Negligence; (6) Tortious Interference with Inheritance; (7) Constructive Trust; (8) Civil Conspiracy; (9) Fraudulent Concealment; (10) Liability of Beneficiaries; (11) Removal of Trustees; (12) Receivership Over Trust; (13) Self-Dealing; (14) Criminal Wiretap Claim; (15) Civil Wiretap Act; (16) Invasion of Privacy and Intrusion on Seclusion; and (17) Request for Injunctive Relief.</p> <p><u>Declarations Sought by Carl:</u></p> <ul style="list-style-type: none"> • 8/25/10 QBD <i>in terrorem</i> clause void. • Construe validity, terms, responsibilities and obligations of documents signed by Elmer and Nelva. • That Carl’s actions do not violate <i>in terrorem</i> clause (if valid). • That Carl’s actions are done in good faith, so <i>in terrorem</i> not triggered. 	<p>(1) Breach of Fiduciary Obligation; (2) Extrinsic Fraud; (3) Constructive Fraud; (4) Intentional Infliction of Emotional Distress; (5) Breach of Fiduciary Duty; (6) Fraud; (7) Money Had and Received; (8) Conversion; (9) Tortious Interference with Inheritance Rights; (10) Declaratory Judgment Action; (11) Demand for Accounting; (12) Unjust Enrichment; and (13) Conspiracy.</p> <p><u>Declarations Sought by Curtis:</u></p> <ul style="list-style-type: none"> • “Modification Documents” (June 2010 QBD, August 2010 QBD and Exercise of Testamentary Power of Appointment) are not valid. • <i>In terrorem</i> clause not capable of enforcement.

II. CLAIMS AND CAUSES OF ACTION

Beginning with the filing of their respective original petitions/complaints, both Curtis and Carl have asserted (and/or continue to assert) claims and causes of action, or otherwise taken action through the filing of various motions, objections and/or responses/replies which violate the Founders' restrictions and trigger the forfeiture provisions. Once triggered, a prior or subsequent amendment of their pleadings does not and cannot "untrigger" the forfeiture. Consistent with the Founders' wishes and cautions, the Co-Trustees assert that:

- one or more of the causes of action asserted and/or declarations sought by Carl trigger the forfeiture provisions;
- one or more of the causes of action asserted and/or declarations sought by Curtis trigger the forfeiture provisions;
- one or more of the motions, responses, and/or replies filed by Carl trigger the forfeiture provisions;
- one or more of the motions, responses, and/or replies filed by Curtis trigger the forfeiture provisions;
- Carl did not have just cause to bring the action, and it was not brought in good faith;
- Curtis did not have just cause to bring the action, and it was not brought in good faith;
- Carl has forfeited his interest, and thus his interest passes as if he has predeceased the Founders;
- Curtis has forfeited her interest, and thus her interest passes as if she has predeceased the Founders;
- If Carl has not forfeited his interest via asserting any of the identified claims, and is or becomes entitled to receive any interest in the Founders' estate, then Amy's and Anita's expenses in defending against Carl's claims are to be charged against his interest dollar-for-dollar;
- If Curtis has not forfeited her interest via asserting any of the identified claims, and is or becomes entitled to receive any interest in the Founders' estate, then Amy's and Anita's expenses in defending against Curtis' claims are to be charged against her interest dollar-for-dollar;

and/or

- All expenses incurred by Amy and Anita to legally defend against or otherwise resist the contest or attack by Carl and/or Curtis are to be paid from the Trust as expenses of administration.

As a more specific example, but not by way of limitation, in his First Amended Petition for Declaratory Judgment, Carl “*seeks declaratory relief construing the...terms...[of the] Family Trust.*” The Brunsting Family Living Trust specifically prohibits an action to construe or contest the trust. Carl also seeks to impose a constructive trust, another claim that is specifically prohibited by Brunsting Family Living Trust.

Likewise, as a non-exclusive/non-limiting example, Curtis also seeks a declaration by the Court construing the terms of the Brunsting Family Living Trust, including, in particular, a finding that the QBDs affecting the terms of the Brunsting Family Living Trust are invalid. Curtis’ requests violate the Brunsting Family Living Trust’s terms.

Consistent with the Founders’ wishes and cautions, the Co-Trustees request that the Court enter one or more declarations setting forth and confirming all or any of the Co-Trustees’ assertions above. The Co-Trustees further seek a recovery/reimbursement of all attorney’s fees, expenses and court costs associated with this matter, whether in accordance with the terms of the Brunsting Family Living Trust; in accordance with the Declaratory Judgment Act; as a sanctions/penalty for actions taken in bad faith, in equity, or otherwise.

III. PRAYER

Co-Trustees, Amy Brunsting and Anita Brunsting, pray that the Court declare:

- A. Carl and Curtis have taken actions that trigger the forfeiture provisions;
- B. Carl and Curtis’ actions in triggering the forfeiture provisions were without just cause and were not in good faith;

- C. The forfeiture provisions are enforceable and applicable in this case;
- D. By their actions, Carl and Curtis have forfeited their interests in the trust as though they had predeceased the Founders;
- E. All expenses, including attorney's fees, incurred to legally defend against or otherwise resist the contest or attack by Carl and/or Curtis are to be paid from the Trust as expenses of administration.
- F. Co-Trustees be reimbursed their reasonable attorneys' fees and court costs;
- G. Co-Trustees recover prejudgment and post-judgment interest as allowed by law.
- H. Co-Trustees receive such other and further relief, general and special, legal and equitable, to which they may be entitled.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: 

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ATTORNEYS FOR ANITA BRUNSTING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 4th day of November 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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info@mendellawfirm.com


NEAL E. SPIELMAN

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS
_____	§	
CARL HENRY BRUNSTING, et al	§	
v.	§	
ANITA KAY BRUNSTING, et al	§	

AMY BRUNSTING’S MOTION FOR SANCTIONS AND/OR CONTEMPT

TO THE HONORABLE JUDGES HORWITZ AND COMSTOCK:

AMY BRUNSTING (“Amy”) files this Motion for Sanctions and/or Contempt (the “Motion”) due to the conduct of Candace Louise Curtis (“Curtis”). For reasons discussed herein, Amy requests that this Court find Curtis in civil contempt and/or sanction Curtis appropriately.

I.

INTRODUCTION

Curtis is in contempt of this Court’s Order Denying Pleas and Motions filed by Candace Curtis dated February 14, 2019. Curtis has ignored this Court’s findings and orders as to her meritless jurisdictional arguments.

Curtis’ dogged pursuit of these meritless claims, both before and after entry of the Order Denying Pleas and Motions filed by Candace Curtis, reveals a disrespect for judicial authority; evidences an intent to exacerbate an already emotionally-charged matter; and continues a pattern of behavior that is either intentionally designed to harass, to waste Estate/Trust assets, and/or is recklessly pursued without regard to the law or the facts.

Most recently, despite this Court's determination that subject matter jurisdiction is proper in Harris County Probate Court No. 4, Curtis filed documents in the United States District Court for the Southern District of Texas – Houston Division in Case No. 4:12-CV-592, a matter confirmed as having been closed, remanded and terminated. The net impact of Curtis' contempt, for which she should be sanctioned, is an otherwise avoidable increase in time and expense associated with the matter, to say nothing of the years-long delays caused by her contemptible conduct.

II.

DESCRIPTION OF CURTIS' CONTEMPTUOUS AND SANCTIONABLE ACTS

The Order Denying Pleas and Motions filed by Candace Curtis expressly states that Harris County Probate Court No. 4 has subject matter jurisdiction over the Estates of Elmer and Nelva Brunsting, as well as the assets contributed to the Trust(s) related to those Estates. Further, the Order Denying Pleas and Motions filed by Candace Curtis makes it equally clear that no other court has dominant jurisdiction regarding claims related to these Estates.¹ The Court will recall that Curtis's own filings requested and resulted in the remand of the federal court proceeding to Probate Court No. 4.

More than thirty (30) days has passed since entry of the Order Denying Pleas and Motions filed by Candace Curtis, and Curtis took no action relative to it while the Court had plenary power. Instead on March 20, 2019 and again on or about April 12, 2019, Curtis filed the following documents in the United States District Court for the Southern District of Texas – Houston Division in Case No. 4:12-CV-592:

- Application for Orders to Show Cause Why Defendants and Their Counsel Should Not Be Held in Contempt of This Court's Injunctive Orders; and

¹ See Exhibit 1 (Order Denying Pleas and Motions filed by Candace Curtis)

- Affidavit of Candace Louise Curtis in Support of Application for Orders to Show Cause.

The filing of these materials is direct evidence of Curtis' contempt. She should be found in contempt and sanctioned for her conduct.

This conduct is far from the first or only instance of Curtis' disregard for and disrespect of the judiciary. Three examples, among many, include:

1. On May 16, 2017, the Honorable Alfred H. Bennett issued a 7-page Order dismissing the Federal RICO case previously discussed with this Court as frivolous and meritless. In doing so, Judge Bennett afforded Curtis (and Rik Munson) the "benefit of the doubt" allowing them to escape financial responsibility (via sanction) for the trouble caused. However, Judge Bennett contemporaneously cautioned them against "additional meritless filings."² With flagrant disregard to Judge Bennett's instruction, Curtis and Munson proceeded to appeal his Order. The Court of Appeals subsequently affirmed Judge Bennett's Order, noting again that Curtis/Munson's allegations and efforts to pursue the matter were fantastical, nonsensical, frivolous and implausible.³
2. On October 3, 2013, prior to the remand to Probate Court No. 4, the Honorable Kenneth M. Hoyt issued an Order recognizing that Curtis' failure to employ counsel hinders necessary discourse and prevents parties from fulfilling their responsibilities, and directing her to retain counsel.⁴ This Order prompted Curtis' retention of Jason Ostrum. However, in direct contravention of Judge Hoyt's Order, Curtis fired Mr. Ostrum shortly after the case was remanded.
3. Between August 17, 2018 and October 19, 2018, Curtis filed the Pleas in Abatement and Plea to the Jurisdiction that this Court denied via its Order Denying Pleas and Motions filed by Candace Curtis. Each of those filings was inconsistent with the May 2014 Motion to Remand Curtis filed in Case No. 4:12-CV-592 and in violation of both Judge Hoyt's Order Granting Plaintiff's Motion to Remand (dated May 15, 2014) and this Court's June 3, 2014 Order of Transfer in which this Court ordered that the pleadings and orders filed and entered in the Case No. 4:12-CV-59 are "*transferred to this Court to be held under Cause Number 412,249-401.*"

Throughout all three legal proceedings to which she is, or has been a party, Curtis has exhibited a pattern of ill-advised, unwise and contemptuous conduct, all of which occurred during

² See Exhibit 2 (Order – Document 91 in Civil Action 4:16-CV-1969).

³ See Exhibit 3.

⁴ See Exhibit 4 (Order – Document 87 in Civil Action 4:12-CV-592).

the course of and as a result of her *pro se* status. At best, she fails to comprehend the legal process (as suggested by both Judge Hoyt and Judge Bennett). At worst, she is engaged in a calculated plan to delay, harass and unnecessarily increase costs, fees and expenses incurred by her siblings. In either instance, she seemingly fails to understand and has certainly yet to be shown that this conduct has consequences. It is well-past time that this message be sent.

III.

REQUEST FOR CONTEMPT AND/OR SANCTIONS

A. Civil Contempt

Contempt of court is an appropriate means to enforce a court's civil order. V.T.C.A., C.P. &R., § 31.002(c). *Ex Parte Johnson*, 654 S.W.2d 415 (Tex. 1983). The contempt powers of the court are generally addressed by V.T.C.A., Government Code § 21.002. That section allows a court to punish a contemnor by a fine of not more than \$500 and/or confinement to the county jail for not more than six months. The purpose of civil contempt is remedial and coercive in nature. A judgment of civil contempt exerts the judicial authority of the court to persuade the contemnor to obey some order of the court where such obedience will benefit an opposing litigant. *Ex Parte Werblud*, 536 S.W.2d 542, 545 (Tex. 1976).

For the reasons discussed herein, Amy requests that the Court find that Curtis violated its Order Denying Pleas and Motions filed by Candace Curtis via her filings of March 20, 2019 and April 12, 2019 in the United States District Court for the Southern District of Texas – Houston Division in Case No. 4:12-CV-592. Amy requests that Curtis be fined in the maximum amount available at law (\$500.00), and that she continue to be held in contempt of court until such fine is paid.

B. Sanctions

Most sanctions are imposed under the authority of a specific statute or rule that permits a court to order sanctions. However, sanctions may also be imposed via a court's inherent power. *See In re Bennet*, 960 S.W.2d 35, 40 (Tex. 1997); *see also Remington Arms Co. v. Caldwell*, 850 S.W.2d 167, 172 (Tex. 1993). This power allows a court to impose sanctions for abuses of the judicial process not covered by rule or statute, or as necessary to aid in exercise of jurisdiction, administration of justice, and preservation its independence and integrity.

Amy requests that this Court sanction Curtis, whether on its own initiative and/or under CPRC §9.012, CPRC §10.004 and/or TRCP 13. As detailed above, Curtis has engaged in conduct that has no proper purpose. Rather, her conduct evidences an intent to harass, delay and increase the costs of litigation. Even if Curtis attempts to evade the consequence of her conduct as a result of her *pro se* status, as other courts have allowed her to do to our current detriment, her conduct is at least negligent and/or founded in poor judgment.

For the reasons discussed herein, Amy requests that the Court sanction Curtis in one or more of the following ways: (1) Enjoin Curtis from making further filings in Case No. 4:12-CV-592; (2) Order that Curtis pay a monetary penalty to the Court; and/or (3) Order that Curtis pay Amy (and/or the Trust) all or any portion the Court deems appropriate of the total amount of attorney's fees incurred and/or anticipated as a result of the conduct described in this Motion.⁵

IV.

PRAYER

For these reasons addressed above, Amy Brunsting requests that the Court set this Motion for hearing, and enter all necessary and proper relief related to the issues addressed herein.

⁵ See Exhibit 5 (Affidavit of Neal E. Spielman)

Additionally, Amy Brunsting prays for such other and further relief (general and special, legal and equitable) to which she may be entitled, collectively, individually or in any of her representative capacities.

Respectfully submitted,

GRIFFIN & MATTHEWS

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ATTORNEYS FOR AMY BRUNSTING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 15th day of May 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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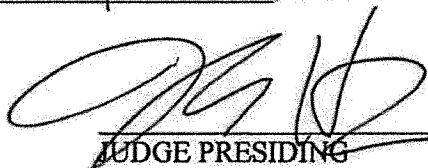


NEAL E. SPIELMAN

2. The Court FURTHER ORDERS, ADJUDGES and DECREES that as punishment for this contempt, Candace Curtis is fined the sum of \$ 500.00, payable to Diane Trautman, Harris County Clerk, Indigent Bond on or before the 1st day of September 2019; Program, Registry No. 28190
at 201 Caroline, 8th Floor, Room 800
Houston TX 77002
3. The Court, after considering the description of services, time, fees and costs described in the Affidavit of Neal E. Spielman, totaling ~~\$8,690.00~~ (representing \$7,505.00 @ 19 hrs x \$395.00/hr through and including the filing of the Motion and \$1,185.00 @ 3 hrs x \$395.00/hr in additional fees and expenses incurred after the filing of the Motion) FURTHER ORDERS, ADJUDGES and DECREES that as further punishment for this contempt and/or as a sanction conferred in accordance with its own initiative and inherent power and/or under CPRC §9.012, CPRC §10.004 and/or TRCP 13, Curtis must pay to Amy Brunsting the sum of \$ 1,975.00 to Amy Brunsting in care of her attorneys – Griffin & Matthews – at 1155 Dairy Ashford, Suite 300, Houston, Texas 77007 on or before the 1st day of September, 2019

FURTHER, in so far as Curtis’s Response attempts to seek affirmative relief (including without limitation within the “Conclusion and Prayer” appearing on Page 6 of Curtis’s Response) all such affirmative relief is DENIED.

SIGNED ON THIS THE 23 DAY OF July, 2019.



JUDGE PRESIDING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 3rd day of July 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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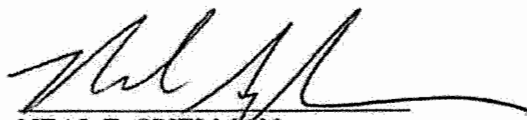
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REPORTER'S RECORD

VOLUME 1 OF 1

TRIAL COURT CAUSE NO. 412249-401

APPELLATE COURT NO. _____

THE ESTATE OF:) IN THE PROBATE COURT
NELVA E. BRUNSTING,) NUMBER 4 (FOUR) OF
DECEASED) HARRIS COUNTY, TEXAS

* * * * *

AMY BRUNSTING'S MOTION FOR SANCTIONS AND/OR CONTEMPT

* * * * *

On the 28th day of June, 2019, the following
proceedings came to be heard in the above-entitled and
numbered cause before the Honorable James Horwitz
Judge of Probate Court No. 4, held in Houston, Harris
County, Texas:

Proceedings reported by Machine Shorthand

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VOLUME 1
(AMY BRUNSTING'S MOTION FOR SANCTIONS AND/OR CONTEMPT)

June 28, 2019	Page	Vol.
PROCEEDINGS.....	4	1
MOTION FOR SANCTIONS AND/OR CONTEMPT		
ARGUMENT BY:		
Mr. Spielman.....	6	1
Ms. Candace Curtis.....	21	1
Court's Ruling.....	23	1
COURT REPORTER'S CERTIFICATE.....	37	1

1 June 28, 2019

2 PROCEEDINGS:

3 THE COURT: Hello. Please be seated.

4 I'm going to call Case Number 412249-401,
5 In The Estate of Nelva E. Brunsting, Deceased.

6 When we get Ms. Curtis on the phone, I'll
7 have each counsel and pro se party stand, identify
8 yourself, and who you represent.

9 (Calling Ms. Candace Curtis on telephone)

10 MS. CANDACE CURTIS: This is Candace.

11 THE COURT: Hi, ma'am. This is James
12 Horwitz; I'm the judge in Harris County Probate Court 4.

13 MS. CANDACE CURTIS: Yes, sir.

14 THE COURT: We are on the record, and
15 we're just now starting; so, I'm going to have each
16 counsel stand and identify themselves and who they
17 represent.

18 MS. CANDACE CURTIS: Thank you.

19 MR. SPIELMAN: Good afternoon, Judge, my
20 name is Neal Spielman, and I represent Amy Brunsting.

21 THE COURT: All right.

22 MR. JADLOSKI: My name is Timothy
23 Jadloski --

24 MS. CANDACE CURTIS: Excuse me. Can you
25 turn that up a little bit 'cause I can't hear anything

1 going on in the background.

2 THE COURT: All right. I'll try to have
3 somebody that's more technical than me do this.

4 JUDGE COMSTOCK: Turning up the volume on
5 this device increases your volume, Ms. Curtis, but it
6 doesn't increase the volume of the attorneys in the
7 courtroom; do you guys want to approach?

8 THE COURT: Yeah, y'all can come on up.
9 All right. Counsel, why don't we start
10 over, okay.

11 MR. SPIELMAN: Judge, my name is Neal
12 Spielman; I represent Amy Brunsting.

13 MR. JADLOSKI: Your Honor, my name is
14 Timothy Jadloski, and I represent Anita Brunsting.

15 MR. REED: Cory Reed; I represent Candace
16 Vacek in the 403 case.

17 MS. BAYLESS: Bobby Bayless; I represent
18 Carl Brunsting.

19 MS. CAROLE BRUNSTING: And Carole
20 Brunsting; I'm pro se.

21 THE COURT: Okay. So, we have a motion
22 for sanctions and/or contempt filed by counsel for Amy
23 Brunsting.

24 MR. SPIELMAN: That's correct, Judge; and
25 Candace Curtis is on the phone as a pro se party,

1 correct?

2 THE COURT: Right. So, Ms. Curtis?

3 MS. CANDACE CURTIS: Yes.

4 THE COURT: I would like you to raise your
5 right hand and be sworn by the court clerk, please.

6 MR. CANDACE CURTIS: All right.

7 (Ms. Candace Curtis is sworn)

8 MS. CANDACE CURTIS: I do.

9 THE COURT: All right. Counsel, would you
10 like to proceed with your motion?

11 MOTION FOR SANCTIONS

12 ARGUMENT BY MR. SPIELMAN:

13 MR. SPIELMAN: Yes, thank you, Judge.

14 Essentially, Judge, we're here on a motion
15 for sanctions and contempt stemming from your recent --
16 the Court's recent order of February the 14th of 2019.
17 By way of review, Your Honor, that order was entered
18 following some pleadings that were filed by my office on
19 Amy Brunsting's behalf that were connected to a series
20 of five different pleadings that had been previously
21 filed by Ms. Curtis. The sum and substance of those
22 pleadings had to do with the suggestion or the argument
23 that this Court did not have jurisdiction over the case
24 that we're dealing with. And as you may recall, Judge,
25 part of what led to your order being signed in February

1 was the discussion about how the case came to be in this
2 courtroom from the federal court - Judge Hoyt's court -
3 pursuant to a motion to remand and an order of remand
4 that was signed by Judge Hoyt. The motion itself was
5 submitted by Ms. Curtis and her lawyer at the time -
6 Jason Ostrom. This Court then --

7 THE COURT: Is that the order dated March
8 16th, 2015 - an agreed order to consolidate cases?

9 MR. SPIELMAN: I did not bring that part
10 of the file with me, so I can't speak to the specific
11 dates.

12 THE COURT: It's the -- it's in your --
13 it's in my order denying plea and motion filed by Ms.
14 Curtis that I signed on February 14th, 2019. So, I
15 believe that's correct. Go ahead.

16 MR. SPIELMAN: Okay. Yeah.

17 And so then Judge Butts - prior to you
18 taking the bench - Judge Butts signed her own order
19 basically accepting the transfer. I do not recall, as I
20 stand here today, whether that was done of the Court's
21 own accord or if that was done in response to a motion
22 filed by Ms. Curtis/Mr. Ostrom; but either way - you
23 have the order from Judge Hoyt and then you have the
24 order from Judge Butts bringing that federal court case
25 into state court at Ms. Curtis' request; and yet, even

1 so, we had these five different pleadings and such
2 suggesting that this Court didn't have jurisdiction.

3 Your Honor may also recall that in and
4 around the same time period at other hearings we were
5 having, Ms. Curtis wasn't appearing, and there was some
6 discussion in the courtroom - not putting words into
7 anybody's mouth - but there was some discussion in the
8 courtroom as to whether or not Ms. Curtis wasn't
9 appearing at these hearings because she did not think
10 this Court had jurisdiction, and we talked about the
11 importance of getting everybody to the table, so to
12 speak, and that was the motivating factor for doing
13 everything that I did so that we had everybody in the
14 right place and we could recognize that the whole debate
15 about who had jurisdiction wasn't even really one that
16 should have been going on in any case.

17 So, fastforward to your order, Judge,
18 February 14th - you issued your order - sort of
19 confirming all of the things that we just said; and yet,
20 even so, subsequent to that - on March the 20th and then
21 again on April the 12th, this is all in 2019 - Ms.
22 Curtis filed two more pleadings or documents into Judge
23 Hoyt's federal court under the same cause of action that
24 had been transferred. So --

25 THE COURT: Is that the cause of action

1 entering in what four numbers?

2 MR. SPIELMAN: The --

3 THE COURT: Is that the 592?

4 MR. SPIELMAN: That is -- yeah. Yes, I
5 think so. Yes, the 592. So, those documents were the
6 application for orders to show cause why Defendants and
7 their counsel should not be held in contempt of this
8 Court's injunctive order. That was one document that
9 was filed. And then the second document that was filed
10 later was affidavit of Candace Louise Curtis in support
11 of application for orders to show cause. So, those were
12 the two documents that were filed into the federal court
13 case that had been closed and terminated prior to and
14 then confirmed again by your order.

15 THE COURT: And, Counsel, is that case
16 that ends in 592 in which she filed on April 12th, 2019,
17 and March 20th, 2019 - the same case number in which
18 Judge Hoyt had signed a agreed order to consolidate, and
19 that case was moved to probate court?

20 MR. SPIELMAN: Yes, Your Honor.

21 THE COURT: Same case?

22 MR. SPIELMAN: Yes, sir.

23 THE COURT: Okay. Go ahead.

24 MR. SPIELMAN: Okay. And so, those
25 actions right there - the March 20th and the April 12th

1 filing - are the ones that were taken subsequent to your
2 February 14th, 2019 order, and those two actions are the
3 ones that I am saying are the contemptuous actions
4 relative to what's been going on in this court and the
5 effort that was put forth to get everybody here and get
6 any confusion that might have existed - legitimate or
7 otherwise - resolved.

8 And so, that's really the sum and the
9 substance of the conduct that we're here to talk about,
10 Judge.

11 It's my position that - with regard to the
12 contempt and the request for sanctions - that none of
13 the conduct that was exhibited by Ms. Curtis with
14 respect to the five pleadings that led up to your order
15 or the two documents subsequent to your order were
16 proper, necessary, merit, full, had merit, and should
17 have ever been pursued because of the fact - like we
18 talked about earlier - because of the orders from Judge
19 Hoyt sending it over here and the order from Judge Butts
20 accepting it, it was well known to everybody - and
21 again, at Ms. Curtis' request - that we be here in this
22 court for the remainder of the litigation.

23 And, you know, I spent a lot of time and
24 effort to help get this properly positioned so that we
25 could start moving forward and making progress with the

1 development of the case - like I said before - trying to
2 get everybody that wanted to be at the table to the
3 table; and now, Judge, what I'm trying to do here is to
4 extend the analogy a little bit in a tortured fashion
5 is - now that everybody's at the table, let's make sure
6 we're all eating with the right fork. I just feel
7 like -- I said it would be a tortured analogy.

8 I feel like this case, from inception, has
9 been burdened by a lot of the conduct of Ms. Curtis and
10 the delays that she's caused and the pleadings that
11 she's filed and there's never been an opportunity - by
12 this Court, at least - to call her out on that to say
13 there is a proper way of conducting business; just
14 because you are a pro se party does not excuse you from
15 understanding how the process works and from following
16 that process. It has cost the parties' time. It is
17 going to cost the estate money. If it's not going to
18 cost the estate money, it's certainly going to cost my
19 client money, and it's time to send the message to Ms.
20 Curtis that there are consequences to the decisions that
21 she makes when she disregards this Court's order or
22 pursues ill-timed, poorly-thought-out, or other conduct
23 that's just contrary to the way we are to conduct
24 ourselves in a litigation.

25 Judge, you would not let me speak to Ms.

1 Bayless or write things about Ms. Bayless of the nature
2 that Ms. Curtis is writing about the lawyers. You would
3 not reward Mr. Reed for filing frivolous pleadings
4 attacking jurisdiction time and again, you know, if he
5 were to do something like that because we, as the
6 attorneys, we know what conduct we're held to. We know
7 what standards we're held to, and we know how to apply
8 and understand and perceive your rulings and the rules
9 of court; and Ms. Curtis has never been taught that
10 lesson.

11 One of the things that I pointed to in the
12 motion, Judge, is that this is not the first time that
13 this has come up. Yes, it's the first time that anybody
14 has really stood up and presented it in this courtroom,
15 but you can see from the history, you know, Judge Hoyt
16 recognized there was a problem with Ms. Curtis' conduct,
17 and he recognized, in an order, that it was hampering
18 the ability for the case to proceed forward, and it was
19 hampering the parties from fulfilling their
20 responsibilities. His order is not specific on which
21 parties, but I think the presumption could be Amy and
22 Anita as the co-trustees.

23 Nevertheless, Judge - Judge Hoyt saw the
24 problem with Ms. Curtis' behavior as so extreme that he
25 ordered her to get legal counsel, and that's the order,

1 Exhibit 4, that I put in my motion. She did follow
2 Judge Hoyt's order for about as long as it took for them
3 to come back into this court.

4 Shortly after the case was transferred and
5 accepted by Judge Butts, her counsel, Mr. Jason Ostrom,
6 was fired by Ms. Curtis, and she resumed this conduct of
7 wildly using the wrong court, filing ill-conceived
8 motions, doing the two things that Judge Hoyt warned her
9 against or wrote about which was hindering necessary
10 discourse and preventing the parties from fulfilling
11 their responsibilities.

12 For the longest period of time, we spent
13 our time stuck in a different federal court proceeding
14 because of an ill-timed, poorly-conceived, frivolous
15 lawsuit. That is also referenced in my motion. That
16 was what Judge Bennett said about Ms. Curtis' RICO case;
17 and not only did Judge Bennett say that, but then the
18 Fifth Circuit Court of Appeals said that.

19 So, we have now three courts highlighting
20 the problems that we are seeing and experiencing here in
21 this court with Ms. Curtis and her behavior.

22 And I guess, Judge, my point in all this
23 is that it's time to send a message to Ms. Curtis, and I
24 think that message is going to be best understood by her
25 in the form of a contempt, a sanction, and a monetary

1 penalty and fee, and that's why I wrote the motion the
2 way I did; and that's why I submitted my affidavit in
3 support of the attorney's fees that I have incurred on
4 Ms. Bruns -- on Amy's behalf dating back to the original
5 five filings all the way through to today's hearing.

6 THE COURT: Mr. Spielman, who was the
7 federal judge in this 592 case, do you remember?

8 MR. SPIELMAN: The 592 was Judge Hoyt, I
9 believe.

10 THE COURT: All right. And he is the one
11 that closed the federal -- this 592 case, granted the
12 Plaintiff's motion to remand in the order of transfer
13 and to have all of this brought back under our current
14 case number; is that correct?

15 MR. SPIELMAN: Well, Judge Hoyt granted
16 Plaintiff's motion to remand and then the order of
17 transfer that you just mentioned was the document signed
18 by Judge Butts in this court. But, other than that,
19 yes.

20 THE COURT: All right. So, without going
21 into the merits of her application for orders to show
22 cause -- well, let me ask you this.

23 What has happened in federal court since
24 this was filed in March and April of this year?

25 MR. SPIELMAN: Well, that's an interesting

1 question, Judge, because what happened there is,
2 apparently, the Court called her -- those pleadings,
3 those federal court filings, to hearing. I did not get
4 notice of that from the Court. I received an email from
5 Ric Munson - who is connected to Ms. Curtis - the
6 evening before. By the time I got to the office and saw
7 that email, the hearing had already transpired. I don't
8 want to speak for Mr. Mendel and Mr. Jadloski, but I
9 don't believe they received Mr. Munson's email at all.
10 So, I cannot say specifically what was discussed during
11 the telephonic conference, but I am aware that --

12 THE COURT: You say "telephonic
13 conference" - what do you mean?

14 MR. SPIELMAN: The Court had a telephonic
15 conference with Ms. Curtis. We were all instructed,
16 apparently, to call in rather than show up.

17 THE COURT: Okay.

18 MR. SPIELMAN: And, you know, I regret not
19 bringing it with me. I know I printed it out. There is
20 a docket sheet entry from that proceeding, and I know
21 we're on the record so I don't want to misquote, so I
22 will say that I'm just sort of going from memory, words
23 to the effect of - we're not going any further because I
24 already closed this X years ago.

25 THE COURT: All right. And have you

1 subsequently researched that to make sure that's the
2 finding of that court?

3 MR. SPIELMAN: I have -- I am -- I can 100
4 percent say yes, I have; I can 90 percent say I printed
5 it out; I can 100 percent say I can get that to you or
6 go and print it out if that's something you would like
7 to look at.

8 THE COURT: And, Counsel, do you have
9 anything to add to that?

10 MR. JADLOSKI: Other than that I support
11 the motion, no, Your Honor, I don't.

12 THE COURT: But any information about what
13 the federal court did in reference to this application
14 other than to say this matter's been closed?

15 MR. JADLOSKI: I have nothing else to add,
16 Your Honor, except that I can confirm - yeah, we did not
17 get notice of the hearing.

18 THE COURT: Counsel, do you have anything?

19 MR. REED: Yes, Your Honor.

20 If you look at every time when Ms. Curtis
21 has filed any of these pleadings in the federal court -
22 next to when you get the email notice - notification of
23 a filing - it says, specifically, "case closed" and then
24 it will have the filing information. So, the federal
25 court, their notation in their system is - "case

1 closed".

2 THE COURT: All right. Ms. Bayless, do
3 you have any information to add?

4 MS. BAYLESS: No. I mean, I agree with
5 what Mr. Reed just said, you know, it would show up as
6 "closed".

7 THE COURT: All right. So, what are you
8 seeking today, Mr. Spielman?

9 MR. SPIELMAN: I'm seeking an order of
10 contempt based off of her - Ms. Curtis' - violation of
11 your February 19 -- your February 14th, 2019, order and
12 that contempt can take whatever form this Court desires
13 from the 500-dollar civil max penalty to just an order
14 saying that you're in contempt for not following my
15 order.

16 I'm also seeking, as a sanction, the
17 attorney's fees that were incurred by my client while I
18 took the actions that I described in my affidavit dating
19 back from the first of the five filings through standing
20 here today. And the only thing I will say about that
21 affidavit is that in it, there is a portion where I
22 estimated the amount of time that I would spend between
23 the date of the filing of this motion and today's
24 hearing - I estimated that as five hours. I have not
25 spent five hours. I would -- if we had to round up, I

1 would say two hours from 1.7 or something of that
2 nature.

3 THE COURT: In your affidavit for
4 attorney's fees, you're seeking attorney's fees for work
5 done going back to the receipt and review of the pleas
6 in abatement and the plea to the jurisdiction?

7 MR. SPIELMAN: Correct. And the reason
8 I'm doing that, Judge, is because, you'll remember - I
9 made no such request at the time even though it was
10 pretty obvious from the history of the file and Ms.
11 Curtis' own actions that none of those five documents
12 should have been filed by then; but at that time, it was
13 more important for me to get us all on the same page
14 than it was to argue about sanctions and fees. That
15 changed in my mind when Ms. Curtis then filed her next
16 two documents. And since the rules allow for us to seek
17 sanctions retroactively while the case is pending, I
18 felt like the best way to send the message was to go all
19 the way back to the beginning.

20 THE COURT: In your responses to the plea
21 in abatement and plea and the jurisdiction - which I
22 don't have in front of me - did you request attorney's
23 fees?

24 MR. SPIELMAN: I did not.

25 THE COURT: All right.

1 MR. SPIELMAN: And, in fact, Judge, I
2 don't know that I've -- I don't know that the documents
3 that I would have filed would have been styled as a
4 response per se because I -- what was it... I think it
5 was motion for -- whatever I called it. I didn't call
6 it a "response" because we were doing more than just the
7 response. But you'll remember, Judge, I think that -- I
8 know what I called it - motion for clarification --

9 THE COURT: Motion for clarification and
10 to dismiss.

11 MR. SPIELMAN: Right. And then within the
12 context of Ms. Curtis' response and our reply, we
13 brought up the issue of these five pleadings, was
14 brought up, and that's what allowed Your Honor to
15 dispose of them in your order.

16 THE COURT: How much time do think you've
17 spent on this particular matter?

18 MR. SPIELMAN: As far as drafting?

19 THE COURT: Including this hearing today.

20 MR. SPIELMAN: We could -- well, let --
21 we could call it five hours.

22 THE COURT: I think you just said you
23 hadn't spent --

24 MR. SPIELMAN: Well, I thought you were
25 asking me -- you're asking me from the time I filed the

1 motion through today how much time I did spend?

2 THE COURT: Well, on this matter. I
3 assume that you spent time before you filed the motion.

4 MR. SPIELMAN: Correct. I may have
5 misinterpreted your question from day one which was
6 the -- which would have been receipt and review of
7 the --

8 THE COURT: March 20th.

9 MR. SPIELMAN: August 20 -- so between
10 August 20th, '18 and October 2018 which is when Ms.
11 Curtis started the plea in abatement process.

12 THE COURT: I apologize for not being
13 clear. What I'm curious about is -- I understand that
14 sanctions can go retroactive; what I was curious about
15 is the very first time you got notice of Ms. Curtis
16 filing something in federal court was, I assume, March
17 of 2019 in the latest round she did --

18 MR. SPIELMAN: I understand.

19 THE COURT: -- from that time until today,
20 approximately, what was the file?

21 MR. SPIELMAN: Judge, that's what I was
22 saying. If we want to call it five hours, just the
23 preparation of this motion, the receipt of Ms. Curtis'
24 response, the preparation for the hearing and the
25 appearance here at the hearing, we could call that five

1 hours.

2 THE COURT: All right. And I believe you
3 also requested in addition or in the alternative to
4 further -- Ms. Curtis from making further filings in the
5 federal court?

6 MR. SPIELMAN: That's correct, Judge; I
7 would hope that although Ms. Curtis had been on the
8 phone with Judge Hoyt and got that ruling or that
9 instruction from him that maybe the injunction wouldn't
10 be necessary. But, sure, yes. I mean, I do think, I do
11 think as many times as we need to say that the case is
12 closed, do not file anything in it, I mean, certainly if
13 past predicts the future, it can't hurt to have an
14 injunction to that effect.

15 THE COURT: All right. Anything further,
16 Counsel?

17 MR. SPIELMAN: No, thank you, Judge.
18 Thank you for indulging me.

19 THE COURT: Ms. Curtis?

20 MS. CANDACE CURTIS: Yes, Your Honor.

21 THE COURT: Would you like to respond,
22 please?

23 ARGUMENT BY MS. CANDANCE CURTIS:

24 MS. CANDACE CURTIS: I've answered Mr.
25 Spielman in writing; so, my position is a matter of

1 record. And also, for the record, no one has even
2 replied to my pleading in this court.

3 THE COURT: Do you recall having a
4 telephone hearing with Judge Hoyt in federal court in
5 reference to --

6 MS. CANDACE CURTIS: Yes, Your Honor, and
7 I prefaced the conversation with the fact that it was an
8 ex parte communication, and he simply corrected my
9 misunderstanding in which I thought the judge who had
10 issued an injunctive order would be the one to uphold
11 the order, and he informed me that that was incorrect
12 and that when he issued the remand order, it says in
13 there that "It's further ordered that all orders
14 rendered by this Court shall carry the same force and
15 effect during the remand that they would have if the
16 remand had not been ordered." And this injunctive order
17 was filed in the probate court on February 6th, 2015,
18 along with the report of master.

19 THE COURT: So, did you understand from
20 Judge Hoyt that you were not to file anything further in
21 that federal court case ending in 592?

22 MS. CANDACE CURTIS: What he said was,
23 "mandamus."

24 THE COURT: I apologize, I couldn't
25 understand.

1 MS. CANDACE CURTIS: What he suggested was
2 "mandamus."

3 MR. SPIELMAN: Maybe she's trying to say
4 "mandamus"?

5 MS. CANDACE CURTIS: Mandamus. Okay.
6 Excuse me.

7 THE COURT: Did he tell you that that 592
8 case was closed and all matters were transferred to the
9 probate court?

10 MS. CANDACE CURTIS: Yes, Your Honor, he
11 did.

12 THE COURT: All right. So, with that
13 understanding, do you know not to file anything further
14 in the Federal Case 592?

15 MS. CANDACE CURTIS: Yes, Your Honor, I
16 do.

17 COURT'S RULING:

18 THE COURT: All right. I'm going to take
19 this matter under advisement, and I will -- if you want
20 to issue -- send me a proposed order, Mr. Spielman.

21 Ms. Curtis, if you have a proposed order
22 you want to send to me - you're welcome to do that as
23 well; and I'll review the record, argument of counsel,
24 I'll reread your pleading, Ms. Curtis, as well as the
25 statement that you've told me what Judge Hoyt told you,

1 and I'll get back with everybody.

2 MR. SPIELMAN: Your Honor, one point, I'm
3 sorry.

4 First of all, I apologize if I did not
5 send in an order. That is a mistake on my part. I will
6 get you what you've asked for.

7 Number two is - would the Court -- like I
8 said, I'm almost positive there is some kind of either a
9 docket entry or a written order of some sort from Judge
10 Hoyt following the telephonic conference in 2019. I'm
11 happy to confirm that and send that in or if I'm wrong,
12 I will send an email that says --

13 THE COURT: That's fine. But admission of
14 a party opponent, she's acknowledged that the judge told
15 her not to file anything else.

16 MR. SPIELMAN: And then the third thing,
17 just for clarification purposes. I guess I'm wondering
18 if Ms. Curtis would confirm for the Court, and for us,
19 that what she wants you to read in response to all of
20 this is the document that she filed that's got a pretty
21 long title: Response To Fiduciary's Application For The
22 Beneficiary To Be Held In Contempt For Seeking To
23 Enforce The Injunction Commanding The Trustee To Perform
24 Fiduciary Duty Owed To The Beneficiary Petition For
25 Partial Summary Or Declaratory Judgment.

1 If that's the document that she's
2 referring to, then I think we have all sorts of problems
3 depending on what the Court is going to do with this
4 after the Court reviews it.

5 THE COURT: Well, that's the document you
6 wanted me to review, right, Ms. Curtis?

7 MS. CANDACE CURTIS: Yes, Your Honor, it
8 is.

9 THE COURT: All right. I've looked at it
10 once. I'll be glad to look at it again. And at this
11 time, I'm going to end this hearing, and y'all are
12 excused. I'll be back in touch. Please provide me with
13 proposed orders.

14 MR. REED: Your Honor, real quick before
15 we end this hearing.

16 We previously came down - I know this
17 isn't before you, but since we're all here, I wanted
18 some guidance on how you want to handle this in the
19 future - on a request for a representative of the estate
20 to be appointed for my 403 case, and I know we got some
21 subsequent orders after that hearing, but none of them
22 touched on that.

23 THE COURT: Who is your client, again?

24 MR. REED: I'm in the 403 case - the
25 malpractice part. And so, my client is, frankly, in

1 limbo until this Court appoints somebody in charge of
2 the estate. And so, we've had several hearings on this
3 so far with no orders; and frankly, it's probably the
4 biggest issue for my client because I can't proceed
5 forward or backwards or any way without someone.

6 THE COURT: And if I understand it right,
7 your client was the representative of the estate; he has
8 resigned.

9 MS. BAYLESS: Right.

10 THE COURT: And your two clients want to
11 be that or one of them wants to be that.

12 MR. SPIELMAN: I think "wants to" might be
13 a strong term. I think the substance of it goes like
14 this, Judge:

15 Carl Brunsting was the executor of the
16 estate and filed the lawsuit against the law firm in
17 that capacity because he was the executor of the estate
18 under the Will. When he resigned, the Will then says
19 that my client, Amy, is next, and then Ms. Curtis is
20 underneath her. There are, then, the competing
21 applications between Amy and Ms. Curtis about taking
22 over the role of Mr. Brunsting.

23 THE COURT: As successor executor?

24 MR. SPIELMAN: As successor executor.

25 Somewhere in this process, we have also

1 brought up the question of whether or not that lawsuit
2 is an asset of the estate because if that lawsuit is an
3 asset of the estate, then it's really part of the Trust
4 which means it's now Amy and Anita as the current
5 co-trustees - that would be the people with the ability
6 to do what Mr. Reed is so desperately looking for which
7 is - negotiate some way out of that for his client and
8 then --

9 MS. CANDACE CURTIS: I believe that is
10 correct --

11 MR. SPIELMAN: I'm sorry?

12 THE COURT: Yes, Ms. Curtis?

13 MS. CANDACE CURTIS: I believe that Mr.
14 Spielman is correct.

15 THE COURT: Thank you.

16 MR. SPIELMAN: Then I'm going to stop
17 talking.

18 MR. REED: Well, that's a first.

19 THE COURT: And if I remember from our
20 previous hearings, you don't want to be the
21 representative.

22 MS. CAROLE BRUNSTING: I did want to be
23 the rep --

24 THE COURT: Oh, you do. But other people
25 object to that; is that right?

1 MR. SPIELMAN: I don't know that any
2 people officially objected, but I don't think that's --
3 that's certainly not what Mom and Dad wanted when they
4 wrote their documents, and I don't think it would be
5 productive --

6 MS. CAROLE BRUNSTING: I have the --

7 MR. SPIELMAN: -- in large part
8 because --

9 THE COURT: I'm sorry, ma'am?

10 MS. CANDACE CURTIS: It think it's a
11 little presumptuous, Mr. Spielman, for you to say what
12 Mom and Dad wanted.

13 THE COURT: Ms. Curtis, Ms. Curtis let me
14 swear in your sister if I could.

15 (Ms. Carole Brunsting sworn)

16 MS. CAROLE BRUNSTING: I believe he made a
17 comment at one time that if I had supported my siblings
18 that they agreed that I could take over that role, that
19 was something to consider.

20 THE COURT: And this is to take over as
21 the successor executor?

22 MR. SPIELMAN: I believe that's --

23 THE COURT: Is that what we're talking
24 about?

25 MR. REED: I'm not sure that it's that

1 exact position; I think it would be -- I'm a little
2 unfamiliar with the probate world, but what I understand
3 it to be is a representative of the estate. So, if it's
4 a successor --

5 THE COURT: I mean, she's not named in the
6 Will; so, if we did that, it would have to be in some
7 administrator status.

8 MS. CAROLE BRUNSTING: This is something
9 we've been talking about this for years and years and
10 years. It's something I would really like to go ahead
11 and make the decision so I --

12 THE COURT: Is that motion before the
13 Court? Not today, but is it, generally, before the
14 Court?

15 MR. REED: It hasn't. Well, it's been
16 vaguely pled in various motions, and that's why --

17 THE COURT: Well, if y'all want to, you
18 know, if somebody wants to bring it to the Court, you
19 know, and --

20 MR. REED: The problem is --

21 THE COURT: -- have a hearing on it, we
22 can do that. I'm not going to do it today, I can tell
23 you that.

24 MR. SPIELMAN: I don't think there's any
25 motion by Carole Brunsting seeking to take --

1 MS. CAROLE BRUNSTING: I can file a motion
2 if I need to.

3 MR. SPIELMAN: And we can deal with that
4 at that time.

5 THE COURT: And the -- between y'all, you
6 can't reach a settlement? Have you tried to reach a
7 settlement on an appointment of a person?

8 MR. SPIELMAN: I mean, the closest that
9 we've gotten to anything was just now when Ms. Curtis
10 said she agreed with me about what would happen if it
11 was, in fact, an asset of the estate - it would belong
12 in the Trust. So, that's, of course, the other question
13 is - if that's the correct analysis, then there really
14 isn't a need for an executor of the estate because I
15 think the thing that everybody would agree on is that
16 but for that lawsuit, there is nothing else as an asset
17 of the estate; anything else, is in the Trust. And so,
18 if that's where that lawsuit belongs --

19 THE COURT: Then we have a continuing
20 argument over who's the proper trustee of the Trust; is
21 that correct?

22 MR. SPIELMAN: Because of the qualified
23 beneficiary designations and the power of -- I'll
24 butcher the terms --

25 THE COURT: That's the substance of the

1 malpractice lawsuit, is it?

2 MR. SPIELMAN: Correct.

3 THE COURT: She did some work to appoint
4 somebody - your clients - as co-trustees and somebody
5 thinks that's not correct; and hence, we go forward on
6 that one.

7 MR. SPIELMAN: And we just finished the
8 deposition of the drafter of those documents - Ms.
9 Freed - yesterday here at the courthouse. Thanks
10 everyone for their hospitality. And now I think we
11 have, at least I do, I have a much better clearer and
12 validating understanding of why Amy and Anita are, in
13 fact, properly named. I suspect Ms. Bayless would
14 disagree but that is also not for --

15 MS. BAYLESS: You're right.

16 MR. SPIELMAN: -- for today's proceeding.

17 MR. REED: And from my standpoint, that's
18 a battle between the siblings. My client has been sued
19 for the last seven years and wants to move forward with
20 defending her name in this lawsuit, and she can't until
21 this court appoints somebody to be the plaintiff of that
22 lawsuit.

23 MS. BAYLESS: I'll bring one other point.

24 I think it will behoove everyone to try to
25 settle everything; although, that sounds ambitious, I

1 understand. But I just learned today there was to be an
2 appraisal of the Iowa farm property which was supposed
3 to facilitate some discussions about settlement; and
4 apparently, that hasn't been initiated yet. I don't
5 know if you have an estimate of how long it's going to
6 take, but I don't know if we would have the information
7 to do that right now if we wanted to be particularly
8 productive.

9 THE COURT: Well, and I remember this
10 case. It reminded me of a Chinese finger puzzle - once
11 you put your finger in it, you can't get your finger
12 out.

13 MS. BAYLESS: Wacamole-kind-of.

14 THE COURT: Well, if y'all want to try to
15 find somebody that you can agree on to be either a
16 successor executor or a administrator --

17 MS. BAYLESS: Temporary administrator.

18 THE COURT: -- which would be a title that
19 somebody who isn't named as an executor would have to
20 utilize - I'm all for it. If y'all can't get an
21 agreement on it, then I think we do need to get somebody
22 appointed, and the Court can use its inherent power to
23 get that accomplished if y'all can't agree among
24 yourselves. I think it's time for y'all to - like an
25 old truck driver said - shift or get off the lot, you

1 know.

2 MR. SPIELMAN: Is that exactly what he
3 said, Your Honor?

4 MR. JADLOSKI: Judge, if I might ask just
5 a point of clarification.

6 You said you'd like to see us get someone
7 appointed. As Mr. Spielman explained earlier - there's
8 the possibility that we don't need someone appointed if
9 it's an as -- are we saying that someone becomes the
10 person that whether it be ...

11 THE COURT: You know, if that person is
12 representing the estate, they may help make the
13 determination of whether it's an asset of the estate or
14 not. I mean, I think what happens in cases like this is
15 everybody tries to put pieces of it in their mouth and
16 swallow the whole thing and we choke on it. And I think
17 we're better off just going ahead and swallowing a
18 little piece first. And let's, you know, if somebody
19 wants to bring something forward to me, I'll be glad to
20 deal with it; otherwise, see if you guys can actually
21 get somebody - and this includes you, of course, Ms.
22 Curtis - because you are second in the pecking order on
23 successor executors. Let's see what we can get done. I
24 mean, I'm glad to work with y'all on that.

25 MR. SPIELMAN: Judge, just thinking aloud

1 real quick. So, I would not suggest him at this point
2 because of some things, but your approach right now is
3 very similar to what Judge Comstock and Judge Butts did
4 or what was maybe their intention in naming Mr. Lester
5 at one point to do some work as - and I always butcher
6 his position - temporary administrator or something
7 along those lines.

8 But, you know, we've heard a lot so far in
9 some of the commentary of the siblings themselves that
10 the attorneys making the decisions and the Courts making
11 the decisions. We didn't know Elmer and Nelva. We
12 don't know their family other than as the lawyers. I'm
13 wondering out loud, without having spoken to my client
14 about it, if the siblings might know of a family friend,
15 somebody that they all trust, somebody that knew Elmer
16 and Nelva, if there might be - rather than Frost Bank
17 who is going to charge a crazy amount of money to do
18 this - if there might be a family friend that might
19 garner some confidence and some agreement amongst the
20 siblings if they had ideas to submit possible names. I
21 certainly wouldn't mind asking my client to do something
22 like that if there was such a person and potentially
23 even recommending that we let such a person do this if
24 they were inclined to do so.

25 MS. CAROLE BRUNSTING: And I realize I'm

1 pro se, but I've done a lot of work and I've really done
2 my best to contact my siblings and I really believe that
3 left on their own to make the decision and not be
4 influenced by their attorneys, that they would agree
5 that - because I've stayed so involved, I've attended
6 every single hearing, I've been involved as much as I
7 possibly can - that I would be the logical choice; and I
8 do realize I would have to have legal counsel which I've
9 already -- I already know the legal counsel that I would
10 retain.

11 THE COURT: Well, today is beyond the
12 power of the Court to just, you know, snap my fingers
13 and say that, but it's something to consider. I'm going
14 to ask y'all to work seriously to try and come up with
15 something and someone, and if you can't make an
16 agreement, then let's have a hearing on that, and I'll
17 appoint somebody.

18 MS. CAROLE BRUNSTING: I have one other
19 concern is - every time we appoint an outside party, it
20 ends up costing the Trust, in my opinion, quite a bit of
21 money, and it also causes a delay because they want six
22 months to a year and then we're delayed again where I
23 know that I can get started immediately.

24 THE COURT: Well --

25 MS. CAROLE BRUNSTING: So, I can file a

1 motion --

2 THE COURT: All right.

3 MS. CAROLE BRUNSTING: -- to do that.

4 THE COURT: All right. Y'all are excused.

5 Thank you, Ms. Curtis. I'm going to disconnect.

6 MS. CANDACE CURTIS: Thank you.

7 THE COURT: Bye-bye.

8 Y'all have a good weekend.

9 MR. SPIELMAN: Thank you.

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1 The State of Texas)

2 County of Harris)

3

4 I, Hipolita Lopez, Official Court Reporter in and
5 for the Probate Court Number Four of Harris County,
6 State of Texas, do hereby certify that the above and
7 foregoing contains a true and correct transcription of
8 all portions of evidence and other proceedings requested
9 in writing by counsel for the parties to be included in
10 this volume of the Reporter's Record, in the
11 above-styled and numbered cause, all of which occurred
12 in open court or in chambers and were reported by me.

13 I further certify that this Reporter's Record
14 truly and correctly reflects the exhibits, if any,
15 admitted by the respective parties.

16 I further certify that the total cost for the
17 preparation of this Reporter's Record is \$240.50.
18 and was paid by Ms. Candace Curtis.

19 WITNESS MY OFFICIAL HAND this the 18th day of
20 July, 2019.

21
22 /s/ Hipolita G. Lopez
23 HIPOLITA G. LOPEZ, Texas CSR #6298
24 Expiration Date: 12-31-20
25 Official Court Reporter
Probate Court Number Four
Harris County, Texas
201 Caroline, 7th Fl.
Houston, Texas 77002

Exhibit 17

Case 4:12-cv-00592 Document 128-1 Filed on 07/17/20 in TXSD Page 6 of 7

PROBATE COURT 4

06052014:0759:P0102

CAUSE NO. 412,249-401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

ORDER OF TRANSFER

On this day came to be considered the Motion to Enter Transfer Order filed by Plaintiff Candace Curtis, seeking to have this Court accept the Order to Remand entered by the Federal Court for the Southern District of Texas and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.* The Court is of the opinion that it has jurisdiction over the parties and claims pending under Cause Number 4:12-CV-00592 finds that the Motion to Enter Transfer Order should be granted. It is, therefore,

ORDERED that the Order of Remand entered by the Federal Court for the Southern District of Texas in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, is hereby accepted. It is further,

ORDERED that the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, be and hereby are transferred to this Court to be held under Cause Number 412,249-401.

SIGNED on this 3 day of June, 2014.

Christine Boush
JUDGE PRESIDING

FILED
2014 JUN -4 AM 10:35
Stan Stewart
COUNTY CLERK
HARRIS COUNTY, TEXAS

Exhibit 18

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS	§	
Plaintiff,	§	Civil Action 4-12-cv-00592
	§	
v	§	Emergency Motion to Reopen Docket
	§	
ANITA KAY BRUNSTING	§	
Does 1-100	§	
AMY RUTH BRUNSTING	§	
Defendants	§	

EMERGENCY MOTION TO REOPEN DOCKET

Plaintiff, Candace L. Curtis, (Curtis) respectfully moves this Court to reopen the above captioned matter. The immediate Granting of this Motion is crucial, as hereinafter more fully appears.

JURISDICTION

This case never left this Court. Every jurisdictional argument raised by Defendants was decided in Candace Curtis' favor by the Fifth Circuit Court of Appeals in 2013, when they unanimously held the case to be outside the probate exception, Curtis v. Brunsting 704 F.3d 406. Nothing substantive has occurred that would remove the subject matter jurisdiction of this Court.

Plaintiff's former counsel created the appearance that this case was remanded when it was not possible legally and thus, did not in fact occur. There is no statutory authority to "transfer" a case from a federal to a state court. Remand is only possible where a case was previously removed.¹ This was an original proceeding having never been filed in a state court and this fact makes remand

¹ Lincoln Prop. Co. v. Roche, 546 U.S. 81, 91 (2005)

legally impossible, *Cochran v. Smith & Nephew, Inc.*, No. 16-1121, at *8 (C.D. Ill. Sep. 15, 2016), *Lincoln Prop. Co. v. Roche*, 546 U.S. 81, 91 (2005).²

Although this case appears administratively closed, neither remand nor transfer occurred, and the case is still pending in this Court.

This court does not need to look beyond its own docket to decide whether to provide the relief requested. Fed. R. Civ. P. 4(b) states that the clerk must sign, seal, and issue a properly completed summons to the plaintiff for service on the defendant. Fed. R. Civ. P. 4(c)(1) requires a copy of the complaint with service of summons be made upon the party within the time allowed by Fed. R. Civ. P. 4(m). This Court's record is conclusive. No service of summons was made on the involuntary Plaintiff, diversity was not polluted, the record was never certified for transfer to any other tribunal and the case never left this Court.

NATURE AND STAGE OF THE PROCEEDINGS

This lawsuit began when trustees refused or otherwise failed to account. On February 27, 2012 Curtis filed a pro se complaint in the United States District Court for the Southern District of Texas alleging the civil torts of breach of fiduciary, extrinsic and constructive fraud, and intentional infliction of emotional distress, claiming that Defendants, acting as trustees, failed to notice her of any actions affecting her beneficial interests and refused to provide copies of non-protected trust instruments and accountings for the trust assets, or to report on any other acts of administration.

² "Dismissal without prejudice the appropriate remedy here because there is no mechanism by which to transfer the case to state court. This case was not removed from state to federal court and so the case cannot be remanded." *Emrit v. Watts, Guerra, L.L.P.*, Civil Action No. SA-13-CV-00473-XR, at *5 n.6 (W.D. Tex. Aug. 13, 2014)

The matter was dismissed sua sponte under the probate exception March 8, 2012, then reversed and remanded for further proceedings by the Circuit Court January 9, 2013, having been held to be outside the probate exception to federal diversity jurisdiction.³ This Court issued a preliminary Injunction [Doc 45] orally, at hearing April 9, 2013, and published a memorandum April 19, 2013 [Doc 45]. On the same day as the injunction hearing was held, Carl Brunsting filed similar tort claims in the probate court, naming federal Plaintiff Curtis a nominal Defendant in Harris County Probate Court 4 No. 412,249-401.

After the injunction was issued the Court appointed a Special Master under Rule 53 [Doc 55]. The Report of the Special Master [Doc 62] showed there had been no accountings performed in preparation for final distributions and that there had been improprieties with the assets.

STANDARD OF REVIEW

“[a] trial court abuses its discretion when it bases its decision on an erroneous view of the law or a clearly erroneous assessment of the evidence.” *United States v. Caldwell*, 586 F.3d 338, 341 (5th Cir. 2009). Findings of fact are reviewed under the “clearly erroneous” standard. Questions of law are reviewed de novo.

"It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court." Fed.R.Civ.P. 52(a). Questions of law are reviewed de novo" Mowbray v. Cameron County, 274 F.3d 269, 279 (5th Cir. 2001) Under the rule, of course, we subject the district court's findings of fact to a deferential standard of review — we will not "set aside [findings of fact] unless clearly erroneous." Fed.R.Civ.P. 52(a). This translates into a need for findings, however, that "provide a sufficiently definite predicate for proper appellate review." Westwego Citizens for Better Gov't v. City of Westwego, 872 F.2d 1201, 1203 (5th Cir. 1989) (citations omitted). Indeed, "when the trial court's decision turns in part upon factual determinations," findings of fact are crucial to a court of appeals engaging in the process of review. Texas Extrusion, 836 F.2d at

³ *Curtis v. Brunsting* 704 F.3d 406

220. A prior opinion of this Court eloquently captures our view of the interplay between the roles of the district and appellate courts:

*Fact finding is the trial court's province. . . . We do remain responsible, however, for the ultimate justness of trial determinations drawn before us. Since this is so, we must know the basis of the trial court's decisions: 'this Court cannot be left to second-guess the factual basis for the district court's conclusion.' . . . Review is our responsibility, and we cannot review bare conclusions. . . . In short, our duty to respect the trial court's factual determinations gives rise to a reciprocal one on its part to tell us the reasons for them. . . . [A] mere statement of result — cannot stand. *Chaiffetz v. Robertson Research Holding, Ltd.*, 798 F.2d 731, 734-35 (5th Cir. 1986) (emphasis in original) (citations omitted). Quite simply, a district court's failure to detail its findings or the evidentiary basis for its findings "negates our ability to apply the clearly erroneous standard of review." *Lopez*, 807 F.2d at 434. Rule 52(a) also obligates the district court to "state separately" its conclusions of law. We do not minimize the district court's task of detailing its conclusions of law. Courts of appeal subject a district court's conclusions of law to a *de novo* review — we are not constrained by the deferential standard of reviewing only for clear error. Despite this distinction, the duty of the district court to "state separately its conclusions of law thereon" becomes particularly important when the case, like this one, involves complex legal issues. For when the district court carefully enunciates and explains its resolution of questions of law, we know that it has thoughtfully and diligently decided the legal issues. Moreover, the preparation of sufficiently complete conclusions of law augments our comprehension of the legal issues on appeal. We must understand not only the factual, but also the legal reasoning of the district court to enable us to conduct a "just, orderly review of the rights of the parties before us." *Browning v. Kramer*, 931 F.2d 340, 344 (5th Cir. 1991). *Chandler v. City of Dallas*, 958 F.2d 85, 89 (5th Cir. 1992*

ISSUES

Fraud upon the Court

The Rule 60(b) Motion for relief is based on Fraud upon the Court that can be shown by the record alone. All other issues are strictly jurisdictional and were decided in Plaintiff's favor by the Fifth Circuit Court of Appeals in 2013. After the Report of Special Master, Plaintiff retained the assistance of Houston Attorney Jason Ostrom (Ostrom). Ostrom immediately enacted a fraud on the administrative side of the court to obtain an unopposed Order for Remand to the state probate court from which it had not been removed⁴. No statute authorizes a federal court to transfer

⁴ 28 U.S.C. § 1441 Removal

a case to a state probate court. An agreement between parties requires the signature of each party and both parties did not sign the agreed Order for remand. Even if it had been legally possible, required procedures were not completed and a remand did not happen.

DEFENDANTS ANSWER

Defendants respond that: 1) the request for relief is untimely 2) the complained of actions [Doc. 112] do not constitute a fraud upon the court as the complained of actions do not reveal the existence of a “grave miscarriage of justice” and do not impact the integrity of the judicial process, and 3) the complained of actions have already been addressed via Civil Action No. 4:16-cv-01969 and determined to be frivolous, “fantastical” and “often nonsensical” and that 4) the Rule 60 Motion for relief was presented as a means of “forum shopping” jurisdictional arguments that had been previously addressed and denied in Probate Court Number Four of Harris County, Texas in Cause No. 412,249-401.

Defendants further argue 5) The transfer/remand of Plaintiff’s claims to Probate Court Number Four [Doc. 112] was within this Court’s powers and authority, not only due to Plaintiff’s inclusion of additional parties, but also to avoid the possibility of conflicting judgments; and 6) that the use of the term “remand” was synonymous with a general use of the word “transfer”; or, alternatively, constitutes harmless error, as the same result could have occurred via other means, methods, procedures and mechanisms.

ARGUMENTS

1) Untimely

Defendants’ argument that the plea for relief is untimely is the equivalent of the argument that orders void on their face can become valid by the passage of time. Orders void on their face do not become valid by the passage of time.

“Absent extraordinary circumstances the mere passage of time cannot convert an absolutely void judgment into a valid one. This is one reason for our having held that there is no time limit on Rule 60(b)(4) motions, and that the doctrine of laches has no effect.” Jackson v. FIE Corp., 302 F.3d 515, 523 (5th Cir. 2002) and “[T]here seems to be universal agreement that laches [in bringing a Rule 60(b)(4) motion] cannot cure a void judgment, and no court has denied relief under Rule 60(b)(4) because of delay.”Bludworth Bond, 841 F.2d at 649 n. 6

2) Fraud upon the Court

While an examination of the docket record of this Court does show a docket closed, because the case was remanded to Harris County Probate Court #4, an examination of the probate docket record fails to reveal a proper arrival and a return to this Court’s docket fails to show a proper departure.

What the federal docket does show is that an unopposed order to amend a complaint to pollute diversity, to obtain an order for remand, of a case never removed, was only signed by one party, was administratively obtained under false pretenses, and, the procedure required to complete the process was simply abandoned once the order was signed.

The probate docket shows Ostrom filing pleadings in the probate court without filing a Notice of Appearance, a nine month delay between the remand order (May 9, 2014) [Doc 109] and the creation of ancillary file 412,249-402 (Feb 9, 2015) [Exhibit 1], with a mere twenty-two days more to the signing of an “Agreed Order to Consolidate” [Exhibit 2], Estate of Nelva Brunsting 412,249-402 with Estate of Nelva Brunsting 412,249-401 and closing the twenty two day old ancillary file 412,249-402.

Immediately upon discovering the “Agreed Order to Consolidate Cases”,^s Plaintiff Curtis fired Ostrom and filed a substitution, [Doc 131-5] without realizing that she was filing a substitution for someone who had not filed an appearance.

^s Via data mining (Plaintiff was never informed before the fact)

Soon thereafter the signed “Agreed Order to Consolidate Cases” disappeared from the Docket and first filed Plaintiff Candace Curtis was left without a judicial forum. The probate court docket does not now, nor has it ever shown Candace L. Curtis as a plaintiff [Exhibit 3]. It should also be noted the independent executor resigned due to lack of capacity February 19, 2015, six days after ancillary file 412,249-402 was opened and there was no one representing Estate of Nelva Brunsting when this agreed order to consolidate was signed. None of this is subject to debate and none of it is barred from the eyes of scrutiny by Rooker-Feldman.

3) Rooker-Feldman

The activities described above [see also Doc 115], a “grave miscarriage of justice” impacting the integrity of the judicial process within the meaning of 28 U.S.C. § 1927 and 42 U.S.C. § 1983, are generally shielded from scrutiny by the federal courts under the Rooker-Feldman Doctrine, but no fully litigated state court proceedings exist for review as of the date of this filing and this Court remains with jurisdiction over the trustees and the non-probate assets by specific mandate of the Fifth Circuit in this case.

The Missing Lawsuit

Shortly after Curtis filed a blanket substitution to replace Ostrom, [Doc 131-5] the signed “Agreed Order to Consolidate Cases” disappeared from the record and was replaced with an order unsigned and ancillary file 412,249-402 was closed. When a new Judge took office in January 2019 the signed “Agreed Order to Consolidate Cases” was made an issue [Exhibit 4] and the associate judge in the probate court took the position the consolidation never happened. Thereafter Attorney Bobbie Bayless became involved [Exhibit 5] and the “Agreed Order to Consolidate Cases” was found rolling around in a drawer by the new clerk [Exhibit 6].

Defendants downplay the significance of a complete breakdown in the protocols and comment “*Plaintiff’s allegation that her case “disappeared” also rings false*”.⁶

Present Counsel filed an appearance on behalf of “interested person” Candace Curtis on or about October 19, 2019, only to discover that her client’s lawsuit, as styled above, could not be located as an ancillary case in the probate court records. Counsel was puzzled as to how to style her pleadings, which lead to the investigation revealing these anomalies.

Although Ostrom and his associate, Nicole Sain-Thornton, filed pleadings in the probate court, including a “Plaintiff’s Second Amended Complaint”⁷, nominal defendant Candace L. Curtis has never had a complaint in the probate court to amend in the first instance, and, neither Ostrom nor Sain-Thornton filed notices of appearance in the probate court. Thus, all of the actions taken by Ostrom and Sain-Thornton in the probate court in the name of Candace Curtis were performed without agency standing.

All of this reveals a “grave miscarriage of justice” impacting the integrity of the judicial process. Federal Plaintiff Candace L. Curtis does not have a lawsuit in the probate court and has no business being in a probate court, *Curtis v. Brunsting* 704 F.3d 406.

Remand and Synonymous

Defendants argue that Remand was within this Court’s powers and, is “*synonymous with general use of the word “transfer”; or, alternatively, constitutes harmless error as the same result could have occurred via other means*”. Defendants provide no supporting authority for this proposition because none exists.

⁶ Case 4:12-cv-00592 Document 131 Filed on 08/13/20 in TXSD Page 19 of 25. This is a violation of 18 U.S.C. § 1001.

⁷ January 27, 2015

The reason Roman jurists referred to their Law as Lex is because its propositions were constructed entirely with linguistic terms, issuing originally from the tongue in speech. Thus, legal propositions are composed of nouns and verbs, adjectives and adverbs etc. in a subject-predicate syntax and are among the few sciences allowed to be explained in this way, with the proviso that said terms must always issue in accordance with First Principles requiring universal application. Contemporary English in Law employs terms that are nouns in one syntax and verbs in another. Failure to maintain awareness of the distinctions reduces our Law to a muddle of nonsense.

Trust is just such a term, being noun in one syntax and verb in another, while also being the description of a relationship involving obligations of the trustee owed to the beneficiary in relation to the rights of the beneficiary in the thing held in trust, a.k.a. the corpus or res.

*As the Fifth Circuit recently observed, "Americold involved a Maryland Real Estate Investment Trust, nominally a trust but in reality an unincorporated business entity recognized by statute. For traditional trusts, the Americold court held that 'when a trustee files a lawsuit or is sued in her own name, her citizenship is all that matters for diversity purposes.'" Hometown 2006-1 1925 Valley View, L.L.C. v. Prime Income Asset Mgmt., L.L.C., 847 F.3d 302, 306-07 (5th Cir. 2017). The Fifth Circuit explained, "Traditionally, a trust was not considered a distinct legal entity, but a 'fiduciary relationship' between multiple people." Id. at n.17 (citing Americold, 136 S. Ct. at 1016). Further, "[t]rusts do not have 'members,' rather a trust exists where a settlor transfers title of property to a trustee to hold in trust for the benefit of beneficiaries." Id. at n.17, Lewis v. Deutsche Bank Nat'l Tr. Co., CIVIL ACTION No. 3:16-CV-133, at *5 n.3 (S.D. Tex. Apr. 13, 2017)*

Remand and Transfer

Remand, 28 U.S.C. § 1367(c) or § 1447, and transfer, 28 U.S.C. § 1407, are not synonymous. As previously stated, 28 U.S. Code § 1447 is a post removal statute and by way of example "Section 1447(e) allows joinder and remand to state court if, **after removal**, "the plaintiff seeks to join additional defendants whose joinder would destroy subject matter jurisdiction". 28 U.S.C. § 1447(e)." *Doleac v. Michalson*, 264 F.3d 470, 475 (5th Cir. 2001).

28 U.S.C. Section 1447(d) states that "[a]n order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise," but the Supreme Court has held that this prohibition applies only when an order of remand is based on one of the grounds specified in section 1447(c): lack of subject matter jurisdiction or a defect in removal procedure, *see Schexnayder v. Entergy La., Inc.*, 394 F.3d 280, 283 (5th Cir. 2004) (citing *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 711-12, 116 S.Ct. 1712, 135 L.Ed.2d 1 (1996)).

The fact that Ostrom selected the term remand suggests his intention was that the federal court would decline to review such an order a priori and was thus intending a deception. It appears that Ostrom did deceive the Court into thinking it had no authority to review the "order for remand" [Doc 131-2] when in fact remand never happened.

4) Defendants argue that similar results may have been obtainable by other means.

There are "sharp distinctions between remands authorized by § 1447(c)" and remands authorized by § 1367(c). A discretionary remand pursuant to section 1367(c) is reviewable on appeal for abuse of discretion. *See Regan*, 524 F.3d at 631. *Brookshire Bros. v. Dayco Products*, 554 F.3d 595, 598-99 (5th Cir. 2009). This case was never removed from a state court, § 1441, and had nowhere to be returned to under § 1447.

28 U.S.C. § 1407 "was meant to `assure uniform and expeditious treatment in the pretrial procedures in multidistrict litigation among federal Districts " and that "[w]ithout it, `conflicting pretrial discovery demands for documents and witnesses' might `disrupt the functions of the Federal courts' as they nearly had in the electrical equipment company cases." (quoting H.R. Rep. No. 1130, 90th Cong., 2d Sess. 1 (1968), reprinted in 1968 U.S.C.C.A.N. 1898, 1899). In re Clients, 482 F.3d 835, 837 n.3 (5th Cir. 2007)

Adding an Involuntary Plaintiff is disfavored

The law generally disfavors forced joinder of a party as a plaintiff with whatever procedural handicaps that normally entails. Under our adversary system the general rule is that only the party who initiates the lawsuit should be saddled with

the procedural burdens of a plaintiff. For that reason, absent the "proper case" exception, where there is an obligation to join as a plaintiff, the preferred method is to designate and serve involuntary parties as defendants, regardless of their appropriate interest alignment. See generally Wright Miller, 7 Federal Practice and Procedure § 1605 and cases cited therein. Although the scope of the involuntary plaintiff exception might possibly warrant broader treatment than it currently receives, we do not believe that joinder as a Rule 19(a) "involuntary plaintiff" is appropriate in this case, where Goller is (a) under no pre-existing obligation to join Eikel and Davey's suit, and (b) amenable to the court's process as a defendant. Eikel v. States Marine Lines, Inc., 473 F.2d 959, 962 (5th Cir. 1973)

The fact that procedures were not followed and the requirements of the rules never met, should be sufficient to conclude that the things claimed by Defendants to have occurred, did not occur as a matter of black letter law. There was no pollution of diversity and there was no remand, only fraud upon the Court and a grave miscarriage of justice, impacting the integrity of the judicial process by deliberate poisoning.

5) Defendants argue that the alleged fraud has already been determined by other federal courts to be frivolous, "fantastical and often nonsensical"

For this proposition Defendants point to S.D.T.X. No. 4:16-cv-1969, an honest services fraud case, 18 U.S.C. § 1346, brought under the Racketeer Influenced Corrupt Organization Act, 18 U.S.C. § 1961-1968, citing illegal wiretappings,⁸ extortion⁹, conversion,¹⁰ and fraud. Plaintiff Curtis filed the civil RICO complaint [Doc 131-7] when it was obvious where the state probate court was headed. Having read the horror stories of previous visitors to that arena, she filed her

⁸ First mentioned in the original complaint filed in this court Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 19 of 28 Para 4 and arising as explained in [Doc 115]

⁹ Referring to instruments claiming to alter or amend irrevocable trusts and containing the heinous in Terrorem clause with the corruption of blood provisions and license to steal. Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 20 of 28 Para 4 – The in Terrorem

¹⁰ Referencing the agreement to convert the above titled cause into "estate of Nelva Brunsting 412249-402" and then into "estate of Nelva Brunsting 412249-401" [Doc 128-1] the event Defendants argue does not represent the disappearance of Plaintiff Curtis federal lawsuit.

federal complaint **without** any fully litigated state court determinations, because she could not buy a substantive evidentiary hearing in Probate Court No. 4.

The Fifth Circuit unanimously held jurisdiction in this case to be in this Court in 2013.¹¹ There are thirty-two cases citing *Curtis v Brunsting* 704 F.3d 406, all 100% positive, and yet that opinion has been regarded as equally frivolous and trivial by the Defendants and made unavailable to the Appellant that obtained the favorable opinion by the very Court where the Fifth Circuit confirmed the case did not belong. Plaintiff has been sanctioned twice for filing frivolous pleadings, apparently for using the case style above in a court where it is not, and for seeking relief in this Court. [Doc 131-12 & 131-13]

RICO is the most difficult claim to plead in both state and federal courts and most are dismissed for failure to state a claim. In *Curtis et al., vs. Kunz-Freed et al* SDTX No. 4:16-cv-1969 the District Court dismissed all claims based on a number of often overlapping grounds that included (1) judicial immunity, (2) attorney immunity, (3) failure to state a claim, and (4) the court's inherent power to dismiss frivolous complaints. All those practicing in probate court know, **or should know**, a pour-over-will avoids probate. In the RICO case all Defendants pled the probate exception:

Probate Case: Gregory Lester Doc 83 p.1, Darlene Payne Smith Doc 84 p.9, 10, 13, 14, 16, 17, Jason Ostrom Doc 78 p.1, County Attorneys for Judges Butts & Comstock Doc 53, p2, 16, 30, Steven Mendel Doc 36 p2, 6, Amy Brunsting Doc 35, p.1 (Ghost written), Anita Brunsting Doc 30 p.1, Probate Proceeding County Attorneys for Judges Butts & Comstock Doc 53, p3, 4, 7, 15, 29, Vacek & Freed Doc 20, p.4, 6, 7, Bobbie G. Bayless, Doc 23, p.2, 3, Neal Spielman Doc 40, p.3, Darlene Payne Smith Doc 84, p.8, 10, Probate Matter; County Attorneys for Judges Butts & Comstock Doc 53, p.18 - Doc 79 p.9, 10, 13, 14, 16, 17; Neal Spielman Doc39, p1, 2 - Doc 40, p.1, 2, 3; Jill Young Doc 25, p.3

¹¹ *Curtis v Brunsting* 704. F.3d 406 (2013)

Jill Willard Young also pled Rooker-Feldman¹² in direct violation of 18 U.S.C. § 1001:

“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”

Plaintiff continues to stand on the same fact claims today, four years later, as stated herein and as stated then in Case 4:16-cv-01969 and Documents 1 and 115 in this Court 4:12-cv-592. Not one issue has been resolved since leaving this court, beginning with what are the valid trust instruments, who are the trustees and what are the affirmative fiduciary duties, if any, and have any of those affirmative fiduciary duties been performed?

Defendants claim to be the trustees but have followed none of the instruments they cling to and have performed no affirmative fiduciary duties. The Brunsting trust is ruptured, dry, passive and naked, being held hostage for a ransom called fees [Exhibit 6], with a demand for capitulation that has escalated to in Terrorem proportions, despite the fact that in a dry trust both legal and equitable title merge in the beneficiary and the trustees' only authority is to transfer the assets to, or as instructed by, the beneficiary¹³. The law does not embrace any of Defendant's conduct nor is it shielded from the eyes of legitimate justice by Rooker-Feldman Doctrines, probate exceptions, latches or limitations.

- 6) Defendants argue (3) Plaintiff's efforts to secure relief under Rule 60 are merely an alternate means of “forum shopping” her previously unsuccessful jurisdictional arguments.**

Plaintiff prevailed on her jurisdictional argument in the Fifth Circuit in 2013, Curtis v Brunsting 704 F.3d 406. The probate exception has already been held not to apply in this case. If

¹² Case 4:16-cv-01969 Document 25 Filed in TXSD on 09/15/16 Page 1 of 17

¹³ Rife v. Kerr, 513 S.W.3d 601 (Tex. App. 2016); IN RE GOFF, 812 F.2d 931 (5th Cir. 1987); In re Deer, No. 06-02460-NPO, ADV. PROC. 07-00060-NPO (Bankr. S.D. Miss. Mar. 14, 2008)

Defendants were unhappy with the result they obtained, they chose not to pursue certiorari to the Supreme Court. When named as Defendants in the probate court on the same day this Court issued a preliminary injunction, Defendants chose to remain in the state court and now come before this court with the same argument they lost in the Circuit Court in this case and attempt to continue their fraudulent manufacture of a vexatious litigant label by mischaracterizing Plaintiff's pleadings and blending concepts in an effort to legitimize the fraud Ostrom perpetrated on this Court.

The disrespectful tone of Defendant's answer [Doc 131] demonstrates the type of glaring and undeserved hostility Plaintiff Curtis has suffered at the hands of the fiduciary Defendants' attorneys for far too long. The obligations of a trustee under Texas law is "one of the highest fiduciary duties recognized by law"¹⁴ These Defendants and their counsel have shown egregious disrespect for the legal and moral obligations of a fiduciary and the commands of this Court, to a degree that is intolerable.¹⁵

Even the comment that Remand and Transfer are generally synonymous and arrive at the same destination regardless of how they are used to construct a legal proposition is quite troubling, when this Court made it clear at the injunction hearing that this case was not going to be one of those cases that drag on for years and "*where the attorneys walk away with all the money and the parties walk away broke*". The respite Plaintiff Curtis had in probate court is too much like the ones we see on television. Property claims subject to in rem proceedings, in the instance of the pour-over mandate of an uncontested will, become proceedings in equity, whether by breach of fiduciary or in combination with those of other torts, thus forcing questions of jurisdiction out of probate rem and placing them before a court competent to take unbiased cognizance of fact and

¹⁴ In re Enron Corp. Securities, Derivative "ERISA", 284 F. Supp. 2d 511 (S.D. Tex. 2003) "The Restatement (Second) of Trusts §§ 184, 184" In re Enron Corp. Securities, Derivative "ERISA", 284 F. Supp. 2d 511, 126 (S.D. Tex. 2003)

¹⁵ "Our government teaches the whole people by its example. If the government becomes the law breaker, it breeds contempt for law, it invites every man to become a law unto himself, it invites anarchy." Louis D. Brandeis

law issues in personam, brought by parties in interest, with standing to pursue lawful remedy. When a trustee fails to act for such purposes, legal and equitable titles merge in the beneficiary, a concept that flows from the statute of uses of 1535. Defendants are in wrongful possession of Plaintiff's property and have shown their true intentions are theft, just as Plaintiff Curtis stated in her original 2012 complaint [Doc 1, P. 20].

Compulsory Counter Claims

On November 4, 2019, after eight years of abuse at the hands of these Defendants and their absolute refusal to perform a single affirmative fiduciary obligation, Defendants launched their in Terrorem clause scheme¹⁶ in Probate Court 4, by filing what they called "Original Counter Claims" accusing Candace of violating the no-contest clause in the 8/25/2010 QBD/TPA (containing corruption of blood), citing the actions taken by Ostrom and his associate, Nicole Sain-Thornton, in the probate court, where neither Ostrom nor Sain-Thornton filed notice of appearance in compliance with the rules of agency.

CONCLUSION

The action before the Court is not a probate matter, probate case or probate proceeding, but a tort action exclusively related to interference with property rights and the intentional infliction of emotional distress resulting from her sisters' intention to steal her share of the family trust, Curtis v Brunsting 704 F.3d 406 (Jan 2013).

Since the May 2014 deceptive removal of her cause, no substantive issues have been properly heard. Not a single finding of fact or evidenced conclusion of law or even witness

¹⁶ Case 4:12-cv-00592 Document 1 Filed in TXSD on 02/27/12 Page 20 of 28 Para 4

testimony is found in the record. By the time the repeated insults and bullying had evolved to a scheme to sanction her as a vexatious litigant, Curtis secured counsel.

Upon sufficient reading, Counsel found that Curtis had no case in probate court, had no avenue to remedy by appeal, yet whose property was being held for an attorney fees ransom. Counsel is compelled to abstain from further participation in Probate Court No. 4 and pursue just remedy in the only Court of competent jurisdiction available.

In view of current on-going machinations by defendants in Probate Court 4, Counsel would urge this Court to take judicial notice of the attached exhibits and act precipitously to prevent further injury, which appears to Counsel to be imminent, absent said requested action to reopen this case.

Jurisdiction is in this Court

No involuntary plaintiff was served with summons. Diversity was not polluted. The record was not transferred. The above styled cause, *Candace Louise Curtis vs. Anita Brunsting, Does 1-100, Amy Ruth Brunsting* is not now nor has it ever been in a state probate court, nor has any state probate court docket sheet ever identified federal Plaintiff Curtis as a Plaintiff.

Defendants insist this Court has no business enforcing the preliminary injunction issued by this Court, [Doc 45] while Defendants have squandered more than \$147,000 in tax liabilities alone, as a direct result of their absolute refusal to distribute income to the five income beneficiaries as commanded in the preliminary injunction. In a desperate attempt to get these Defendants to recognize the authority of this Court, Plaintiff registered the injunction as a foreign judgment in the Harris County District Court which, in and of itself is merely a notice that makes the judgment enforceable within the state but asks for no specific relief. Defendants use this registration as if it were a new lawsuit in effort to add another arrow to their vexatious litigant quiver. Their reaction

was to file a motion to transfer, original answer and motion for sanctions so insolent and insulting to the dignity and authority of this Honorable Court, they must be included in this brief [Exhibits 7, 8].

“Given the history of Plaintiff’s ill-advised, ill-conceived, contemptuous and sanctionable conduct in connection with and/or related to the Trust, including antics that have been described by other Justices as “fantastical”, “nonsensical”, “frivolous” and “implausible” 1, the omission of “venue” facts and allegations is likely due to Plaintiff’s historically-confirmed practice of filing pleadings in violation of Sections 9.012, 10.004 of the Texas Civil Practice and Remedies Code and/or Rule 13 of the Texas Rules of Civil Procedure,”

All of this raises the issue of 28 U.S.C. § 1927 sanctions. Even after having been directed by this Court to make real, by depositing income, the claims in Defendant Amy Brunsting’s March 6, 2012 affidavit, [Doc 10-1] that personal asset trusts had been set up for the beneficiary, no division into shares has ever occurred and the total economic losses resulting from the shenanigans described to date are difficult to quantify because they are so overwhelming.

RELIEF SOUGHT

First filed Plaintiff Candace L. Curtis respectfully moves this Court to reopen the above cause for further proceedings without further delay and to issue Orders to the Defendants to appear and show cause why they should not be held in contempt and sanctioned accordingly.

CERTIFICATE OF CONFERENCE

Plaintiff/Petitioner has conferred with opposing counsel and they are adamantly opposed to this Court continuing where it left off six years ago. Defendants and their counsel would prefer to hold Plaintiff’s property hostage until Plaintiff capitulates to their fee demands or they get a disinheritance decree against the beneficiary for demanding the surrender of property in which the Defendant trustees are in wrongful possession.

PROOF OF SERVICE

The undersigned hereby certifies that a true and correct copy of this instrument was electronically filed with the United States District Court for the Southern District of Texas to be served via electronic means by the clerk through the ECF system as follows:

Respectfully submitted

Candace Louise Curtis represented by
Added: 02/27/2012
(Plaintiff)

Candice Schwager

Candice Lee Schwager
Schwager Law Firm
2210 Village Dale Ave
Houston, TX 77059
United States
832-315-8489
713-456-2453 (fax)
schwagerlawfirm@live.com
Assigned: 07/17/2020
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Anita Kay Brunsting represented by
Added: 02/27/2012
(Defendant)

Stephen A Mendel
The Mendel Law Firm L.P.
1155 Dairy Ashford
Ste 104
Houston, TX 77079
281-759-3213
281-759-3214 (fax)
steve@mendellawfirm.com
Assigned: 08/13/2020
ATTORNEY TO BE NOTICED

Amy Ruth Brunsting represented by
Added: 02/27/2012
(Defendant)

Stephen A Mendel
The Mendel Law Firm L.P.
1155 Dairy Ashford
Ste 104
Houston, TX 77079
281-759-3213
281-759-3214 (fax)
steve@mendellawfirm.com
Assigned: 08/13/2020
ATTORNEY TO BE NOTICED

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS	§	
Plaintiff,	§	Civil Action 4-12-cv-00592
	§	
v	§	Petitioner's Declaration in Support of
	§	
ANITA KAY BRUNSTING	§	Emergency Motion to Reopen Docket
Does 1-100	§	
AMY RUTH BRUNSTING	§	28 U.S.C. § 1746 ¹
Defendants	§	

PETIONER CANDACE L. CURTIS' AFFIDAVIT IN SUPPORT OF EMERGENCY MOTION
TO REOPEN DOCKET

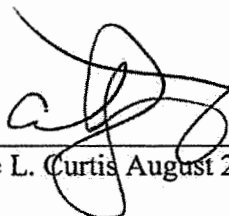
The undersigned does herein declare and state as follows:

My name is Candace Louise Curtis. I am beyond the age of majority and reside in Napa County, California. I suffer no legal disabilities and have personal knowledge of the facts set forth herein, and, if called as a witness, could testify completely thereto.

I declare and state under penalty of perjury that, to the best of my knowledge and belief, the information presented herein is true, correct, accurate and complete and that the statements of fact contained in my Rule 60 Motion [Doc 128] and in my Emergency Motion to Reopen the Docket are also true and correct and based upon personal knowledge.

With my signature below, I verify and reaffirm under penalty of perjury that all of the fact allegations previously made by me before this Honorable Court are true and correct as stated.

Respectfully submitted,



Candace L. Curtis August 23, 2020

¹ Although an unsworn affidavit is incompetent to raise a fact issue precluding summary judgment, the statutory exception in 28 U.S.C. § 1746 permits unsworn declarations to substitute for an affidavit if made "under penalty of perjury" and verified as "true and correct."



[Courts](#) [Property Records](#) [Personal Records](#) [Other](#)

Probate - November 1837 to present

Case Number: 412249-402	<input type="button" value="Search"/>	Images available from Jan. 1, 2008 to Present 26 Event Record(s) Found. Probate - reflect(s) filings accepted through 2016-09-09
<input checked="" type="radio"/> Party <input type="radio"/> Attorney Name Last Name First - No Punctuation	<input type="button" value="Search"/>	
File Date (From): MM/DD/YYYY <input type="text"/>	(To): MM/DD/YYYY <input type="text"/>	<input type="button" value="Clear"/>

Case	Court	File Date	Commenced By	Status	Nature	Style	Location	View All
412249	4	04/02/2012	Original Will	Closed Case	Deposit of Will with NO Application	NELVA E BRUNSTING		Parties
412249-401	4	04/09/2013	Application	OPEN	Declaratory Judgement (Indep.)	NELVA E. BRUNSTING, DECEASED		Parties
412249-402	4	02/09/2015	Petition	OPEN	Motion Pertaining to Lawsuits			Parties

<u>Case</u>	<u>File Date</u>	<u>Event</u>	<u>Comments</u>	<u>Pgs</u>	<u>Document ID</u>
412249-402	02/09/2015	Case Initiated - Petition		0	
412249-402	02/09/2015	Motion Pertaining to Lawsuits Only (Indep.)	NOTICE OF FILING OF PLAINTIFF'S ORIGINAL PETITION	601	<u>PBT-2015-47608</u>
412249-402	02/09/2015	Receipts	RECEIPT #1166739 CHARGED \$182.00 FOR ENVELOPE #4075218	1	<u>PBT-2015-47611</u>
412249-402	02/09/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTERFILED PREVIOUSLY ON 2/6/15	51	<u>PBT-2015-47630</u>
412249-402	02/09/2015	Receipts	RECEIPT# 1166586 CHARGED \$27.00 FOR ENVELOPE NUMBER 40506979	1	<u>PBT-2015-47634</u>
412249-402	02/10/2015	Amended	NOTICE OF FILING OF PLAINTIFFS FIRST AMENDED PETITION	12	<u>PBT-2015-47716</u>
412249-402	02/10/2015	ELECTRONIC FILING FEE		0	
412249-402	02/11/2015	ELECTRONIC FILING FEE		0	
412249-402	02/11/2015	Notice of Hearing		2	<u>PBT-2015-48491</u>
412249-402	02/11/2015	Receipt# 1167156 generated for the amount of \$ 2.00		0	
412249-402	02/12/2015	ELECTRONIC FILING FEE		0	
412249-402	02/12/2015	Demand for a Jury		0	
412249-402	02/12/2015	Amended	PLAINTIFF'S SECOND AMENDED PETITION	8	<u>PBT-2015-49977</u>
412249-402	02/12/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER	51	<u>PBT-2015-50259</u>

<u>Case</u>	<u>File Date</u>	<u>Event</u>	<u>Comments</u>	<u>Pgs</u>	<u>Document ID</u>
412249-402	02/12/2015	ELECTRONIC FILING FEE		0	
412249-402	02/12/2015	Receipt# 1167371 generated for the amount of \$ 2.00		0	
412249-402	02/12/2015	ELECTRONIC FILING FEE		0	
412249-402	02/12/2015	Application for Continuance		5	<u>PBT-2015-50464</u>
412249-402	02/13/2015	Receipt# 1167788 generated for the amount of \$ 4.00		0	
412249-402	02/13/2015	Receipt# 1167789 generated for the amount of \$ 25.00		0	
412249-402	02/13/2015	Receipt# 1167800 generated for the amount of \$ 24.00		0	
412249-402	02/13/2015	ELECTRONIC FILING FEE		0	
412249-402	02/13/2015	Receipt# 1168038 generated for the amount of \$ 2.00		0	
412249-402	02/17/2015	ELECTRONIC FILING FEE		0	

<u>Case</u>	<u>File Date</u>	<u>Event</u>	<u>Comments</u>	<u>Pgs</u>	<u>Document ID</u>
412249-402	02/17/2015	Misc. Notice	CHANGE OF NAME AND ADDRESS	2	<u>PBT-2015-56703</u>
412249-402	02/18/2015	Receipt# 1168909 generated for the amount of \$ 2.00		0	

FILED
3/5/2015 3:21:27 PM
Stan Stanart
County Clerk
Harris County

DATA ENTRY
PICK UP THIS DATE

PROBATE COURT 4

CAUSE NO. 412,249 - 401

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CAUSE NO. 412,249 - 402

IN RE: ESTATE OF	§	IN THE PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

AGREED ORDER TO CONSOLIDATE CASES

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this 16 day of March, 2015.

Clementine Butler
JUDGE PRESIDING

03052015:0815:P0002

08/28/2015 08:15:00

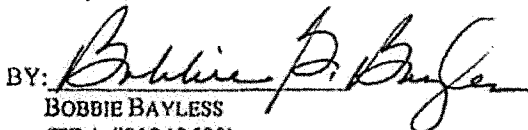
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ostrommorris, PLLC

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for Carl Brunsting

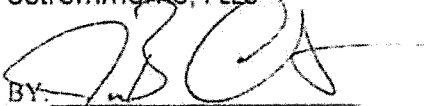
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Attorney for Carole Brunsting

03092015:0815:P0009

BY: 

BRADLEY FEATHERSTON
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BY: 

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Houston, Texas 77079
281.870.1124
281.870.1647 (Facsimile)

Attorney for Amy Brunsting



Subject: Fw: [Ext] Fw: Case 412249-401

From: Candace Curtis <occurtis@sbcglobal.net>

Date: 1/28/2019, 12:09 PM

To: Rik Munson <blowintough@att.net>

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X-UIDL: AOTJtu1ipL7CXE9heQWRyJhb4WU

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Return-Path: <occurtis@sbcglobal.net>

Received-SPF: none (domain of sbcglobal.net does not designate permitted sender hosts)

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Content-Length: 14906

----- Forwarded Message -----

From: Carole Brunsting <CBrunsting@cameron.slb.com>

To: occurtis@sbcglobal.net <occurtis@sbcglobal.net>

Sent: Monday, January 28, 2019, 10:58:32 AM PST

Subject: FW: [Ext] Fw: Case 412249-401

On Friday, January 4, 2019, 11:16:04 AM CST, Comstock, Clarinda (Probate Courts) <Clarinda.Comstock@prob.hctx.net> wrote:

Dear Ms. Brunsting,

Of course I remember you and I appreciate any efforts to resolve this case.

I apologize for the delay in response. I needed time to review the record to answer your question.

The -402 was initially established 2/7/2015 by Candace Curtis/Jason Ostrom with the filing of a Notice of Filing of Original Petition from the Federal District Court upon remand by that court.

In the -402, no motion for consolidation appears to be of record.

The unsigned order you emailed was filed in the -401 on 3/5/2015 as an Agreed Order to Consolidate Cases.

Although this was an agreed order, there was no application to consolidate the cases filed of record.

I cannot explain why this agreed order was not signed at that time.

Often orders that are filed without a motion attached were not circulated to the court and, at that time, we had a different filing system.

So, the answer to your question is no, that order does not appear to have been signed, therefore the cases were not ordered to be consolidated.

If you need additional information, please do not hesitate to contact me.

Regards,

Clarinda Comstock

Associate Judge

Harris County Probate Court 4

Clarinda.comstock@prob.hctx.net

832-927-1404

Schlumberger-Private

From: Carole Brunsting <cbrunsting@sbcglobal.net>

Sent: Thursday, January 3, 2019 3:17 PM

To: Comstock, Clarinda (Probate Courts) <Clarinda.Comstock@prob.hctx.net>

Subject: Case 412249-401

Judge Comstock,

I am a Pro Se litigant in Case-No 412249-401 and have never missed a hearing. This case has been in Probate Court 4 for many years.

The issue I am writing to you about today is regarding the consolidation of cases 412249-402 and 412249-401. Did Judge Butts ever sign off on this consolidation? I am attaching a copy of the unsigned document that I found online. Could you please provide me the information that I would need to show that either this case was consolidated or not consolidated.

Fw: [Ext] Fw: Case 412249-401

Case 4:12-cv-00592 Document 133-4 Filed on 08/28/20 in TXSD Page 4 of 4

Thank you so much for your help and please let me know if you need any other information.

Regards,

Carole Brunsting

Subject: Re: Fw: 412,249-401 Brunsting Estate - Agreed Order to Consolidate Cases
From: Rik Munson <blowintough@att.net>
Date: 1/28/2019, 10:11 AM
To: Candace Curtis <occurtis@sbcglobal.net>
X-Mozilla-Status: 0001
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References: <7FC97DF7232FCD4D89C264D7C8A73F530F0DB0AE@SVPITCXM06.hc.hctx.net>
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Content-Language: en-US

On 1/28/2019 10:05 AM, Candace Curtis wrote:

----- Forwarded Message -----

From: Comstock, Clarinda (Probate Courts) <Clarinda.Comstock@prob.hctx.net>
To: Bobbie Bayless <bayless@baylessstokes.com>; Carole Brunsting <cbrunsting@sbcglobal.net>; nspielman@grifmatlaw.com <nspielman@grifmatlaw.com>; Foley, Zandra <zfoley@thompsoncoe.com>; Candace Curtis <occurtis@sbcglobal.net>; Reed, Cory <CReed@thompsoncoe.com>; Steve Mendel <steve@mendellawfirm.com>
Sent: Monday, January 28, 2019, 9:38:27 AM PST
Subject: RE: 412,249-401 Brunsting Estate - Agreed Order to Consolidate Cases

Our clerk just informed me that the order was in the paper file, but had not been scanned.

She has arranged for scanning and it should be available on line soon.

Thank you for bringing this to my attention and apologies for any inconvenience.

Regards,

Clarinda Comstock

Associate Judge

Harris County Probate Court 4

Clarinda.comstock@prob.hctx.net

832-927-1404

From: Comstock, Clarinda (Probate Courts)

Sent: Friday, January 25, 2019 5:01 PM

To: 'Bobbie Bayless' <bayless@baylessstokes.com>

Subject: RE: 412,249-401 Brunsting Estate - Agreed Order to Consolidate Cases

Thank you. I have asked our Clerk to investigate the whereabouts of the original order. I will let you know as soon as I know something more.

Thank you for bringing this back around to my attention.

Regards,

Clarinda Comstock

Associate Judge

Harris County Probate Court 4

Clarinda.comstock@prob.hctx.net

832-927-1404

From: Bobbie Bayless <bayless@baylessstokes.com>
Sent: Friday, January 25, 2019 3:40 PM
To: Comstock, Clarinda (Probate Courts) <Clarinda.Comstock@prob.hctx.net>
Subject: FW: 412,249-401 Brunsting Estate - Agreed Order to Consolidate Cases

Judge Comstock—In trying to figure out what might have happened to this consolidation order, I ran across this email where you circulated it to the parties. I thought it might help if you are trying to locate it.

From: Comstock, Clarinda (Probate Courts) [<mailto:Clarinda.Comstock@prob.hctx.net>]
Sent: Monday, March 16, 2015 1:57 PM
To: Jason Ostrom; Bobbie Bayless; Darlene Smith; brad@mendellawfirm.com;
nspielman@grifmatlaw.com
Subject: 412,249-401 Brunsting Estate - Agreed Order to Consolidate Cases

Attached is the signed Order to Consolidate Cases in this matter into the -401.

Clarinda Comstock

Associate Judge

Harris County Probate Court Four

7th Floor, 201 Caroline

Houston, TX 77002

713-368-6767

--

Rik Munson

probatemafia.com

Exposing color of law organized crime

Re: Fw: 412,249-401 Brunsting Estate - Agreed Order to Consolidate...

Case 4:12-cv-00592 Document 133-5 Filed on 08/28/20 in TXSD Page 4 of 4

—Attachments: _____

2015-03-05 Case 412249-401 PBT-2015-76288 Agreed Order to Consolidate cases.pdf 376 KB

Print

Subject: RESPONSE FROM AN ATTORNEY
From: Carole Brunsting (cbrunsting@sbcglobal.net)
To: occurtis@sbcglobal.net;
Date: Thursday, December 29, 2016 6:56 AM

Dear Ms. Brunsting:

As you know, our firm represents your sister, Anita Brunsting, in her capacity as co-trustee of the trust. We are sending this response to you on the assumption that you continue to represent yourself, as we are not aware of any attorney taking over your representation since you separated from the Crain Caton law firm.

We received your request for a distribution and the request is denied. The reasons for denial include, but are not limited to, your articulated reasons are insufficient, Ms. Curtis's allegations in the probate litigation, and the estate's need to maintain liquidity for incurred debt.

We understand that you believe the probate court ordered that distributions be made for the reasons that you claimed. We are unaware of such an order. If you believe the probate court issued such a ruling, then please provide a copy of same.

Best wishes.

Very truly yours,
Stephen A. Mendel

The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, TX 77079
O: 281-759-3213
F: 281-759-3214
steve@mendellawfirm.com

CAUSE NO. 2020-35401

CANDACE LOUISE CURTIS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
ANITA KAY BRUNSTING AND	§	
AMY RUTH BRUNSTING	§	151 st JUDICIAL DISTRICT

**MOTION TO TRANSFER, ORIGINAL ANSWER AND
MOTION FOR CONTEMPT AND SANCTIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, AMY RUTH BRUNSTING and ANITA KAY BRUNSTING (who, while apparently sued in their individual capacities, are actually the co-trustees of The Brunsting Family Living Trust, which itself is the subject of several proceedings currently pending in Probate Court No. 4 of Harris County, Texas), and file this, their Motion to Transfer, Original Answer and Motion for Contempt and Sanctions. In support, Defendants would show unto this Court the following:

I. PREFATORY STATEMENT

The Houston 14th Court of Appeals decided that venue statutes apply to the Texas Civil Practice and Remedies Code’s Uniform Enforcement of Foreign Judgments Act (“UEFJA”). *Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 741-42 (Tex. App.–Houston [14th Dist.] 2008, pet. denied). In fact, it was determined that a motion to transfer venue can be filed as soon as a foreign judgment is *properly filed* in a Texas Court. *See Cantu*, 251 S.W.3d at 741. [Emphasis Added].

Meanwhile, our well-established “due order of pleading” rules require a defendant to file a motion to transfer venue after a special appearance (if any) and before or along with any other pleading or motion. Tex. R. Civ. P. 86(1), 120a(1); *see Massey v. Columbus State Bank*, 35 S.W.3d 697, 700 (Tex. App.–Houston [1st Dist.] 2000, pet. denied.). Therefore, it would appear that before

a defendant can address issues indicating that an alleged foreign judgment has been *improperly filed* in a Texas Court, the defendant must, out of an abundance of caution, first proceed with a motion to transfer venue.

In following this presumed order of pleadings, it is not Defendants intent to admit or waive, nor should they be construed as admitting or waiving, that the alleged “foreign judgment” underlying Plaintiff’s Petition to Enforce Foreign Judgment is actually a judgment (foreign or otherwise) and/or that it has been properly filed. Additionally, neither Defendant accepts, agrees or acknowledges Plaintiff’s description of herself as a “judgment creditor” or her description of Defendants, whether in their individual or trustee capacities, as “judgment debtors.”

II. MOTION TO TRANSFER

Plaintiff’s Petition to Enforce Foreign Judgment contains no facts or allegations that support “venue” in the District Courts of Harris County, Texas being proper. Given the history of Plaintiff’s ill-advised, ill-conceived, contemptuous and sanctionable conduct in connection with and/or related to the Trust, including antics that have been described by other Justices as “fantastical”, “nonsensical”, “frivolous” and “implausible”¹, the omission of “venue” facts and allegations is likely due to Plaintiff’s historically-confirmed practice of filing pleadings in violation of Sections 9.012, 10.004 of the Texas Civil Practice and Remedies Code and/or Rule 13 of the Texas Rules of Civil Procedure², and/or as something of a “collateral attack” on Probate Court No. 4’s prior rulings regarding its jurisdiction of and over the Brunsting Family Limited Trust (and other) matters **currently pending** in Probate Court No. 4, including without limitation,

¹ See Exhibit 1 – Orders/Opinions from the United States District Court for the Southern District of Texas – Houston Division and from the United States Court of Appeals – 5th Circuit;

² See Exhibit 2 – Order Granting Motion for Contempt and Sanctions.

Probate Court No. 4's prior denial of Plaintiff's prior efforts to enforce the *Preliminary Injunction* Plaintiff seeks to domesticate.³

The alleged "foreign judgment" Plaintiff seeks to domesticate is a *Preliminary Injunction* issued in regard to the Brunsting Family Living Trust. It was issued in April 2013 when Plaintiff's trust-related claims and causes of action were pending in the United States District Court for the Southern District of Texas – Houston Division.⁴ Those claims remained pending within the United States District Court systems until May 2014 when Plaintiff filed a Motion to Remand those claims to Probate Court No. 4 of Harris County Texas.⁵

Via the Motion to Remand, Plaintiff requested that the Court "(a) remand this cause of action to Harris County Probate Court Number Four to be consolidated into Cause Number 412,249..." because "diversity jurisdiction will be destroyed via the First Amended Petition and because similar issues of fact and law are pending before Harris County Probate Court Number Four." The Court honored Plaintiff's request, signing an Order Granting Plaintiff's Motion to Remand on or about May 15, 2015.⁶

Thereafter, Plaintiff filed her Motion to Enter Transfer Order in Probate Court No. 4, and consistent with Plaintiff's request, Probate Court No. 4 subsequently signed an Order of Transfer accepting the Order Granting Plaintiff's Motion to Remand. In doing so, Probate Court No. 4 ordered that the pleadings and orders filed and entered in the remanded proceeding are "transferred to this Court to be held under Cause Number 412,249-401." The transferred pleadings and orders

³ Exhibit 3 – Order Denying Pleas and Motions filed by Candace Curtis

⁴ Case No. 4:12-cv-00592; *Candace Louise Curtis vs. Anita Kay Brunsting, and Amy Ruth Brunsting, and Does 1-100*

⁵ Exhibit 4 – Motion to Remand

⁶ Exhibit 5 – Order Granting Plaintiff's Motion to Remand

include the *Preliminary Injunction* upon which Plaintiff's Petition to Enforce Foreign Judgment is based.

Following the remand and transfer, Plaintiff filed Plaintiff's Second Amended Petition in Probate Court No. 4. On information and belief, this remains her live pleading. Cause Number 412,249-401, as well as other matters involving or relating to the Brunsting Family Living Trust, remain open and pending on Probate Court No. 4's docket.

A statutory probate court, such as Probate Court No. 4, has *exclusive* jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts. *See*, Trust (Property) Code §115.001(d). [Emphasis Added]. Probate Court No. 4 has confirmed its jurisdiction over the Brunsting Family Living Trust and dismissed Plaintiff's various attacks on its jurisdiction. Plaintiff's conduct in this regard has been so egregious that she has been found in contempt of court and sanctioned.

Considering the above and foregoing, there are a variety of perspectives this Court may employ as a basis for transferring this matter to Probate Court No. 4, including without limitation:

- The jurisdiction of the district court is exclusive except for jurisdiction conferred by law on a statutory probate court. (Trust (Property) Code §115.001(d));
- Venue of an action under Section 115.001 of the Trust Code is proper where the situs of administration of the trust is maintained, i.e., Probate Court No. 4. (Trust (Property) Code §115.002(b-1));
- Matters related to "probate proceedings" may be transferred to a statutory probate court from any other district, county or statutory court. Estates Code §34.001(a);
- A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy. Estates Code §32.001(b);
- Venue (of a trust proceeding) may be transferred for the convenience of the parties and witnesses. (Trust (Property) Code §115.002(d), (e);

- Determination of Plaintiff's Petition to Enforce Foreign Judgment by this Court would result in a violation of Texas' "one judgment" rule and/or result in unreasonable duplication or proliferation of litigation.

In light of the issues described above, Defendants respectfully request that Plaintiff's Petition to Enforce Foreign Judgment be transferred to Probate Court No. 4 (Cause No. 412,249-401).

III. ORIGINAL ANSWER/MOTION TO VACATE

As authorized by Rule 92 of the Texas Rules of Civil Procedure, Defendants enter a general denial of the matters pled by Plaintiffs and respectfully requests the Court require Plaintiff to prove her charges, claims and allegations by a preponderance of the evidence, clear and convincing evidence, and/or in compliance with any other burden of proof/legal standard applicable to Plaintiff's Petition to Enforce Foreign Judgment (including without limitation, the UEFJA), as are or may be required by the Constitution and/or the laws of the State of Texas.

By way of further answer, and/or in the alternative to Defendants' Answer, to the extent it is now, or is ever in the future determined that Plaintiff has filed a final, valid and subsisting judgment, then it Defendants' intent that this filing, in its totality, be considered and construed as a Motion to Vacate and/or a Motion to Stay Enforcement pursuant to Section 35.006 of the Texas Civil Practice and Remedies Code.

IV. MOTION FOR CONTEMPT AND SANCTIONS

A. Civil Contempt

Contempt of court is an appropriate means to enforce a court's civil order. V.T.C.A., C.P. &R., § 31.002(c). *Ex Parte Johnson*, 654 S.W.2d 415 (Tex. 1983). The contempt powers of the court are generally addressed by V.T.C.A., Government Code § 21.002. That section allows a court to punish a contemnor by a fine of not more than \$500 and/or confinement to the county jail

for not more than six months. The purpose of civil contempt is remedial and coercive in nature. A judgment of civil contempt exerts the judicial authority of the court to persuade the contemnor to obey some order of the court where such obedience will benefit an opposing litigant. *Ex Parte Werblud*, 536 S.W.2d 542, 545 (Tex. 1976).

For the reasons discussed herein, Defendants request that the Court find that Plaintiff has again violated Probate Court No. 4's Order Denying Pleas and Motions filed by Candace Curtis via this Petition to Enforce Foreign Judgment. Defendants request that Plaintiff be fined in the maximum amount available at law and that she continue to be held in contempt of court until such fine is paid.

B. Sanctions

Most sanctions are imposed under the authority of a specific statute or rule that permits a court to order sanctions. However, sanctions may also be imposed via a court's inherent power. *See In re Bennet*, 960 S.W.2d 35, 40 (Tex. 1997); *see also Remington Arms Co. v. Caldwell*, 850 S.W.2d 167, 172 (Tex. 1993). This power allows a court to impose sanctions for abuses of the judicial process not covered by rule or statute, or as necessary to aid in exercise of jurisdiction, administration of justice, and preservation its independence and integrity.

Based on the circumstances described above, Defendants request that this Court sanction Plaintiff and Plaintiff's counsel, whether on its own initiative and/or under CPRC §9.012, CPRC §10.004 and/or TRCP 13. Plaintiff, as condoned by Plaintiff's counsel, once again evidences an intent to harass, delay and increase the costs of litigation. Moreover, Plaintiff (and Plaintiff's counsel) have filed false, inaccurate pleadings and affidavits in an effort to mislead this Court, and in violation of the procedures and protocols set out in the UEFJA.

V. PRAYER

WHEREFORE, PREMISES CONSIDERED, Defendants, AMY RUTH BRUNSTING and ANITA KAY BRUNSTING (who, while apparently sued in their individual capacities, are actually the co-trustees of The Brunsting Family Living Trust, which itself is the subject of several proceedings currently pending in Probate Court No. 4 of Harris County, Texas) request that the matters addressed herein be set for hearing, and after that hearing order that this matter is transferred to Probate Court No. 4; is vacated; is stayed; that Plaintiff is in contempt of court; and/or that Plaintiff and Plaintiff's counsel are sanctioned. Defendants also request that Defendants request that they be granted/awarded all other relief to which they may be entitled.

Respectfully submitted,

GRIFFIN & MATTHEWS

BY: /s/ Neal E. Spielman
NEAL E. SPIELMAN
Texas State Bar No. 00794678
nspielman@grifmatlaw.com
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
281.870.1124 - Phone
281.870.1647 - Facsimile

ATTORNEYS FOR AMY BRUNSTING

THE MENDEL LAW FIRM, L.P.

BY: /s/ Stephen A. Mendel
STEPHEN A. MENDEL
Texas State Bar No. 13930650
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
O: 281-759-3213
F: 281-759-3214
E: steve@mendellawfirm.com

ATTORNEYS FOR ANITA BRUNSTING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 6th day of July 2020, to all counsel of record/pro se parties via E-file and/or direct e-mail.

Attorney for Candace Louise Curtis:

Candice L. Schwager
Schwager Law Firm
1417 Ramada Drive
Houston, Texas 77062
Via E-Mail: candiceschwager@icloud.com

Attorneys for Anita Kay Brunsting:

Steve Mendel
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
Via E-Mail: steve@mendellawfirm.com

BY: /s/ Neal E. Spielman
NEAL E. SPIELMAN

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS
_____	§	
CARL HENRY BRUNSTING, et al	§	
v.	§	
ANITA KAY BRUNSTING, et al	§	

**ORDER REGARDING
AMY BRUNSTING’S MOTION FOR SANCTIONS AND/OR CONTEMPT**

On the 28th day of June 2019, the Court considered Amy Brunsting’s Motion for Sanctions and/or Contempt (the “Motion”) pertaining to the conduct of Candace Louise Curtis (“Curtis”). In considering the Motion, the Court also considered Curtis’ response of June 11, 2019, entitled “Response to the Fiduciary’s Application for the Beneficiary to be Held in Contempt for Seeking to Enforce the Injunction Commanding the Trustee to Perform a Fiduciary Duty Owed to the Beneficiary with Petition for Partial Summary or Declaratory Judgment” (“Curtis’s Response”). The Court also heard oral argument from the parties.

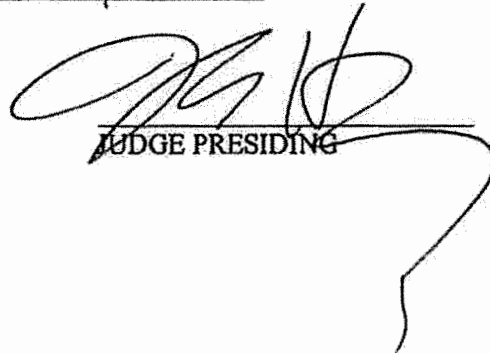
After considering the Motion, Curtis’s Response and oral argument, the Court FINDS that it has jurisdiction of this proceeding; that the Motion has MERIT and is in all respects proper and sufficient; that Curtis was properly served and received proper notice of the proceeding; and that the Motion should be and is GRANTED. Therefore:

1. The Court FURTHER FINDS and ORDERS that Curtis is in CONTEMPT of the Court’s Order of February 14, 2019 for the reasons presented in the Motion, including without limitation, via her March 20, 2019 and April 12, 2019 filings in the United States District Court for the Southern District of Texas – Houston Division in Case No. 4:12-CV-592, a matter confirmed as having been closed, remanded and terminated;

2. The Court FURTHER ORDERS, ADJUDGES and DECREES that as punishment for this contempt, Candace Curtis is fined the sum of \$ 500.00, payable to Diane Trautman, Harris County Clerk, Indigent Bond on or before the 1st day of September 2019; Program, Registry No. 28190
at 201 Caroline, 8th Floor, Room 800
Houston TX 77002
3. The Court, after considering the description of services, time, fees and costs described in the Affidavit of Neal E. Spielman, totaling ~~\$8,690.00~~ (representing ~~\$7,505.00 @ 19 hrs x \$395.00/hr through and including the filing of the Motion and \$1,185.00 @ 3 hrs x \$395.00/hr in additional fees and expenses incurred after the filing of the Motion~~) FURTHER ORDERS, ADJUDGES and DECREES that as further punishment for this contempt and/or as a sanction conferred in accordance with its own initiative and inherent power and/or under CPRC §9.012, CPRC §10.004 and/or TRCP 13, Curtis must pay to Amy Brunsting the sum of \$ 1,975.00 to Amy Brunsting in care of her attorneys – Griffin & Matthews – at 1155 Dairy Ashford, Suite 300, Houston, Texas 77007 on or before the 1st day of September, 2019

FURTHER, in so far as Curtis’s Response attempts to seek affirmative relief (including without limitation within the “Conclusion and Prayer” appearing on Page 6 of Curtis’s Response) all such affirmative relief is DENIED.

SIGNED ON THIS THE 23 DAY OF July, 2019.



JUDGE PRESIDING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 3rd day of July 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

Attorneys for Candace Kunz-Freed:

Zandra Foley/Cory S. Reed
Thompson, Coe, Cousins & Irons, L.L.P.
One Riverway, Suite 1400
Houston, Texas 77056
Via E-Mail: zfoley@thompsoncoe.com
Via E-Mail: creed@thompsoncoc.com

Candace Louise Curtis – Pro Se:

Candace Louise Curtis
Via E-Mail: occurtis@sbcglobal.net

Attorneys for Carl Henry Brunsting:

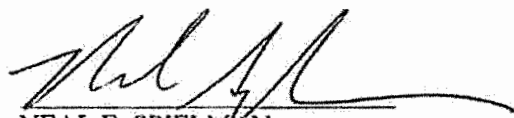
Bobbie G. Bayless
Bayless & Stokes
Via E-Mail: bayless@baylessstokes.com

Carole Ann Brunsting – Pro Se:

Carole Ann Brunsting
Via E-Mail: cbrunsting@sbcglobal.net

Attorneys for Anita Kay Brunsting:

Steve Mendel/Tim Jadloski
The Mendel Law Firm, L.P.
1155 Dairy Ashford, Suite 104
Houston, Texas 77079
Via E-Mail: steve@mendellawfirm.com
tim@mendellawfirm.com



NEAL E. SPIELMAN

Exhibit 19

United States District Court
Southern District of Texas

ENTERED

September 30, 2020

David J. Bradley, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS, *et al*,

Plaintiffs,

VS.

ANITA KAY BRUNSTING, AMY RUTH
BRUNSTING, *et al*,

Defendants.

§
§
§
§
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§
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§
§
§

CIVIL ACTION NO. 4:12-CV-00592

**ORDER FOLLOWING TELEPHONE CONFERENCE
HELD ON September 10, 2020 at 9:00 AM**

Appearances: Jason Ostrom
Candice Lee Schwager
Candice Louise Curtis
Stephen A. Mendel
Neal Spielman
Carole Ann Brunsting
Amy R. Brunsting
Anita K. Brunsting
(Court Reporter: K. Metzger)

The following rulings were made:

Pursuant to phone conference conducted this day, the Court reopens this case for the limited purpose of considering the plaintiff's ex parte motion for relief (Dkt. No. 128). This re-opening does not interfere or intervene in the matters pending or occurring in Probate Court No. 4 of Harris County, Texas.

It is so ORDERED.

SIGNED on this 10th day of September, 2020.



Kenneth M. Hoyt
United States District Judge

Exhibit 20

Exhibit 20

- c. the plaintiff had knowledge of the complained of activities in 2016; and did not pursue her claims for Rule 60 relief within a reasonable time;
- d. the complained of actions as described in the Ex Parte Motion for Relief, including this Court's May 2014 transfer/remand [Doc. 112], do not constitute a Fraud Upon the Court as the complained of actions do not reveal the existence of a "grave miscarriage of justice" and do not impact the integrity of the judicial process, and further have already been addressed in Civil Action No. 4:16-cv-01969 and determined to be frivolous, "fantastical" and "often nonsensical";
- e. the plaintiff's *ex parte* motion for relief is presented as a means of "forum hopping" her jurisdictional arguments, as previously addressed and denied in Probate Court Number Four of Harris County, Texas in Cause No. 412,249-401;
- f. the transfer/remand of the plaintiff's claims to Probate Court Number Four [Doc. 112] was within this Court's powers and authority, not only due to the plaintiff's inclusion of additional parties, but also to avoid the possibility of conflicting judgments; that the use of the term "remand" was synonymous with a general use of the word "transfer"; or, alternatively, constitutes harmless error as the same result could have occurred by other means, methods, procedures and mechanisms;
- g. this Court ceded jurisdiction of the plaintiff's claims and its Orders, including without limitation the Orders represented by Doc. 45 and Doc. 87, to Probate Court Number Four of Harris County, Texas; and
- h. the preliminary injunction issued by this Court [Doc. 45] is to be enforced in Probate Court Number Four of Harris County, Texas, as determined in the sole and absolute discretion of Probate Court Number Four of Harris County, Texas, and which determination may include modification or termination as determined in the sole and absolute discretion of Probate Court Number Four of Harris County, Texas. It is not a "final judgment" of this Court, and did not require or contemplate the distribution of trust income to beneficiaries prior to the final resolution of the disputes between the parties.

It is, therefore, ORDERED that the plaintiff's *ex parte* motion is Denied.

It is so Ordered.

SIGNED on this 23rd day of September, 2020.



Kenneth M. Hoyt
United States District Judge

Exhibit 21

Exhibit 21

UNITED STATES DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF TEXAS, HOUSTON DIVISION

Candace Louise Curtis	§	No. 4:12-cv-592
Plaintiff	§	
	§	
v	§	
	§	
Anita Kay Brunsting	§	
Amy Ruth Brunsting	§	
Defendants	§	

Notice of Appeal

Parties are hereby noticed that the above named Plaintiff, Candace Louise Curtis, will appeal to the United States Court of Appeal for the Fifth Circuit, the September 23, 2020 District Court Order [Dkt 139] denying Rule 60 Motion [Dkt 128] to vacate a remand order [Dkt 112] void as a matter of law.

Candice Schwager
Candice Lee Schwager
16807 Pinemoor Way
Houston , Texas 77058
Tel: 867-7173
candiceschwager@icloud

PROOF OF SERVICE

The undersigned hereby certifies that a true and correct copy of this instrument was electronically filed with the United States District Court for the Southern District of Texas to be served via electronic means by the clerk through the ECF system as follows:

Respectfully submitted
Candace Louise Curtis

Added: 02/27/2012

(Plaintiff)

represented by

Candice Lee Schwager
Schwager Law Firm 2210
Village Dale Ave Houston,
TX 77059 United States 832-
315-8489 713-456-2453 (fax)
schwagerlawfirm@live.com
*Assigned: 07/17/2020 LEAD
ATTORNEY ATTORNEY TO
BE NOTICED*

Anita Kay Brunsting

Added: 02/27/2012

(Defendant)

represented by

Stephen A Mendel The
Mendel Law Firm L.P. 1155
Dairy Ashford Ste 104
Houston, TX 77079 281-759-
3213 281-759-3214 (fax)
steve@mendellawfirm.com
*Assigned: 08/13/2020
ATTORNEY TO BE
NOTICED*

Amy Ruth Brunsting

Added: 02/27/2012

(Defendant)

represented by

Stephen A Mendel The
Mendel Law Firm L.P. 1155
Dairy Ashford Ste 104
Houston, TX 77079 281-759-
3213 281-759-3214 (fax)
steve@mendellawfirm.com
*Assigned: 08/13/2020
ATTORNEY TO BE
NOTICED*

Candice Schwager

Exhibit 22

Exhibit 22

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUIS CURTIS, et al . C.A. NO. H-12-592
. HOUSTON, TEXAS
VS. .
. SEPTEMBER 10, 2020
ANITA KAY BRUNSTING, et al . 9:00 A.M. to 10:10 A.M.

TRANSCRIPT of TELEPHONE CONFERENCE
BEFORE THE HONORABLE KENNETH M. HOYT
UNITED STATES DISTRICT JUDGE

APPEARANCES: (All participants appearing by phone.)

FOR PLAINTIFF CANDACE LOUISE
CURTIS: CANDICE LEE SCHWAGER
Schwager Law Firm
2210 Village Dale Ave
Houston, Texas 77059

FOR DEFENDANT ANITA KAY
BRUNSTING: STEPHEN A. MENDEL
The Mendel Law Firm L.P.
1155 Dairy Ashford
Suite 104
Houston, Texas 77079

FOR DEFENDANT AMY RUTH BRUNSTING: NEAL E. SPIELMAN
Griffin & Matthews
1155 Dairy Ashford
Suite 300
Houston, Texas 77079

Proceedings recorded by mechanical stenography, transcript
produced by computer-aided transcription.

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APPEARANCES CONTINUED

ALSO PRESENT:

CANDACE LOUISE CURTIS
ANITA KAY BRUNSTING
AMY RUTH BRUNSTING
CAROLE ANN BRUNSTING
JASON B. OSTROM

OFFICIAL COURT REPORTER:

KATHY L. METZGER
U.S. Courthouse
515 Rusk
Room 8004
Houston, Texas 77002
713-250-5208

1 P R O C E E D I N G S

2 *THE COURT:* Good morning. This is Judge Ken Hoyt. Do
3 I have parties on the line at this time?

4 *UNIDENTIFIED SPEAKER:* Yes. Good morning.

09:01:01 5 *MR. MENDEL:* Yes. Steve Mendel for Anita Brunsting.

6 *THE COURT:* Hold on just one second. Let me do -- let
7 me start it this way: Who's on the line for the plaintiff?

8 *MS. CURTIS:* Candace Curtis.

9 *THE COURT:* All right. And just yourself, Ms. Curtis,
09:01:21 10 for the plaintiff?

11 *MS. CURTIS:* No. My attorney is going to be calling
12 in just any second now.

13 *THE COURT:* Who's your -- who is your attorney?

14 *MS. CURTIS:* Candice Schwager.

09:01:38 15 *THE COURT:* Well, I've got Candace Louise Curtis, the
16 plaintiff, right?

17 *MS. CURTIS:* Yes, sir. That's me.

18 *THE COURT:* And then you've got a lawyer, I believe,
19 in Houston, Candice Lee Schwager. Is that the person you're
09:01:50 20 talking about?

21 *MS. CURTIS:* Yes, sir.

22 *THE COURT:* Okay. Let's see, that might be her
23 joining us now. Is that Ms. Schwager joining us?

24 *MS. SCHWAGER:* Yes, sir.

09:02:01 25 *THE COURT:* Okay. You're representing Ms. Curtis in

09:02:05 1 this call; is that correct?

2 *MS. SCHWAGER:* Yes, Your Honor.

3 *THE COURT:* Okay. Very good. And I gather it's just
4 the two of you on the line for the plaintiff, Ms. Curtis and
09:02:15 5 then yourself as her attorney?

6 *MS. SCHWAGER:* I believe so. I believe she's on the
7 line.

8 *THE COURT:* Yes, she's on the line.

9 *MS. CURTIS:* Yes, I'm here.

09:02:24 10 *THE COURT:* On representing the Brunsting -- which of
11 the Brunstings -- is Anita Brunsting on the line or her counsel
12 on the line?

13 *MR. MENDEL:* Counsel is on the line. My name is Steve
14 Mendel, Your Honor. And Anita Brunsting might be dialing in.

09:02:45 15 *THE COURT:* Who else is on the line with you then,
16 Mr. Mendel, if anyone?

17 *MR. MENDEL:* No one else is on the line with me.

18 *THE COURT:* Are you representing both Amy and Anita --
19 *(Simultaneous speaking, indiscernible.)*

09:02:59 20 *MR. MENDEL:* Mr. Neal Spielman -- Mr. Neal Spielman is
21 on the line representing Amy Brunsting.

22 *MR. SPIELMAN:* That's correct, Judge. Good morning.

23 *THE COURT:* Yes. Let me make sure I've got -- let's
24 see, what's your last name, sir?

09:03:14 25 *MR. SPIELMAN:* Spielman, S-p-i-e-l-m-a-n.

09:03:21 1 *THE COURT:* All right. Just yourself on the line for
2 Ms. Amy Brunsting?

3 *MR. SPIELMAN:* Yes, sir.

4 *THE COURT:* Okay. Let's see. Let me just make sure,
09:03:29 5 because I've got to get my docket sheet straightened out here.
6 I apologize. It is Stephen A. Mendel, is it, right?

7 *MR. MENDEL:* Yes, sir.

8 *THE COURT:* Okay. Very good. All right.
9 Let's see. Do we have others joining this call
09:03:50 10 or someone else just join us?

11 *MS. CAROLE BRUNSTING:* Yes. Yes. This is Carole
12 Brunsting, pro se. I'm one of the beneficiaries.

13 *THE COURT:* Well, let's see. Ms. Brunsting, hold on
14 just one second. You were sued, I gather, by the plaintiff in
09:04:15 15 this case? Is that your relationship to the case?

16 *MS. CAROLE BRUNSTING:* Correct.

17 *MS. SCHWAGER:* Your Honor, this is Candice Schwager.
18 In this case Ms. Carole Brunsting is not yet a party. If we
19 were to add a declaratory judgment, she would be brought in.

09:04:33 20 *THE COURT:* Well, I'm checking all the persons who are
21 participating and trying to make sure their opposition is
22 stated in the record. So I show her as a defendant. She may
23 not have been served, but I show --

24 *MS. SCHWAGER:* Oh, okay.

09:04:43 25 *THE COURT:* -- her as a defendant along with a number

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Page number: 231
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