Case No. 17-20360

In the United States Court of Appeals
For the Fifth Circuit

CANDACE CURTIS, et al

Plaintiff - Appellants

v.

Candace Kunz-Freed, et al

Defendant - Appellees

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

BRIEF OF PLAINTIFF - APPELLANTS

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CERTIFICATE OF INTERESTED PERSONS

The undersigned Plaintiff-Appellant pro se, certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this court may evaluate possible disqualification or recusal.

(1)	Candace Louise Curtis	Plaintiff/Appellant
(2)	Rik Wayne Munson	Plaintiff/Appellant
(3)	Anita Kay Brunsting	Defendant/Appellee
(4)	Amy Ruth Brunsting	Defendant/Appellee
(5)	Candace L. Kunz-Freed	Defendant/Appellee
(6)	Albert Vacek Jr.	Defendant/Appellee
(7)	Bernard Lilse Mathews III	Defendant/Appellee
(8)	Clarinda Comstock	Defendant/Appellee
(9)	Christine Riddle-Butts	Defendant/Appellee
(10)	Neil Spielman	Defendant/Appellee
(11)	Bradley Featherston	Defendant/Appellee
(12)	Stephen A. Mendel	Defendant/Appellee
(13)	Darlene Payne-Smith	Defendant/Appellee
(14)	Jason Ostrom	Defendant/Appellee
(15)	Gregory Lester	Defendant/Appellee

(16) Jill Willard Young Defendant/Appellee

(17) Bobby G. Bayless Defendant/Appellee

(18) Toni Baiamonte Defendant/Appellee

(19) Carl Henry Brunsting Interested Person

(20) Carole Ann Brunsting Interested Person

The following Law Firms have a potential interest

(21) The Vacek Law Firm a.k.a. Vacek & Freed PLLC

(22) The Mendel Law Firm, LP

(23) The Griffin & Matthews law firm

(24) The Crain, Caton & James law firm

(25) The Bayless & Stokes law firm

(26) The MacIntyre, McCulluch, Stanfied & Young L.L.P Law firm

(27) The Ostrom Sain Law firm

(28) The Ostrom Morris Law firm

NOTICE OF CORRELATIVE ACTIONS

(1) Candace Louise Curtis v Anita and Amy Brunsting and Does 1-100, 4:12-cv-592 Filed TXSD 2/27/2012 [ROA.17-20360.3067]

(2) Estate of Elmer H. Brunsting 412248, Will filed in the Harris County Probate Court on April 2, 2012 [ROA.17-20360.2372]

(3) Estate of Nelva Brunsting 412249, Will filed in the Harris County Probate Court on April 2, 2012 [ROA.17-20360.2384]

(4) Fifth Circuit No. 12-20164 [ROA.17-20360.1460] decided January 9, 2013 with order for reverse and remand published Curtis v Brunsting 704 F.3d 406. [ROA.17-20360.2227]

(5) Carl Brunsting, Executor of the Estate of Nelva Brunsting v. Candace Freed & Vacek & Freed; No. 2013-05455, 164th Judicial District Court of Harris County, TX. Filed Jan. 29, 2013. [ROA.17-20360.2002]

(6) Carl Brunsting individually and as executor for the Estate of Elmer and Nelva Brunsting No 412249-401 Filed Harris County Probate #4 April 9, 2013. [ROA.17-20360.2259]

(7) No 412249-402, assigned to Curtis v Brunsting 4:12-cv-592 on remand to Harris County Probate Court #4 [ROA.17-20360.233]

STATEMENT REGARDING ORAL ARGUMENT

Appellants request oral argument pursuant to Federal Rule of Appellate Procedure 34(a)(1) and Fifth Circuit Rule 28.2.3, only to the extent it would aid the Court in understanding the factual background of this case and clarify the legal issues presented.

Appellant suggests that the issues presented can be determined upon the record, pursuant to Fed. R. App. P. 34(a)(3), and that oral argument would not benefit the panel, as the bulk of evidence, contained in the public record, is primarily self-authenticating, the parties' positions are clear and the record is relatively uncomplicated.

STATEMENT OF JURISDICTION

This Appeal is from an Order [ROA.17-20360.3329 - 3335] dismissing a quasi-civil action, entered by the Honorable Alfred H. Bennett of the United States District Court for the Southern District of Texas, on May 16, 2017. A timely Notice of Appeal [ROA.17-20360.3336] was filed on May 26, 2017. The District Court was asked to exercise jurisdiction under 28 U.S.C. § 1331. This Court has appellate jurisdiction pursuant to 28 U.S.C. § 1291.

STANDARD OF REVIEW

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

Under the demanding strictures of a Rule 12(b)(6) motion, "[t]he plaintiff's complaint is to be construed in a light most favorable to the plaintiff, and the allegations contained therein are to be taken as true." *Oppenheimer v. Prudential Sec., Inc.*, 94 F.3d 189, 194 (5th Cir. 1996) (citing *Mitchell v. McBryde*, 944 F.2d 229, 230 (5th Cir. 1991). Dismissal is appropriate only if, the "[f]actual allegations [are not] enough to raise a right to relief above the speculative level, on the assumption that all the allegations in the complaint are true (even if doubtful in fact)." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 1965, 167 L.Ed.2d 929 (2007).

"[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)*.

This Court is asked to review the District Court's dismissal of Plaintiffs' action de novo.

STATEMENT OF THE ISSUES

1. To what extent, if any, can RICO predicate acts, such as honest services fraud (18 U.S.C. § 1346), or participation in a racketeering conspiracy, be considered acts undertaken in a judicial capacity or in connection with representing a client in litigation?

2. In what manner does the creation of a private right of claims at 18 U.S.C. § 1964(c), convert criminal RICO allegations into ordinary civil tort claims to which judicial immunity can be said to apply?

3. What is the proper standard of pleading and proof for sham, staged, predatory, or otherwise abusive litigation within the framework of 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d)?

4. To what extent, if any, can injury to the joint finances of domestic partners, under a non-marital relationship contract, be considered injury to business or property within the meaning of 18 U.S.C. § 1964(c)?

5. The leading authority guiding this appeal is Curtis v Brunsting 704 F.3d 406 (5th Cir. Jan 2013), which is not only on all fours with this case, it is this case.

STATEMENT OF THE CASE

This case involves claims of an organized crime industry operating in the public sector. The action is brought by pro se claimants under section § 1964(c) of

the Racketeer Influenced Corrupt Organization Statutes. (RICO)[1] The issues raised weigh heavily on public policy and the administration of public justice, affecting the public interest at large. Plaintiffs plead violations of 18 U.S.C. § 1962(c) and 18 U.S.C. § 1962(d) but lay a foundation for 18 U.S.C. § 1962(a) by naming the Defendants' law firms as enterprise in fact associations, because the intentions forestalled by this RICO action will likely manifest if the federal courts do not intervene and fashion a remedy.

The action was dismissed under Federal Rule of Civil Procedure 12(b)(6) with prejudice. This appeal necessarily follows. The principal issues fall within the domains of standing, sufficiency and plausibility.

All of the Defendants filed Motions to Dismiss advancing fact claims that cannot be defended. Plaintiffs amended their complaint by adoption and incorporation by reference, pursuant to Federal Rule of Civil Procedure 15(a)(1), and Federal Rule of Civil Procedure 10(b), as if fully expressed in the original complaint when filed.[2]

Defendants' Motions to Dismiss[3] have also been incorporated by reference as exhibits, as if fully attached to the originally filed complaint, thus supplementing the factual allegations in satisfaction of the heightened pleading standard imposed by

[1] 18 U.S.C. §§1961-1968
[2] The complaint consists of Docket entries 1, 26, 33, 34, 45, 57, 62, 65, 69, 85, 87, and 89.
[3] Docket entries 19, 20, 23, 25, 36, 39, 40, 70, 81, 83 and 84 have been adopted as exhibits.

Federal Rule of Civil Procedure 9(b) as delineated in *Iqbal*[4] and T*wombly*.[5] The allegations involve both actions and inactions by attorneys and judges, in furtherance of an all too common goal so well established in the public discourse that the accusations cannot rationally be dismissed a priori as implausible. Plaintiffs ask the Court to take Judicial Notice of the public dialog in this area as it relates to the question of plausibility.[6] Plaintiffs also ask the Court to take Judicial Notice of the public records in the correlative cases cited supra, under Federal Rules of Evidence § 201, as previously requested in the District Court.[7]

Due to the tendency for concepts to elicit varying interpretations, Plaintiffs view matters of conceptual clarification as apposite and not peripheral. Accordingly, we clarify our usage of the terms "corruption" and "public corruption" consistent

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[4] *Ashcroft v. Iqbal, 556 U.S. 662 (2009)*

[5] *Bell Atlantic Corp. v. Twombly* 550 U.S. 544 (2007)

[6] Sites of particular interest include but are not limited to: http://www.estateofdenial.com; https://stopguardianabuse.org; http://www.aaapg.net**Error! Bookmark not defined.**; http://cesarlebel.blogspot.com/; https://www.forbes.com/sites/nextavenue/2016/05/23/guardianship-in-the-u-s-protection-or-exploitation/#1fedfb3a3b49; https://www.amazon.com/PROBATE-PIRATES-J-Kristi-Hood-ebook/dp/B00VH6DWZG; https://www.thestreet.com/story/13119181/1/heres-how-the-great-41-million-generational-wealth-transfer-is-intercepted-by-probate-pirates.html; http://www.yalelawjournal.org/note/corruption-in-our-courts-what-it-looks-like-and-where-it-is-hidden/; http://www.forbes.com/sites/trialandheirs/2016/09/07/what-you-can-learn-from-gene-wilders-struggle-with-the-illness-pirate/; https://ppjg.me/tag/corrupt-probate-courts/; http://cesarlebel.blogspot.com/2007/11/judicial-corruption.html

[7] [ROA.17-20360.2264] (ROA.17-20360.226, 234, 632, 2500, 2501, 2515, 2519, 2652, 2664, 2698, 2699, 2797, 2798, 2831, 2894, 3100)

with federal jurisdiction in states of the union under *U.S. Const. Article I Section 8 clause 3*, as applicable to the case in point:

> *"A form of anti-social behavior by an individual or social group which confers unjust or fraudulent benefits on its perpetrators (and) is inconsistent with the established legal norms and prescribed moral ethos of the land and is likely to subvert or diminish the capacity of the legitimate authorities to produce fully for the material and spiritual well-being of all members of society in a just and equitable manner."*[8]

Transparency International [9] defines "public corruption" as "the abuse of public office for private gain". The *World Bank* [10] sees public corruption as "the abuse of public power for private gain". One inescapable fact of public corruption is that it entails actions or even inactions that pervert the socially accepted behavior, established laws, and prescribed moral ethos of a given society; in Congress' own words, "corrupting the democratic process".[11]

Singularity of Purpose, Plausibility, Pattern, Continuity and Relatedness

This story, like far too many others, involves a segment of the U.S. population commonly referred to as "baby boomers" and their aging parents. According to calculations by Bank of America and others, it has been estimated that over the next 20 to 60 years approximately one trillion dollars will be transferred each year, from

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[8] Osoba, S.1996. Corruption in Nigeria: Historical Perspectives", Review of African Political Economy

[9] https://www.transparency.org/news/feature/corruption_perceptions_index_2016

[10] http://www1.worldbank.org/publicsector/anticorrupt/corruptn/cor02.htm#note1

[11] See the Statement of Findings and Purpose for the RICO statutes, P.L. 91-452, 84 stat. 922, 941 (1970) Reprinted in 1970 U.S. CODE CONG. & ADMIN. News 1073.

aging Americans to heirs, beneficiaries, charities and taxes.[12] Although there is some debate as to the amounts, this has been noted by many observers as the largest generational wealth transfer in history.[13]

In 2002, Roy Williams of the Williams Group[14] published the results of an often quoted 25-year survey of 3,250 instances of generational wealth transfer. [15] Williams concluded that 70% of generational asset transfers fail, where failure was defined as "*involuntary loss of control of the assets"*.[16]

Consistent with Defendants' claims of family feuding, the Williams Report suggests that ninety-seven percent (97%) of the failures were attributable to the family itself. Williams book, however, was completely silent on the question of how, or to whom, control over 70% of generational assets were "involuntarily lost" by the family during intended asset transfers. Williams himself had no data to offer.[17]

The case in point, Candace Curtis et al, v Candace Kunz-Freed et al, consistent with the public dialog, answers the question of how and to whom control of 70% of

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[12] http://www.cnbc.com/2016/06/15/the-great-wealth-transfer-has-started.html
[13] http://www.cnbc.com/2015/01/13/coming-soon-the-biggest-wealth-transfer-in-history.html; http://www.cnbc.com/2014/05/28/greatest-wealth-transfer-in-history-underway-59-trillion-to-heirs-charity-by-2061.html;
[14] http://www.thewilliamsgroup.org/
[15] Preparing Heirs: Five Steps to a Successful Transition of Family Wealth and Values ISBN 1-931741-31-X
[16] http://www.mutualtrust.com.au/families/70-wealth-transfers-fail/
[17] roy@thewilliamsgroup.org Telephone 949-940-9140

generational asset transfers are "involuntarily lost" by the family before the assets can successfully transfer to intended heirs and beneficiaries.

Texas Senate Committee hearings [ROA.17-20360.2351] on Jurisprudence, October 11, 2006, brought the following testimony from a Harris County Probate Court litigant named Van Brookshire: [18]

> *"These people in these specialty courts. They truly have a probate business. They are running it for profit and it profits their small group their small circle. When I was drawn into this, I went to my family attorney, a friend for over 35 years, and he told me there's no way to win. There's not enough money in the world. You cannot go to Harris County and survive this, kiss it all goodbye and lick your wounds and walk away. I went to five additional attorneys. Some of them within this circle this small club. Either they wanted too much money, they didn't have time or they didn't want to go into that particular judge's court for whatever reason. I learned that this circle of friends has a name in Harris County. It's called the tomb raider's club and they pride themselves on making a living at this particular industry that they have created."*

The major portions of the seven and one half hour hearing involved similar complaints and there is nothing delusional or fantastical about Plaintiffs raising claims regarding the very same activities, involving some of the very same participants, more than ten years later.

[18] http://tlcsenate.granicus.com/MediaPlayer.php?view_id=17&clip_id=5696, at 6:56:22 to 6:57:23 of the hearing session in Senate Room E1 016 on Oct. 11, 2006

STATEMENT OF THE ARGUMENT

Although bearing a different case name, cause number and claims, Plaintiff Appellant Candace Louise Curtis, Appellee's Anita and Amy Brunsting, the Brunsting Trusts, the Estates of Elmer and Nelva Brunsting, and Does 1-100, have already been before this honorable Court and a pivotal issue decided. How we return to this Court under the Organized Crime Control Act of 1970[19], with the Does identified, is best answered with another question. What happened to Fifth Circuit No. 12-20164 after leaving this honorable court on reverse and remand to the Southern District of Texas? [ROA.17-20360.3067]

Plaintiffs argue that this case No. 17-20360, is a continuation of No. 12-20164, and not a new case at all, for numerous reasons, among which, (1) Curtis v Brunsting, (correlative actions #1 and #4), having been the first filed case involving Brunsting trust related issues, arises from no other case or controversy. (2) The Brunsting Trusts are the only heir to the estates and none of the Trust beneficiaries have standing in the administration of their parents' estates [ROA.17-20360.2372, 2384] (3) Plaintiffs live in California and have no reason to have been in Texas for the past five years other than efforts to protect Curtis' beneficial interests in the Brunsting inter vivos Trusts (4) None of the substantive issues raised in Curtis' original federal complaint

[19]P.L. 91-452, 84 stat. 922, 941 (1970)

have been litigated or passed upon by any court, despite Defendants' unsupported and unsupportable claims to the contrary. [ROA.17.20360.181, 187, 193] (5) A variety of attempted conversions left the original action without an identity or legitimate judicial forum. This case continues to be about Plaintiff Curtis' right to dominion and control of property and concerted efforts to deprive her of those property interests. It is also about collateral injuries to persons removed from the action whose rights are affected none-the-less.[20]

The District Court's Order begins with a background statement [ROA.17-20360.3330] pointing directly at the pivotal contention between Plaintiffs and Defendants over the nature of the action from which the civil RICO claims arise.

> *Plaintiffs' Complaint appears to relate to a probate matter in Harris County Probate Court No. 4, which the Plaintiffs generically call "Curtis v. Brunsting."*

The action Defendants call the "probate matter" (Correlative Action #5 supra) and the action Plaintiffs refer to as "Curtis v Brunsting" (Correlative Actions #1 and #4), are separate and distinct actions, filed in different courts, by different plaintiffs, and neither matter involves the administration of a decedent's estate.

The Probate Matter, Correlative Action #6

In her Motion to Dismiss, [ROA.17-20360.174] Defendant Bayless claims:

[20] The Trust has five beneficiaries and nine remaindermen

> *"This case is related to a case pending in Harris County Probate Court Number 4 in Cause No. 412.249-401, styled Carl Henry Brunsting, et al. v. Anita Kay Brunsting, et al"*

This statement is disingenuous as Defendant Bayless has used only one heading style in the probate court and it was not this one. [ROA.17-20360.252], [ROA.17-20360.560], [ROA.17-20360.1975], [ROA.17-20360.2259]

Curtis v Brunsting, Correlative Action #1 and #4

When the Wills of Elmer Brunsting (412248) and Nelva Brunsting (412249) were filed in Harris County Probate Court No. 4 in April of 2012, *Curtis v Brunsting 4:12-cv-592, filed TXSD 2/27/2012*, was headed to the Fifth Circuit as *Candace Louise Curtis v Anita Kay Brunsting, Does 1-100, Amy Ruth Brunsting*, No. 12-20164, under the probate exception to federal diversity jurisdiction.

In "Curtis" No. 12-20164, this Court held the action under review was related only to inter vivos trusts, that assets in the (Brunsting) inter vivos Trusts were not assets belonging to an estate and were not subject to probate administration. [21]

In Defendant Bayless' Rule 12(b)(6) Motion she admits Defendants' probate action is exclusively trust related. [ROA.17-20360.174]

> *"The action in the Harris County Probate Court involves disputes concerning a trust created by the parents of the five Brunsting siblings."*

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

In Curtis[22], this Court also clarified application of the doctrine of comity, holding that no court could assume in rem jurisdiction over a res in the custody of another court and yet, the composite action filed in the probate court raises only trust related issues, and it was filed while the trust was in the custody of the federal court.

The record will show [ROA.17-20360.1103] there are five beneficiaries to an inter vivos trust, Candace Curtis and Carole, Carl, Amy, and Anita Brunsting. The family "Trust" is the only heir to the deceased founders "Estates". [ROA.17-20360-2372, 2384] Carl Brunsting is the named executor but has no "individual standing" in the administration of the Estate. Assets in the trusts are not assets belonging to an estate[23] and thus, Carl the "Executor" has no standing in the administration of the Trust. An honest temporary administrator's report [ROA.17-20360.611] would have pointed these things out instead of attempting to validate the forgery called 8/25/2010 QBD.[24] Defendants cling to this instrument in their assertions of fact, but refuse to produce it and qualify it as evidence. They will not because they cannot.

The administration of an inter vivos trust is a business matter, not the sibling soap opera the attorneys scripted for themselves. Carl resigned as executor on February 2, 2015, due to a lack of competence, leaving the office of executor vacant.

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[22] Id at HN3
[23] Id at HN6
[24] See No-evidence motion [ROA.17-20360.243] and the answer [ROA.17-20360.623]

[ROA.17.20360.672] At the same time a new docket control order was agreed upon by all of the attorneys,[25] obviously having nothing to do with the "Estate". Defendants continued to file motions[26] and schedule hearings[27] and Defendant Bayless continued to use the same heading style without modification, never distinguishing Carl the executor from Carl the individual, nor claims belonging to the "Estate" from claims belonging to Carl individually.

Standing

Standing is a foundational issue independent of the elements of the particular claim. Generally, federal court standing under Article III of the Constitution requires injury in fact caused by the challenged conduct. To establish Article III standing the plaintiff must show (1) plaintiff suffered or is imminently threatened with the concrete and particularized injury in fact, (2) the injury is fairly traceable to the defendant's conduct and (3) the injury is likely to be redressed by the requested relief.

18 U.S.C. § 1964(c) creates the civil RICO remedy and requires four criteria to establish standing: (1) the plaintiff must be a person who (2) has suffered injury (3) to his or her business or property and (4) by reason of the defendant's violation of section 1962. In addition, § 1962(c) requires that the injury was proximately caused

[25] [ROA.17.20360.1472, 2294]
[26] [ROA.17.20360.243] ROA.17.20360.252] ROA.17.20360.560] ROA.17.20360.714]
[27] [ROA.17.20360.621]

by the complained of conduct and § 1962(d) requires injury from an overt predicate act. As the ultimate predicate act is honest services fraud, Plaintiffs' claims fully meet this criterion.

Plaintiffs are domestic partners with joint finances, both business and personal, whose time and financial resources have been diverted from local interests to the defense of Curtis' property interests in Texas Courts. The illicit multiplication of litigation has caused extended injuries to Plaintiffs' joint finances. Munson works almost entirely from their home office. Curtis works full time outside the home.

Plaintiff Candace Curtis is an income beneficiary to the Brunsting family of Trusts,[28] whose right to dominion and control over property interests have been tortiously interfered with for more than five years by the wrongful actions and intentions of these Defendants. Those acts include but are not limited to threats of complete deprivation of property rights, [ROA.17-20360.1420] intending to coerce consent to illicitly extract value from the Brunsting Trusts in violation of 18 U.S.C. § 1951, as part of the scheme and artifice to deprive under 18 U.S.C. § 1346.

Injury to Business and Property

In addition to the four specific standing criteria stated supra, RICO requires only harm resulting proximately from the predicate act advances. It does not also

[28] Appellant Curtis is also a member of a committee of co-trustees for the Gorman-Munson Trust.

require that this harm necessarily give rise to a civil claim based on those predicate act offenses, and the RICO plaintiff need not have suffered harm from each predicate offense comprising the pattern. *Bridge v. Phoenix Bond and Indemnity Co. 553 US 639 (2008).* The non-predicate act claims, and those which may not give rise to individual civil recovery, are none-the-less acts committed in furtherance of the racketeering objective.

In *Slorpe v. Lerner*,[29] a homeowner who was forced to incur attorney fees and costs to defend suit had Article III standing to sue under RICO because those expenses resulted proximately, not from the homeowners underlying mortgage default, but rather from the fraudulent mortgage assignment on which the foreclosure action was premised and, fraud on the court committed to "*mislead the judge in the performance of her official function within the foreclosure action*". Even Defendant Spielman made an issue over how much it costs for all this "litigation". [ROA.17-20360.1419, 1420]

Under Sedima, the plaintiff need only demonstrate, or at least plead, compensable injury "consisting of harm caused by predicate acts sufficiently related to constitute a pattern." *Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 497 (1985).*

[29] *Slorp v. Lerner et al., 2014 U.S. App. LEXIS 18816,* (September 29, 2014) United States Court of Appeals for the Sixth Circuit No. 13-3402, not recommended for full text publication.

Unsuccessful predicate acts are viable components of the plaintiff's pattern. As long as the pattern of racketeering activity has caused harm to the plaintiff's business or property the plaintiff has RICO standing. *H. J. Inc. v. the Northwestern Bell Telephone Co. 492 US 229, 242 (1989)*

The Agents of Commerce

Business does not have a fixed or definitive legal meaning and 18 U.S.C. § 1964(c) does not define business in terms of fictitious named entities, nor distinguish between the noun and verb forms. Plaintiffs adopt the definition provided by Webster's, consistent with the commerce clause, as "a commercial or mercantile activity engaged in as a means of livelihood."

In a simple market economy there are three main types of interdependent commercial agents, and two interdependent commercial markets. The economic agents are "producer/manufacturer", "distributor", and "household". The interdependent markets are products and resources.

In a Supply and Demand Analysis, it is important to remember that all three types of economic agents in the commercial market economy follow the same revenue, expense, profit and loss scenario, are subject to the same market factors and

considerations, and that each is essential to the successful operation of the others. Congress, in enacting the RICO statutes, did not overlook this relationship.[30]

In product markets, manufacturers and distributors purchase, supply and sell goods and services while households generally demand and buy them. In resource markets, the relationship is reversed. Households generally supply and sell factors of production, such as knowledge, skill and labor, while the other economic agents demand and purchase them.

In addition to injuries to Plaintiff Curtis' Trust property interests, Plaintiffs have standing because the activity complained of violates 18 U.S.C. § 1962 (c) and 18 U.S.C. § 1962 (d), causing pecuniary injury, by forcing the redirection of time and money away from the California concerns of Curtis and Munson to the defense of Curtis' property interests in Texas courts. This economic injury would not have been suffered in the ordinary course of the trust administration controversy and is injury to both business and property within the meaning of 18 U.S.C. § 1964(c), as it is an injury caused not by the trust administration controversy itself, but by Defendants' illicit attempts to dissolve the boundaries between trust and estate and the holding of trust assets hostage for attorney fee ransoms not authorized by law.

[30] See statement of Findings and Purpose P.L. 91-452, 84 stat. 922, 941 (1970)

Racketeering Enterprise

A court may be an enterprise within the meaning of RICO. *United States v Goot*, 894 F.2d 231 (7th Cir.), cert. denied, 498 U.S. 811 (1990). Enterprise, like business, is both a noun and a verb and the evidence necessary to prove Enterprise, although distinct, often coalesce with the those of the pattern element.

Continuity

Predicate acts must amount to or constitute a threat of continuing racketeering activity. *H. J. Inc. v. the Northwestern Bell Telephone Co. 492 US 229, 240 (1989)*. If the federal courts do not intervene, the Brunsting Trusts will continue to be held hostage to attorney fee ransoms the beneficiaries do not owe and that Defendants have no legal right to demand. All that was ever necessary to resolve the Brunsting trust controversy was to produce a full true and complete accounting and distribute the assets.

The March 9, 2016 Transcript [ROA.17-20360.1460] speaks for itself on the question of refusal to set dispositive hearings and the fully expressed intentions of using intimidation to effect yet another agreement these people will not honor.

Relatedness

The criterion for the relatedness aspect of pattern is as follows: Criminal acts that [1] have the same or similar (a) purposes (b) results, (c) participants, (d) victims

(e), methods of commission or [2] otherwise are interrelated by distinguishing characteristics and [3] are not isolated events, Sedima, supra.[31]

Predicate acts must be related by having the same or similar purposes, results, participants, victims, or methods of commission or otherwise be interrelated by distinguishing characteristics and not be isolated events. *H. J. Inc. v. the Northwestern Bell Telephone Co. 492 US 239, 240 (1989).*

The purpose for the "probate matter" was to interfere with the expedient resolution of the Brunsting trusts and to facilitate interception of the Brunsting generational asset transfer, to redirect those assets to the attorneys own unjust self-enrichment, through the collection of an unlawful attorney fee debt.

The complete absence of any claims relating to property belonging to a decedent's estate in the action filed by Bayless, is evidence of that fact. Even if Anita and Amy Brunsting were ignorant of the fact that their self-dealing success was enabled for the purpose of creating a controversy, they none-the-less had the same unjust "bust the Trust" self-enrichment objective in mind.

Staged, Predatory, Sham, or Otherwise Abusive Litigation

Defendants' "probate matter", when subjected to a cost-benefit analysis, cannot be objectively justified, as all five of the beneficiaries of the sole heir

[31] See https://ppjg.me/2011/02/20/probate-courts-criminal-racketeering-sanctioned-by-government/

("Trust"), are Defendants in Bayless' "Estate litigation". Benefit from the action, if any, would pour over into the Trust to be distributed among the same Defendant beneficiaries, minus attorney's fees and costs. Ultimately the sole heir to the Brunsting Estate, the Brunsting Trusts, [ROA.17-20360-2372] and the final distribution of assets to the beneficiaries are held hostage to attorney fee debt ransoms, in a sham lawsuit that no one but the attorneys could ever benefit from.

At the Motions Hearing December 15, 2016, Defendants argued that Plaintiffs' claims are delusional and fantastical while waving Judge Kenneth Hoyt's Order dismissing an entirely different lawsuit against entirely different probate court judges. [ROA.17-20360.3403] Defendants were reading Judge Hoyt's Order dismissing that case, claiming the allegations in **this** matter were pure "zanyism", [ROA.17-20360.3393] and that Plaintiffs had failed to plead a laundry list of RICO elements, while completely ignoring the pleadings in the case before the Court, ultimately revealing the straw in Defendants' collective shoe. Defendants **in this case** are accused of attempting to do exactly what Judge Hoyt said was not going to happen **in this case**[32] at the injunction hearing more than four years ago. [ROA.17-20360.545] What attorneys did or did not plead in an entirely different lawsuit,

[32] Injunction Hearing April 9, 2013

involving entirely different litigants, is not relevant to the sufficiency of the pleadings in this case.

Defendants attempt to minimize their contribution by claiming “all I did” and “all my client did”, and in so doing they each admit to their participation. As we look at the email from Judge Butts to the attorneys, [ROA.17-20360.2676] we have to wonder (1) why was Judge Butts trying to find a way for the attorneys to access Brunsting trust assets, and (2) where did she think to find a surviving founder?

The number assigned to Curtis v Brunsting on remand to the state probate court was 412249-402. When we look at exhibits [ROA.17-20360.2667] and [ROA.17-20360.2672] agreeing to Consolidate 412249-401 and 412249-402 as if both were “Estate of Nelva Brunsting”, the effort to unlawfully convert trust assets into estate assets is more than transparent. After Curtis terminated Defendant Ostrom, the fully signed consolidation agreement [ROA.17-20360.2667] was removed from the public record and replaced with a version not signed by Christine Butts. [ROA.17-20360.2672] One will note the identical control numbers.

The Duty of Candor

Defendants advanced fact claims but do not support their claims with exhibits, because no support can be found for such claims in the record of the probate court proceedings. By way of example and not limitation, Defendant Jill Willard-Young claims [ROA.1720360.181]

> *"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."*

[ROA.1720360.193]

> *"Plaintiffs' allegations are fanciful, fantastic, and delusional—at best. They also appear to constitute an attempt by Plaintiffs to seek revenge for being on the losing end of trust and estate determinations that were already fully litigated in Texas state court."*

Defendant judges also make similar affirmative claims without exhibits and without pointing to the record. [ROA.1720360.2627]

> *"As is patently obvious from Plaintiffs'62-page Complaint, they were dissatisfied with the rulings and administration of the Brunsting probate case in Probate Court Four."*

Defendants do not provide exhibits of these dissatisfying "rulings" with their briefs, nor do they point to the record. They do not because they cannot. There is not one example in the record of proceedings in Probate Court 4, where there has been testimony or facts introduced into evidence. There are no findings of fact or conclusions of law after hearing on any relevant issue and there is nothing to appeal.

On October 27, 2016, Rafe Schaefer, counsel for Jill Willard Young, violated Rule 11 again when he filed a Rule 11 motion continuing his disingenuous assertions[33]. On page 2 his argument is, [ROA.17-20360.2853]

[33] [ROA.12-20360.2825]

> *"Filing a RICO action in federal court is not a proper substitute for appealing an unfavorable ruling, nor is it an appropriate means of seeking revenge against opposing and court-appointed counsel.*

These Defendants conspired in concert to prevent Curtis' access to the Court, opportunity to be heard, and substantive resolution on the merits. By refusing to enter any dispositive determinations at all, they also conspired to deprive Curtis of an opportunity to appeal to a higher court, which would explain why Plaintiffs bring the matter back to the federal courts in this fashion. Foreclosing appeal by refusing to rule on substantive matters is only one of the patent methods used to trap victims in an endless delay and expense generating limbo and it is exactly what a myriad of others have complained of in similar cases [34]. That Plaintiffs are forced to plead the most difficult claim in the federal arsenal, as the only hope for escaping the probate quagmire and obtaining remedy in an otherwise very simple trust administration matter, is well beyond obscene.

Poser Advocacy

Defendants Ostrom and Bayless filed motions asking the probate Court to approve distributions from the "Estate" to pay their fees.[35] In the objections that

[34] http://www.houstonpress.com/news/families-go-to-battle-in-probate-court-only-to-leave-without-anything-7623658

[35] October 20, 2014 PBT-2014-342716 (412249), November 7, 2014 PBT-2014-363911 (412249-401)

followed, totaling hundreds of pages, and five attorney self-designations as experts on fees, the only topic raised was "the Trust."[36]

The award of attorney fees in § 1964(c) marks an exception to the "American Rule," under which each party to a litigation is generally obliged to bear its own attorney's fees regardless of outcome. See e.g. *Chambers v. NASCO, Inc*., 501 U.S. 32, (1991). Ostrom had personal knowledge of the federal court Order that accompanied the remand to the probate court limiting the issue of payment of fees from the trust to agreement between the parties. There were no grounds for such motions and no applicable fee shifting authority relating to breach of fiduciary in the administration of inter vivos trusts. There is no lawful basis for holding distribution of Brunsting Trust assets hostage to secure payment of attorney fees.

The Brunsting Trusts are not property belonging to an estate. None of the Brunsting siblings are heirs to the estate [ROA.17-20360.2372] [ROA.17-20360.2384], none have standing to seek distributions from the "Estate" and the estate owns no liquid assets [ROA.17-20360 2398].

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[36] 2014-11-13 PBT-2014-369853, 2014-11-07 PBT-2014-363911, 2014-11-07 PBT-2014-363907, 2014-08-27 PBT-2014-280737, 2014-10-20 PBT-2014-342716, 2014-12-01 PBT-2014-387708, 2014-12-5 PBT-2014-393808, 2014-12-01 PBT-2014-387901, 2015-02-05 (Dkt_62-1 Ostrom Application for partial Distribution), 2015-07-01 PBT-2015-213684, 2015-07-01 PBT-2015-214532, 2015-07-01 PBT-2015-213764, 2014-12-09 Hearing, 2015-02-15 Hearing, 2015-02-12 PBT-2015-48491, Notice of distribution hearing, 2015-02-11, 2015-02-17 Carole Objection Ostrom 1st Application for Partial Distribution, 2014-12-09 PBT-2014-396326, 2014-12-09 PBT-2014-396930 Order, 2014-12-09 PBT-2014-396928.

The probate court allowed only five hearings, two on fee motions,[37] two involving appointment of a temporary administrator[38] and one hearing on illegal wiretap recordings.[39] The "Emergency" Motion for Protective Order involving illegal wiretap recordings [ROA.17-20360.560] was used as an artifice to displace summary judgement [ROA.17-20360.1472] and trial, in effort to prevent resolution on the merits. An examination of the wiretap hearing transcript [ROA.17-20360.670] reveals no witness testimony and no facts placed in evidence. Moreover, no trust related findings of fact or conclusions of law after hearing have ever been entered in the enterprise court, because no facts have ever been introduced into evidence. Meanwhile, all of this theatrical posturing over fees, while addressing nothing material, has generated an enormous amount of fees.

It only took nine days for Jill Willard Young to get a hearing, while Plaintiff Curtis' request for resetting of summary judgement hearings [ROA.17-20360.1405] in "Curtis v Brunsting" was relegated to a "status conference", where the court abjectly refused to set substantive hearings actually dispositive of the Trust controversy.[40] Scheduling hearings is an administrative function, not an act

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[37] Feb 15, 2015, Dec 9, 2014
[38] July 21, 2015, September 10, 2015, A transcript of the September 10, 2015 hearing has not been made available despite the vast improvement of the reporting technology since the 2006 Senate hearings.
[39] Aug. 3, 2015 [ROA.17-20360.670]
[40] See Transcript of March 9, 2016 [ROA.17-20360.1406]

undertaken in a judicial capacity. The unresolved dispositive motions Curtis could not get set for hearing are telling, and begin on pages [ROA.17-20360.243, 252, 623, and 714].

Defendants make numerous fact claims but fail to attach exhibits or point to the record where any of these facts have been judicially determined. They do not because they cannot! After more than five years, usurpers continue to occupy the office of Trustee[41] while absolutely refusing to meet any fiduciary obligations. There has been no attempt to meet the fiduciaries' burden of proof. There is no alleged 8/25/2010 QBD in evidence and there have been no substantive hearings or rulings resolving even one relevant issue. There has been no full true and complete accounting and no compliance with affirmative orders in the preliminary federal injunction. [ROA.17-20360.1667]

Doctrines of Immunity

The doctrine of "absolute judicial immunity", has become an anachronism as of *Pulliam v Allen 466 U.S. 522 (1984)*. Citing to *Pierson v. Ray, 386 U. S. 547 (1967)*, the Pulliam Court found no indication of affirmative congressional intent to insulate judges from the reach of the injunctive remedy Congress provided in 42 U.S.C. § 1983. Congress' express purpose for the Organized Crime Control Act of

[41] See Certificate of Interested Persons in Appellants Opening Brief on Appeal in No. 12-20164

1970 was the eradication of organized crime in the United States.[42] There is no indication of affirmative congressional intent to insulate state court judges from the reach of the remedy Congress provided in 18 U.S.C. § 1964(c), as demonstrated by Congress' inclusion of honest services fraud, 18 U.S.C. § 1346, among the list of predicate acts 18 U.S.C. § 1961(1).

RICO predicate act crimes and participation in a racketeering conspiracy cannot be considered acts undertaken in a judicial capacity or conduct "arising out of or in connection with legitimate petitioning activities". The addition of a private right of claims at 18 U.S.C. § 1964(c), as an effort to supplement the public prosecutorial resources, does not convert criminal racketeering allegations into ordinary civil tort claims. A RICO complaint alleges criminal conduct; it is only the remedy provided to the non-governmental plaintiff by Congress that causes civil RICO to resemble tort.

These RICO claims are not dealing with attorney or judicial error, and are not attempting to correct mistake, inadvertence or excusable neglect. There are no fully litigated state court determinations to appeal. This RICO matter alleges a profoundly manifest criminal conspiracy with demonstrated intention to hold Trust Property hostage to inflated sham litigation ransoms inappropriately labeled "attorney fees".

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[42] P.L. 91-452, 84 stat. 922, 941 (1970)

SUMMARY OF THE ARGUMENT

The Supreme Court in *Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479, 497 (1985*), articulated the elements of a 1962(c) claim for relief. To successfully plead claims under 1962(c), a plaintiff must prove that (1) a person (2) employed by or associated with (3) an enterprise (4) that is engaged in or affects interstate or foreign commerce (5) conducted or participated in the conduct (6) through a pattern of racketeering activity or collection of an unlawful debt (7) while acting with the necessary mens rea (8) resulting in injury to plaintiff's business or property.

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

Therefore, "[t]o survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible

on its face." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed.2d 868 (2009) (quoting Twombly, 550 U.S. at 570, 127 S. Ct. at 1974).

"A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft, 556 U.S. at 678 (citing Twombly, 550 U.S. at 556, 127 S. Ct. at 1955).

Under Federal Rule of Civil Procedure 8(a)(2), a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." "[D]etailed factual allegations" are not required, *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), at 555, but the court did find that Rule 8 requires the non-moving party to show plausible factual allegations, accepted as true, to "state a claim to relief that is plausible on its face." Id. at 570. A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. Id. at 556.

> *Two working principles underlie our decision in Twombly. First, the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. ... Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework*

> *of a complaint, they must be supported by factual allegations. When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief. Our decision in Twombly illustrates the two-pronged approach.*

Viewed against the backdrop of noted correlative cases, the long standing public discourse and legal treatises, Plaintiffs' claims cannot be logically dismissed as implausible.

> *"If experience demands a presumption that a judge will seize every opportunity presented to him in the course of his official conduct to line his pockets, no canon of ethics or statute regarding disqualification can save our judicial system."- Justice William Rehnquist*[43]

This controversy was created, nurtured and manipulated by attorneys, as part and parcel of an organized generational asset transfer interception industry.

> *What we do matters. We owe it to clients and to litigants not only to be "civil and noble" practitioners of justice but to ensure that the appearance of justice is also served. Unruly and uncaring lawyers and judges do not serve that end. Rude and uncaring staff do not serve that end. We all share the burden of advancing the ends of justice. Because if equal justice is to be dispensed, it must come in forums and from those that the public respects. If ever there is a day when people lose faith in the courts, we as a nation will have lost the great equalizer. We will have lost the ability to protect the weak from the strong and the ability to punish the wicked from the moral high ground.*[44]

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[43] Justice William H. Rehnquist, Sense and Nonsense About Judicial Ethics, 28 REC. ASS'N B. CITY N.Y. 694, 699-700 (1973)

[44] Investiture remarks by the Honorable Alfred H. Bennett, sworn into office May 22, 2015 in Houston, Texas, as United States District Judge for the Southern District of Texas

The people are consistently finding themselves without remedy in the face of corrupt judges and attorneys, who have no external motivation for integrity. Where can one find reason to put faith in a system that protects government actors more than it safeguards the individual and collective rights the government office they occupy was created to protect?

> *"Our government ... teaches the whole people by its example. If the government becomes the lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy." Justice Louis D. Brandeis*[45]

CONCLUSION

Under Rule 12(b)(6) the District Court was obliged to find that the case arose from a matter related exclusively to the Brunsting Trusts, as Plaintiffs plead and as this Court has already held, and not arising from a matter involving the administration of the Brunsting Decedents' Estates, as Defendants claim. Once the court rejects Defendants' "probate matter" argument and accepts that this case is an extension of the same exclusively trust related case and controversy that came before this court as No. 12-20164 in 2012, the court must conclude that Plaintiffs' claims are plausible, that the threat of imminent and continuing injury is substantial, that the complaint, as amended, alleges sufficient facts to state a claim under Rule 9(b) and that dismissal under Rule 12(b)(6) was error.

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[45] http://www.brandeis.edu/legacyfund/bio.html

Appellants ask this court to enter findings of fact and conclusions of law based upon the record, consistent with the holding in No. 12-20164, and to reverse and remand to the District Court with guidance and instructions for further proceedings.

Respectfully submitted,

/s/ Candace Louise Curtis

/s/ Rik W. Munson

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was filed into Action No. 17-20360 and served on this 13th day of August, 2017, as indicated through the Appellate CM/ECF system, which constitutes service on all parties.

/s/ Rik W. Munson

CERTIFICATE OF COMPLIANCE

Pursuant to 5TH CIR. R. 32.2.7 (c), undersigned pro se Plaintiff-Appellant certifies that this brief complies with the type-volume limitations of 5TH CIR. R. 32.2.7 (b).

1. Exclusive of the portions exempted by 5TH CIR. R. 32.2.7 (b)(3), this brief contains 6,632 words of text and 474 words in foot notes for a total of 7106.

2. This brief is printed in a proportionally spaced, serif typeface using Times New Roman 14-point font in text and Times New Roman 12-point font in footnotes, produced using Microsoft Word 2016 software.

3. Upon request, undersigned will provide an electronic version of this brief and/or a copy of the word printout to the Court.

4. Undersigned understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in 5TH CIR. R. 32.2.7, may result in the Court's striking this brief and imposing sanctions against the person who signed it.

/s/ Rik W. Munson