Statute of Frauds

Unjust Enrichment

Conspiracy

To survive a [Rule 12(b)(6)](https://casetext.com/statute/united-states-code/title-28-appendix/federal-rules-of-civil-procedure/rules-of-civil-procedure-for-the-united-states-district-courts-1/title-iii-pleadings-and-motions/rule-12-defenses-and-objections-when-and-how-presented-motion-for-judgment-on-the-pleadings-consolidating-motions-waiving-defenses-pretrial-hearing) motion to dismiss, a plaintiff must plead enough facts “to state a claim to relief that is plausible on its face.” A claim is not “plausible on its face” when “it appears certain that the plaintiff[s] cannot prove any set of facts in support of [their] claim that 3 would entitle [them] to relief.” To state a claim under the Racketeer Influenced and Corrupt Organizations Act (“RICO”), a plaintiff must allege three things: a *person* who engages in a “*pattern of racketeering activity*” that is “connected to the acquisition, establishment, conduct, or control of an *enterprise*.” Upon reviewing the motions and the applicable law, the Court finds that Ms. Bouvier and AJ Holdings have failed to meet this threshold.

Ashcroft v. Iqbal, [556 U.S. 662, 678](https://casetext.com/case/ashcroft-v-iqbal-4#p678) (2009) (quoting Bell Atlantic Corp. v. Twombly, [550 U.S. 544, 547](https://casetext.com/case/bell-atl-corp-v-twombly#p547) (2007)).

Piotrowski v. City of Houston, [51 F.3d 512, 514](https://casetext.com/case/piotrowski-v-city-of-houston-2#p514) (5th Cir.1995) (quoting Leffall v. Dallas Indep. Sch. Dist., [28 F.3d 521, 524](https://casetext.com/case/leffall-v-dallas-independent-school-dist#p524) (5th Cir.1994)); Iqbal, [556 U.S. at 677](https://casetext.com/case/ashcroft-v-iqbal-4#p677). Additionally, in evaluating a complaint under [Rule 12(b)(6)](https://casetext.com/statute/united-states-code/title-28-appendix/federal-rules-of-civil-procedure/rules-of-civil-procedure-for-the-united-states-district-courts-1/title-iii-pleadings-and-motions/rule-12-defenses-and-objections-when-and-how-presented-motion-for-judgment-on-the-pleadings-consolidating-motions-waiving-defenses-pretrial-hearing), the district court should confine itself to the pleadings, and the documents attached to the complaint. Umbrella Invs. Grp., L.L.C. v. Wolters Kluwer Fin. Servs., Inc., No. CV 19-02156, 2020 WL 68613, at \*1 (E.D. La. Jan. 7, 2020).

Scottsdale Ins. Co. v. Dorman, [153 F.Supp.2d 852, 856](https://casetext.com/case/scottsdale-insurance-co-v-dorman#p856) (E.D. La. 2001) (emphasis in original). See In re Burzynski, [989 F.2d 733](https://casetext.com/case/in-re-burzynski) (5th Cir. 1993).

“A plaintiff establishes the existence of an enterprise by providing ‘evidence of an ongoing organization, formal or informal, and by evidence that the various associates function as a continuing unit.' *Walker v. Beaumont Indep. Sch. Dist*., [938 F.3d 724, 738](https://casetext.com/case/walker-v-beaumont-indep-sch-dist-6#p738) (5th Cir. 2019); *U.S. v. Turkette*, [452 U.S. 576, 583](https://casetext.com/case/united-states-v-turkette#p583) (1981).

“Continuity” is both a closed- and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition…A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates

*AJ Holdings of Metairie, LLC v. Fischbein*, Civil Action 21-318, at \*1 (E.D. La. Jan. 31, 2022)

The district court's jurisdiction over probate proceedings is appellate only. Dunaway v. Easter, [133 Tex. 309](https://casetext.com/case/dunaway-v-easter), [129 S.W.2d 286](https://casetext.com/case/dunaway-v-easter) (Tex.Com.App. 1939, opinion adopted by S.Ct.). The issues on appeal to the district court are confined to those made in the probate court. Myers v. Spharler, [370 S.W.2d 239](https://casetext.com/case/myers-v-spharler) (Tex.Civ.App., Texarkana 1963, writ ref'd n. r. e.). Kaufman's Guardianship Est. in re 429 S.W.2d 612 (Tex. Civ. App. 1968)

The district court has only appellate jurisdiction in probate matters. Article 1706, Revised Statutes. On an appeal from the probate court to the district court, only such issues as were presented in the probate court can be determined in the district court. Levy v. Moody (Tex.Civ.App.) 87 S.W. 205; Vance v. Upson, 64 Tex. 266; Minor v. Hall (Tex.Civ.App.) [225 S.W. 784](https://casetext.com/case/minor-v-hall). Magee v. Magee, 272 S.W. 252, 254 (Tex. Civ. App. 1925)

The State's pleadings in the case at bar allege solely a suit on a rejected claim as provided for by [Section 313 of the Probate Code.](https://casetext.com/statute/texas-codes/probate-code/chapter-viii-proceedings-during-administration/part-1-inventory-appraisement-and-list-of-claims/section-313-repealed) It is not an appeal from an order of the probate court. It is well settled that the district court's jurisdiction over probate proceedings is appellate only. Texas Constitution, Article 5, § 16, Vernon's Ann.St. Dunaway v. Easter,[133 Tex. 309](https://casetext.com/case/dunaway-v-easter), [129 S.W.2d 286](https://casetext.com/case/dunaway-v-easter) (Tex.Com. of App.1939); Callahan v. Stover,[263 S.W.2d 630](https://casetext.com/case/callahan-v-stover) (Tex.Civ.App.--Beaumont, writ ref'd). Smith v. State, 493 S.W.2d 650, 653 (Tex. Civ. App. 1973)

In probate proceedings any person who may consider himself aggrieved by any order, decree, or judgment of the county court may appeal to the district court of the county. Rev. Stats., art. 2225. And the jurisdiction of the district court over the county court in probate matters is appellate only. Franks v. Chapman, 60 Tex. 46. Shrewsbury v. Ellis, 26 Tex. Civ. App. 406, 407 (Tex. Civ. App. 1901)

Please take judicial notice that Andrew Curtis is not now and has never been party to any proceeding or claim filed in this court and that no judgment entered in this court can prejudice his rights as a successor beneficiary to his mother’s interests, even if the First District Court of Appeals denies her currently pending action in that court.

A void judgment may be attacked at any time by a person whose rights are affected. See El-Kareh v. Texas Alcoholic Beverage Comm'n, [874 S.W.2d 192, 194](https://casetext.com/case/el-kareh-v-tx-alcoholic#p194) (Tex.App. — Houston [14th Dist.] 1994, no writ); see also Evans v. C. Woods, Inc., No. 12-99-00153-CV, [1999 WL 787399, at \*1](https://casetext.com/case/evans-v-woods-1#p1) (Tex.App. — Tyler Aug. 30, 1999, no pet. h.)

“A void judgment can be attacked at any time. ” Gower v. State, 332 S.W.2d 328, 330 (Tex. Crim. App. 1960) 12 Tex.Jur., Criminal Law, Sec. 111, page 385

A void judgment may be attacked either directly or collaterally. PNS Stores, 379 S.W.3d at 271.

“A void judgment may be attacked anywhere at any time. ” La Duke v. State, 312 S.W.2d 242, 245 (Tex. Crim. App. 1958)

A void judgment may be attacked at any time by a person whose rights are affected. See El-Kareh v. Texas Alcoholic Beverage Comm'n,874 S.W.2d 192, 194 (Tex.App. — Houston [14th Dist.] 1994, no writ); see also Evans v. C. Woods, Inc., No. 12-99-00153-CV, 1999 WL 787399, at \*1 (Tex.App. — Tyler Aug. 30, 1999, no pet. h.) In re Nash, 13 S.W.3d 894, 899 (Tex. App. 2000)

The general rule is that the rights of persons can be determined only in some proceeding to which they are parties. Stated another way, a judgment is not binding upon those who were not parties thereto or who are not in privity thereto. Kirby Lumber Corp. v. Southern Lumber Co.,145 Tex. 151, 196 S.W.2d 387 (1946); Lobit v. Crouch,293 S.W.2d 110 (Tex.Civ.App.-Austin, 1956, wr. ref'd. n.r.e.). Dean v. First Nat. Bank of Athens, 494 S.W.2d 222, 226 (Tex. Civ. App. 1973)

"The invalidity of a void order may be asserted by any person whose rights are affected at any time and at any place." Qwest Microwave, Inc. v. Bedard, [756 S.W.2d 426, 439](https://casetext.com/case/qwest-microwave-inc-v-bedard#p439) (Tex.App. — Dallas 1988, orig. proceeding)

On October 22, 2024 attorney Stephen Mendel filed a motion for an interim distribution to “the remaining beneficiaries” to pay his alleged fees.

"When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.' Article 2524 — 1, sec. 11, Vernon's Ann.Tex.Stats.

A trial court's declaration "does not prejudice the rights of a person not a party to the proceeding." [Tex. Civ. Prac. & Rem. Code Ann. § 37.006(a)](https://casetext.com/statute/texas-codes/civil-practice-and-remedies-code/title-2-trial-judgment-and-appeal/subtitle-c-judgments/chapter-37-declaratory-judgments/section-37006-parties) (West 2014); *Brooks v*. *Northglen Ass'n*, [141 S.W.3d 158, 163](https://casetext.com/case/brooks-v-northglen-association#p163) (Tex. 2004).

According to Texas Estates Code §402.001

Section 37.006 of the Uniform Declaratory Judgments Act (the "UDJA") requires that, when "declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties." Tex. Civ. Prac. & Rem. Code § 37.006(a). Undisputedly, Target was not a party to the Biloxi Bacon lawsuit. "A declaration does not prejudice the rights of a person not a party to the proceedings." Id. Texas courts, including this court, have universally enforced this provision. See, e.g.,Brooks v. Northglen Ass'n , 141 S.W.3d 158, 163 (Tex. 2004) (parties not joined in declaratory judgment suit are not bound by declarations arising therefrom); In reEstate of Nunu , 542 S.W.3d 67, 77-78 (Tex. App.—Houston [14th Dist.] 2017, pet. denied) Target Corp. v. D&H Props., 637 S.W.3d 816, 841-42 (Tex. App. 2021)

The declaratory judgment statute does not compel a different result. All persons who have any interest that would be affected by the declaration shall be made parties to a declaratory judgment action. A declaration does not prejudice the rights of a person not a party to the proceeding. TEX.CIV.PRAC. REM. CODE ANN. § 37.006(a) (Vernon 1986). Mobil Explor Prod v. McDonald, 810 S.W.2d 887, 890 (Tex. App. 1991)

DTPA’s bar against unconscionable behavior

This Notice of Appeal is filed by CANDACE LOUISE CURTIS, challenging the trial court's subject matter jurisdiction over claims brought by CANDACE LOUISE CURTIS against Amy and Anita Brunsting in the above titled cause No. 412,249-401 or any related case.

**RELATED PROCEEDINGS**:

**CAUSE NO. 412,248** Estate of Elmer H. Brunsting, DECEASED

**CAUSE NO. 412,249** Estate of Nelva E. Brunsting, DECEASED

**CAUSE NO. 412,249-402**: Candace Louise Curtis vs Anita Brunsting, Amy Brunsting and Does 1-100 filed U.S. District Court Southern District of Texas No. 4:12-cv-592 on 2/27/2012;

Candace Louise Curtis appeals the trial court’s denial of her Plea to the Jurisdiction and exercise of subject matter jurisdiction over claims of Candace Louise Curtis against Amy and Anita Brunsting in Cause No. 412249-401 and all related matters.

Candace Louise Curtis’ Ground for appeal includes the following:

# WANT OF JURISDICTION

The Court lacks jurisdiction over any claims asserted by Candace Louise Curtis against Amy and Anita Brunsting for the following reasons:

1. Candace Louise Curtis never filed suit against Anita or Amy Brunsting in this court or any other Texas court.
2. Candace Curtis’ federal lawsuit against Amy and Anita Brunsting, Cause No. 4:12-cv-592, in the Southern District of Texas, was never lawfully remanded to this Court because it was never removed from this Court.
3. Candace Curtis’ federal lawsuit against Amy and Anita Brunsting, Cause No. 4:12-cv-592, in the Southern District of Texas, was never lawfully transferred to this court because it was never in any State Court.
4. Candace Curtis’ federal lawsuit against Amy and Anita Brunsting, Cause No. 4:12-cv-592, in the Southern District of Texas, was not refiled in the probate court and Candace Curtis’ had no pending action in the probate court for counter claims to be filed in response to.
5. The Probate Court had no jurisdiction over the purported counter-claims of Amy and Anita Brunsting against Candace Louise Curtis, as Candace Louise Curtis was never served with notice of any such lawsuit.
6. The Court had no jurisdiction over the Elmer H. Brunsting Irrevocable Trust (informally referred to as the Elmer H. Brunsting Decedent’s Trust), because the Elmer H. Brunsting Trust did not pour into Estate of Nelva Brunsting and Estate of Nelva Brunsting did not pour into the Elmer H. Brunsting irrevocable trust.
7. The Court had no jurisdiction over the Elmer H. Brunsting Irrevocable Trust because Elmer H. Brunsting passed April 1, 2009. Independent executor Carl Brunsting’s April 9, 2013 action missed the four year statute of limitation for bringing claims on behalf of the estate of Elmer H. Brunsting No. 412248 by eight days; Tex. Civ. Prac. & Rem. Code § 16.004. The Elmer H. Brunsting irrevocable trust owns the lion’s share of all trust assets and the probate court never had the jurisdiction to determine any action involving the Elmer H. Brunsting irrevocable trust, created pursuant to Article VII on April 1, 2009.
8. The Court lacked ancillary jurisdiction over any Brunsting related trust because the Pour-over estate closed upon the filing of the inventory as all right, title and interest in any and all claims became trust business on the date the estate administration closed.
9. The Court lacks jurisdiction over Candace Louise Curtis’ registration of foreign judgment.

## Statutory Probate Court No.412249-401

1. April 9, 2013 Independent Executor Carl Brunsting filed non-probate related civil tort claims in the probate court. In filing non-probate related civil tort claims in the probate court Independent Executor Carl Brunsting improperly requested the probate court to interfere in the independent administration; violated Section 6 of the wills and had no authority under statute to file non-probate related civil tort claims in the probate court after the inventory, appraisement and list of claims had been approved; administration of the pour-over estate had been completed and the estates had been dropped from the active docket. (see Tex. Govt. Code § 25.0021)
2. Original, Exclusive and Dominant Jurisdiction over a controversy between an independent executor and the beneficiaries of the sole devisee trust is in the district court and not the statutory probate court*.* The statutory probate court is estopped from interfering with the independent administration, subject to limited exceptions that are inapplicable here.

“The probate court has no jurisdiction, absent a specific statutory provision, to determine controversies between an independent executor and the devisees and legatees under the will. Griggs v. Brewster, supra; Gonzalez v. Gonzalez, [309 S.W.2d 111](https://casetext.com/case/gonzalez-v-gonzalez-17) (Tex.Civ.App. Forth Worth 1958, no writ).”[[1]](#footnote-1)

## NO PLAINTIFF IN 412249-401

1. Disabled independent executor Carl Brunsting resigned and substituted his wife Drina as his alleged attorney in fact. There is no plaintiff with standing in ancillary cause no. 412249-401 after February 19, 2015 when Carl’s resignation was approved as there is no “independent representative” for the closed estate, no need for continuing administration (as there is nothing left to be performed under the pour-over will after the inventory was approved) and thus, no basis for appointing a successor. Carl has no individual standing in the administration of an estate to which he is not a devisee and his wife Drina has the same want of individual standing. Carl’s action was filed as ancillary to estate of Nelva Brunsting No. 412249, involves a living trust and not a testamentary trust and, was filed ancillary to an independent administration, not a dependent administration.
2. It was alleged that Carl and Candace were consolidated but Bobbie G. Bayless, attorney for Drina Brunsting, attorney in fact for Carl Brunsting, was emphatic in telling the probate court at hearing on her motion to sever, that Carl and Candace had no claims in common, even though no substantive issues had ever seen a hearing and no substantive issues had been decided, including the absence of any declaration of what instruments constitute the trust.

# COMPLETE ABSENCE OF JURISDICTION

1. Curtis vs. Brunsting in the Fifth Federal Circuit and the preliminary injunction issued in the Southern District of Texas, prior to claims being filed in the probate court, are res judicata. The state court is collaterally estopped from relitigation of those issues under the full faith and credit clause of Article IV Section 1 of the Constitution for the United States of America.
2. Curtis has been Denied Due Process as no evidentiary hearing was ever held. All non-probate related orders on contested issues of fact, entered without hearing, are void.
3. Local rule 7.1 required dismissal for want of prosecution when a case had been on file for more than three years without being set for trial. Estate of Nelva Brunsting, Ancillary matter No. 412249-401, has no plaintiff with standing, was without a docket control order and without a date set certain for trial for more than six years.
4. Without a pending estate administration a statutory probate court lacks subject matter jurisdiction over matters filed as ancillary and Texas Estates Codes 32.005, 32.006, 32.007 cannot be taken out of the context of Title II. (Tex. Govt. Code § 25.0021)
5. Summary Judgment was Abuse of Discretion as Judge Kathleen Stone signed the summary judgment order February 25, 2022, but failed to render judgment at the pretrial conference where summary judgment was announced and she clearly stated she signed the order based upon conversations with Judge Horwitz and not based upon any findings of fact or conclusions of law rendered after a Dispositive Motions Hearing. o plaintiff with Standing in 412249-401 after February 19, 2015)
6. The summary judgment order is self-defeating as it identifies numerous disputed issues of material fact; no declaratory judgment hearing was ever had; no declaratory judgment was ever entered and the Defendants proposed summary judgment order holds Defendants own fiduciary disclosures in the Southern District of Texas to lack authenticity. (No plaintiff with Standing in 412249-401 after February 19, 2015)
7. The summary judgment order is self-defeating as it assumes facts not in evidence over Appellants specific objections to assuming said facts. (No plaintiff with Standing in 412249-401 after February 19, 2015)
8. The alleged Co-Trustee Defendants were in perpetual breach of trust for more than seven years and in perpetual violation of a federal preliminary injunction for more than six and one half years when they filed their “original Counter claims” on November 4, 2019. (No plaintiff with Standing in 412249-401 after February 19, 2015 and the Federal Plaintiff’s lawsuit was not refiled in the probate court.)
9. The alleged Co-Trustee Defendants “original Counter claims” were compulsory counter claims waived under Texas Civil Practices and Remedies Code 97(a), are barred by the four year statutes of limitations under Tex. Civ. Prac. & Rem. Code § 16.004, violate Article XII Section B of “the trust” and are otherwise barred by the doctrine of unclean hands. (No plaintiff with Standing in 412249-401 after February 19, 2015 and nothing to file counter claims against)
10. The alleged CO-TRUSTEE Defendants Motion for Summary Judgment fails to identify each element of the Defendants alleged causes of action upon which they seek judgment and for which they allege there is no evidence, and are void for vagueness, are disloyal, were brought in bad faith and exceed the authority granted to trustees. (No plaintiff with Standing in 412249-401 after February 19, 2015; the Federal Plaintiff’s lawsuit was not refiled in the probate court and there was no pending action for counter claims to be filed in response to)
11. There was ample evidence in the record showing that the alleged CO-TRUSTEES violated fiduciary duties owed to Plaintiff Candace Cutis; converted CURTIS’ beneficial interest to their own use and benefit; comingled personal assets with fiduciary assets, remained in wrongful possession of Candace Curtis property and committed fraud throughout more than ten years of threats, intimidation and attrition tactics while failing to even perform the first obligation commanded of them at the passing of Nelva Brunsting under Section D of Article VIII terminating Nelva’s trust and Section D of Articles IX terminating Elmer’s trust. (No plaintiff with Standing in 412249-401 after February 19, 2015)
12. The probate Court failed to issue declaratory judgment that the January 12, 2005 Restatement, as amended September 6, 2007, are the only active and controlling trust instruments; failed to declare the August 25, 2010 Qualified Beneficiary Designation and Testamentary Power of Appointment (hereinafter 8/25/10 QBD) void and severable from the trust; failed to declare that the in Terrorem clause contained therein offends public policy and assumed the instrument is valid without it having been qualified as evidence. Defendants have not produced the three different alleged originals or made any attempt to do so and will not produce the three different alleged originals because they cannot produce the three different alleged originals and they have already pled so in their own denials of personal knowledge.
13. Defendant Co-Trustees Motions for sanctions constitute breach of the fiduciary duty of loyalty and exceed the authority granted to trustees by Article XII B.
14. The challenged Orders violated CANDACE CURTIS’ Constitutional right to a meaningful opportunity to be heard.
15. There is no evidence that CANDACE CURTIS violated the “no contest” provision of the 2005 restatement of the BRUNSTING FAMILY LIVING TRUST. It is the alleged Co-Trustee DEFENDANT’s burden of proof to establish the what, when, where and how CANDACE CURTIS is claimed to have violated a “no contest” provision of the restatement.
16. The Summary Judgement Order fails to specify the primitive elements necessary for any summary judgment, whether no-evidence or traditional and finds the Defendant Co-Trustees own disclosures in the Southern District of Texas to be unauthenticated hearsay.
17. Defendant, alleged Co-Trustees, have failed to establish the existence of an active trust, as there is No-Evidence of affirmative fiduciary performance. Forfeiture clauses cannot be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary's duties, for seeking redress against a fiduciary for a breach of the fiduciary's duties, or for seeking a judicial construction of a trust or for questioning alleged changes to an irrevocable trust.
18. Attorneys’ fees may not be granted in Texas absent a contract or statute authorizing attorneys’ fees and defendant’s demands that their fees be paid from the trust violates provisions of the trust instruments governing professional fees; violate the orders entered in the Southern District of Texas prior to the independent executor’s filing of non-probate tort claims in the probate court as ancillary to the closed estate of Nelva Brunsting and are prohibited by the trust, according to Defendants own opposition to Petitions for distributions to pay attorneys.
19. The Court erred in ruling that Candace Curtis is liable for the alleged Co-trustees’ attorneys’ fees or that the alleged Co-trustees’ attorneys’ fees shall be taken out of CANDACE CURTIS’ property interests, as Candace Curtis share vested at the passing of Nelva Brunsting 11/11/2011, and was neither alienable nor subject to claims of judgment creditors. Having plead so in Anita’s third set of attorneys first pleading on December 5, 2014, the alleged Co-trustees’ are estopped from arguing the contrary without an admission that they are challenging the settlors intentions and thereby violating the very in Terrorem provisions they project onto trust beneficiary and de jure trustee Candace Curtis.

This appeal is being taken to the 14th Court of Appeal in Houston and appellant invokes the appellate court's original jurisdiction specifically requesting that, if the appeals court lacks jurisdiction to consider want of jurisdiction on direct appeal that Appellants appeal be treated as a mandamus petition. Appellant Candace Louise Curtis reserves the right to amend this Notice of Appeal.

1. Griggs v. Brewster, 122 Tex. 588, 62 S.W.2d 980 (1933); [↑](#footnote-ref-1)