

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS,

Plaintiff,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

§  
§  
§  
§  
§  
§  
§  
§

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 (6<sup>th</sup> 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 8<sup>th</sup> day of March, 2012.



Kenneth M. Hoyt  
United States District Judge

TRUE COPY I CERTIFY ATTEST:  
DAVID J. BRADLEY, Clerk of Court

By  7/26/19  
Deputy Clerk