Appellees joint answer is fraught with Ad hominem attacks in effort to avoid substantive arguments. Their conclusory opinions are unsupported by prevailing law and accompanied by misstatements of the record intended to deceive. We begin with misstatement of Local Rule 2.5.6 omitting the key word “pending”. Local rule 2.6.5 actually reads as follows [Exhibit x]:

LR 2.6 Ancillary Matters that belong in a different file with on ancillary or related case designation. Those contested matters that bear no direct relationship to the administration of the estate and that would have the possibility of becoming an independently-tried lawsuit (each potentially with its own docket control and discovery schedules, etc.):

2.6.4 Testamentary Trust Actions (other than construction issues);

2.6.5 lntervivos Trust Actions (settlor is decedent in probate **pending** in subject court);

2.6.6 Declaratory judgments (after the will is admitted to probate);

This case only involves the administration of a living trust. There is no evidence of an ongoing probate case, probate matter or probate proceeding and without a pending probate there can be no ancillary jurisdiction.

## Failure to Render

A void judgment is an absolute nullity and has no legal force or effect, while a voidable judgment is capable of being voided or confirmed. *See In re Sensitive Care, Inc.*, [28 S.W.3d 35, 39](https://casetext.com/case/in-re-sensitive-care#p39) (Tex.App.-Ft. Worth 2000, no pet.); *Easterline v. Bean*, [49 S.W.2d 427, 429](https://casetext.com/case/easterline-et-al-v-bean#p429) (Tex. 1932). A judgment is void when the court had no jurisdiction to issue it. *Browning v. Placke*, [698 S.W.2d 362, 363](https://casetext.com/case/browning-v-placke#p363) (Tex. 1985). Other defects merely render the judgment voidable. *Id.* These concepts can be applied to the issues before us. *Peacock v. Wave Tec Pools, Inc.*, 107 S.W.3d 631, 636 (Tex. App. 2003) *In re Energy Transfer Fuel 250 S.W.3d 178 (Tex. App. 2008)*

The void-judgment exception recognizes that there are some rare situations in which a trial court's judgment is accorded no respect due to a complete lack of jurisdiction to render the judgment in question. *Id*. "A void judgment is a 'nullity' and can be attacked at any time." *Id*. at 667-68 (citing *Ex parte Patterson*, [969 S.W.2d 16, 19](https://casetext.com/case/ex-parte-patterson-5#p19) (Tex. Crim. App. 1998)).

("The void judgment exception recognizes that there are some rare situations in which a trial court's judgment is accorded no respect due to a complete lack of power to render the judgment in question. A void judgment is a 'nullity' and can be attacked at any time." (internal footnotes omitted)); *see Masa Custom Homes, LLC v. Shahin*, [547 S.W.3d 332, 338](https://casetext.com/case/masa-custom-homes-llc-v-shahin-2#p338) (Tex. App.-Dallas 2018, no pet.) (concluding that when a judge has no authority to render an order or judgment, that order or judgment is void).

## Failure of the trial court to render

We should probably begin by eliminating the Summary Judgment order.

## “Pending”

We should probably correct Appellees lack of candor in citing to the local rules. Rule 2.6.5 contains the word “pending” which Appellees seem to have omitted from their “quotation” of that rule.

A living trust is not part of a decedent’s estate.

They decline to address standing or distinguish between personas and continually use the “probate” label without distinguishing between an inter vivos trust and a decedent’s estate.

Absence of a Controversy renders matter moot

## Was there ever a 412249-401?

Assuming the April 9, 2013 Petition filed by Plaintiff Carl Brunsting invoked the jurisdiction of the probate court, his resignation from the office of independent executor left office empty and the action without a plaintiff. Plaintiff Carl Brunsting, in his individual capacity has no standing in probate but substituted wife as attorney in fact (without proof).

## If there was a 412249-401 did 412249-401 become moot at the resignation of the independent executor?

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal.

At this point in time Bayless has a disabled client with no lawsuit and his family stuck in a court that cannot compose itself with competent jurisdiction and being threatened, by defendants, with a guardianship action in order to get co-operation against the federal plaintiff that will not contract with unholy creatures to launder a ransom as “fees for legal services”.

## Was there a Remand?

Not removed and could not be returned

## Transfer?

Probate court transferring federal case to itself is not authorized by law

## Resignation?

A case becomes moot if a controversy ceases to exist between the parties at any stage of the legal proceedings, including the appeal.

Carl’s resignation left his lawsuit without a plaintiff and without a plaintiff, there can be no controversy

## Conversion & Complete Merger labeled “Agreed Order to Consolidate”

412249-401 had no plaintiff as of February. Can you merge something with nothing in March? Can you consolidate two cases that are not there?

## Mendel billing statement

Problem with Remand of case not removed

## Spielman billing statement

Anita threatens Carl with guardianship proceedings and Bayless plays let’s make a deal.

## Rule 11 Agreement

December 5, 2021 Bayless and her original defendants make their non-prosecution agreement public.

## Bayless at hearing on severance

Candace and Carl have no issues in common and “the parties” (which excludes Curtis) have an agreement.

## Summary Judgment

Defendant/Appellees Original Counter Claims, filed more than six years after their original answer, were compulsory counter claims waived under TRCP 97(a); are vague and substantively indefensible under trust law and failed to state a claim as it contains no statement invoking statutory probate jurisdiction or any other jurisdiction.

## Bayless Non-suit

Carl and Candace have no controversy and never did

## Mendel 2nd request for extension

Appellees are all in concert and have complementary issues.

Cause No. 412,249, titled “Estate of Nelva Brunsting”, is a container object. The only things in that container are the things that belong in that container. [Local Rule 2.2] listed in [Local Rule 2.5]

*“The Clerk shall maintain separate files for each sub-file number”* [Local Rule 2.4]. Cause No. 412,249-401, is a container object created to hold matters considered as ancillary to the base case [Local Rule 2.6] that do not belong in the base case. [Local Rule 2.5]

Ancillary Matters that belong in a different file with an ancillary or related case designation includes *“lntervivos Trust Actions (settlor is decedent in probate* ***pending*** *in subject court);”* [Local Rule 2.6.5]

Can you create a lawsuit in a court with no subject matter jurisdiction by combining two cases that are not really there?

[2014-05-09 Case 4-12-cv-592 [Doc 109] Ostrom Motion to Remand.pdf](http://probatemafia.com/brunsting/2014-05-09%20%20Case%204-12-cv-592%20%5BDoc%20109%5D%20Ostrom%20Motion%20to%20Remand.pdf)

[2014-05-15 Case 4-12-cv-592 Doc 112 Order granting Motion to Remand.pdf](http://probatemafia.com/brunsting/2014-05-15%20Case%204-12-cv-592%20Doc%20112%20Order%20granting%20Motion%20to%20Remand.pdf)

[2014-11-17 Mendel Notice of Appearance for Anita Kay Brunsting.pdf](http://probatemafia.com/brunsting/2014-11-17%20Mendel%20Notice%20of%20Appearance%20for%20Anita%20Kay%20Brunsting.pdf)

[2014-12-08 412249-401 Spielman Notice of APPEARANCE.pdf](http://probatemafia.com/brunsting/2014-12-08%20412249-401%20Spielman%20Notice%20of%20APPEARANCE.pdf)

[2015-02-19 Case 412249-401 PBT-2015-57597 Carl Resignation.pdf](http://probatemafia.com/brunsting/%5B13%5D%202015-02-19%20Case%20412249-401%20PBT-2015-57597%20Carl%20Resignation.pdf)

[2015-03-09 Agreed Order to Consolidate cases.pdf](http://probatemafia.com/brunsting/%5B15%5D%202015-03-09%20Agreed%20Order%20to%20Consolidate%20cases.pdf)

## Dominant Jurisdiction

 Southern District of Texas

 Harris County District Court 164

 Harris County Probate Court No. 4

## Statutory Probate Court Jurisdiction over Inter Vivos trusts

 Was the Settlor a Decedent in a probate matter pending in the probate court at the time the independent executor filed his trust related tort suit in the probate court? [Local Rule 2.6.5 and Property Code § 115] Independent administration ends when the debts are paid and the assets have been distributed. Independent administration means independent of probate court jurisdiction. Was the independent executor foreclosed from filing his trust related tort suit in the probate court by the Decedents Will? Tex. Est. § 402.001 and dominant case law? Did Trust beneficiary Carl Brunsting ever have individual standing in the administration of the Settlors estates when the only Devisee was the trust?

**The Fiduciary Relationship**

"The relationship existing between a principal and his agent is fiduciary in nature. It requires loyalty and good faith, integrity of the strictest kind, and fair and honest dealing by the agent toward the principal. In this connection, it is said that one who occupies such a fiduciary relationship to another must measure his conduct by high equitable standards and not by the standards commonly required in business dealings between ordinary persons. Consequently, an agent has the duty of imparting to his principal every material fact relating to transactions within the scope of the agency on becoming aware of such facts during the course of the transaction. Good faith, honesty, and fair dealing should always prevail in any transaction in which one person is acting as the agent of another, and there should never be any concealment of matters that might tend to influence the agent's actions, to the prejudice of his principal.

"In every agency relationship, the principal is entitled to the unbiased judgment and best efforts of the agent. Furthermore, for obvious reasons founded on public policy, an agent may not assume any relation that is antagonistic to the duties owed by him to his principal. For example, An agent may not act in behalf of another whose interest is adverse to that of the principal, or act in a double capacity or for two or more principals, unless all of the principals consent to such representation with full knowledge of the facts. Again, an agent may not deal with the subject matter of the agency in such a manner as to injure the principal, or act in connection with the subject matter so as to secure for himself secret or unauthorized benefits. . . ." (Emphasis ours.)

*Anderson v. Griffith*, 501 S.W.2d 695, 700 (Tex. Civ. App. 1973)

**Failure to State a Claim**

Court is defined as “competent jurisdiction”, an abstraction of the mind composed of certain specific elements. Those elements always involve jurisdiction of the subject matter and jurisdiction of the persons. Other elements such as case or controversy, amount in controversy etc. may vary depending upon the type of action and relief sought. Probate is an action in rem. Controversies involving trusts are matters in equity brought in personam. Such matters can only be construed as quasi in rem as “a trust” defines a fiduciary relationship in regard to equitable interests in property.

Defendant Anita Brunsting and Defendant Amy Brunsting filed their Original Counter Claims November 4, 2019 individually and as Co-Trustees of The Restatement of The Brunsting Family Living Trust (the "Brunsting Family Living Trust"). Not only are the claims vague, substantively absurd, foreclosed by limits on the powers granted to the trustee by Article XII Section B of the Trust; waived under the compulsory counter-claim rule and barred by limitations, but

Defendant Appellees Original Counter Claims:

**Mail Fraud**

[The federal mail fraud statute establishes criminal sanctions for anyone who, "having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of f…](https://casetext.com/case/united-states-v-glover-72?jxs=9cir,us,1cir,2cir,3cir,4cir,5cir,6cir,7cir,8cir,10cir,11cir,dccir,fedcir,ustc,adminmat,fedreg,fedstat,fedsecsrcs&p=1&q=extremism&sort=relevance&type=case#uh650214215cd918002a39cd2d)

*United States v. Glover*, No. 16-4212 (4th Cir. Nov. 27, 2017)

## What Instruments?

2005 Restatement as amended in 2007

1st QBD valid but must be severed from Testamentary Power. fails on substantive ground and fails procedurally due to absence of two independent witness signatures. The QBD only applies to Nelva’s trust. The Testamentary Power fails on substantive ground and fails procedurally due to the absence of two independent witness signatures

2nd QBD Not valid on substantive ground, Instrument objected to as not in evidence and they have not produced three originals to match their three signature page versions. They have not attempted to introduce these three signature page versions and qualify them as evidence by witness testimony because they cannot. 2nd QBD does not rescind the 1st QBD but afforms it. QBD only applies to the Settlor that exercised the power (only applies to Nelva’s trust) Testamentary Power fails on substantive ground and fails procedurally due to absence of two independent witness signatures. Substantively it seeks to amend an irrevocable trust, is self-contradictory and the corruption of blood provisions offend public policy. It was a greedy beneficiary that colluded with the estate planning attorneys to create a series of illicit change instruments after the trust could no longer be altered or amended.

It may be hearsay that Nelva, when asked about the 2nd QBD, said she did no such thing! Three different signature pages have arisen as one version was filed into the record by Carole’s counsel, one version was filed by Anita and one by Amy. The Notary log shows 3 COT’s signed on August 25, 2010 but only 1 QBD. There is more but why beat a dead horse?

Changes made by the Vacek Law Firm working in concert with Anita Brunsting are what gave Anita Control over the trust. Anita’s intentional failure to account and failure to disclose is what compelled litigation and as alleged from the o0nset (In SDTX 2/27/2012 Doc 1 pg 20 para 4) Anita plannded to steal the trust in such a way that if anyone complained, she’d get to keep it.

Anita intentionally caused litigation to be brought in order to advance her 2nd QBD/TPA in Terrorem clause with corruption of blood argument, a theory that, if true, would enlarge her share. That is exactly what the Co-Trustee defendants conduct has since proven.

Co-Trustee Anita Brunsting had no standing to file counter claims against beneficiary Candace Curtis or beneficiary Carl Brunsting (Art. XII Section B 2005 Restatement) [Tab 4]. Neither beneficiary Anita Brunsting nor beneficiary Anita Brunsting had ground to sue against beneficiary Candace Curtis or beneficiary Carl Brunsting as all of the beneficiaries have the same rights. The trustees have obligations of a fiduciary nature. It is Co-Trustee Anita Brunsting that failed in her duty to account, (Art. XII Section E 2005 Restatement) [Tab 4]

The Report of Special Master and the hearing that followed showed that Anita failed to establish books and records of accounts, self-dealt and co-mingled assets and made unequal distributions and that none of these dealings were disclosed to Carl or Candace.

Under the principles of res judicata, an issue/claim which has already been litigated on the merits is a bar on future lawsuits, the party is collaterally estopped from raising it again. As a result, a party wishing to re-litigate an issue/claim which has already been decided on the merits must show that the initial judgment was invalid by way of a collateral attack.

Common grounds for a collateral attack include a lack of personal jurisdiction, a lack of subject matter jurisdiction, and a failure of due process in the first case. For a collateral attack, the failure of due process is generally an inability for the party being barred to argue their side in court.

The full faith and credit clause, seems to forbid collateral attack in civil cases

Civil litigants do not lose their separate identity when their case is consolidated with another.

*Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100* is not *ESTATE OF NELVA BRUNSTING*

*Candace Louise Curtis vs. Anita Brunsting, Amy Brunsting and Does 1-100 (Curtis v Brunsting)* is an action in personam relating exclusively to the administration of an “A/B inter vivos trust” (The family Trust hereinafter “the trust”).

*ESTATE OF NELVA BRUNSTING* is an action in rem, in which the decedent was one of two Settlors that created the family trust which, is the sole devisee of both decedents’ wills.

Both Decedents wills required independent administration. Independent administration is considered closed when all of the debts are paid and the estate has been distributed.

There was no inventory of any substantial worth and independent administration is considered closed when the verified inventory has been filed with and approved by the probate court. In the instant in which the estate closed, all right title and interest vested in the sole devisee including the right of claims.

DUE PROCESS

A trust is defined by an indenture. The indenture defines a relationship between a trustee (a fiduciary) and a beneficiary (cestui que) in regard to the property (Corpus) held in trust. After ten years, Appellee’s cannot produce a declaratory judgment or even a transcript of a substantive hearing in which testimony was given, a discussion was had and determinations were made regarding which instruments are being referred to when we say “The Trust”.

After ten years Appellee’s cannot produce, for the court’s review, even one substantive hearing in which sworn testimony was taken in evidence.

An instrument Appellees rely upon [ROA 181-218] is not in evidence. [Tab 38: Relators Addendum to Complaint 518] and has been objected to

Either the obligations of the trustee are affirmative and active or the trust is passive. Defendant Co-Trustee Appellees are either in breach of the affirmative duties prescribed by an active trust or they are in wrongful possession of the assets of a dry trust. Despite the complete absence of evidence of actual litigation, Appellees refer to Appellant as vexatious and argue that she is somehow confused in her interpretation of the law and menially dissatisfied with a host of negative rulings in Probate Court No. 4. Appellees even go so far as to misstate local rule 2.6.5 to evade the word “pending” as will be addressed supra.

On page 11, of their combined appellee brief, Appellees argue that “*a ruling from this Court that Probate Court No. 4 had no subject matter jurisdiction will erase a host of negative rulings (properly) entered against her in Probate Court No. 4.*” The only thing a proper ruling from this Court will erase is a host of fees amassed from ten years of malingering in Harris County Probate Court No. 4 while producing nothing of benefit for the real parties in interest.

The Memorandum of Preliminary Injunction established two of the three elements of a breach of fiduciary duty claim: (1) a fiduciary relationship between the Plaintiff/Appellant and Defendant Co-Trustee Appellees; (2) the Defendant Co-Trustee Appellees breached their fiduciary duty to Plaintiff/Appellant. The court also found anomalies with the instruments submitted by Defendants and that they had failed to account; failed to disclose unprotected trust instruments and failed to establish separate trusts for each beneficiary as required by the trust. Only the 3rd element remained to be established (3) the defendant's breach must result in injury to the plaintiff or benefit to the defendant. See Punts v. Wilson,137 S.W.3d 889, 891 (Tex.App.-Texarkana 2004, no pet.). Jones v. Blume, 196 S.W.3d 440, 447 (Tex. App. 2006)