

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

CANDACE LOUISE CURTIS

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CIVIL ACTION NO. H-12-CV-592

vs.

ANITA KAY BRUNSTING, and
AMY RUTH BRUNSTING

EMERGENCY MOTION FOR REMOVAL OF LIS PENDENS

TO THE HONORABLE COURT:

Defendants Anita Kay Brunsting and Amy Ruth Brunsting (Trustees) file this Emergency

Motion for Removal of Lis Pendens and respectfully allege:

[Note: This Motion is brought subject to the Trustees contention that this Court lacks subject matter jurisdiction due to the fact that Texas Probate Code §115.001 (7) confers exclusive jurisdiction over matters related to questions “arising in the administration or distribution of a trust” to the State District Court, and by analogy this case should not be considered under the Probate Exception to Federal Court Jurisdiction, *Marshall v. Marshall*, 126 S.Ct. 1735, 1748 (2006). These issues will be raised by a separate Motion to Dismiss under FRCP 12(b)]

1. Trustees are the Co-Successor Trustees of the Brunsting Family Living Trust (the Trust), referenced and attached to Plaintiff’s Complaint.

2. Part of the trust estate which Trustees are attempting to liquidate for distribution to the heirs is a residence located at 13639 Pinerock Lane, Houston, Texas 77079 (the Property). This was the home of their parents. A sale for the appraised fair market value has been put under contract and is set to close on March 9, 2012.

3. Trustees were served with the above lawsuit on or about March 1, 2012. Among the

documents served was a “Lis Pendens” dated February 11, 2012, which Trustees had not previously seen or about which they had been advised prior to the service of suit papers.

4. The Property is titled in the name of the Trust. Plaintiff has no ownership interest, and has, at best, an expectancy of the property or proceeds as one of the heirs. Plaintiff’s lawsuit cites no ownership in the Property, but is exclusively a disjointed complaint regarding her displeasure at the adequacy of the accounting of Trust assets by the Trustees to her, as a beneficiary.

5. Trustees have a right and obligation to sell the Property at the best price pursuant to Article IX of the Trust, and have taken all necessary steps to maximize the benefit to the Trust estate.

6. Plaintiff has no purpose for utilizing a *lis pendens* other than to jeopardize a legitimate sale in an effort to leverage her position.

7. Trustees incorporate the affidavit of Amy Brunsting, and supporting exhibits filed herewith.

WHEREFORE, Trustees request an order of this court vacating and removing any incident of the lis pendens recorded by Plaintiff as it relates residence located at 13639 Pinerock Lane, Houston, Texas 77079, and for such other relief as may be appropriate.

GREEN & MATHEWS, L.L.P.

/s/

BERNARD LILSE MATHEWS, III

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Attorneys for Anita Kay and Amy Ruth Brunsting

Certificate of Service

I certify that on March 6, 2012 I served the foregoing Candace Louise Curtis by electronic filing and service at her e-mail address: occurtis@sbcglobal.net.

/s/

Bernard Lilse Mathews, III