

CAUSE NO. 2012-14538

IN RE: § IN THE DISTRICT COURT OF
§
§ HARRIS COUNTY, TEXAS
CARL HENRY BRUNSTING §
§
§ 80TH JUDICIAL DISTRICT

**ANITA KAY BRUNSTING'S AND AMY RUTH BRUNSTING'S
OBJECTION TO CARL HENRY BRUNSTING'S VERIFIED PETITION
TO TAKE DEPOSITIONS BEFORE SUIT**

Anita Kay Brunsting and Amy Ruth Brunsting file their objection to Carl Henry Brunsting's Verified Petition to Take Depositions Before Suit and show as follows:

SUMMARY

1. On March 9, 2012, Carl Henry Brunsting ("Carl") filed his verified petition to take depositions before suit regarding the finances of the Brunsting Family Living Trust as well as other trusts created under the Brunsting Family Living Trust.
2. Since the filing of the petition, Anita Kay Brunsting ("Anita") and Amy Ruth Brunsting ("Amy") provided a detailed accounting of the trusts, made 8 large boxes of documents available for review by Carl's attorney, produced 3941 bates stamped documents and produced many additional documents that were not bates stamped.
3. Attorneys Vacek & Freed, PLLC produced a large quantify of documents.
4. Carl was provided sufficient information to investigate any claims and make an informed decision as to whether or not to file a lawsuit against Amy and Anita. Therefore, his request to depose Amy and Anita should be denied.

FACTS

5. Nelva and Elmer Brunsting had five children – Carl, Amy, Anita, Carol and Candace.
6. Nelva and Elmer Brunsting executed the *Brunsting Family Trust* on October 10, 1996, and transferred the majority of their assets into the trust. Nelva and Elmer were represented by Vacek and Freed, PLLC in the creation, execution and funding of the trust.
7. Nelva and Elmer Brunsting acted as Co-Trustees of *the Brunsting Family Trust*.
8. Elmer Brunsting died on April 1, 2009.

9. Upon Elmer's death, the Brunsting Family Trust was separated into two subtrusts, the *Nelva E. Brunsting Survivor's Trust* and the *Elmer H. Brunsting Decedent's Trust*. Vacek and Freed, PLLC provided legal services in the funding of the subtrusts.
10. Various family members served as Trustees of the Trusts. On December 21, 2010, Anita became trustee of the two subtrusts.
11. Nelva Brunsting died on November 11, 2011.
12. Due to Nelva's death, Amy became Co-Trustee with Anita on the two subtrusts.
13. It appears Carl believes that Anita and Amy made improper distributions to themselves and other descendants of Nelva and Elmer Brunsting from the trusts.
14. Amy, Anita, and Vacek and Freed, LLC have produced an accounting and thousands of pages of documents regarding the assets and management of the trusts. Carl has more than sufficient information to decide if he wishes to proceed with a lawsuit.
15. Although Carl is the named executor in both Nelva and Elmer Brunsting's Wills, he has not sought to be appointed executor of either estate. The original Wills are currently on file with the Harris County Clerk per the requirements of the Texas Probate Code.

LAW

16. Rule 202 of the Texas Rules of Civil Procedure allows a party to petition the court to authorize the taking of a deposition to perpetuate testimony or investigate a potential claim or suit prior to filing a lawsuit. To order a deposition the court must find that:
 - (1) allowing the petitioner to take the requested deposition may prevent a failure or delay of justice in an anticipated suit; or
 - (2) the likely benefit of allowing the petition to take the requested deposition to investigate a potential claim outweighs the burden or expense of the procedure.

Tex. R. Civ. Proc. 202.4

17. There is no allegation the deposition is to perpetuate testimony; there is only an allegation the testimony is needed to investigate a potential claim or suit. However, Carl admitted in his pleading that he anticipates being the plaintiff in a lawsuit regarding the family trust and his mother's estate. (p.4, item 3) The request for the deposition of Amy and Anita is unreasonable since it appears Carl has already made the decision to file a lawsuit. Therefore, this investigation does not outweigh the burden or expense of a lawsuit. If this court allows Carl to proceed with the depositions, he will have a second opportunity to depose Amy and Anita when he files his lawsuit against them. Carl is using this procedure as a way to get discovery from Amy and Anita; however, they do not have the opportunity to conduct discovery in their own defense.

18. Carl already been given the opportunity to review all of the financial information regarding the family trusts that was in Amy and Anita's possession and has been provided an accounting and over 4000 pages of documents.
19. Additionally, Carl has made 545 requests for documents from Anita and 545 requests for documents from Amy which are unreasonable.
20. Furthermore, Carl is using this procedure as a way to obtain financial information while avoiding probating his parents' Wills and being appointed as a fiduciary, therefore, owing a fiduciary duty to Amy, Anita and other Brunsting family members.

RELIEF REQUESTED

21. Anita Kay Brunsting and Amy Ruth Brunsting request this Court deny Carl Henry Brunsting's Verified Petition to Take Depositions Before Suit.

Respectfully Submitted,

MILLS SHIRLEY L.L.P.

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CERTIFICATE OF SERVICE

By my signature above, I hereby certify that a true and correct copy of this document has been sent in the appropriate manner to all known counsel of record on this the 22nd day of June, 2012.

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