

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

CANDACE LOUISE CURTIS

Plaintiff,

V.

ANITA KAY BRUNSTING, AND
AMY RUTH BRUNSTING

Defendants.

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4:12-CV-00592

**DEFENDANTS' RESPONSES TO PLAINTIFF'S REQUEST FOR
PRODUCTION OF DOCUMENTS**

To: Plaintiff, Candace Louise Curtis, 1215 Ulfonian Way, Martinez, California 94553.

Pursuant to the provisions of the Federal Rules of Civil Procedure, Defendants Anita Kay Brunsting and Amy Ruth Brunsting hereby file the following Responses, subject to the prior served Objections, to Plaintiff's March 6, 2013, Request for Production of Documents.

Respectfully submitted,

MILLS SHIRLEY L.L.P.

By: 

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing document has been forwarded to Plaintiff via E-mail and Certified Mail, Return Receipt Requested, on April 8, 2013.

A handwritten signature in black ink, appearing to read "G. W. Vie III", positioned above a horizontal line.

George W. Vie III

DEFENDANTS' RESPONSES TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS

(1) Defendants are to produce all documents in their possession or known by them to exist, purporting to be part of or related to the Brunsting Family Living Trust "the Trust", including but not limited to all sub-trusts, amendments, revisions, wills, diagrams, photographs, and descriptions. If none, say none and give the legal reason why any demanded document or record is not in Defendants' possession, does not exist, or why it is otherwise unavailable for scrutiny.

RESPONSE: Defendants object to this Request for Production to the extent it requires them to give answer or provide a written statement of a "legal reason" for the non-existence of documents, or why documents are not in Defendants' care, custody, or control as such requests are beyond the scope of a Request for Production under Rule 34.

Subject to the objection, responsive documents are available for inspection and copying at the offices of the attorneys that prepared the documents, Vacek & Freed, PLLC. A mutually convenient time and date will need to be determined for such inspection.

(2) Defendants are to produce a full, true and complete statement of inventory, listing all assets belonging to the Brunsting Family Living Trust "the Trust". The inventories should be supported by true and complete copies of all transactions involving trust property and should include all associated documents, vouchers, transaction records, and receipts. If none, say none and give the legal reason why any demanded document or record does not exist or why it is otherwise unavailable for scrutiny.

RESPONSE: Defendants object to this Request for Production to the extent it requires them to give answer or provide a written statement of a "legal reason" for the non-existence of documents, or why documents are not in Defendants' care, custody, or control as such requests are beyond the scope of a Request for Production under Rule 34.

Subject to the objection, Plaintiff has previously been provides inventories, and schedules. Associated documents and transactions are included in the documents produced as responsive documents Bates Nos. BRUNSTING000001-4922.

(3) There was a phone conference held on or about October 25, 2010. Defendants are to produce all documents and communications relating to that phone conference, in whatever form, electronic or otherwise, which indicate from and to whom the communications were sent. If none, say none and give the legal reason why any demanded document or record does not exist or why it is otherwise unavailable for scrutiny.

RESPONSE: Defendants object to this Request for Production to the extent it requires them to give answer or provide a written statement of a “legal reason” for the non-existence of documents, or why documents are not in Defendants’ care, custody, or control as such requests are beyond the scope of a Request for Production under Rule 34.

Subject to the objection, there are no responsive documents.

(4) Defendants are to produce all documents containing proposed amendments or revisions to the trust that did not become part of the trust, including but not limited to any document intending to disinherit Carl’s daughter Marta or that Nelva refused to sign. If none, say none with an affirmative statement that no such document is known to have existed.

RESPONSE: Defendants object to this Request for Production to the extent it requires them to give answer or provide a written affirmation that documents do not exist, as such request is beyond the scope of a Request for Production under Rule 34.

Subject to the objection, there are no responsive documents.

(5) Defendants are to produce copies of all documents, receipts, and transaction records relating to handling of any Exxon stock, which may tend to show how it was managed, when and by whom, using what instruments of authority and/or evidencing any other action which may tend to explain how the stocks were accessed, converted, or distributed to beneficiaries, with statements of individual amounts, when and how deposited to what accounts, and all other Exxon stock associated records and receipts as of the death of Elmer Brunsting 4/1/2009, including specifically, but not limited to:

- a. Any documents or records showing any communication with Plaintiff Curtis involving the transfer of Exxon stock into an account established in the name of Curtis.
- b. Any evidence that Curtis consented to the use of her Social Security Number in the creation of that account, or that she in any way participated in the creation or funding of that account.
- c. Transaction records showing the credentials that were used to create and fund that account.
- d. Proof that Anita Brunsting was authorized to create and fund that account.
- e. Proof that the Exxon stock that was transferred into an account in the name of Anita Brunsting was registered to the trust and not to Elmer and/or Nelva in their personal capacity.

If none, say none and give the legal reasons if any.

RESPONSE: Defendants object to this Request for Production to the extent it requires them to give answer or provide a written statement of a “legal reason” for the non-existence of documents, as such request is beyond the scope of a Request for Production under Rule 34.

Subject to the objection, responsive documents are included in the documents produced as responsive documents Bates Nos. BRUNSTING000001-4922.

(6) Defendants are to produce copies of all documents, receipts, and transaction records explaining and documenting all trust transactions involving acquisition or sale of trust assets from April 1, 2009 to the present. If none, say none and give the legal reasons if any.

RESPONSE: Defendants object to this Request for Production to the extent it requires them to give answer or provide a written statement of a “legal reason” for the non-existence of documents, or why documents are not in Defendants’ care, custody, or control as such requests are beyond the scope of a Request for Production under Rule 34.

Subject to the objection, responsive documents are included in the documents produced as responsive documents Bates Nos. BRUNSTING000001-4922.

(7) Defendants are to produce a full, true and complete accounting of the Trust assets with adequate explanations of each act of the trustees when moving, transferring, liquidating, distributing or in any other way changing the status or condition of trust property from April 1, 2009 up until and including the present, including all trust tax returns. If none, say none and give the legal reasons if any.

RESPONSE: Defendants object to this Request for Production to the extent it requires them to give answer or provide a written statement of a “legal reason” for the non-existence of documents, or why documents are not in Defendants’ care, custody, or control as such requests are beyond the scope of a Request for Production under Rule 34.

Defendants further object to the request for “adequate explanations” of transactions as the request is beyond the scope of a Request for Production under Rule 34.

Subject to the objection, responsive documents are included in the documents produced as responsive documents Bates Nos. BRUNSTING000001-4922. The trust tax returns prepared in Iowa for 2012 has not yet been filed, and the response will be supplemented to include that return after its filing.

SPECIFIC DEMANDS FOR PRODUCTION
CERTIFIED MAIL RECEIPTS OR OTHER PROOFS OF NOTICE³

(8) Defendants are to produce copies of all documents notifying beneficiaries of proposed changes to the trust after April 1, 2009. If none, say none and explain in detail the legal reason(s) why the trustees were not required to notice the beneficiaries. Proof of Notice of actions intending to change the trust includes all notices regarding creation and endorsement of the following documents:

- a. The First Restatement and Amendment to the Brunsting family trust dated January 12, 2005.
- b. The Qualified Beneficiary Designation and Exercise of Testamentary Power of Appointment Under Living Trust Agreement dated August 25, 2010.
- c. Appointment of Successor Trustees dated August 25, 2010.
- d. Certificates of Trust dated August 25, 2010 for the Nelva E. Brunsting Survivor's trust, The Elmer H. Brunsting Decedent's trust and the Brunsting Family Trust.
- e. The Pour Over Will of Elmer Brunsting dated January 12, 2005.
- f. The Medical Power of Attorney for Nelva Brunsting dated August 25, 2010.
- g. The Durable Power of Attorney for Nelva Brunsting dated August 25, 2010.
- h. The Pour Over Will of Nelva Brunsting dated January 12, 2005.
- i. Conveyance regarding transfer of an undivided 1/2 interest in the Iowa farm land dated August 25, 2010.

RESPONSE: Defendants object to this Request for Production to the extent it requires them to give answer or provide a written statement of the reason for the non-existence of documents, or why Defendants did or did not provide notice, as such requests are beyond the scope of a Request for Production under Rule 34.

Subject to the objection, there are no responsive documents.

(9) Defendants are to produce copies of all certified mail notices notifying beneficiaries of any intended division or combination of trusts as required by and conforming to Sec. 112.057 et seq., of the Texas Property Code.

RESPONSE: There are no responsive documents

³ Article 14 Section L. governs Notices and Section M governs Delivery of notice. All notices required to be given in this agreement shall be made in writing...

(10) Defendants are to produce copies of all documents notifying beneficiaries of a right to receive distributions from any trust, account or policy of insurance, after April 1, 2009.

RESPONSE: There are no responsive documents.

(11) Defendants are to produce copies of all documents authored or signed by Nelva Brunsting indicating a desire to change her estate plan after April 1, 2009.

RESPONSE: There are no responsive documents other than the documents by which Nelva Brunsting did change her estate plan; those documents are tendered in response to Request for Production No. 1.

(12) Defendants are to produce copies of all documents in their possession or known by them to exist relating to the competency of Nelva Brunsting, including but not limited to the identity and report of any and every doctor who may have examined Nelva for competency.

RESPONSE: Defendants object to the request to the extent it calls for the production of documents not within their care, custody, or control but “known to exist” as such a request exceeds the scope of permissible discovery under Rule 34.

Defendants further object to the request to provide the identity of every doctor who may have examined Nelva for competency, since that request exceeds the scope of permissible discovery under Rule 34.

Subject to the objection, Nelva’s treating physicians would talk with her and may have determined in that regard whether she was competent, but Defendants do not have possession of any medical records of Nelva.

TRUST PROTECTOR

(13) Defendants are to produce copies of all documents in their possession or known by them to exist, appointing a trust protector, including but not limited to any and every document identifying the name, address and phone number of said trust protector. If none, say none and explain why not.

RESPONSE: Defendants object to this Request for Production to the extent it requires them to give answer or provide a written statement of a reason for the non-existence of documents, as such request is beyond the scope of a Request for Production under Rule 34.

Subject to the objection, there are no responsive documents.

SPECIAL CO-TRUSTEE

(14) Defendants are to produce copies of all documents appointing an independent special co-trustee, including but not limited to documents identifying the name, address and phone number of said independent special co-trustee if any. If none, say none and explain why not.

RESPONSE: Defendants object to this Request for Production to the extent it requires them to give answer or provide a written statement of a reason for the non-existence of documents, as such request is beyond the scope of a Request for Production under Rule 34.

Subject to the objection, there are no responsive documents.

SELF DEALING AND COMMINGLING

(15) Provide Proof of certified mail or other notices delivered to Candace Curtis or any beneficiary (1) informing a beneficiary of Defendants' intent, as trustees, to transfer assets to Defendants for their own personal use, and (2) provide written evidence of any agreement wherein Nelva Brunsting consented to trustee compensation for Defendants, as shown on the accounting schedules prepared by Defendants and/or Vacek & Freed, PLLC, and received by Plaintiff in April 2012.

RESPONSE:

There are no responsive documents to request 15(1). As to request 15(2), the written Trust provides for compensation to the trustee. The Trust documents are tendered in response to Request for Production No. 1.