NO. 412,249-401

CARL HENRY BRUNSTING, § IN PROBATE COURT

INDIVIDUALLY AND AS §

INDEPENDENT EXECUTOR OF THE §

ESTATES OF ELMER H. BRUNSTING §

AND NELVA E. BRUNSTING § NUMBER FOUR (4)

 §

vs. §

§

ANITA KAY BRUNSTING f/k/a § HARRIS COUNTY, TEXAS

ANITA KAY RILEY, individually, §

as attorney-in-fact for Nelva E. Brunsting, §

and as Successor Trustee of the Brunsting §

Family Living Trust, the Elmer H. §

Brunsting Decedent's Trust, the §

Nelva E. Brunsting Survivor's Trust, §

the Carl Henry Brunsting Personal §

Asset Trust, and the Anita Kay Brunsting §

Personal Asset Trust; §

AMY RUTH BRUNSTING f/k/a §

AMY RUTH TSCHIRHART, §

individually and as Successor Trustee §

of the Brunsting Family Living Trust, §

the Elmer H. Brunsting Decedent’s Trust, §

the Nelva E. Brunsting Survivor's Trust, §

the Carl Henry Brunsting Personal §

Asset Trust, and the Amy Ruth Tschirhart §

Personal Asset Trust; §

CAROLE ANN BRUNSTING, §

Individually and as Trustee of the §

Carole Ann Brunsting Personal Asset Trust; §

and as a nominal defendant only, §

CANDACE LOUISE CURTIS §

# OBJECTION TO DEFENDANTS MOTION TO LIQUIDATE TRUST PROPERTY

The 412,249-401 action is currently Appellate Case Number 01-23-00362-CV in the First District Court of Appeals. On February 22, 2024, the First District Court of Appeals noticed the parties of intent to dismiss for want of appellate jurisdiction and provided Appellant with 14 days in which to file a supplemental brief demonstrating that the Court of Appeals does have jurisdiction (Exhibit 1).

 On February 28, 2024, Mr. Mendel, without notice, filed what he called an Agreed Emergency Motion to sell the family farm and showed up at a status conference in the -403 the following day attempting to argue his motion.

Appellant filed her supplemental brief on appellate jurisdiction on March 7, 2024 (Exhibit 2). On June 6, 2024, the First District Court of Appeals issued a sua sponte Order directing Appellees to reply to Appellant’s supplemental brief. (Exhibit 3)

The only way Appellees can show the Appeals Court that they do not have jurisdiction is to show, with citation to the record, statutes, rules, and case law, that the statutory probate court has subject matter jurisdiction over the -401 action. Appellees’ reply brief was due fourteen days from the date of that order.

On June 10, 2024, Appellees filed an unopposed motion with the Court of Appeals seeking an extension of time to file their response (Exhibit 4) and the Court of Appeals, on the same day, granted Appellees’ Motion extending Appellees deadline to June 28, 2024 (Exhibit 5). Also on June 10, 2024, Mr. Mendel filed yet another motion in the probate court seeking permission to distribute $26,000 in trust assets without identifying the source of those funds.

# UNCLEAN HANDS

On February 27, 2012, Candace Curtis filed an action for breach of fiduciary duty in the Southern District of Texas, seeking a mandatory trust accounting and fiduciary disclosures. On March 6, 2012, Defendant Amy Brunsting filed a sworn Affidavit claiming that “Personal Asset Trusts” had been setup for the beneficiary, “as is the case for Candace” (Exhibit 6). This case was dismissed under the probate exception but reversed and remanded by the Fifth Circuit in a unanimous opinion, published Curtis v. Brunsting 704 F.3d 406 (Jan 2013).

On April 9, 2013, United States District Court Judge, the Honorable Kenneth Hoyt Jr., issued a preliminary injunction, a memorandum of which was published April 19, 2013. On May 9, 2013, the Honorable Kenneth Hoyt Jr. issued an order appointing a Special Master (Exhibit 7) to assemble the accounting because Anita, acting as Nelva Brunsting’s successor, was unable to produce the necessary trust accounting. The Report of Special Master, filed August 8, 2013 (Exhibit 8), identifies numerous improprieties tantamount to failure to establish and maintain books and records of accounts, self-dealing, and misapplication of fiduciary assets. These financial transactions were not disclosed to Candace or Carl, nor equalized by distributions to Candace or Carl. The alleged Co-Trustee Defendants are clearly in breach.

### The Injunction Commands and Enjoins

The federal injunction (Exhibit 9) commands the acting co-trustee Defendants to deposit income into an appropriate account for the beneficiary. By necessary implication, those would be the accounts Amy’s affidavit claims had been “set up for the beneficiary, as is the case for Candace”. The injunction then enjoins the acting co-trustee Defendants from engaging in any new business without court permission.

Income is received twice annually; however, the acting co-trustee Defendants have never distributed the trust income and have failed to fund any accounts for any beneficiary. Defendant’s failure to distribute income has resulted in 30% excess tax injury to the trust in an amount estimated to be more than $150,000.00. No proper trust accounting with a balance sheet, has ever been performed.

Without proof that the acting co-trustee Defendants have complied with the affirmative commands in the injunction they have no standing to now seek permission to ignore it altogether.

Two other issues raised in Candace original petition (Exhibit 10) should be noted. On page 3 at item 9, Candace claims the following:

“9. Defendant(s) Anita Brunsting and Amy Brunsting acting individually and severally as co-trustees for the Trust have exercised all of the powers of trustees while refusing or otherwise failing to meet their first obligation under that power, to provide full, accurate, complete and timely accounting to the beneficiaries, to provide copies of material documents or other information relating to administration of the Trust, and to provide notice to all beneficiaries and successor beneficiaries of proposed changes to the trust that may tend to affect their beneficial interests.”

On page 20 of 28 at paragraph 4, Candace alleges the following:

“The difficulty for all of us was coming to grips with the notion that, apparently, behind our backs, Anita had made a concentrated effort to take control of the entire trust, and our individual inheritances, in such a manner that if Carl and I complain about it, she gets to keep it, all the while asserting to others that our Mother made this decision ON HER OWN.”

This fact is obvious at this juncture, Anita intentionally caused litigation to be brought, by failing to account, for the purpose of advancing a theory that, if true, would enlarge her share in direct violation of the in Terrorem clause in the 2005 Restatement. Not only have they proved that this was Anita’s plan, they have intractably refused to perform even the most basic of the fiduciary obligations required by “the trust”. Mr. Mendel’s motion must be denied as the case it was filed in is not in this court, if for no other reason.

 Respectfully submitted,

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# CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel of record and unrepresented parties in the manner required by the Rules on this Monday, June 24, 2024.

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