NO. 412,249-403

THE ESTATES OF ELMER H. §

AND NELVA E. BRUNSTING § NUMBER FOUR (4)

 §

vs. §

§ IN PROBATE COURT 4

CANDACE L. KUNZ-FREED AND §

VACEK & FREED, PLLC f/k/a § HARRIS COUNTY, TEXAS

THE VACEK LAW FIRM, PLLC §

#  Candace Louise Curtis Application for Order Continuing Independent Administration & Motion for Appointment as Successor Independent Executor

Candace L. Curtis, hereby requests that the Court enter an order for continuing independent administration of the Estates of Elmer H. Brunsting and Nelva E. Brunsting pursuant to Tex. Est. Code § 404.005(a)

Applicant, Candace L. Curtis, hereby requests the Court Appoint her as successor Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting as authorized by Tex. Est. Code § 404.005(b) & (c), for purposes of resolving the above titled controversy.

# Background

On January 29, 2013, Independent Executor Carl Henry Brunsting, represented by attorney Bobbie G. Bayless, filed a malpractice action in Harris County 164th Judicial District Court against the attorneys and firm that drafted the Brunsting’s estate plan. The case was filed as No. 2013-05455. (Exhibit 1)

On April 9, 2013, Independent Executor Carl Henry Brunsting, represented by attorney Bobbie G. Bayless, filed analogous litigation asserting a common nucleus of operative facts and alleging tort claims against the acting co-trustees, in Harris County Probate Court No. 4, Cause No. 412,249-401, (Exhibit 2).

On February 19, 2015, Carl resigned the offices of Independent Executor stating that a necessity still exists for the administration of these estates (Exhibit 3) and requesting the immediate appointment of a successor personal representative to pursue and manage the claims owed to the estate.

“Under the terms of the Will, the successor personal representative, in the event Carl steps down, is Amy Brunsting. However, having been named as a defendant in litigation filed by the estate, Amy Brunsting is disqualified from serving as personal representative of the estate.”

On July 14, 2015, with no one representing the estate, attorney Bayless filed a motion to transfer the District Court Case to Harris County Probate Court No. 4 (Exhibit 4) arguing that both matters were so related that she could not see how they could be resolved under separate roofs. On March 1, 2019, this Court ordered the district court case transferred to probate court 4 where it was assigned Cause No. 412249-403 and where it remains without a plaintiff.

# Claims

In the -403 action, the Defendants are accused of assisting the Current Trustees in implementing a scheme to change the terms of the Family Trust; to remove Nelva from her position as trustee of the Family Trust and to improperly remove assets from Elmer and Nelva's estates and from the Family Trust.

Among other allegations, it was alleged that because of the actions of the Vacek Defendants, the Current Trustees were able to alter Elmer and Nelva's wishes, resulting in the improper transfer of assets to Anita, Amy, and Carole, all to Plaintiffs detriment. It is also stated that Candace and Carl were the only beneficiaries of the Family Trust whose rights were diminished by the improper changes implemented by the Vacek Defendants in assisting the Current Trustees in implementing their scheme to steal family trust shares belonging to Carl and Candace. Anita, Amy and Carole are named Defendants in suits brought by the estate and their objections should not be well taken.

Applicant’s rights were injured by the actions of the -403 defendants in their facilitation of the de facto co-trustees scheme and by actions of the de facto trustees thereafter. Applicant has a personal interest in prosecuting the estates claims.

# The Trust

Defendants are expected to object with an ad hominem attack claiming Candace is unsuitable and has been disinherited under the terms of a forged instrument containing corruption of blood provisions that is not in evidence. Due to the nature of the claims in the -403 action, the first question that must be resolved, in order to provide remedy to the real parties in interest, is a determination as to what instruments are valid trust instruments.

Resolving the question of what instruments are valid is a very simple matter but there have been no findings of facts or conclusions of law after hearing as there have been no evidentiary hearings in either case despite the fact that thirteen years have passed.

The offending instruments were all generated after the legal incapacity of Elmer Brunsting and none were approved by a court of competent jurisdiction. Nelva Brunsting had no autonomous authority to make changes to the family trust as exercising plenary control would result in the merger of legal and equitable titles in Nelva alone and the trust would fail. [Texas Property Code § 112.034(b)] (Exhibit 5)

None of the change instruments signed by Nelva alone could be held valid as even exercising sole prerogatives, without a Court of Competent Jurisdiction standing in for absent co-trustee Elmer Brunsting, would result in merger. The only valid trust instruments are the 2005 Restatement as amended in 2007. Candace and Carl are the de jure successor Co-trustees to Nelva, as a matter of law, but the Probate Court is not the correct court for ruling on the trust instrument issue.

# The Decedent’s Wills

Both Decedents wills were admitted without contest and direct independent administration. Both Decedents wills name Carl Henry Brunsting as independent Executor to serve without bond. Both Decedents wills name Amy Brunsting as successor executrix followed by Candace Curtis. Everyone lives in Texas except Candace. Due to Amy Brunsting, having been named as a defendant in litigation filed by the estate, is disqualified from serving as personal representative of the estate. Applicant is unaware of any disqualification that would eliminate her from accepting Letters Testamentary. Applicant, Candace Curtis is entitled to receive such Letters and it is in the interest of justice that she receives them.

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 Sunday, June 23, 2024.

Bobbie G. Bayless

Attorney for Carl Brunsting

Bayless & Stokes

2931 Ferndale

Houston, Texas 77098

bayless@baylessstokes.com

Neal E. Spielman

Attorney for Defendant Amy Brunsting

Griffin & Matthews

1155 Dairy Ashford, Suite 300

Houston, Texas 77079

nspielman@grifmatlaw.com

Stephen A. Mendel

Attorney for Defendant Anita Brunsting

The Mendel Law Firm, L.P.

1155 Dairy Ashford, Suite 104

Houston, Texas 77079

steve@mendellawfirm.com

Carole Ann Brunsting pro se

5822 Jason

Houston, Texas

cbrunsting@sbcglobal.net

Zandra Foley

Cory S. Reed

Attorneys for Vacek & Freed et al.,

One Riverway, Suite 1400

Houston, Texas 77056

Telephone: (713) 403-8200

Telecopy: (713) 403-8299

Email: zfoley@thompsoncoe.com

Email:creed@thompsoncoe.com