

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

CANDACE LOUISE CURTIS, ET AL.,

Plaintiffs,

V.

CANDACE KUNZ-FREED, ET AL.,

Defendants.

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Civil Action No. 4:16-cv-01969

**DEFENDANT NEAL SPIELMAN’S MOTION TO DISMISS BASED ON LACK OF
SUBJECT MATTER JURISDICTION**

Defendant Neal Spielman (“Spielman”) files this Motion to Dismiss under Federal Rule of Civil Procedure 12(b)(1) seeking the dismissal of all claims asserted by Plaintiffs against him. In support thereof, Defendant would respectfully show the Court the following:

I.

SUMMARY OF THE ARGUMENT

This case stems from “conspiracy” claims and other allegations against lawyers, judges, and court personnel involved in a bitterly contested probate matter in Harris County Probate Court No. 4. The Plaintiffs’ “claims,” which are nearly incomprehensible are nothing more than incredible conspiracy theories suggesting that the Harris County Probate Court is the home of a nefarious, shadowy syndicate with designs on stealing “familial wealth.” The Plaintiffs’ Original Complaint has alleged Spielman and other Defendants for (1) violations of the Racketeer Influence Corrupt Organization Act (“RICO”), 18 U.S.C. § 1962(c) and conspiracy to violate the same; (2) conspiracy to commit Honest Services Fraud, 18 U.S.C. § 1346; (3) conspiracy to commit Mail Fraud, 18 U.S.C. § 1341; (4) conspiracy to commit Wire Fraud, 18 U.S.C. § 1343; (5) Hobbes Act Extortion 15 U.S.C. §1951(b)(2); (6) conspiracy to obstruct justice, 18 U.S.C.

§371; and state law theft, Texas Penal Codes 31.02 & 31.03. Despite the litany of allegations, Plaintiffs have failed to plead any facts which would impart standing upon the Plaintiffs. *See Lujan v. Defenders of Wildlife*, 504 U.S. 559 (1992) (holding that plaintiff lacked standing where the failed to allege “imminent” injury-in-fact). For this reason, Plaintiffs’ Original Complaint against Spielman should be dismissed with prejudice.

II. **BACKGROUND**

Plaintiffs’ suit arises from a case pending in Harris County Probate Court Number 4, Cause No. 412.249-401, *Carl Henry Brunsting et al. v. Anita Kay Brunsting, et al.*, (“the Probate Matter”). The Probate Matter involves a dispute between the Brunsting siblings over the administration over their late parents’ estate. Rather than litigate their claims in the proper forum—Probate Court No. 4—Plaintiffs have filed this suit, naming every person remotely involved with the Probate Matter—including the judge, court personnel, Defendant Spielman, and “99 Jane and John Does”—in an apparent attempt to avoid participating in the court-ordered mediation in the Probate Matter.¹

Prior to landing in Probate Court, Plaintiff Curtis first attempted to bring the claims that form this basis of the instant suit in federal court. In that suit, Cause No. 4:12-cv-00592, in the Southern District of Texas, Plaintiff made similar allegations as alleged in the present complaint, namely: conspiracy, fraud, elder abuse, undue influence, false instruments, breach of fiduciary duty, tortious interference with fiduciary obligations, among others. Ultimately, **at Plaintiff Curtis’ request** the case was remanded to the probate proceeding in Probate Court No. 4, where it remains pending. The claims pending in the Probate Matter contain substantially the same parties and issues.

¹ In the Plaintiffs’ Verified Complaint for Damages, Plaintiff Curtis has characterized the pending mediation of the probate matter as “predetermined by the personal interests of enterprise acolytes and not by law.” *See* ¶¶ 113-115.

Spielman is attorney of record for Amy Brunsting in the Probate Matter. *See* Plaintiffs' Verified Complaint for Damages. Plaintiffs appear to have asserted only one claim specifically against Spielman: that Spielman "obstructed justice" by assenting to the postponement of a summary judgment hearing, somehow depriving Curtis access to the courts and other due process rights. *See* Plaintiffs' Verified Complaint for Damages ¶131. Besides this one specific act, the remainder of Plaintiffs' allegations against Spielman consists of unintelligible and boilerplate criminal "conspiracy" claims and allegations against all Defendants. Without anything more, the Plaintiffs have not pleaded facts to support a claim for relief or that they even have standing to assert claims against Spielman. Therefore, the Court should dismiss this claim with prejudice. *Carroll v. Fort James Corp.* 470 F.3d 1171, 1177 (5th Cir. 2006).

III. **ARGUMENTS AND AUTHORITIES**

Defendant Spielman moves to dismiss this complaint pursuant to Rule 12(b)(1) for lack of subject matter jurisdiction. Plaintiffs have the burden of showing subject matter jurisdiction, and this Court must determine whether it has subject matter jurisdiction before addressing the merits of the complaint. *See Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94-95, 104 (1998).

Plaintiffs Lack Proper Standing to Assert Their Claims.

A plaintiff will have standing to file suit if it can demonstrate (1) an "injury in fact"—a harm that is concrete and actual, not merely conjectural or hypothetical;² (2) causation between the injury and defendant's conduct, and (3) redressability by a favorable decision of the court. *Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). Because these are not merely pleading requirements, but rather an indispensable part of the plaintiff's case, **each** element must be

² *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992).

supported in the same way as any other matter in which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at that stage of litigation. *See Lujan v. National Wildlife Federation*, 497 U.S. 871, 883-889 (1990).

Here, the Plaintiffs cannot provide proof of any of the required elements of standing. Plaintiffs cannot show any injury-in-fact from the conduct alleged in their Complaint. Nor is there a showing of causation between Spielman's conduct and any injury alleged by Plaintiffs.

Plaintiff Curtis' claims suggest that as a result of some action of Spielman, she has been deprived of the "enjoyment of her beneficial interests" as a beneficiary of the Brunsting Family Trust. *See Plaintiffs Verified Complaint for Damages*, ¶ 213. Plaintiff has not pleaded any facts that can demonstrate how any action of Spielman has injured her status as a beneficiary of the Brunsting Family Trust. Spielman has had no involvement in the drafting of estate planning documents in this matter. In fact, Curtis is still entitled to collect her share of the inheritance of the Brunsting Family Trust. More so, Texas has never recognized tortious interference with inheritance as a cognizable cause of action. *See Anderson v. Archer*, 03-13-00790-CV, 2016 WL 589017 (Tex. App.—Austin Mar. 2, 2016, no pet. h.) ("In short, we agree with the Amarillo Court of Appeals that 'neither this Court, the courts in *Valdez*, *Clark*, and *Russell*, nor the trial court below can legitimately recognize, in the first instance, a cause of action for tortuously interfering with one's inheritance.' We also agree with the Amarillo court's assessment that neither the Legislature nor Texas Supreme Court has done so, or at least not yet. Absent legislative or supreme court recognition of the existence of a cause of action, we, as an intermediate appellate court, will not be the first to do so.).

Plaintiff Munson's "injuries" are facially conjectural and hypothetical. Munson, who is neither a party to any of the prior lawsuits nor a beneficiary under the Brunsting Family Trust,

alleges that he has been “diverted away from other productive pursuits.” *See* Plaintiffs Verified Complaint for Damages, ¶ 216. Without a demonstration of concrete, actual harm, his claims—like Curtis’s claims—must fail, and Plaintiffs’ claims should be dismissed.

IV.
CONCLUSION

For the reasons stated above, Defendant Neal Spielman requests that this Court grant Defendant’s Motion to Dismiss on all claims with prejudice.

Respectfully submitted,

**WINGET, SPADAFORA, &
SCHWARTZBERG, L.L.P.**

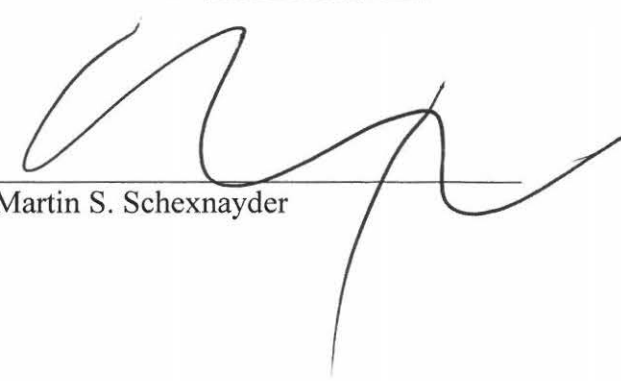
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been served on all counsel of record through the Court’s CM/ECF system on this date: October 3, 2016.



Martin S. Schexnayder

