

**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 JILL WILLARD YOUNG’S OPPOSITION TO
PLAINTIFFS’ MOTION TO CONSOLIDATE**

Plaintiffs’ Motion to Consolidate (the “Motion”) asks this Court to consolidate this matter into case number 4:12-cv-0592, a closed case formerly pending before Judge Hoyt. But Plaintiffs’ Motion should be denied because a pending matter cannot be consolidated into a closed case, especially one that involves no common questions of law or fact.

I. Consolidation Should be Denied Because the “Prior Case” Is Closed.

Plaintiffs ask this Court to consolidate this matter into case number 4:12-cv-0592, before Judge Hoyt. But case number 4:12-cv-0592 is closed, and it has been closed since May 15, 2014.

A Motion to Consolidate a pending matter into a closed matter should be denied. *See* Order Denying Motion for Leave to File Motion to Consolidate, *EP-Team, Inc. v. Aspen Infrastructure, Ltd.*, No. H-07-2549 [DKT. 17] (S. D. Tex. Jan. 10, 2008). In *EP-Team*, a court in this District was asked to consolidate a matter into an earlier-filed case that was closed. *Id.* The court denied consolidation, stating, “This case, Civil Action No. 07-2549, is the earlier case and **it is closed, therefore, the Court cannot consolidate anything with it.**” *Id.* (emphasis

added); *see also* *Clarke v. Dir., TDCJ-CID*, No. 4:09-CV-404, 2012 WL 4120430, at *1 & *5 (E.D. Tex. Sept. 19, 2012) (denying a motion to consolidate because the “corresponding case” was “closed”); *Hamilton v. United Healthcare of Louisiana, Inc.*, CIV.A. 01-585, 2003 WL 22779081, at *2 n.3 (E.D. La. Nov. 21, 2003) (determining that “consolidation **was done in error**” because the first-filed case “was closed” prior to consolidation) (emphasis added). And the “prior matter” is closed because Plaintiff Candace Curtis *herself* requested the court remand the matter to Harris County. *See* Order Granting Unopposed Motion to Remand by Candace Louise Curtis, *Curtis v Brunsting*, No. 4:12-cv-0592 (DKT. 112) (S.D. Tex. May 15, 2014).

Thus, Plaintiffs’ Motion to Consolidate should be denied.

II. The Closed Case and This Pending Matter Should not Be Consolidated.

In determining whether to consolidate, Courts consider five factors:

(1) whether the actions are pending before the same court, (2) whether common parties are involved in the cases, (3) whether there are common questions of law and/or fact, (4) whether there is risk of prejudice or confusion if the cases are consolidated, and if so, is the risk outweighed by the risk of inconsistent adjudications of factual and legal issues if the cases are tried separately, and (5) whether consolidation will conserve judicial resources and reduce the time and cost of trying the cases separately.”

Zolezzi v. Celadon Trucking Services, Inc., No. Civ.A.H-08-3508, 2009 WL 736057, at *1 (S.D. Tex. Mar. 16, 2009) (citing *In re Enron Corp. Securities, Derivative & “ERISA” Litigation*, Civ. A. Nos. H-01-3624, H-04-0088, H-04-0087, H-03-5528, 2007 WL 446051, at *1 (S.D. Tex. Feb.7, 2007)). Here, those factors overwhelmingly show that the two matters should not be consolidated.

First, the actions are not **pending** before the same court. Indeed, as shown above, the “prior case” is not pending at all—it is closed.

Second, although some of the parties to the two matters are common between the two cases, several are not. As an example, Defendant Young is not a party to the prior case; nor is

Defendant Lester. Judge Butts and Judge Comstock were not parties to the prior matter, either. And Jason Ostrom, who appears on the docket sheet as counsel for Plaintiff Curtis in the now-closed “prior case,” *has now been sued* by Plaintiffs in this case.

Third, there are not common questions of law or fact. This matter involves RICO assertions made by Plaintiffs, who make the novel contention that a state probate court is a conspiracy called the “Harris County Tomb Raiders” and the “Probate Mafia,” who “transfer wealth” from estates by engaging in “poser advocacy.” There are *no* questions of law or fact in the closed matter, because it has been remanded to state court. But even if the Court looked to the questions of law and fact in the state court matter, those questions relate merely to estate law—not alleged federal RICO statutes and criminal conspiracies.

Fourth, there is an extraordinary risk of confusion that would result from consolidation of the cases. As examples, in the RICO case, many of the probate court litigants, the attorneys, and the judges are all Defendants, who are all more-or-less aligned in opposing Plaintiffs’ RICO allegations. But in the probate matter itself, the parties share no such affinities. Certainly, it would be confusing for a fact-finder to be asked to determine, on the one hand, whether Plaintiff Curtis’s own counsel was involved in the criminal enterprise “Probate Mafia,” when that counsel also previously represented the Plaintiff in the closed federal court matter.

Fifth, consolidation will not conserve judicial resources since the prior matter is closed.

Thus, Plaintiffs’ Motion should be denied.

III. Conclusion

For the above-stated reasons, Plaintiffs’ Motion should be denied.

Dated: October 25, 2016

Respectfully submitted,

/s/ Robert S. Harrell

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ATTORNEYS FOR DEFENDANT JILL
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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the above document has been served on October 25, 2016, in accordance with the Federal Rules of Civil Procedure.

/s/ Robert S. Harrell

Robert S. Harrell