

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDICE LOUISE CURTIS, *ET AL.* §  
§  
VS. §  
§ Civil Action No. 4:16-cv-01969  
CANDACE KUNZ-FREED, *ET AL.* §  
§  
§

**DEFENDANTS JUDGE CHRISTINE RIDDLE BUTTS, JUDGE CLARINDA  
COMSTOCK & TONY BAIAMONTE’S RESPONSE TO PLAINTIFFS’  
MOTION FOR CONSOLIDATION**

TO THE HONORABLE JUDGE ALFRED H. BENNETT:

Defendants, the Honorable Judges Christine Riddle Butts and Clarinda Comstock and substitute Court Reporter Tony Baiamonte (collectively, “Harris County Defendants”) file this Response to Plaintiffs’ Motion for Consolidation [Doc. 61] and would respectfully show the Court as follows:

**Background**

On February 22, 2012, Plaintiff Curtis sued her siblings Anita and Amy Brunsting, claiming they breached fiduciary duties owed to her arising from their position as co-trustees of the Brunsting Family Trust (“Sibling Lawsuit”).<sup>1</sup> Upon motion by Curtis, the

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<sup>1</sup> See Curtis’ Original Petition [Doc. 1] filed in Case No. 4:12-cv-0592, *Candace Louise Curtis v. Anita Kay Brunsting, et al.* Harris County Defendants ask the Court to take judicial notice of this lawsuit and its pleadings.

Sibling Lawsuit was remanded to Harris County Probate Court 4.<sup>2</sup> The remand occurred on May 15, 2014. Curtis subsequently sought permission to e-file and was denied.<sup>3</sup>

Two years later, on July 5, 2016, Plaintiffs Curtis and paralegal Rik Munson filed this lawsuit, claiming the Harris County Defendants and lawyers representing various parties (including Curtis' former lawyer Jason Ostrom) were involved in some fictitious civil and criminal RICO conspiracy.

Plaintiffs now seek to consolidate the instant lawsuit with the Sibling Lawsuit -- however, not to consolidate it with the actual case that is pending in Probate Court 4, but to consolidate it in a federal court that has remanded and closed the case.

### **Argument & Authorities**

The Motion for Consolidation 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. Further, the case to which they seek consolidation is currently pending before Probate Court 4 – with the judges being sued in this case.

#### **1. Consolidation should be denied because the “prior case” is closed.**

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 [Doc. 17] (S. D. Tex. Jan. 10, 2008). In *EP-Team*, a

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<sup>2</sup> See Sibling Lawsuit, Doc. 112.

<sup>3</sup> See Sibling Lawsuit, Doc. 114, Order Denying Curtis Motion for Permission for Electronic Case Filing.

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 Curtis *herself* requested the court remand the matter to Probate Court 4. *See* Doc. 112 in the Sibling Lawsuit. Thus, Plaintiffs’ Motion for Consolidation should be denied.

**2. The Sibling Lawsuit and this lawsuit 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 cases 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. None of the Harris County Defendants were parties to the Sibling Lawsuit. With the exception of Amy and Anita Brunsting, none of the 11 other Defendants were parties to the Sibling Lawsuit either (Jill Young, Gregory Lester, Candace Kunz-Freed, Albert Vacek, Jr., Bernard Lyle Matthews, III, Neil Spielman, Bradley Featherston, Stephen Mendel, Darlene Payne Smith, Bobbie Bayless and her attorney in the Sibling Lawsuit, Jason Ostrom).

Third, there are not common questions of law or fact. This matter involves RICO assertions made by Plaintiffs, who make the novel contention that the Judges, Court Reporter and attorneys that practice in Probate Court 4, known as the “Harris County Tomb Raiders” and the “Probate Mafia,” are involved in an alleged conspiracy to “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, many of 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.

### **Conclusion & Prayer**

The Motion for Consolidation 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. For the reasons set forth above, the Harris County Defendants respectfully request the Court deny the Plaintiffs' Motion for Consolidation [Doc. 61] and award the Defendants such other and further relief to which this Court finds them to be justly entitled.

**Dated:           October 31, 2016.**

Respectfully Submitted,

*/s/ Laura Beckman Hedge*

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the foregoing instrument has been served on all counsel of record in accordance with the Federal Rules of Civil Procedure on this the 31<sup>st</sup> day of October, 2016, via ECF.

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