

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

Curtis, et al	§	
Plaintiffs	§	
	§	Civil Action No. 4:16-cv-01969
v	§	
	§	The Honorable Alfred Bennett
Kunz-Freed, et al	§	
Defendants	§	

**PLAINTIFF’S ANSWER TO DEFENDANT JASON OSTROM’S FEDERAL RULE OF CIVIL PROCEDURE 12(B)(6) MOTION TO DISMISS**

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**I. Nature and Stage of the Proceedings**

1. Plaintiffs brought the above titled action pursuant to 18 U.S.C. §1964(c) alleging Racketeer Influenced Corrupt Organization Act violations of 18 U.S.C. §1962(c) and 18 U.S.C. §1962(d), both individually and as private attorneys general on behalf of the public trust, on July 5, 2016 in the Southern District of Texas.
2. On October 31, 2016, Defendant Jason Ostrom filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). (Dkt 78).

**II. Contextual Summary**

3. Plaintiff Candace Louise Curtis (Curtis) lives in California and is a beneficiary of inter vivos trusts having a situs in Houston, Texas.
4. Other beneficiaries of the trusts include Plaintiff Curtis’ siblings: Carl Brunsting, Carole Brunsting, and Defendants Amy Brunsting and Anita Brunsting. (Dkt 33-1, 33-2 and 33-3)

5. Neither Plaintiff Curtis nor any of her siblings is an heir to, and none has inheritance expectancy, from the “Brunsting Estates” (Dkt 41-3 and 41-4)<sup>1</sup>.

### III. History of “The Trust”

6. In 1996 Elmer Brunsting and his wife Nelva Brunsting created the original Brunsting Family Living Trust for their benefit, for the benefit of their five primary issue, as well as for their remaindermen grandchildren and great grandchildren. (Dkt 34-1)

7. The Brunstings restated their Trust in 2005 (Dkt 33-2) removing Anita Brunsting as successor trustee and appointing Carl and Amy Brunsting as successor co-trustees, and naming Candace Curtis as alternate.

8. The Brunstings amended their restatement in 2007 (Dkt 33-3), to remove Amy Brunsting as a successor co-trustee, appointing Candace in her place, and naming Frost Bank as the alternate. It would appear from this sequence of events that Elmer and Nelva sought to prevent what has since occurred.

9. Elmer Brunsting was declared incompetent in June 2008 and on July 1, 2008 the first illicit successor trustee appointment to the Brunsting Trust was apparently drafted and notarized by Candace Kunz-Freed, claiming a change in jointly selected successor trustees had been made by Nelva Brunsting alone. (Exhibit 1) That instrument portends to have placed Anita Brunsting back in a trustee position.

10. Elmer Brunsting passed on April 1, 2009. At the death of Elmer Brunsting the inter vivos “family” trust became irrevocable and its assets were divided between an irrevocable decedent’s trust and a revocable survivor’s trust (Dkt 34-2 Articles III & VII).

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<sup>1</sup> See *Curtis v Brunsting* 704 F.3d 406 regarding the Brunsting inter vivos Trusts

11. First named successor co-trustee Carl Brunsting fell ill with encephalitis on or about July 3, 2010 and by August 25, 2010 the extortion instrument<sup>2</sup> had been drafted and notarized by Candace Freed, naming Anita and Amy Brunsting successor co-trustees.

#### **IV. A History of the Litigation**

12. Candace Curtis v Anita and Amy Brunsting is a breach of fiduciary action seeking accounting and disclosures, filed in the Southern District of Texas on February 27, 2012, (Exhibit 2) and was dismissed under the Probate exception to federal diversity jurisdiction March 8, 2012. Plaintiff Curtis filed a timely notice of appeal.

13. On March 9, 2012 Defendant Bobbie Bayless filed a Petition to take depositions before suit in the Harris County District Court styled, “In Re: Carl Henry Brunsting. (Exhibit 3)

14. On January 9, 2013 the Fifth Circuit issued a unanimous opinion with Order for Reverse and Remand published *Curtis v Brunsting* 704 F.3d 406 (Dkt 34-4).

15. On January 29, 2013 Defendant Bobbie Bayless filed a suit in the Harris County District Court against Defendants Vacek & Freed, in the name of the “Estate of Nelva Brunsting” raising only trust related issues. (Dkt 34-5)

16. In late 2013 Plaintiff Curtis enlisted the assistance of Houston Attorney Jason Ostrom.

17. Immediately upon appearing as Plaintiff Curtis’ representative in the federal lawsuit, Curtis v Brunsting 4:12-cv-592, Defendant Jason Ostrom arranged a remand to the Harris County Probate Court to consolidate Plaintiff Candace Curtis’ lawsuit with that of her brother Plaintiff Carl Brunsting, (Dkt 26-1) allegedly to afford complete relief to the parties.

18. It should be noted that Ostrom amended Curtis’ federal complaint to add Carl Henry Brunsting as an “Involuntary Plaintiff”, in order to pollute diversity so he could perfect a remand

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<sup>2</sup> The alleged August 25, 2010 “Qualified Beneficiary Designation and Testamentary Power of Appointment Under Living Trust Agreement” a.k.a. 8/25/2010 QBD.

to state court to consolidate the first filed Plaintiff, Candace Curtis, with later filed state court Plaintiff Carl Brunsting, where federal plaintiff Curtis was named a Defendant only. (Dkt 34-7) (see also Dkt 57-1 and 57-2)

19. Defendant Ostrom thereafter abandoned “Plaintiff Curtis” and “Curtis v Brunsting” in the probate court record, pleading only under the heading of “Estate of Nelva Brunsting” (Exhibits 4 and 5 attached).

#### **V. Statement of the Issues**

1. Plaintiffs have not adequately pleaded the necessary predicate acts;
2. The plaintiffs have not stated a RICO claim under section 1962(c);
3. Plaintiffs have failed to adequately plead with particularity their fraud-based predicate acts as required by Federal Rule 9(b);
4. Plaintiffs have failed to plead reliance in connection with their fraud related claims;
5. Plaintiffs failed to plead a cognizable RICO enterprise;
6. Plaintiffs enterprise allegations are too vague and conclusory
7. Plaintiffs' claims should be dismissed because Plaintiffs' allegations do not satisfy RICO's proximate cause standard.

#### **VI. The Argument**

20. The RICO complaint articulates, with specificity, more than 40 events, each of which is listed as a RICO predicate act at 18 U.S.C. §1961(1) and each Defendant is accused of in-concert aiding and abetting. It is unnecessary for Plaintiffs to plead that each defendant personally committed two or more predicate acts.

*To be convicted of conspiracy to violate RICO under § 1962(d), the conspirator need not himself have committed or agreed to commit the two or more predicate acts, such as bribery, requisite for a substantive RICO offense under § 1962(c). Section 1962(d)-which forbids "any person to conspire to violate" § 1962(c)-is even more comprehensive than the general conspiracy provision applicable to federal crimes, § 371, since it contains no requirement of an overt or specific act to effect the conspiracy's object. Presuming Congress intended the "to conspire" phrase to have its ordinary meaning under the criminal law, see *Morissette v. United States*, 342 U. S. 246, 263, well-established principles and contemporary understanding demonstrate that, although a conspirator must intend to further an*

*endeavor which, if completed, would satisfy all of the elements of a substantive criminal offense, it suffices that he adopt the goal of furthering or facilitating the criminal endeavor, and he need not agree to undertake all of the acts necessary for the crime's completion. Salinas' contrary interpretation of § 1962(c) violates the foregoing principles and is refuted by Bannon v. United States, 156 U. S. 464, 469. Its acceptance, moreover, is not required by the rule of lenity, see United States v. Shabani, 513 U. S. 10, 17. Even if Salinas did not accept or agree to accept two bribes, there was ample evidence that the sheriff committed at least two predicate acts when he accepted numerous bribes and that Salinas knew about and agreed to facilitate the scheme, and this is sufficient to support Salinas' conviction under § 1962(d). Pp. 61-66. United States v Salinas 654 F.2d 319*

21. It is also only necessary to show the defendant associated with the criminal venture, purposefully participated in the criminal activity, and sought by his actions to make the venture successful. *United States v. Landerman*, 109 F.3d 1053, 1068 n.22 (5th Cir. 1997). Jason Ostrom's conduct inarguably meets and exceeds this criterion.

22. A defendant associates with a criminal venture if he shares in the criminal intent of the principal, and the defendant participates in criminal activity if he has acted in some affirmative manner designed to aid the venture. *Landerman*, 109 F.3d at 1068 n.22. The level of participation may be of relatively slight moment. *Leos-Quijada*, 107 F.3d at 794. Also, it does not take much evidence to satisfy the facilitation element once the defendant's knowledge of the unlawful purpose is established. *United States v. Bennett*, 75 F.3d 40, 45 (1st Cir. 1996).<sup>3</sup>

23. Jason Ostrom's overt acts clearly intended to convert the Brunsting trusts into assets of a probate estate by masquerading Curtis v Brunsting behind an "estate" label.

## **VII. Res Judicata and Collateral Estoppel**

### **1. The Brunsting Trusts are not a Probate Matter**

24. The Brunsting Trusts are not assets belonging to the Estates of Elmer or Nelva Brunsting and are not subject to probate administration.

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<sup>3</sup> US Attorneys' Criminal Resource Manual CRM 2474

25. That finding of fact and conclusion of law was settled by the Justices of the Fifth Circuit Court of Appeals<sup>4</sup> when Plaintiff Curtis' original petition survived the probate exception to federal diversity jurisdiction.

26. Moreover, the "Estate" inventory (Dkt 41-7) approved March 27, 2013, contains only an old car and the claims pending against Vacek and Freed in the Harris County District Court and was followed immediately by two drop orders. (Dkt 41-5 and 6).

27. The Fifth Circuit Court of Appeals on review held that Curtis v Brunsting was a matter relating only to an inter vivos trust not in the custody of a state court, that the assets in the inter vivos trust were not assets belonging to any "Estate" and were not subject to probate administration. (Dkt 34-4)

28. Defendant Ostrom, (Dkt 78) like Defendants Vacek & Freed (Dkt 19 and 20), Bobbie Bayless (Dkt 23), Jill Willard Young (Dkts 25, 38), Anita Brunsting (Dkt 30) Amy Brunsting (Dkt 35), Steven Mendel/Bradley Featherston (Dkt 36), Neal Spielman (Dkt 39 and 40), Christine Riddle Butts, Clarinda Comstock and Tony Baiamonte (Dkt 53), claim the Racketeer Influenced Corrupt Organization Act action before this Honorable Court arises from a "Probate Case" or "Probate Matter". However, the so called "Probate Matter" does not speak to anything but the Brunsting Trusts.

29. The Fifth Circuit found that Plaintiff Curtis' federal lawsuit was exclusively related to the Brunsting inter vivos Trusts, that those trusts were not in the custody of any state court, that trust assets were not property of any estate and that even though the wills had been since filed and there was an ongoing probate of the estate, the assets in an inter vivos trust are not property

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<sup>4</sup> Curtis v. Brunsting 704 F.3d 406

belonging to an estate and would not be subject to probate administration. Jason Ostrom's remand to state court did not change that.

30. The Circuit Court also noted that the only heir to the Estates of Elmer and Nelva Brunsting was the Brunsting Trust.

31. The Circuit Court also reiterated the long standing doctrine of custodia legis, citing to the United States Supreme Court in *Marshall v. Marshall*<sup>5</sup> for the proposition that no court can assume in rem jurisdiction over a res in the custody of another court. (Dkt 34-4)

32. Two actions were filed in state courts subsequent to Curtis reverse and remand back to the federal Court. Both state court suits were brought in the name of the "Estate of Elmer and Nelva Brunsting" and both suits raised only claims relating to the Brunsting trusts, then in the custody of a federal Court.

33. Federal Plaintiff Curtis is not an heir to any estate and neither are the other trust beneficiaries. The trust is the only heir to any estate and alleged trespass against the trust is against the named beneficiaries, not against any estate. Plaintiff Curtis is a real party in interest in the Brunsting Trusts, but not in any estate.

34. Defendant Ostrom admits to causing the case of *Curtis v Brunsting* 5:12-cv-592 to be remanded to Harris County Probate Court. However, Mr. Ostrom characterizes the remand as "*remanding the case back to Harris County Probate Number 4*", (Dkt 78 Page 4 of 24 unnumbered paragraph 7), as if to imply Plaintiff Curtis was some kind of escapee being returned to the custody of Harris County Probate Number 4, when Plaintiff Curtis had never been to Harris County Probate Court and had no claims pending there.

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<sup>5</sup> 547 U.S. 293, 126 S. Ct. 1735, 164 L. Ed. 2d 480 (2006).



35. Plaintiff Curtis retained Defendant Jason Ostrom in the federal court matter under the letterhead of Ostrom/Sain. After effecting a remand to state probate court Ostrom pled exclusively under the heading “Estate of Nelva Brunsting”, which Plaintiff Curtis’ lawsuit is not.

### VIII. Sufficiency of the Pleadings

36. Defendant Ostrom claims Plaintiffs fail to plead a cognizable RICO claim, enterprise, fraud based acts, reliance or proximate cause.

37. Such assertions can only be ground upon an unfamiliar view of the law, as surely Defendant cannot honestly plead ignorance of his acts or the facts when his proclaimed station requires him to be knowledgeable of the records and pleadings in the cases he claims to be an attorney in.

38. Plaintiffs more than adequately plead Harris County Probate Court as both the RICO enterprise and a victim of the racketeering activity.

39. In *Cedric Kushner Promotions, Ltd. v. King*, 533 U.S. 158, 164 (2001), the Supreme Court stated:

*The Court has held that RICO both protects a legitimate “enterprise” from those who would use unlawful acts to **victimize** it, United States v. Turkette, 452 U.S. 576, 591 (1981), and also protects the public from those who would unlawfully use an “enterprise” (whether legitimate or illegitimate) as a “vehicle” through which “unlawful . . . activity is committed,” National Organization for Women, Inc., 510 U.S. [249,] 259 (1994).*

40. Plaintiffs plead cognizable predicate acts with the necessary particularity and Plaintiffs plead acts demonstrative of conspiracy and of aiding and abetting with more particularity in each reply to motions to dismiss.

41. This Probate Bully Mob of RICO Defendants fully intended to trap the Brunsting siblings in a cycle of vacuous paper exchanges to maximize attorney billing profits while resolving

absolutely nothing on the public record, in order to protect the racketeering activity from discovery and investigation by legitimate law enforcement resources.

42. Each of the “RICO Defendants” aided and abetted the conspiracy in violation of 18 U.S.C. §§2 and 1962(d) and now come before this Honorable Court claiming their attempt to bust the Brunsting trusts for their own personal gain is a bitter sibling dispute over the administration of their parents’ estate. Nothing could be further from the truth.

43. While real damages are difficult to calculate without fiduciary disclosures, the additional injury resulting from five years of improperly motivated “litigation” posturing, directly and proximately caused by these Defendants illicit conduct, are tangible, concrete, calculable and a matter of public record.

44. Every one of the Brunsting beneficiaries has been injured by the fraud perpetrated on the federal and state courts, upon the Brunsting family and upon Plaintiffs by these Defendants.

45. Jason Ostrom was instrumental in the plot to treat the Brunsting Trusts as if they were a probate asset and his feigned ignorance of the legal precedents set by pro se Curtis in this extended Brunsting Trusts litigation, is in direct conflict with his fiduciary obligation to know.

46. Defendant Jason Ostrom’s feigned ignorance of law and fact are not defenses.

47. Defendant Ostrom also makes dubious statements regarding Plaintiff Munson’s participation in protecting Plaintiff Curtis’ property interest and those of the Brunsting trusts.

48. That participation is common knowledge and a matter of public record.

49. The name Rik Munson appears for the first time at Docket entry 9 in Curtis’ original federal lawsuit and appears a total of ten times in the Official record on Appeal to the Fifth Circuit in 2012. (CA No. 12-20164)

**IX. Amendment and Adoption by Reference**

50. Pursuant to the authority provided by Federal Rule of Civil Procedure 10(b) and Federal Rule of Civil Procedure 15(a)(1), Plaintiffs hereby adopt and incorporate by reference into Plaintiffs' original complaint (Dkt 1), the Addendum of Memorandum and the pleadings subsumed therein, (Dkt 26) and all of Plaintiffs' Replies to Defendants Motions, as if fully expressed in said Complaint, including but not limited to Docket entries 33, 34, 41, 45, 57, 61, 62, 65, 69, this reply, the replies yet unfiled and the attached exhibits as if fully expressed therein;

51. Plaintiffs further adopt and incorporate by reference all of the Defendants' Motions and pleadings and the claims stated therein, as exhibits in support of Plaintiffs' Complaint, as if originally attached thereto, including but not limited to Docket entries 19, 20, 23, 25, 30, 35, 36, 38, 39, 40, 53, 78, 79, 81, 83, 84 and those yet unfiled as if fully attached as exhibits thereto.

**X. Conclusion**

52. Defendant Jason Ostrom told the Honorable Judge Kenneth Hoyt in his application for approval of his First Amended Complaint that the purpose for a remand to state court was to consolidate with Plaintiff Carl Brunsting in order to afford complete relief to the parties.

53. Defendant Ostrom deprived Plaintiff Curtis of a federal judicial forum and access to the only Court of competent jurisdiction under false pretexts, by presenting unopposed motions to amend Plaintiff Curtis' federal complaint and to remand to Harris County Probate Court.

54. The Brunsting Trusts are the only heir to the "Estates of Elmer and Nelva Brunsting". Trust assets are not property belonging to the "Estates", and are not subject to probate administration, yet each of these Defendants insist this RICO lawsuit arises out of a dispute between siblings over inheritance expectancies and the administration of an estate and others

have pled Plaintiffs are disgruntled litigants seeking vengeance for being on the losing end of fully litigated state court determinations.

55. For the last five years, these Defendants have each participated in denying Plaintiff Curtis and each of the Brunsting siblings the enjoyment of their parents' benevolence. Each has engaged in gaming the judicial process, posing as advocates, to maximize fees and resolve nothing, while holding resolution of the Brunsting trusts hostage under a probate administration pretext.

Wherefore, Plaintiffs move this Honorable Court for an Order denying the Rule 12(b)(6) Motion to Dismiss filed by Defendant Jason Ostrom October 31, 2016, (Dkt 78) and hold this Defendant to answer.

Respectfully submitted,

November 18, 2016

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson

Certificate of Service

I hereby certify that a true and correct copy of the foregoing was filed into Civil Action No. 4:16-cv-01969 and served on November 18, 2016, through the Court's CM/ECF system, which constitutes service on all parties.

/s/ Candace L. Curtis  
Candace L. Curtis

/s/ Rik W. Munson  
Rik W. Munson