

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, et al	§
	§
v.	§
	§
ANITA KAY BRUNSTING, et al	§

**AMY BRUNSTING'S REPLY TO KUNZ-FREED'S RESPONSE
TO ANITA BRUNSTING'S MOTION TO COMPEL**

TO THE HONORABLE JUDGES HORWITZ AND COMSTOCK:

AMY BRUNSTING ("Amy") agrees that taking the deposition of Candace Kunz-Freed ("Freed") is a necessary and proper step at this time. To assist the Court in evaluating the competing motions filed by Freed and Anita Brunsting ("Anita"), Amy advises this Court of the following:

1. Freed's deposition is necessary because the 401 proceeding and the District Court proceeding are inexorably intertwined.

This 401 proceeding is inclusive of claims and causes of action filed by Carl Henry Brunsting ("Carl") and Candace Curtis ("Curtis").

Within the confines of this 401 proceeding Carl and/or Curtis contest the enforceability of certain documents drafted by Freed as attorney for Elmer and Nelva Brunsting, both of whom are now deceased. It is Amy's understanding that Carl and/or Curtis contest those documents drafted by Freed (and executed by Nelva Brunsting) following Elmer Brunsting's death in April 2009.

In the 164th Judicial District Court of Harris County, Texas, Carl initiated a lawsuit against Freed asserting a number of claims and causes of action stemming from the drafting of those very

same documents. In fact, one cause of action asserted against Freed in District Court is described as “*Aiding and Abetting Current Trustees’ Breaches of Fiduciary Duty*”.

The falsely accused “Current Trustees” referenced by Carl in the District Court proceeding are Amy and Anita. Neither Amy nor Anita are parties to the District Court proceeding. Rather, their defense of the fiduciary duty claims asserted by Carl and/or Curtis will occur within the 401-proceeding.

While the 401-proceeding and the District Court proceeding are inexorably intertwined, Freed’s liability in the District Court proceeding cannot be adjudicated until and unless Carl and Curtis’ contests and fiduciary claims are resolved by this Court. Thus, the case against Freed is subordinate to the cases against Amy and Anita.

Likewise, the fiduciary claims asserted against Amy and Anita are subordinate to the challenges asserted against the enforceability of the contested trust documents. It does not appear that the validity or enforceability of these documents are directly at issue in the District Court proceeding, and thus the 401-proceeding is the proper place for them to be evaluated.

Freed’s deposition is a necessary and material part of that evaluation, especially insofar as Carl and Curtis challenge those documents based on allegations that (a) they violate the “irrevocable” nature of prior-in-time documents also drafted by Freed; (b) that Nelva lacked capacity when the challenged documents were executed; and/or (c) Amy and Anita exerted undue influence on Nelva relative to the documents prepared by Freed. The better (and sooner) Freed is able to assist in resolving Carl and Curtis challenges to the trust documents, the quicker these overlapping claims can be dealt with summarily.

2. A pending, but as yet undecided consolidation motion would remedy Freed’s deposition concerns.

One basis for Freed’s opposition to her deposition appears to be her belief that the District

Court proceeding is being “held hostage” to the 401-proceeding. This of course belies Freed’s own knowledge of and involvement in the federal RICO proceeding initiated by Curtis, and subsequently described by the federal courts as “clearly frivolous (and borderline malicious)”.

It also ignores Freed’s own opposition to efforts to consolidate the District Court proceeding with the 401-proceeding. By opposing the consolidation, Freed creates most of the issues upon which she bases her opposition to being deposed. Consolidation would transform Freed from non-party to party.

Consolidation has already been recommended. The Court has previously appointed a Temporary Administrator Pending Contest. One of the Temporary Administrator’s mandates was to “*evaluate all claims filed against 1) Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC...*” With respect to the District Court proceeding, the Temporary Administrator recommended: “*Remove this District Court case to the Probate Court. It is important that there not be different results for the same or similar issues that are in the cases currently in Probate Court.*”

3. If legitimate, the Probate Court has the power to address Freed’s concerns about the attorney-client privilege.

Freed is correct that Carl has not yet been replaced as executor of Elmer and Nelva Brunsting’s respective estates. However, that is no reason to preclude her deposition from proceeding. This Court can use its inherent powers to compel Freed’s deposition, effectively freeing her from any constraints that might otherwise apply. Or, the Brunsting siblings could collectively agree to waive the privilege so that the deposition might go forward. Or, the Court could appoint Amy as the successor executor consistent with her pending applications to be so named. If there were any concerns about such an appointment among the Brunsting siblings, its scope could be specifically limited, in much the same manner as was the case with the appointment

of the Temporary Administrator. A limited appointment to allow for the waiver of any applicable privilege would resolve Freed's concerns and allow the deposition to proceed.

For these reasons addressed above, Amy Brunsting requests that the Court enter all necessary and proper relief related to the deposition of Candace Kunz-Freed, so that the deposition may proceed. Additionally, Amy Brunsting prays for such other and further relief (general and special, legal and equitable) to which she may be entitled, collectively, individually or in any of her representative capacities.

Respectfully submitted,

GRIFFIN & MATTHEWS

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ATTORNEYS FOR AMY BRUNSTING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 23rd day of January 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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