UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Candace Louise Curtis	§	
Plaintiff,	§	
	§	Civil Action NO. 4:12-CV-592
	§	
v.	§	The Honorable Kenneth Hoyt
	§	
Anita Brunsting and Amy Brunsting	§	
Defendants	§	

APPLICATION FOR ORDERS TO SHOW CAUSE WHY DEFENDANTS AND THEIR COUNSEL SHOULD NOT BE HELD IN CONTEMPT OF THIS COURT'S INJUNCTIVE ORDERS

To the Honorable Judge Kenneth Hoyt,

Petitioner herein, Candace Louise Curtis (Curtis), a California Resident, filed a breach of fiduciary suit into this Court on February 27, 2012, under diversity jurisdiction, seeking disclosures and accounting. A hearing was had on Curtis' application for preliminary injunction on April 9, 2013.[1]

THE INJUNCTION

The Court issued injunctive constraints verbally at the conclusion of the hearing, wherein the Court stated "for all with ears to hear" that this matter would be cleared up in 90 days.

[1] Transcript April 9, 2013 Hearing (Exhibit 1)

Nearly six years later, this preliminary injunction is the only substantive finding of fact and conclusion of law after hearing ever published by any court in this case. *Findings of Fact and Conclusions of Law and Order after Hearing* [Doc 45] were published on April 19, 2013.[2]

In the Order for Preliminary Injunction this Court found:

a. that Curtis had sued her sisters Anita and Amy Brunsting for Breach of fiduciary for failure to disclose trust instruments and failure to provide an accounting;
b. that Curtis was a beneficiary of the trust;
c. that Anita and Amy are trustees for the trust;
d. that Anita and Amy as co-trustees owed fiduciary obligations to Curtis;
e. that Anita and Amy had failed to disclose unprotected trust instruments;
f. that Anita claimed to have occupied the office as sole trustee as of December 2010;
g. that Anita had failed to establish proper books and records; failed to provide a proper accounting, and failed to establish and fund individual share accounts as required by the trust instruments:

"The record also reflects that the defendants have failed to provide the records requested by the plaintiff as required by Article IX-(E) of the Trust. Nor is there evidence that the Trustee has established separate trusts for each beneficiary, as required under the Trust, even though more than two years has expired since her appointment". In light of what appears to be irregularities in the documents and the failure of the

Trustee to act in accordance with the duties required by the Trust, the Court ENJOINS the Trustee(s) and all assigns from disbursing any

[2] 2013-04-19 Case 4-12-cv-592 Doc 45 Preliminary Federal Injunction filed in this Court (2015-02-06 Case 412249 PBT-2015-42743 Ostrom Notice of filing of injunction and report of master)

> *funds from any Trust accounts without prior permission of the Court. <u>However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account</u>. However, the Trustee shall not borrow funds, engage in new business ventures, or sell real property or other assets without the prior approval of the Court. In essence, all transactions of a financial nature shall require pre-approval of the Court, pending a resolution of disputes between the parties in this case.*

Those are all the facts necessary to find breach of fiduciary and all that was left at that juncture was remedy.

Stage of the Proceedings

Pro se Petitioner filed a simple breach of fiduciary lawsuit under diversity jurisdiction to enforce her beneficial interests in an inter vivos trust. Plaintiff later retained Texas attorney Jason Ostrom, whereupon Plaintiffs' lawsuit was remanded to Harris County Probate Court No. 4 (May of 2014) [Doc 112] with the injunction in full force and effect "throughout the controversy between these parties".

In Harris County Probate Court Four (4), Curtis has been listed as a Defendant of the party alleged to have polluted diversity, the trust lawsuit has been treated as if it was a probate matter, and Plaintiff Curtis has been subjected to threats, intimidation and character assassination, but has received no benefit of any kind from the family trusts.

Defendant Amy Brunsting filed an affidavit in this Court, [Doc 10-1] on March 6, 2012, claiming the individual trusts had already been "*set up, as is the case for Candace*."

Nine years have passed and there is no evidence that the Trustees have established separate trusts for each beneficiary, "as required under the Trust", nor is there any evidence that income received for the benefit of the beneficiary has been deposited appropriately in an account for the beneficiary, even though this Court found the trust required such action and despite the fact that this court Ordered the trustees to do what the Court had already found the trust required.

Standard of Review

Inherent sanctions are subject to review only under the "rather differential abuse-of-discretion standard applicable under Rule 11."[3] The United States Supreme Court has held that federal judges have a license to sanction lawyers and litigants virtually at will and without regard to any limitations in the rules and statutes.[4] A court enforces its pretrial injunctive relief through the exercise of its contempt authority. "The Supreme Court has consistently stated that the power to punish contempt is part and parcel of the judicial power."[5]

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[3] *Chambers, Chambers v. NASCO, Inc.*, 501 U.S. at 55.
[4] *Chambers v. NASCO, Inc.*, 501 U.S. 501 U.S. 32 (1991*). ID* at 46
[5] United States v. Griffin, 84 F.3d 820, 828 (7th Cir. 1996).

Courts have both statutory and inherent authority to enforce their orders through contempt.[6] In the Order remanding Curtis v Brunsting to Harris County Probate Court Four, this Court specifically retained jurisdiction to enforce its injunctive Order. The imposition of Rule 11 sanctions has been upheld even after a subsequent determination that the court lacked subject matter jurisdiction,[7] which is **not** the case here.

Far from treating this Court's Order with obedience and respect, Defendants have disparagingly acted as if the affirmative command to make mandatory distributions of income in the preliminary injunction can simply be ignored. Defendants' attempt to defeat the purpose of the Court's Order and to further their presumed litigation strategy of No-Contest-Clause-Based intimidation, is an affront to the dignity and authority of this Honorable Court.

> *"If a party can make himself a judge of the validity of orders which have been issued, and by his own act of disobedience set them aside, then are the courts impotent, and what the Constitution now fittingly calls the 'judicial power of the United States' would be a mere mockery." Gompers v. Buck Stove & Range Co., 221 u.s. 418, 450 (1911).*

[6] 28 U.S.C.S. §§ 401–402; Fed. R. Crim. P. 42; Inst. of Cetacean Research v. Sea Shepherd Conservation Soc'y, 774 F.3d 935, 944 (9th Cir. 2014). *Also see* Wagstaffe Prac. Guide: Fed. Civ. Proc. Before Trial § 31-XXXII(B).
[7] Willy v. Coastal Corp., 112 S. Ct. 1076 (1992)

Any act designed to taint the course of justice may be considered a contempt of court. Accordingly, the Court should hold Defendants and their Counsel in contempt, pursuant to Rules §65(d)(2)(A), §65(d)(2)(B) and §65(d)(2)(C) Federal Rules of Civil Procedure.

Relief Requested

Plaintiff therefore prays the Court Order Defendants and their Counsel to appear and give any legal reason why this Court should not find them in contempt of this Courts Injunctive Order.

Petitioner would like the affirmative Order in the Preliminary Injunction Enforced and would like to see Anita and Amy Brunsting learn to respect: the dignity and authority of this Court, beneficial interests and fiduciary obligations. Therefore, Plaintiff asks the Court to punish these Respondents pursuant to 18 U.S. Code §1509 – Obstruction of Court Orders, and for any other monetary, compensatory, punitive, coercive or remedial remedy and any further legal or equitable relief that may be provided by law, including but not limited to incarceration.

Subscribed and sworn on this _____ day of February 2019.

Respectfully Submitted

_____ _____

Date Candace Louise Curtis

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the above and foregoing instrument was forwarded to all known counsel of record and unrepresented parties in the manner required by the Rules on this _____ day of February 2019.

_____
Candace Louise Curtis

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