Candace Louise Curtis	§	
	§	412249-402
v.	§	Feb 27, 2012
	§	
Anita Brunsting et al.,	§	
IN RE: THE ESTATE OF	§	PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS
	§	412,249 April 2, 2012
CLOSED		
Carl Henry Brunsting	§	
Individually	§	
	§	412,249-401
v.	§	April 9, 2013
	§	
Anita Brunsting et al.,	§	
Executor for Estate of	§	
Nelva Brunsting	§	412,249-401
v.	§	April 9, 2013
	§	
Anita Brunsting et al.,	§	

DEMAND FOR PROPER IDENTIFICATION OF PARTIES AND CLAIMS WITH MOTION AND DEMAND FOR ORDER TO MAKE MORE DEFINITE AND CERTAIN

TO THE HONORABLE JUDGE OF SAID COURT:

1. Texas Rules of Civil Procedure §199.2 states that a notice of intent to take an oral deposition must be served on the witness and all parties a reasonable time before the deposition is taken.

2. An Order Compelling Depositions in The ESTATE OF NELVA BRUNSTING 412,249-401 was issued on January 24, 2019 but the office of

administrator for the ESTATE OF NELVA BRUNSTING is vacant and notice cannot be provided to all parties as required by statute.

PROPER IDENTIFICATION OF PARTIES AND CLAIMS

3. The Brunsting Trusts are not the Estate of Nelva Brunsting, rather the sole devisee or legatee of the estate.

4. The 412,249-401 ancillary cause was brought by Carl *individually and as executor* for the Estate in which Carl named his four sisters defendants in a total of seventeen different personas, for a total of thirty-four possible plaintiff/defendant combinations.

5. Carl, like his four siblings, is a beneficiary of the Brunsting trusts but not a devisee or legatee of the Estate and neither Carl nor any of his four siblings have individual standing in Estate of Nelva Brunsting.

6. Carl resigned the office of Executor in February 2015. His individual claims have never been bifurcated from the Estate's claims and the office is currently vacant.

7. According to the approved inventory and list of claims there are no claims belonging to Estate of Nelva Brunsting pending in this court.

8. If there are claims belonging to the Estate of Nelva Brunsting pending in this Court, those claims will have to be distinguished from claims belonging to Carl individually and each plaintiff would need their case number identifier.

9. Curtis was named a defendant in 412,249-401. Curtis has the due process right to know whether the plaintiff against her is Carl as a beneficiary of the Brunsting trusts or the estate or both and has the due process right to know what claims each plaintiff has against her, if any.

10. Carole Brunsting was named a defendant in 412,249-401. Carole Brunsting has the due process right to know whether the plaintiff against her is Carl or the estate and has the due process right to know what claims each plaintiff has against her, if any.

11. Amy Brunsting was named a defendant in 412,249-401. Amy Brunsting has the due process right to know whether the plaintiff against her is Carl or the estate and has the due process right to know what claims each plaintiff has against her, if any.

12. Anita Brunsting was named a defendant in 412,249-401. Anita Brunsting has the due process right to know whether the plaintiff against her is Carl or the estate and has the due process right to know what claims each plaintiff has against her, if any.

The Temporary Incompetent

13. On July 24, 2015, Greg Lester was appointed Temporary Administrator[1] Pending Contest of this Estate with limited powers to evaluate all claims filed against the Defendants in the District Court and in this Court and was ordered to:

> *"report to the Court regarding the merits of these claims on or before the expiration of this Order."*

14. The report of Gregory Lester, Temporary Administrator for the Estate of Nelva Brunsting was filed on January 14, 2016 and, while it presents itself as a report on the merits of the claims, it wholly fails to identify the parties or the claims subject to evaluation. The report does say that:

> *The issue of who will serve as the successor executor of the Estate of Nelva E. Brunsting and the Estate of Elmer Brunsting must be resolved prior to resolving the claims against Defendants.*

15. Although Amy Brunsting and Candace Louise Curtis each agreed to a qualified declination to serve as Successor Independent Executor of the Estates of Nelva E. Brunsting and Elmer H. Brunsting, pursuant to the respective wills filed in each estate during the pendency of the temporary administration, that period has long since expired and we are again confronted with the exact same questions we were confronted with then.

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[1] 2015-07-24 PBT-2015-240496 Letters of Administration Lester 2015-07-24

16. The estate matter pending in the Harris County 80th Judicial District Court is a malpractice case. However, no one can occupy the office of executor without identifying the claims, the defendant and the remedy being sought in regard to each claim belonging to the estate that is pending in the probate court.

17. Unfortunately the report does not mention the will of Nelva Brunsting; does not identify a devisee or legatee; does not mention standing; does not mention the approved inventory and list of claims; does not identify the claims belonging to Carl Brunsting individually, as distinguished from the claims brought by Carl Brunsting as executor for the estate of Nelva Brunsting and, in effect, does not comply with the Order by any measure.

18. Therefore, **Trust Beneficiary Plaintiff** Candace Louise Curtis hereby invokes her right to consider serving as Successor Independent Executor of the Estate of Nelva E. Brunsting pursuant to the designation in the Will. However, in order to properly evaluate the obligations, all claims belonging to the estate must be distinguished with a particularity. At present we have the label of an estate but no claims belonging to the Estate of Nelva Brunsting are known to be pending in Probate Court Four.

19. Defendants are not charged with the burden of proving the non-existence of facts alleged by the plaintiff and should not have to guess at the claims.

20. Commensurate with these considerations, Curtis moves This Honorable Court to enter an Order commanding that Bobbie G. Bayless, counsel for Carl Henry Brunsting, make the Estates' claims more definite and certain by identifying the claims pending in Probate Court Four brought by Carl as executor for the estate and to distinguish those claims from the claims pending in Probate Court Four brought by Carl in his capacity as a beneficiary of the Brunsting trusts.

Respectfully Submitted,

//s//
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 25th day of January 2019.

//s//
Candace Louise Curtis

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