

Candace Louise Curtis	§	
	§	412249-402
v.	§	Feb 27, 2012
	§	
Anita Brunsting et al.,	§	
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IN RE: THE ESTATE OF	§	PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS
	§	412,249 April 2, 2012
	§	
	CLOSED	
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Carl Henry Brunsting	§	
Individually	§	
	§	412,249-401
v.	§	April 9, 2013
	§	
Anita Brunsting et al.,	§	
<hr/>		
Executor for Estate of	§	
Nelva Brunsting	§	412,249-401
v.	§	April 9, 2013
	§	
Anita Brunsting et al.,	§	
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**PLAINTIFF CURTIS’ RESPONSE TO NOTICE OF HEARING, MOTION
FOR CLARIFICATION AND TO DISMISS
SPECIAL EXCEPTIONS, MOTION IN LIMINE AND MEMORANDUM
OF POINTS AND AUTHORITIES IN SUPPORT**

TO THE HONORABLE JUDGE OF SAID COURT:

1. On January 29, 2019 Neil Spielman, Attorney of record for Defendant Amy Brunsting, filed a Motion for Clarification and to Dismiss in “Estate of Nelva Brunsting” with Notice of Hearing set for February 7, 2019.

2. Most non-dispositive motions have no deadline for filing a written response and can be set with as few as three days' notice. However, a Motion to Dismiss is dispositive and thus comes under the purview of T.R.C.P. Rule 166a which requires summary judgment motions to be on file at least 21 days before it can be heard and any opposing affidavits or written responses should be on file at least 7 days before the hearing.

In Response to Amy's Motion for Clarification and to Dismiss (a) – (d)

(a) Let's all go the wrong way. Curtis v Brunsting was remanded to this Court as a direct result of a half-truth fraud perpetrated upon Plaintiff Curtis and the federal Court by attorney Jason Ostrom. The truth is that the cases are integrally related. The fraud half is in the notion that the first filed case (E2) can be transferred to the later filed court, as in Spielman's suggestion that the second related proceeding filed (E6) can be transferred from the state District Court to the Probate Court where the third related proceeding was filed (E4). **The other half of the lie is in the notion that Curtis' claims could be merged with those of a plaintiff that had named her a defendant in the same controversy.**

Amy's Application for Appointment:

(b) Because of the dominant jurisdiction issue no state court can enter a judgment that will withstand review and the question of vacancy in the office of executor is moot. Even if the issue was not moot the Complaint in the District

Court (E6 p.3) alleges that Defendants in both state court actions entered into a conspiracy.

“IV Factual Background”

8. This is a case involving Defendants' negligence, breach of fiduciary duty and other acts or omissions in their representation of Elmer and Nelva, both individually and in their capacities as trustees of the Family Trust. Defendants' actions constitute negligent misrepresentation, negligence per se, deceptive trade practices, conversion, fraud, commercial bribery, breaches of their fiduciary duties, as well as aiding and abetting, assisting and encouraging repeated breaches of fiduciary duty. Alternatively, a conspiracy existed between Defendants, and the Current Trustees for that unlawful purpose.

9. The Defendants assisted the Current Trustees in implementing a scheme to change the terms of the Family Trust, to ultimately remove Nelva from her position as trustee of the Family Trust, and to improperly remove assets from Elmer and Nelva's estates and from the Family Trust. Because of the actions of the Defendants, the Current Trustees were able to alter Elmer and Nelva's wishes, resulting in the improper transfer of assets to Anita, Amy, and Carole, all to Plaintiffs detriment.

10. Despite the Law Firm's representations to Elmer and Nelva that the Family Trust would preserve their plans for their estate, Defendants took direction from the Current Trustees, while representing Nelva, with the result being just the opposite. It is believed that Defendants not only failed to inform Nelva that they had established a relationship with the Current Trustees which put them in a conflict of interest with regard to their representation of Nelva's interests but that Defendants actually ignored that conflict of interest and their obligations to Nelva and assisted the Current Trustees in changing the terms of the Family Trust in ways which it is believed that Nelva did not have capacity to change and/or did not understand or want. Defendants also took steps to undermine and even remove Nelva's control of her own assets, of the assets of Elmer's estate, and of the Family Trust assets, thereby placing those assets at risk of loss

to Anita, Amy, and Carole and facilitating the loss which actually occurred.

11. Moreover, it is believed that Defendants assisted the Current Trustees in various ways intended to prevent Nelva from even understanding that documents were being prepared by Defendants at the Current Trustee's request, why those documents were being prepared, and what the impact of the documents would be. It is believed that in assisting the Current Trustees in obtaining their improper objectives, Defendants, among other things:..."

3. That would eliminate Amy from consideration due to conflict of interests.
4. Other than moot point, conflict of interest and unclean hands, Curtis has no objection to Amy as long as the trust is not paying for it. (E10 p.44 ln.13)

(c) Assignment of a trial date and docket control order would have to trail the Plea to the Jurisdiction (October 19, 2018) and the Pleas in Abatement (August 18, 2018, September 4, 2018 and October 8, 2018) and, as pointed out, are essentially moot at this juncture.

(d) The Order accepting the remand to the probate court is void on its face and needs to be vacated. Curtis v Brunsting needs to be returned to the Court of Original and Dominant Jurisdiction. Plaintiff Curtis is not merely concerned with being before an honorable court, but is equally concerned with getting before an honorable court that can constitute itself a court of competent jurisdiction and whose judgments can withstand the test of time. That can only be accomplished by adherence to the rules. That is not what we find here.

UNCLEAN HANDS

5. Defendants have unclean hands and the pleas of the unclean cannot be heard by the ears of an honorable Court. Plaintiff Curtis is a beneficiary of inter vivos trusts and is owed fiduciary obligations and has rights in property that are not being respected. (see Attached Exhibit E1¹)

6. Nearly seven years have passed since Plaintiff Curtis filed her initial complaint in the Southern District of Texas. It has been six years since a federal judge found that the trust required income to be deposited into an account for each beneficiary and Ordered that Anita and Amy establish and fund those accounts.

7. To date, Defendants Anita and Amy have ignored their fiduciary duty. While ignoring the affirmative orders of a federal judge, and in defiance of the obligations bound to the office of trustee, Anita and Amy have chosen to threaten the beneficiaries to whom they owe fiduciary obligations with loss of beneficial interests for having the audacity to seek judicial remedy. (E12)

AS TO BEING TIME SENSITIVE

8. The office of executor has been vacant nearly four years, during which time the Defendants' ignored the affirmative commands in an active federal injunction and the fiduciary duty clearly defined therein.

¹ Application for Orders to Show Cause 18 U.S.C. §1509 Rules §65(d)(2)(A), §65(d)(2)(B) and §65(d)(2)(C) Federal Rules of Civil Procedure.

9. While filing numerous motions and pleadings under the “Estate of Nelva Brunsting” banner, attorneys engaged in every conceivable scheme to evade dispositive hearings while also attempting to coerce Plaintiff Curtis into mediation where, again, attorney fees would be the first order of business.

10. While Mendel and Spielman talk about their fees with inferences, they will not specifically identify the “incurred debt” to which they refer. (E8)

11. The purpose for a Spendthrift Trust is to prevent the interception of generational asset transfers by third parties prior to delivery to the beneficiary. The Brunsting Trust has a spendthrift provision.

Texas Property Code §112.035

(a) A settlor may provide in the terms of the trust that the interest of a beneficiary in the income or in the principal or in both may not be voluntarily or involuntarily transferred before payment or delivery of the interest to the beneficiary by the trustee.

(b) A declaration in a trust instrument that the interest of a beneficiary shall be held subject to a “spendthrift trust” is sufficient to restrain voluntary or involuntary alienation of the interest by a beneficiary to the maximum extent permitted by this subtitle.

(c) A trust containing terms authorized under Subsection (a) or (b) of this section may be referred to as a spendthrift trust.

12. This provision appears to foreclose the kind of mediation we already saw. Any discussion of Curtis’ share of “the trust” paying attorney fees is clearly not within the law of the Decedent’s trust.

13. Now that the District Court Defendants have filed for dismissal due to non-prosecution, the probate court Defendants argue that there is an urgent necessity to have Amy appointed Executor before the “Estate’s” claims against the current trustees’ co-conspirators are dismissed. A list of dispositive and other motions filed in “Estate of Nelva Brunsting” while the office of Executor remained vacant include, but are not limited to, the following:

- 1) June 26, 2015 defendants Anita and Amy Brunsting, No-Evidence Motion for Partial Summary Judgment
- 2) July 8, 2015 Bayless *Motion for Partial Summary Judgment*
- 3) July 13, 2015 *Curtis Answer to Defendants No-Evidence Motion with Demand to Produce the Archetype of the 8/25/2010 QBD/TPA* and qualify it as evidence.
- 4) July 20, 2015 Bayless *Emergency Motion for Protective Order* (Carl)
- 5) Aug. 17, 2018, *Plea in Abatement*
- 6) Sept. 4, 2018, *Addendum to Plea in Abatement*
- 7) Oct. 8, 2018 *Verification on Plea in Abatement*
- 8) October 19, 2018 *Plea to the Jurisdiction*
- 9) November 27, 2018 Stephen Mendel (Mendel) *Notice of Intent to Hold Deposition* of District Court Defendant attorney Candace Kunz-Freed
- 10) November 30, 2018 Corey Reed, (Reed) attorney for Freed, *Motion to Quash and for Protective Order*.
- 11) December 18, 2018 Mendel filed a *Motion for Order to Compel* deposition, which he then set for January 24, 2019.

14. Petitioner has included the following chart to assist with clarity. The claims appear in the first column with those things defined as probate matters in the 2nd.

<p>I. Curtis claims in the Federal Court [Doc 1]</p> <p>1 Breach of Fiduciary Obligation; 2 Extrinsic Fraud; 3 Constructive Fraud; and 3 Intentional Infliction of Emotional Distress.</p> <p>II. Bayless Claims in the Probate Court</p> <p>1 Demand for Trust Accounting; 2 Breach of Fiduciary Duties 3 Conversion 4 Negligence 5 Tortious Interference with Inheritance 6 Constructive Trust 7 Civil Conspiracy 8 Fraudulent Concealment 9 Declaratory Relief</p> <p>III. Bayless Claims in the District Court [Doc 41]</p> <p>1 Negligence; 2 Negligent Misrepresentation; 3 Breach of Fiduciary Duty; 4 Aiding & Abetting Current Trustees' Breaches of Fiduciary Duty; 5 Fraud; 6 Conspiracy (with Current Trustees): and 7 Deceptive Trade Practices</p> <p>IV. Spielman List of Probate Court Claims</p> <p>1 Construction of Trust and Suit for Declaratory Judgment; 2 Demand for Trust Accounting; 3 Breach of Fiduciary Duties; 4 Conversion; 5 Negligence; 6 Tortious Interference with Inheritance; 7 Constructive Trust; 8 Civil Conspiracy; 9 Fraudulent Concealment; 10 Liability of Beneficiaries; 11 Removal of Trustees; 12 Receivership Over Trust; 13 Self-Dealing; 14 Criminal Wiretap Claim; 15 Civil Wiretap Act; 16 Invasion of Privacy and Intrusion on Seclusion; and 17 Request for Injunctive Relief.</p>	<p>Tex. Est. Code § 22.029 "The terms 'probate matter,' 'probate proceedings,' 'proceedings in probate,' and 'proceedings for probate' are synonymous and include a matter or proceeding relating to a decedent's estate."</p> <p>Tex.Est.Code § 22.012 "estate" means a decedent's property ...</p> <p>Tex. Est.Code § 31.001 SCOPE OF "PROBATE PROCEEDING" FOR PURPOSES OF CODE. The term "probate proceeding," as used in this code, includes:</p> <p>1 the probate of a will, with or without administration of the estate;</p> <p>2 the issuance of letters testamentary and of administration;</p> <p>3 an heirship determination or small estate affidavit, community property administration, and homestead and family allowances;</p> <p>4 an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;</p> <p>5 a claim arising from an estate administration and any action brought on the claim;</p> <p>6 the settling of a personal representative's account of an estate and any other matter related to the settlement, partition, or distribution of an estate; and</p> <p>7 a will construction suit.</p>
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CONCLUSION

15. A fundamental rule of law is that men are presumed to have intended the natural and foreseeable consequences of their own acts. Another fundamental rule, rooted in a principle of inductive logic called Ockham's razor, was stated in so many words by Sir Isaac Newton at the beginning of the third book of his Principia:

“given a distinctive pattern or tendency in events, assign the simplest and most fitting explanation as the cause, unless and until another more reasonable and plausible explanation later appears from new evidence.”

16. The judicial standard for proving up conspiracy in civil litigation is aptly expressed as follows:

"Conspirators do not make minutes of their machinations, progress, and objectives. Seldom, therefore, can conspiracy be proved by other than circumstantial evidence. It is only by assembling the results, with such evidence as may be of the progress thereof by the participants, that the victim can ever make a case of conspiracy. If in the end there is a completed structure of result, the frame of which has been furnished piecemeal by several individuals, the parts when brought together showing adaptation to each other and fitness for the end accomplished, it is at least reasonable to infer concert in both planning and fabrication." Scheele vs. Union Finance and Loan Co. 200 MINN 554 at 560, 274 N.W. 673 at 678 (1937)

17. If events are of a kind which ordinarily would not happen unless men plotted to advance a certain objective, then we should not be inundated with doubt, but may and should confidently postulate a conspiracy to accomplish that objective.

Request for Hearing

18. If hearing is necessary Plaintiff Curtis requests hearing on jurisdiction, abatement, vacancy, clarity and every other pending dispositive issue ripe for resolution, in the order in which they need be addressed, and would like the Court to set the date of its availability, giving plaintiff enough time to make travel arrangements. (at least 21 days)

19. The attached Memorandum in Support of Special Exceptions, Motion in Limine, Pleas to the Jurisdiction and in Abatement is incorporated by this reference as if fully restated herein.

Respectfully Submitted,

//s//

Candace Louise Curtis

Memorandum in Support of Special Exceptions, Motion in Limine, Pleas to the Jurisdiction and in Abatement

Jurisdiction has been challenged and must be ruled on before any other activity can be allowed in this Court.

1. Candace Louise Curtis vs. Anita and Amy Brunsting and Does 1-100 (E2) is not the Estate of Nelva Brunsting. (E7)
2. There is no executor occupying the office of executor for Estate of Nelva Brunsting and it would be pointless to appoint one, as hereinafter more fully appears.
3. There are no known claims belonging to the Estate pending in the probate court.
4. **Subject Matter Jurisdiction in Candace Louise Curtis vs. Anita and Amy Brunsting is Trust Property AND NOT Estate Property (E7, E11)** and assets in the Brunsting trusts are not property belonging to a decedent's estate.
5. Dominant Jurisdiction over the Brunsting trust controversy resides in the Court where claims were first filed. (E2)
6. Dominant Jurisdiction follows the filing Order and the first filed plaintiff has the choice of forum:
 - (1) Federal District Court (E2) February 27, 2012
 - (2) State District Court (E6) January 29, 2013
 - (3) State Probate Court (E4) April 9, 2013
7. Defendants' argument that Curtis requested remand to the Probate Court defies reason. Curtis did not go through the arduous effort to obtain a unanimous Fifth Circuit Opinion (E7) on the probate exception just to ask to be transferred to the probate court for consolidation with a later filed cross-plaintiff.
8. Even if everything these attorneys are claiming is true, it would not create subject matter jurisdiction in the probate court or the state district court. Jurisdiction cannot be created by fraud, by agreement or by any other act of a party. Because the trust controversy was in the custody of another court, neither state court could assume subject matter jurisdiction over the same controversy regardless of the labels and theories advanced.

9. Once in the Probate Court, Ostrom showed his true colors by participating in the unlawful conversion of “*Curtis v Brunsting 412,249-402*” (E3) into “*Estate of Nelva Brunsting 412,249-402*” and attempting to dissolve Curtis’ 402 proceeding into Bayless’ 412,249-401 “*Estate of Nelva Brunsting*”, (E5) when his client, Candace Curtis, has no standing in “Estate of Nelva Brunsting”.

10. The state district court’s subject matter jurisdiction was not lawfully invoked, as the trust was in the custody of a federal court when the state district court action was filed.

11. The state probate court’s subject matter jurisdiction was not lawfully invoked as the trust was in the custody of a federal court when the state probate court action was filed. (E2, E4, E6)

12. Want of Jurisdiction cannot be cured nunc pro tunc and **neither** state court can constitute itself a court of competent jurisdiction over the Brunsting trust administration controversy nor enter a judgment that will withstand review. While this may be perfectly acceptable to the attorneys’ self-interest, it is not equitable to the real parties in interest.

13. A Court must rule on summary judgment motions at the hearing. The fact that the attorneys and the Court did everything they could to avoid having to enter a ruling that would open the door for appeal indicates what? (E9, E10)

14. Instead Defendants’ Attorneys tried every conceivable means to threaten and intimidate the beneficiaries in effort to extort a settlement agreement that would have their clients enlarging their share and them stuffing their pockets like Gregory Lester and Jill Willard Young. (E8, E12) What can be concluded from this?

15. Carl Brunsting resigned from the office of executor for the “*Estate of Nelva Brunsting*” on **February 19, 2015** and Bayless has never bifurcated Carl’s individual claims as a trust beneficiary from claims pending in this court alleged to belong to the Decedent’s estate.

16. Apparently, no one flying the “Estate of Nelva Brunsting” flag actually believes “Estate of Nelva Brunsting” is a necessary party to docket control order agreements, consolidations, summary judgment motions and hearings, mediation or depositions in a probate of the “Estate of Nelva Brunsting” and apparently do

not think it necessary to distinguish between the Brunsting inter vivos trusts and the “Estate of Nelva Brunsting” at all.²

17. After the Summary Judgment hearings became wiretap hearings, Pro se Curtis attempted to place substantive matters back on the docket. At hearing March 9, 2016, Curtis was met with attempt to redirect to a second mediation using threats that were not well received as evidence of good faith and honest intentions. (E10)

18. The next nine months were spent in the federal court in an honest services fraud case (18 U.S.C. §1346),³ wherein each of the Defendants filed Motions to Dismiss claiming the organized crime claims arose from a “Probate Case”⁴, “Probate Matter”⁵, or “Probate Proceeding”⁶ which they continued in their appellate briefs⁷ in violation of 18 U.S.C. §1001.

URGENCY

19. The office of executor has been vacant for nearly four years while the attorneys pretended Estate of Nelva Brunsting and now Spielman acts like there is some sudden emergency that requires a hearing without adequate notice and opportunity for the California pro se to respond or make arrangements to appear.

20. Jurisdiction, Venue, and Standing are all first principals and must be addressed before any other matters, regardless of the stage of the proceedings in which challenges are raised.

² See the Report of Gregory Lester, Temporary Administrator for the estate of Nelva Brunsting whom, along with his accomplice Jill Willard Young, formed an apparent filthy lucre soup line to the Brunsting trust’s assets without ever identifying a legal nexus or how the estate was intending to repay the loan from the trust for their fees after having failed to even distinguish one from the other. The Report of Gregory Lester, Temporary Administrator for the estate of Nelva Brunsting, not only fails to make a distinction between the trust administration controversy and a probate of the estate but fails to identify a legal nexus between the two; fails to identify the separate claims; fails to even mention standing.

³ United States District Court for the Southern District of Texas, Houston Division Case No 4:16-cv-1969

⁴ Gregory Lester Doc 83 p.1; Darlene Payne Smith Doc 84 p.9, 10, 13, 14, 16, 17; Jason Ostrom Doc 78 p.1; County Attorneys for Judge Butts & Comstock Doc 53, p2, 16, 30; Steven Mendel Doc 36 p2, 6; Amy Brunsting Doc 35, p.1 (Ghost written); Anita Brunsting Doc 30 p.1

⁵ Jill Young Doc 25, p.3; Neal Spielman Doc39, p1, 2 - Doc 40, p.1, 2, 3; County Attorneys for Judges Butts & Comstock Doc 53, p.18 - Doc 79 p.9, 10, 13, 14, 16, 17.

⁶ Vacek & Freed Doc 20, p.4, 6, 7; Bobbie G. Bayless, Doc 23, p.2, 3; Neal Spielman Doc 40, p.3; County Attorneys for Judges Butts & Comstock Doc 53, p3, 4, 7, 15, 29; Darlene Payne Smith Doc 84, p.8, 10

⁷ Case: 17-20360 Payne Smith Doc: 00514171952; Bayless Doc: 00514171972; Jill Willard Young Doc: 00514172002; Vacek and Freed Doc: 00514186436; Mendel and Featherston Doc: 00514190024; Jason Ostrom Doc: 00514190319; Gregory Lester Doc: 00514189989; Neal Spielman Doc: 00514189951

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 3rd day of February 2019.

//s//

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Attached Exhibits

E1_2019-02-14 Application for Orders to Show Cause F.R.C.P. 65

E2_2012-02-27 Case 412-cv-592 Curtis Original Federal Complaint.pdf

E3_2014-05-22 Case 4-12-cv-592 Federal Order Granting Remand Case 412249-402 PBT-2014-170812.pdf

E4_2013-04-09 Case 412249-401 PBT-2013-115617 Bayless Original Petition 2013-04-09.pdf

E5_2015-03-05 Case 412249-401 PBT-2015-76288 Agreed Order to Consolidate cases.pdf

E6_2013-01-29 Case 2013-05455 District Court Complaint against Freed.pdf

E7_2013-01-09 Curtis v. Brunsting_ 704 F.3d 406 Lexis.pdf

E8_2016-12-29 Mendel email to Carole Distribution Injunction Liquidity and Incurred Debt

E9_2015-08-03 Case 412249-401 Hearing Transcript - Wiretap.pdf

E10_2016-03-09 Case 412249-401 March 9, 2016 Hearing Transcript.pdf

E11_2013-11-1 Bayless Plea to the Jurisdiction In re Hannah.pdf

E12_ October 2018 No-contest clause emails.pdf