

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

United States Courts
Southern District of Texas
FILED

MAR 20 2019

David J. Bradley, Clerk of Court

Candace Louise Curtis
Plaintiff,

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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)

Findings of Fact and Conclusions of Law and Order after Hearing [Doc 45]

were published on April 19, 2013.² 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.

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 funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit

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)

of the Trust beneficiary is to be deposited appropriately in an account. 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 remaining 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), Plaintiff Curtis was listed as a Defendant of the later filed plaintiff that was alleged to have polluted diversity and whose lawsuit Curtis cause was to be consolidated with and where Plaintiff's lawsuit was converted into estate of Nelva Brunsting 412249-402 and consolidated with estate of Nelva Brunsting 412249-401.

Defendants, while ignoring the Courts injunctive Orders, have made perpetual threats involving a no-contest clause while evading substantive resolution and attempting to redirect to mediations.

Defendant Amy Brunsting filed an affidavit in this Court, [Doc 10-1] on March 6, 2012, claiming individual trusts had already been “*set up, as is the case for Candace*” and this Courts injunctive order Commands the funding of those trust accounts. 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.

Defendants have been paying excess taxes due to their refusal to fund these trusts and paying professional fees without notice or hearings or court approval and Plaintiff is asking this court to enforce the injunction.

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

³ *Chambers, Chambers v. NASCO, Inc.*, 501 U.S. at 55.

⁴ *Chambers v. NASCO, Inc.*, 501 U.S. 32 (1991). *ID* at 46

contempt authority. “The Supreme Court has consistently stated that the power to punish contempt is part and parcel of the judicial power.”⁵

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).

⁵ *United States v. Griffin*, 84 F.3d 820, 828 (7th Cir. 1996).

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 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 the Courts Injunctive Order.

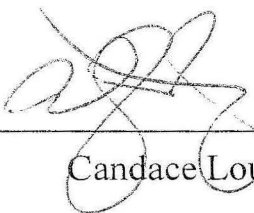
Petitioner would like the affirmative Order in the Preliminary Injunction Enforced and would like to see Anita and Amy Brunsting learn to respect the dignity and authority of this Court and the beneficial interests and fiduciary obligations bound to the office they are in hostile possession of.

Plaintiff asks the Court to punish these Respondents for Obstruction of Court Orders, and for any other monetary, compensatory, punitive, coercive or remedial remedy and any further relief that may be provided by law or equity including but not limited to the incarceration of these contemnors.

Subscribed and sworn on this 20 day of March 2019.

Respectfully Submitted


3/20/2019
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 20 day of March 2019.

Personal Service @ 201 Caroline St. Houston
ON Counsel


Candace Louise Curtis

Amy Brunsting
C/O her Counsel Neal E. Spielman
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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CANDACE LOUISE CURTIS,

Plaintiff,

VS.

ANITA KAY BRUNSTING, *et al*,

Defendants.

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CIVIL ACTION NO. 4:12-CV-592

MEMORANDUM AND ORDER
PRELIMINARY INJUNCTION

I. INTRODUCTION

Before the Court is the *pro se* plaintiff's, Candace Louise Curtis, renewed application for an *ex parte* temporary restraining order, asset freeze, and preliminary and permanent injunction [Dkt. No. 35]. Also before the Court is the defendants', Anita Kay Brunsting and Amy Ruth Brunsting, memorandum and response to the plaintiff's renewed motion [Dkt. No. 39]. The Court has reviewed the documents presented, including the pleadings, response and exhibits; received testimony and arguments, and determines that the plaintiff's motion for a temporary injunction should be granted.

II. BACKGROUND

A. Procedural Background

The plaintiff filed her original petition on February 27, 2012, alleging that the defendants had breached their fiduciary obligations under the Brunsting Family Living Trust ("the Trust"). Additionally, the plaintiff claimed extrinsic fraud, constructive fraud, intentional infliction of emotional distress, and sought an accounting, as well as a

recovery of legal fees and damages. The Court denied the plaintiff's request for a temporary restraining order and for injunctive relief. However, concurrent with the Court's order denying the relief sought by the plaintiff, the defendants filed an emergency motion for the removal of a *lis pendens* notice that had been filed by the plaintiff on February 11, 2012, prior to filing her suit.

The defendants sought, by their motion, to have the *lis pendens* notice removed in order that they, as the Trustees of the Trust might sell the family residence and invest the sale proceeds in accordance with Trust instructions. After a telephone conference and consideration of the defendants' argument that the Court lacked jurisdiction, the Court concluded that it lacked jurisdiction, cancelled the *lis pendens* notice, and dismissed the plaintiff's case.

The plaintiff gave notice and appealed the Court's dismissal order. The United States Court of Appeals for the Fifth Circuit determined that the Court's dismissal constituted error. Therefore, the Fifth Circuit reversed the dismissal and remanded the case to this Court for further proceedings. This reversal gave rise to the plaintiff's renewed motion for injunctive relief that is now before the Court.

B. Contentions of the Parties

The plaintiff contends that she is a beneficiary of the Trust that the defendants, her sisters, serve as co-trustees. She asserts that, as co-trustees, the defendants owe a fiduciary duty to her to "provide [her] with information concerning trust administration, copies of trust documents and [a] semi-annual accounting." According to the plaintiff,

the defendants have failed to meet their obligation and have wrongfully rebuffed her efforts to obtain the information requested and that she is entitled.

The defendants deny any wrongdoing and assert that the plaintiff's request for injunctive relief should be denied. The defendants admit that a preliminary injunction may be entered by the Court to protect the plaintiff from irreparable harm and to preserve the Court's power to render a meaningful decision after a trial on the merits. *See Canal Auth. of State of Fla. V. Calloway*, 489, F.2d 567, 572 (5th Cir. 1974). Rather, the defendants argue that the plaintiff had not met her burden.

III. STANDARD OF REVIEW

The prerequisites for the granting of a preliminary injunction require a plaintiff to establish that: (a) a substantial likelihood exists that the plaintiff will prevail on the merits; (b) a substantial threat exists that the plaintiff will suffer irreparable injury if the injunction is not granted; (c) the threatened injury to the plaintiff outweighs the threatened harm that the injunction may do to the defendants; and, (d) granting the injunction will not disserve the public interest. *See Calloway*, 489 F.2d at 572-73.

IV. DISCUSSION AND ANALYSIS

The evidence and pleadings before the Court establish that Elmer Henry Brunsting and Nelva Erleen Brunsting created the Brunsting Family Living Trust on October 10, 1996. The copy of the Trust presented to the Court as Exhibit 1, however, reflects an effective date of January 12, 2005. As well, the Trust reveals a total of 14 articles, yet Articles 13 and part of Article 14 are missing from the Trust document. Nevertheless, the Court will assume, for purposes of this Memorandum and Order, that the document

presented as the Trust is, in fact, part of the original Trust created by the Brunstings in 1996.

The Trust states that the Brunstings are parents of five children, all of whom are now adults: Candace Louise Curtis, Carol Ann Brunsting; Carl Henry Brunsting; Amy Ruth Tschirhart; and Anita Kay Brunsting Riley. The Trust reflects that Anita Kay Brunsting Riley was appointed as the initial Trustee and that she was so designated on February 12, 1997, when the Trust was amended. The record does not reflect that any change has since been made.

The plaintiff complains that the Trustee has failed to fulfill the duties of Trustee since her appointment. Moreover, the Court finds that there are unexplained conflicts in the Trust document presented by the defendants. For example, The Trust document [Exhibit 1] shows an execution date of January 12, 2005.¹ At that time, the defendants claim that Anita Kay served as the Trustee. Yet, other records also reflect that Anita Kay accepted the duties of Trustee on December 21, 2010, when her mother, Nelva Erleen resigned as Trustee. Nelva Erleen claimed in her resignation in December that she, not Anita Kay, was the original Trustee.

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.

¹ It appears that Nelva Erleen Brunsting was the original Trustee and on January 12, 2005, she resigned and appointed Anita Brunsting as the sole Trustee.

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 funds from any Trust accounts without prior permission of the Court. However, any income received for the benefit of the Trust beneficiary is to be deposited appropriately in an account. 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.

The Court shall appoint an independent firm or accountant to gather the financial records of the Trust(s) and provide an accounting of the income and expenses of the Trust(s) since December 21, 2010. The defendants are directed to cooperate with the accountant in this process.

It is so Ordered

SIGNED on this 19th day of April, 2013.

A handwritten signature in black ink, appearing to read "Kenneth M. Hoyt", written over a horizontal line.

Kenneth M. Hoyt
United States District Judge