

IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Candace Louise Curtis	§	
Plaintiff	§	
	§	
vs.	§	
	§	Civil Action No. 4:12-cv-592
	§	
Anita Brunsting	§	
Amy Brunsting	§	
Does 1-99	§	
Defendants	§	

**AFFIDAVIT OF CANDACE LOUISE CURTIS IN SUPPORT OF
APPLICATION FOR ORDERS TO SHOW CAUSE**

To the Honorable Kenneth Hoyt,

1. I came before this Honorable Court on February 27, 2012, with valid concerns over the threat of theft of my beneficial interest in an inter vivos trust created by my parents Elmer and Nelva Brunsting. I was seeking fiduciary disclosures and accounting and was suffering from emotional trauma over what had transpired that compelled me to seek judicial remedy.

2. I knew nothing of law at the time and so I told everything I knew or thought I knew in that initial complaint, sworn to under penalty of perjury and verified by California Jurat [Doc 1].

3. I continue to stand behind all of my claims. Of particular note are the mentions of illegal wiretap recordings [Doc 1 p.19 para 3] the drafting of illicit instruments and a no-contest clause disinheritance scheme, [Doc 1 P.20 para 4] all of which reared their ugly heads after the case had left this Honorable Court.

The Injunction

4. This Court issued a preliminary injunction on April 19, 2013. At conclusion of the April 9, 2013 hearing the Court issued the Injunction with constraints delivered verbally. Findings of Fact, Conclusions of Law and Order after Hearing were published on April 19, 2013. [Doc 45]

5. In the Injunctive Order the Court found that I had sued my sisters Anita and Amy Brunsting for breach of fiduciary, for failure to disclose trust instruments and failure to provide an accounting. The Court then found that I was a beneficiary of the trust created by our parents and that my sisters Anita and Amy were trustees and owed me fiduciary obligations.

6. The Court further found that Anita had failed to disclose unprotected trust instruments; failed to establish proper books and records; failed to provide a proper accounting; and failed to establish separate trusts for each of the five beneficiaries as required by the trust instruments.

“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”.

7. The Court also appointed a Special Master to perform an accounting of trust income and disbursements beginning when Anita first occupied the office of trustee.

8. Amy and Anita were enjoined from spending trust money without Court approval and were ordered to fund the trust accounts for the beneficiaries with trust income, as required by the trust.

9. My dearest friend and companion Rik Munson helped me draft the initial federal petition but suffered a medical emergency in late 2013 resulting in coma. In October 2013, I appeared in this Court without having had an opportunity to be briefed and was completely lost.

10. I was directed by the Court to obtain the assistance of counsel and had the extreme misfortune of retaining Houston Attorney Jason Ostrom. Without my knowledge and consent Ostrom petitioned the court for leave to amend my complaint in order to pollute diversity and obtained a remand to Harris County Probate Court No. 4. Moreover, Ostrom not only polluted diversity but raised claims allegedly belonging to my mother’s estate that I had no standing to raise.

11. It should be noted here that on April 10, 2013 my sisters’ attorney, George Vie III, noticed the court that a related state court suit [Doc 41] had been filed in Harris County Probate Court No. 4 naming everyone in the federal court case as defendants, including me.

12. In Probate Court No. 4 the suit was assigned Case No. 412249-402. [*Candace Louise Curtis vs. Anita and Amy Brunsting and Does 1-100 No 412249-402*]. After that Ostrom adopted the pleading caption “Estate of Nelva Brunsting No. 412249-402” and abandoned my lawsuit altogether.

13. My brother Carl Brunsting resigned the office of executor on February 19, 2015. On March 3, 2015, with the office of executor vacant, Ostrom, along with Probate Court Judge Christine Butts and all the other attorneys, signed an agreed Order to “Consolidate” “Estate of Nelva Brunsting 412249-402” with “Estate of Nelva Brunsting 412249-401”, thus dissolving my separate and distinct lawsuit in its entirety. Ostrom acted without my knowledge and consent and this does not comport with any rules governing consolidation. This was a conversion. I was named a defendant in 401 (see [Doc 41])

14. I am not the executor for any estate nor am I a devisee or legatee of any estate. I am a third party to an A/B family trust contract created by my parents that specifically identifies my four siblings and I as third parties whom that contract was intended to benefit. The Brunsting Family Trust is not an asset of the estate of our parents and I have my own separate and distinct right of claims.

15. Upon discovering these acts, I immediately dismissed Jason Ostrom and did my best to act in good faith, but soon discovered that -402 had been closed and I was not even allowed to file into my own case. I later discovered the 402 file had been reopened and that the version of the order consolidating the cases had been removed from the docket.¹

The Remand Order and Recent Disclosures

16. The remand order binds the state court to all orders entered in the federal court throughout the controversy among these parties. However, the instant this case landed in probate court all of that went out the window.

17. Although the case was remanded to Harris County Probate Court Number Four (4) in May 2015, this Court’s Order for Preliminary Injunction [Doc 45] is the only substantive finding of fact and conclusion of law after hearing ever issued in **any** court.

18. On March 19, 2019, seven years after I initially filed suit, I was boarding a plane for Houston for a March 20, 2019 deposition of one of the attorneys that double crossed my parents, when I received a message with attached “supplemental productions” totaling 143 pages.

¹ It should be noted here that after a new judge was elected to Probate Court 4, beginning January 2019, the consolidation agreement was found rolling around in a drawer by the new clerk and returned to the docket, whereupon the Court ruled the consolidation agreement valid because it was signed by my supposed representative and ancillary case -402 was again ordered closed. Why in the world would I have wanted this non-probate case in Harris County Probate Court after having obtained a unanimous opinion from the Fifth Circuit Court of Appeals that my breach of fiduciary lawsuit was not a probate matter and that the trust is not the estate?

Fraud Upon This Court

19. From the onset, when my sisters first appeared in this Court, they were represented by Attorney Bernard Lisle Mathews III, (Mathews) also referred to as Chip or litigation attorney in the law firm notes.

20. These newest disclosures appear to indicate that Bernard Mathews was a staff attorney and Candace Kunz-Freed's counterpart at Vacek & Freed P.L.L.C., the trust and estate plan firm that betrayed my parents and ruptured the family trust.

Perjured Affidavit

21. On March 6, 2012 Bernard Mathews filed an affidavit, verified by Amy, claiming that personal asset trusts had been setup "*as is the case for Candace*" [Doc 10-1].

22. The March 19, 2019 disclosures contain a Vacek & Freed case note entry by Candace Freed that reads as follows:

Phone call from Litigation Counsel requested verification of continuing to set up the personal asset trusts. answer was yes, may want to hold off on Candy's since she has filed suit. There appears to be no problem with the trusts themselves just who will be in charge of it. Discussed with CHIP the issues relating to SMJ that the court felt took it out of his realm. Handling Lis pendens action first and handle the rest later. Dismissal perhaps. Advised him that Checks in the mail from the client. He has not stopped working on it.

23. Yes, there is a problem with the trust instruments themselves.

24. Moreover, not only did Mathews appear using a "Green and Mathews" letterhead to conceal his egregious conflict of interest as a staff attorney with Vacek & Freed, but he filed a knowingly false affidavit into this Court while simultaneously saying just the opposite behind the Court's back. That affidavit was untrue then and has remained untrue despite this Court's injunctive order [Doc 45] commanding specific performance that would make it true.

A Passive Aggressive Approach to Fiduciary Theft

The No Accounting - No Disclosure - No-Contest Clause Machination

25. For my sisters to make threats of disinheritance while ignoring this Court's Injunctive Order is a crime. Unfortunately it is not their only crime. Knowing the only remedy available to a beneficiary for dealing with a rogue fiduciary is to bring an action for judicial relief, and after having attained hostile possession of the office of trustee, Anita and Amy refused or otherwise failed to provide an accounting, failed to produce unprotected trust documents, [Doc 45] and began making verbal threats that I was going to be disinherited for "challenging the trust", when all I was doing was exercising my rights to information as an income beneficiary. Anita and Amy made it clear from the onset that they intended to claim Carl and I violated a no-contest clause by bringing judicial action.

26. The mere notion that a beneficiary who is forced to invoke the law to protect beneficial interests violates a no-contest clause, is a counter-dilemma similar to that presented by *Protagoras v. Euathlus*. Under this theory, complaining about fiduciary theft of property interests would be a forfeiture of those interests, which is a result indistinguishable from doing nothing in response to the overt theft of property. I identified this fiduciary theft plot in my original complaint. [Doc 1 P.20 para 4]

27. That my sisters and their attorneys would even make such a claim is the utmost betrayal of the fiduciary duty of undivided loyalty and demonstrative of the depth and breadth of their abject moral bankruptcy.

Life Changing Events

28. My Mother's passing was very painful for me. Amy and Anita concealed the place where she was in hospice, depriving us both of the opportunity to say goodbye.

29. My sister Carole's house was damaged in Hurricane Harvey and she had to obtain a FEMA loan to make repairs, which are ongoing to this day. Carole was named a defendant in the probate court suit because of 100k in Exxon stock improperly transferred to her by Anita, which Carole will not touch for fear of reprisal, not to mention suffering serious tax consequences due to the manner in which it was transferred.

30. Once I found myself in the probate court, I was threatened continuously by my sisters' third set of attorneys, while this Court's preliminary injunction and remand Order have been disrespected and ignored. My character has been maligned and I have been subjected to ridicule causing further emotional distress. I have continued to suffer financial injury by traveling to Houston on numerous occasions, only to experience evasion games designed with attrition in mind.

31. After thirty-six years of marriage my husband unexpectedly left the home without even voicing any discontent, leaving me with a financial responsibility we once shared. When I was forced to rent my home, Rik opened his heart and his home to me, and my youngest son Andy, who is a single father. The greatest joy in my life, my three year old grandson Andrew Jr. (AJ), also came to live with us.

32. The worst tragedy in my life was the unexpected loss of my son Kevan last Thanksgiving. For the last ten years Kevan, a self-employed dental technician, had been an insulin dependent diabetic, suffering numerous hospitalizations and surgeries due to blood infections.

33. When Kevan was no longer able to work, I could stretch my finances no further and was helpless to even assist him with the basic necessities of life. His grandparents would have been the first to step forward but they had already passed away and my sisters' lack of honesty and integrity were instrumental in creating and perpetuating my financial hardships. I want them in prison.

34. I did not even inform them of the death of their nephew, my sister Carole did. Anita and Amy both called me, after years of no communication, and offered to help me financially. I told Anita that I would accept some of my property but that she had to give the same to everyone else. That ended the conversation and that was the last I heard of any intent to distribute.

35. I turned 66 on March 12, 2019. I am still working despite well laid plans to retire and enjoy my golden years and my grandson. Those plans included the expectancy that our parents had promised.

Conclusion

36. I filed suit and came to Texas to get what belonged to me but that is no longer enough. The people responsible for this charade have no excuse to offer that the law will tolerate or that I will accept. When our father was declared non compos mentis in June of 2008, no changes could be made to the trust under its own terms.

37. None-the-less Vacek & Freed attorney Candace Kunz-Freed (Freed) and Vacek staff attorney Bernard Lisle Mathews III immediately went to work to dismantle my parents trust plan, generating a series of illicit instruments beginning July 1, 2008. These improperly drafted changes put Vacek & Freed's new clients, my sisters Anita and Amy, in the position of co-trustees, without resort to a court of competent jurisdiction.

38. Our mother and father had jointly removed both Amy and Anita from the list of successor trustees, to prevent exactly what has happened, and our Mother had no individual power to alter or amend that A/B contract.

39. I am the de jure trustee under the last agreement signed by both of our parents and seven years after our mother's death on November 11, 2011, I have received a total of absolutely nothing of my share of the trust property.

40. At a deposition my diminished capacity brother Carl testified that he has given his attorney Bobbie G. Bayless \$250,000 in fees. Carl has received nothing of his inheritance and my sister Carole has received no benefit from her equitable property interests either.

41. The recent disclosures of non-privileged records show that Anita was constantly calling Vacek & Freed about making changes to our parents' trust contract while our mother was still alive. These disclosures also show an engagement letter between Vacek & Freed and Anita, while Nelva was still their client. If this is not a breach of the fiduciary duty of undivided loyalty that Vacek & Freed owed to our parents, what is it?

42. They also show that Anita continued to talk about making changes to "The Trust" even after mother died. Moreover, Anita emailed Freed asking if she could comingle the life insurance proceeds from the irrevocable life insurance trust with mother's Survivors Trust bank Account. The reason she gave was to avoid issuing large checks to each beneficiary which, in addition to the secret comingling and self-dealing revealed by the Report of the Special Master, would indicate that Anita also intended to keep more of those proceeds for herself.

43. While Anita and Amy's attorneys have been making disinheritance threats and evading remedy, they have made it abundantly clear off the record, that the only way this case is going to be resolved is by mediation in which the first order of business will be the extraction of attorneys' fees from the trust res.

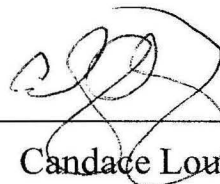
44. Defendants have violated this Court's Order for Preliminary Injunction and trampled the unanimous opinion of the Honorable Justices of the Fifth Circuit Court of Appeals, and the conditions precedent to the Order for Remand that all rulings entered in the federal courts be binding as res judicata on the state court "throughout the controversy between these parties".

Remedy Requested

45. I am asking that this Court's preliminary injunction be enforced, that my sisters both be incarcerated, and that their attorneys be disgorged of their single minded motivation for interfering with the resolution of this case.

46. This affidavit is based upon personal knowledge that is supported by self-authenticating disclosures, admissions, and the record, and are herein sworn to be true pursuant to F.R.C.P. §11 and Title 18 United States Code §1001 and all other applicable provisions of state and federal law.

Respectfully submitted this 12th day of April 2019



Candace Louise Curtis

CERTIFICATE OF SERVICE

SEE THE ATTACHMENT

I hereby certify that a true and correct copy of the foregoing instrument was placed in the United States Mail with postage fully prepaid on the 12th day of April 2019, addressed as follows:

Amy Brunsting
C/O Neal Spielman Esq.
Griffin and Mathews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

Anita Brunsting
C/O Stephen Mendel Esq.
The Mendel Law Firm
1155 Dairy Ashford, Suite 104
Houston, Texas 77079

Neal Spielman Esq.
Griffin and Mathews
1155 Dairy Ashford, Suite 300
Houston, Texas 77079

Stephen Mendel Esq.
The Mendel Law Firm
1155 Dairy Ashford, Suite 104
Houston, Texas 77079

CALIFORNIA ALL- PURPOSE CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California }

County of Napa }

On 04/12/2019 before me, ARVIND K NISCHAL NOTARY PUBLIC
(Here insert name and title of the officer)

personally appeared CANDACE-LOUISE CURTIS,
 who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/~~are~~ subscribed to the within instrument and acknowledged to me that ~~he/she/they~~ executed the same in his/her/their authorized capacity(ies), and that by ~~his/her/their~~ signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

[Signature]
 Notary Public Signature

(Notary Public Seal)



ADDITIONAL OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages _____ Document Date _____

CAPACITY CLAIMED BY THE SIGNER

Individual (s)
 Corporate Officer

(Title)

Partner(s)
 Attorney-in-Fact
 Trustee(s)
 Other _____

INSTRUCTIONS FOR COMPLETING THIS FORM

This form complies with current California statutes regarding notary wording and, if needed, should be completed and attached to the document. Acknowledgments from other states may be completed for documents being sent to that state so long as the wording does not require the California notary to violate California notary law.

- State and County information must be the State and County where the document signer(s) personally appeared before the notary public for acknowledgment.
- Date of notarization must be the date that the signer(s) personally appeared which must also be the same date the acknowledgment is completed.
- The notary public must print his or her name as it appears within his or her commission followed by a comma and then your title (notary public).
- Print the name(s) of document signer(s) who personally appear at the time of notarization.
- Indicate the correct singular or plural forms by crossing off incorrect forms (i.e. ~~he/she/they~~, is /are) or circling the correct forms. Failure to correctly indicate this information may lead to rejection of document recording.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different acknowledgment form.
- Signature of the notary public must match the signature on file with the office of the county clerk.
 - ❖ Additional information is not required but could help to ensure this acknowledgment is not misused or attached to a different document.
 - ❖ Indicate title or type of attached document, number of pages and date.
 - ❖ Indicate the capacity claimed by the signer. If the claimed capacity is a corporate officer, indicate the title (i.e. CEO, CFO, Secretary).
- Securely attach this document to the signed document with a staple.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Candace Louise Curtis	§	
Plaintiffs,	§	
	§	Civil Action NO. 4:12-CV-592
	§	
v.	§	The Honorable Kenneth Hoyt
	§	
Anita Brunsting and Amy Brunsting	§	ORDER TO SHOW CAUSE WHY
Defendants	§	DEFENDANT SHOULD NOT BE
	§	HELD IN CONTEMPT OF COURT

Upon the Affidavit of Plaintiff Candace Louise Curtis, sworn to the 12th day of April 2019, and upon the copy of the Memorandum and Order for Preliminary Injunction Issued by this Court on the 19th day of April 2013, annexed hereto;

Anita Brunsting, you are Ordered to personally appear before this Court on the _____ day of _____ 2019, to give any legal reason why this court should not find you guilty of contempt, punish you for willfully disobeying its orders, as set forth in the attached affidavit of facts constituting contempt, and require you to pay for the benefit of the moving party, sanctions including but not limited to the attorney fees and travel costs of this proceeding.

It is SO ORDERED

Date

Honorable Kenneth Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Candace Louise Curtis	§	
Plaintiffs,	§	
	§	Civil Action NO. 4:12-CV-592
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v.	§	The Honorable Kenneth Hoyt
	§	
Anita Brunsting and Amy Brunsting	§	ORDER TO SHOW CAUSE WHY
Defendants	§	DEFENDANT SHOULD NOT BE
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Upon the Affidavit of Plaintiff Candace Louise Curtis, sworn to the 12th day of April 2019, and upon the copy of the Memorandum and Order for Preliminary Injunction Issued by this Court on the 19th day of April 2013, annexed hereto;

Amy Brunsting, you are Ordered to personally appear before this Court on the _____ day of _____ 2019, to give any legal reason why this court should not find you guilty of contempt, punish you for willfully disobeying its orders, as set forth in the attached affidavit of facts constituting contempt, and require you to pay for the benefit of the moving party, sanctions including but not limited to the attorney fees and travel costs of this proceeding.

It is SO ORDERED

Date

Honorable Kenneth Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
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	§	
Anita Brunsting and Amy Brunsting	§	ORDER TO SHOW CAUSE WHY
Defendants	§	DEFENDANT SHOULD NOT BE
	§	HELD IN CONTEMPT OF COURT

Upon the Affidavit of Plaintiff Candace Louise Curtis, sworn to the 12th day of April 2019, and upon the copy of the Memorandum and Order for Preliminary Injunction Issued by this Court on the 19th day of April 2013, annexed hereto;

Stephen Mendel, you are Ordered to personally appear before this Court with your client Anita Brunsting, on the ____ day of _____ 2019, to give any legal reason why this court should not find you guilty of aiding and abetting your client's contempt and punish you for willfully disobeying its orders, as set forth in the attached affidavit of facts constituting contempt, and require you to pay for the benefit of the moving party, sanctions including but not limited to the attorney fees and travel costs of this proceeding.

It is SO ORDERED

Date

Honorable Kenneth Hoyt
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

Candace Louise Curtis	§	
Plaintiffs,	§	
	§	Civil Action NO. 4:12-CV-592
	§	
v.	§	The Honorable Kenneth Hoyt
	§	
Anita Brunsting and Amy Brunsting	§	ORDER TO SHOW CAUSE WHY
Defendants	§	DEFENDANT SHOULD NOT BE
	§	HELD IN CONTEMPT OF COURT

Upon the Affidavit of Plaintiff Candace Louise Curtis, sworn to the 12th day of April 2019, and upon the copy of the Memorandum and Order for Preliminary Injunction Issued by this Court on the 19th day of April 2013, annexed hereto;

Neal Spielman, you are Ordered to personally appear before this Court with your client Amy Brunsting, on the ____ day of _____ 2019, to give any legal reason why this court should not find you guilty of aiding and abetting your client's contempt and punish you for willfully disobeying its orders, as set forth in the attached affidavit of facts constituting contempt, and require you to pay for the benefit of the moving party, sanctions including but not limited to the attorney fees and travel costs of this proceeding.

It is SO ORDERED

Date

Honorable Kenneth Hoyt
United States District Judge