

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS
_____	§	
	§	
CARL HENRY BRUNSTING, <i>Et Al</i>	§	
	§	
v.	§	
	§	
ANITA KAY BRUNSTING, <i>Et Al</i>	§	

**DEFENDANT CO-TRUSTEES ANITA KAY BRUNSTING’S &
AMY RUTH BRUNSTING’S 2ND AMENDED ANSWER**

TO THE HONORABLE JUDGES HORWITZ & COMSTOCK:

ANITA KAY BRUNSTING (“Anita”) and AMY RUTH BRUNSTING (“Amy”) (collectively Co-Trustees) have been sued individually and in various capacities and file this second amended answer to all claims asserted against them in any and all various capacities by any other party, including, but not limited to, Candace Louis Curtis and Carl Henry Brunsting, and would respectfully show the Court as follows:

I. General Denial

Pursuant to the TEX. R. CIV. P. 92, Defendant Co-Trustees deny each and every allegation in all pleadings seeking affirmative relief against the Defendant Co-Trustees and demand strict proof thereof.

II. Verified Denial

Defendant Co-Trustees are not liable as Trustee of the Carl Henry Brunsting Personal Asset Trust and the Candace Curtis Personal Asset Trust, because such trusts have not been

created and therefore do not contain any property. In part, these personal asset trusts have not been created due to the conduct of Candace Curtis and Carl Brunsting.

III. Affirmative Defenses

Pursuant to the TEX. R. CIV. P. 94, Defendant Co-Trustees assert the following affirmative defenses, each in addition and/or in the alternative to, the others:

1. Defendant Co-Trustees deny that all conditions precedent to a right of recovery have been satisfied.
2. Defendant Co-Trustees would show that any claim for declaratory relief is without merit as the claim is subsumed within the other claims asserted by the plaintiffs. Alternatively, Defendant Co-Trustees assert their right to recovery of reasonable attorneys' fees under TEX. CIV. PRAC. & REM. CODE, ch. 37.
3. Defendant Co-Trustees specifically deny and affirmatively assert that the conspiracy claim is not an independent tort or cause of action as a matter of law, and is not a basis for an award of actual or exemplary damages.
4. Plaintiffs' claims are barred, or Defendant Co-Trustees are excused, by the equitable or legal doctrines of affirmation, waiver, estoppel, laches, ratification (express or implied) and acceptance of benefits.
5. Defendant Co-Trustees plead all applicable provisions of the Trust and sub-trust instruments concerning the duties and liabilities of a person serving as Trustee, including any exculpatory provision applicable to alleged errors of judgment or mistake of fact or law or ordinary negligence.
6. Defendant Co-Trustees plead all applicable provisions of the Trust and sub-trust instruments concerning Plaintiffs' forfeiture of any amounts to which they are entitled because they have contested the trust.
7. Defendant Co-Trustees plead the doctrine of comparative responsibility as provided in TEX. CIV. PRAC. & REM. CODE, ch. 33, and its application to any tort claim (intentional or otherwise) of the Plaintiffs that may be alleged against them, including the present claims of conversion and negligence.
8. Defendant Co-Trustees contend that some or all of the acts complained of were done by, or upon advice received from and relied upon by, a third party over whom the Defendant Co-Trustees had no control or right of control, and for whom Defendant Co-Trustees are not responsible, including, but not limited to, the claims for intrusion on seclusion and criminal and civil wiretap.

9. The claims for civil and criminal wiretap liability are barred, or Defendant Co-Trustees' actions are excused, because the recordings were made with the consent of one of the parties to the conversation.
10. Any allegedly wrongful acts or omissions by Defendant Co-Trustees, to the extent any occurred, which are denied, were legally excused or justified.
11. Pleading further, Plaintiffs are not entitled to punitive damages, and any and all excessive amounts of such damages sought violate TEX. CIV. PRAC. & REM. CODE, ch. 41, the Texas Constitution, and the United States Constitution, all of which set limits on the award of punitive damages. Defendant Co-Trustees alleged acts and omissions were undertaken in good faith, without malicious intent to injure Plaintiffs, and constitute lawful, proper and justified means to further the purposes of the Trust and sub-trusts.

IV. Prayer

Defendant Co-Trustees pray for the following relief:

- A. Entry of a judgment that Plaintiffs take nothing on their claims.
- B. Assessment of costs against Plaintiffs.
- C. Reasonable and necessary attorneys' fees.
- C. Such other and further relief, legal and equitable, general and special, to which Defendant Co-Trustees may be entitled.

Respectfully submitted,

THE MENDEL LAW FIRM, L.P.

// s // Stephen A. Mendel

BY: _____

STEPHEN A. MENDEL
Texas State Bar No. 13930650
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
O: 281-759-3213
F: 281-759-3214
E: steve@mendellawfirm.com

ATTORNEYS FOR ANITA BRUNSTING

&

Respectfully submitted,

GRIFFIN & MATTHEWS

// s // Neal E. Spielman

BY: _____

NEAL E. SPIELMAN
Texas State Bar No. 00794678
1155 Dairy Ashford, Suite 300
Houston, Texas 77079
O: 281-870-1124
F: 281-870-1647
E: nspielman@grifmatlaw.com

ATTORNEYS FOR AMY BRUNSTING

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this November 4, 2019, to all counsel of record/pro se parties via E-file and/or direct e-mail.

Attorneys for Candace Kunz-Freed:

Zandra Foley/Cory S. Reed
Thompson, Coe, Cousins & Irons, L.L.P.
One Riverway, Suite 1400
Houston, Texas 77056
O: 713-403-8200
F: 713-403-8299
Via E-Mail: zfoley@thompsoncoe.com
Via E-Mail: creed@thompsoncoe.com

Candace Louise Curtis – Pro Se:

Candace Louise Curtis
218 Landana Street
American Canyon, CA 94503
C: 925-759-9020
Via E-Mail: occurtis@sbcglobal.net

Attorneys for Carl Henry Brunsting:

Bobbie G. Bayless
Bayless & Stokes
2931 Ferndale
Houston, Texas 77098
O: 713-522-2224
F: 713-522-2218
Via E-Mail: bayless@baylessstokes.com

Carole Ann Brunsting – Pro Se:

Carole Ann Brunsting
5822 Jason St.
Houston, Texas 77074
Via E-Mail: cbrunsting@sbcglobal.net

Attorneys for Amy Ruth Brunsting:

Neal Spielman
Griffin & Matthews
1155 Dairy Ashford, Suite 300
Houston, TX 77079
O: 281-870-1124
F: 281-870-1647
Via E-Mail: nspielman@grifmatlaw.com

// s // Stephen A. Mendel

Stephen A. Mendel