

CAUSE NO. 2020-35401

CANDACE LOUISE CURTIS	§	IN THE DISTRICT COURT OF
	§	
VS.	§	HARRIS COUNTY, TEXAS
	§	
ANITA KAY BRUNSTING AND	§	
AMY RUTH BRUNSTING	§	151 <sup>ST</sup> JUDICIAL DISTRICT

**MOTION TO TRANSFER, ORIGINAL ANSWER AND  
MOTION FOR CONTEMPT AND SANCTIONS**

TO THE HONORABLE JUDGE OF SAID COURT:

Defendants, AMY RUTH BRUNSTING and ANITA KAY BRUNSTING (who, while apparently sued in their individual capacities, are actually the co-trustees of The Brunsting Family Living Trust, which itself is the subject of several proceedings currently pending in Probate Court No. 4 of Harris County, Texas), and file this, their Motion to Transfer, Original Answer and Motion for Contempt and Sanctions. In support, Defendants would show unto this Court the following:

**I. PREFATORY STATEMENT**

The Houston 14<sup>th</sup> Court of Appeals decided that venue statutes apply to the Texas Civil Practice and Remedies Code’s Uniform Enforcement of Foreign Judgments Act (“UEFJA”). *Cantu v. Howard S. Grossman, P.A.*, 251 S.W.3d 731, 741-42 (Tex. App.–Houston [14<sup>th</sup> Dist.] 2008, pet. denied). In fact, it was determined that a motion to transfer venue can be filed as soon as a foreign judgment is *properly filed* in a Texas Court. *See Cantu*, 251 S.W.3d at 741. [Emphasis Added].

Meanwhile, our well-established “due order of pleading” rules require a defendant to file a motion to transfer venue after a special appearance (if any) and before or along with any other pleading or motion. Tex. R. Civ. P. 86(1), 120a(1); *see Massey v. Columbus State Bank*, 35 S.W.3d 697, 700 (Tex. App.–Houston [1<sup>st</sup> Dist.] 2000, pet. denied.). Therefore, it would appear that before

a defendant can address issues indicating that an alleged foreign judgment has been *improperly filed* in a Texas Court, the defendant must, out of an abundance of caution, first proceed with a motion to transfer venue.

In following this presumed order of pleadings, it is not Defendants intent to admit or waive, nor should they be construed as admitting or waiving, that the alleged “foreign judgment” underlying Plaintiff’s Petition to Enforce Foreign Judgment is actually a judgment (foreign or otherwise) and/or that it has been properly filed. Additionally, neither Defendant accepts, agrees or acknowledges Plaintiff’s description of herself as a “judgment creditor” or her description of Defendants, whether in their individual or trustee capacities, as “judgment debtors.”

## II. MOTION TO TRANSFER

Plaintiff’s Petition to Enforce Foreign Judgment contains no facts or allegations that support “venue” in the District Courts of Harris County, Texas being proper. Given the history of Plaintiff’s ill-advised, ill-conceived, contemptuous and sanctionable conduct in connection with and/or related to the Trust, including antics that have been described by other Justices as “fantastical”, “nonsensical”, “frivolous” and “implausible”<sup>1</sup>, the omission of “venue” facts and allegations is likely due to Plaintiff’s historically-confirmed practice of filing pleadings in violation of Sections 9.012, 10.004 of the Texas Civil Practice and Remedies Code and/or Rule 13 of the Texas Rules of Civil Procedure<sup>2</sup>, and/or as something of a “collateral attack” on Probate Court No. 4’s prior rulings regarding its jurisdiction of and over the Brunsting Family Limited Trust (and other) matters **currently pending** in Probate Court No. 4, including without limitation,

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<sup>1</sup> See Exhibit 1 – Orders/Opinions from the United States District Court for the Southern District of Texas – Houston Division and from the United States Court of Appeals – 5<sup>th</sup> Circuit;

<sup>2</sup> See Exhibit 2 – Order Granting Motion for Contempt and Sanctions.

Probate Court No. 4's prior denial of Plaintiff's prior efforts to enforce the *Preliminary Injunction* Plaintiff seeks to domesticate.<sup>3</sup>

The alleged "foreign judgment" Plaintiff seeks to domesticate is a *Preliminary Injunction* issued in regard to the Brunsting Family Living Trust. It was issued in April 2013 when Plaintiff's trust-related claims and causes of action were pending in the United States District Court for the Southern District of Texas – Houston Division.<sup>4</sup> Those claims remained pending within the United States District Court systems until May 2014 when Plaintiff filed a Motion to Remand those claims to Probate Court No. 4 of Harris County Texas.<sup>5</sup>

Via the Motion to Remand, Plaintiff requested that the Court "(a) remand this cause of action to Harris County Probate Court Number Four to be consolidated into Cause Number 412,249..." because "diversity jurisdiction will be destroyed via the First Amended Petition and because similar issues of fact and law are pending before Harris County Probate Court Number Four." The Court honored Plaintiff's request, signing an Order Granting Plaintiff's Motion to Remand on or about May 15, 2015.<sup>6</sup>

Thereafter, Plaintiff filed her Motion to Enter Transfer Order in Probate Court No. 4, and consistent with Plaintiff's request, Probate Court No. 4 subsequently signed an Order of Transfer accepting the Order Granting Plaintiff's Motion to Remand. In doing so, Probate Court No. 4 ordered that the pleadings and orders filed and entered in the remanded proceeding are "transferred to this Court to be held under Cause Number 412,249-401." The transferred pleadings and orders

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<sup>3</sup> Exhibit 3 – Order Denying Pleas and Motions filed by Candace Curtis

<sup>4</sup> Case No. 4:12-cv-00592; Candace Louise Curtis vs. Anita Kay Brunsting, and Amy Ruth Brunsting, and Does 1-100

<sup>5</sup> Exhibit 4 – Motion to Remand

<sup>6</sup> Exhibit 5 – Order Granting Plaintiff's Motion to Remand

include the *Preliminary Injunction* upon which Plaintiff's Petition to Enforce Foreign Judgment is based.

Following the remand and transfer, Plaintiff filed Plaintiff's Second Amended Petition in Probate Court No. 4. On information and belief, this remains her live pleading. Cause Number 412,249-401, as well as other matters involving or relating to the Brunsting Family Living Trust, remain open and pending on Probate Court No. 4's docket.

A statutory probate court, such as Probate Court No. 4, has *exclusive* jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts. *See*, Trust (Property) Code §115.001(d). [Emphasis Added]. Probate Court No. 4 has confirmed its jurisdiction over the Brunsting Family Living Trust and dismissed Plaintiff's various attacks on its jurisdiction. Plaintiff's conduct in this regard has been so egregious that she has been found in contempt of court and sanctioned.

Considering the above and foregoing, there are a variety of perspectives this Court may employ as a basis for transferring this matter to Probate Court No. 4, including without limitation:

- The jurisdiction of the district court is exclusive except for jurisdiction conferred by law on a statutory probate court. (Trust (Property) Code §115.001(d));
- Venue of an action under Section 115.001 of the Trust Code is proper where the situs of administration of the trust is maintained, i.e., Probate Court No. 4. (Trust (Property) Code §115.002(b-1));
- Matters related to "probate proceedings" may be transferred to a statutory probate court from any other district, county or statutory court. Estates Code §34.001(a);
- A probate court may exercise pendent and ancillary jurisdiction as necessary to promote judicial efficiency and economy. Estates Code §32.001(b);
- Venue (of a trust proceeding) may be transferred for the convenience of the parties and witnesses. (Trust (Property) Code §115.002(d), (e));

- Determination of Plaintiff's Petition to Enforce Foreign Judgment by this Court would result in a violation of Texas' "one judgment" rule and/or result in unreasonable duplication or proliferation of litigation.

In light of the issues described above, Defendants respectfully request that Plaintiff's Petition to Enforce Foreign Judgment be transferred to Probate Court No. 4 (Cause No. 412,249-401).

### **III. ORIGINAL ANSWER/MOTION TO VACATE**

As authorized by Rule 92 of the Texas Rules of Civil Procedure, Defendants enter a general denial of the matters pled by Plaintiffs and respectfully requests the Court require Plaintiff to prove her charges, claims and allegations by a preponderance of the evidence, clear and convincing evidence, and/or in compliance with any other burden of proof/legal standard applicable to Plaintiff's Petition to Enforce Foreign Judgment (including without limitation, the UEFJA), as are or may be required by the Constitution and/or the laws of the State of Texas.

By way of further answer, and/or in the alternative to Defendants' Answer, to the extent it is now, or is ever in the future determined that Plaintiff has filed a final, valid and subsisting judgment, then it Defendants' intent that this filing, in its totality, be considered and construed as a Motion to Vacate and/or a **Motion to Stay Enforcement** pursuant to Section 35.006 of the Texas Civil Practice and Remedies Code.

### **IV. MOTION FOR CONTEMPT AND SANCTIONS**

#### **A. Civil Contempt**

Contempt of court is an appropriate means to enforce a court's civil order. V.T.C.A., C.P. &R., § 31.002(c). *Ex Parte Johnson*, 654 S.W.2d 415 (Tex. 1983). The contempt powers of the court are generally addressed by V.T.C.A., Government Code § 21.002. That section allows a court to punish a contemnor by a fine of not more than \$500 and/or confinement to the county jail

for not more than six months. The purpose of civil contempt is remedial and coercive in nature. A judgment of civil contempt exerts the judicial authority of the court to persuade the contemnor to obey some order of the court where such obedience will benefit an opposing litigant. *Ex Parte Werblud*, 536 S.W.2d 542, 545 (Tex. 1976).

For the reasons discussed herein, Defendants request that the Court find that Plaintiff has again violated Probate Court No. 4's Order Denying Pleas and Motions filed by Candace Curtis via this Petition to Enforce Foreign Judgment. Defendants request that Plaintiff be fined in the maximum amount available at law and that she continue to be held in contempt of court until such fine is paid.

#### **B. Sanctions**

Most sanctions are imposed under the authority of a specific statute or rule that permits a court to order sanctions. However, sanctions may also be imposed via a court's inherent power. *See In re Bennet*, 960 S.W.2d 35, 40 (Tex. 1997); *see also Remington Arms Co. v. Caldwell*, 850 S.W.2d 167, 172 (Tex. 1993). This power allows a court to impose sanctions for abuses of the judicial process not covered by rule or statute, or as necessary to aid in exercise of jurisdiction, administration of justice, and preservation its independence and integrity.

Based on the circumstances described above, Defendants request that this Court sanction Plaintiff and Plaintiff's counsel, whether on its own initiative and/or under CPRC §9.012, CPRC §10.004 and/or TRCP 13. Plaintiff, as condoned by Plaintiff's counsel, once again evidences an intent to harass, delay and increase the costs of litigation. Moreover, Plaintiff (and Plaintiff's counsel) have filed false, inaccurate pleadings and affidavits in an effort to mislead this Court, and in violation of the procedures and protocols set out in the UEFJA.

**V. PRAYER**

WHEREFORE, PREMISES CONSIDERED, Defendants, AMY RUTH BRUNSTING and ANITA KAY BRUNSTING (who, while apparently sued in their individual capacities, are actually the co-trustees of The Brunsting Family Living Trust, which itself is the subject of several proceedings currently pending in Probate Court No. 4 of Harris County, Texas) request that the matters addressed herein be set for hearing, and after that hearing order that this matter is transferred to Probate Court No. 4; is vacated; is stayed; that Plaintiff is in contempt of court; and/or that Plaintiff and Plaintiff's counsel are sanctioned. Defendants also request that Defendants request that they be granted/awarded all other relief to which they may be entitled.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 6<sup>th</sup> day of July 2020, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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