# 412,249-401.1

 **Carl Henry Brunsting individually vs**

1. ANITA KAY BRUNSTING f/k/a as attorney-in-fact for Nelva E. Brunsting and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust;
2. AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent’s Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust;
3. CAROLE ANN BRUNSTING, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust;
4. And, as a nominal defendant only, CANDACE LOUISE CURTIS

Breach of Fiduciary Duties,

* 1. there is fiduciary relationship between the plaintiff and defendant;
	2. the defendant breached his fiduciary duty to the plaintiff; and
	3. the defendant's breach proximately caused injury to the plaintiff or benefit to the defendant.

Conversion,

* 1. Plaintiff owned, had legal possession of, or was entitled to possession of the property;
	2. Defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with plaintiff's rights;
	3. Plaintiff made a demand for the property;
	4. Defendant refused to return the property.

Negligence,

* 1. Duty owed by defendant to plaintiff;
	2. Breach of that duty;
	3. Proximate cause of the plaintiff's damages by defendant's breach; and
	4. Damages.

Civil Conspiracy,

* 1. a combination of two or more persons;
	2. the persons seek to accomplish an object or course of action;
	3. the persons reach a meeting of the minds on the object or course of action;
	4. one or more unlawful, overt acts are taken in pursuance of the object or course of action; and
	5. Damages occur as a proximate result.

Fraudulent Concealment

* 1. Generally a theory applied to statutes of limitations in fraud cases. Given limitations are not at issue here, this cause would simply mean breach of the fiduciary duty of full disclosure in conjunction with the object or course of action in the civil conspiracy.

**THE OTHER CLAIMS ARE REMEDIAL**

~~Tortuous Interference with Inheritance~~,

* 1. Texas does not recognize this cause Archer v. Anderson, 556 S.W.3d 228, 239 (Tex. 2018)

Constructive Trust,

Construction of Trust and Suit for Declaratory Judgement,

Demand for Trust Accounting,

Prejudgment Interest

Attorney’s Fees pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code.

 ***Breach of Fiduciary Duties***

Anita (-401.1(a)) as a co-trustee is a fiduciary owing obligations to trust beneficiaries Amy, Anita, Carl, Carole and Candace.

Amy (-401.1(b)) as a co-trustee is a fiduciary owing obligations to trust beneficiaries Amy, Anita, Carl, Carole and Candace.

Independent Executor Carl owes fiduciary obligations to the Decedent and the Decedent’s devisee, the family trust, and by necessary implication to trust beneficiaries Amy, Anita, Carl, Carole and Candace.

Carole is not a fiduciary and owes no fiduciary obligations to Carl.

***Conversion,***

Candace and Carole have never been in possession, assumed control or exercised dominion over any property belonging to Carl.

***Negligence***

Candace and Carole owe no duties to Carl and carl has identified no duties owed by Candace or Carole in relation to any of his claims.

***Civil Conspiracy***

Civil conspiracy is not an independent tort, but rather, a theory of vicarious liability which requires some underlying wrong.

***Fraudulent Concealment***

Carl only plead this in regard to statutes of limitations

# 412,249-401.2

**Independent Executor Carl Brunsting vs**

1. ANITA KAY BRUNSTING f/k/a as attorney-in-fact for Nelva E. Brunsting and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent's Trust, the Nelva E. Brunsting Survivor's Trust the Carl Henry Brunsting Personal Asset Trust, and the Anita Kay Brunsting Personal Asset Trust;
2. AMY RUTH BRUNSTING f/k/a AMY RUTH TSCHIRHART, individually and as Successor Trustee of the Brunsting Family Living Trust, the Elmer H. Brunsting Decedent’s Trust, the Nelva E. Brunsting Survivor's Trust, the Carl Henry Brunsting Personal Asset Trust, and the Amy Ruth Tschirhart Personal Asset Trust;
3. CAROLE ANN BRUNSTING, Individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust;
4. And, as a nominal defendant only, CANDACE LOUISE CURTIS
5. Breach of Fiduciary Duties,
	1. there is fiduciary relationship between the plaintiff and defendant;
	2. the defendant breached his fiduciary duty to the plaintiff; and
	3. the defendant's breach proximately caused injury to the plaintiff or benefit to the defendant.

Conversion,

* 1. Plaintiff owned, had legal possession of, or was entitled to possession of the property;
	2. Defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with plaintiff's rights;
	3. Plaintiff made a demand for the property;
	4. Defendant refused to return the property.

Negligence,

* 1. Duty owed by defendant to plaintiff;
	2. Breach of that duty;
	3. Proximate cause of the plaintiff's damages by defendant's breach; and
	4. Damages.

Civil Conspiracy,

* 1. a combination of two or more persons;
	2. the persons seek to accomplish an object or course of action;
	3. the persons reach a meeting of the minds on the object or course of action;
	4. one or more unlawful, overt acts are taken in pursuance of the object or course of action; and
	5. Damages occur as a proximate result.

Fraudulent Concealment

* 1. Generally a theory applied to statutes of limitations in fraud cases. Given limitations are not at issue here is would simply mean breach of the fiduciary duty of full disclosure combined with the object or course of action in the civil conspiracy.

**THE OTHER CLAIMS ARE REMEDIAL**

Tortuous Interference with Inheritance,

* 1. Texas does not recognize this cause Archer v. Anderson, 556 S.W.3d 228, 239 (Tex. 2018)
	2. Constructive Trust,
	3. Construction of Trust and Suit for Declaratory Judgement,
	4. Demand for Trust Accounting,
	5. Prejudgment Interest
	6. Attorney’s Fees pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code.

Defendant Co-Trustees filed their original answers on May 13, 2013: 412249-401 Amy’s Answer PBT-2013-154977; and Anita’s answer PBT-2013-154981. If Defendant Co-Trustees had counter claims those claims would be compulsory and were waived under Texas Rules of Civil Procedure 97(a) when they failed to raise their compulsory counter claims with their original answer.

***Breach of Fiduciary Duties***

Anita (-401.1(a)) as a co-trustee is a fiduciary owing obligations to trust beneficiaries Amy, Anita, Carl, Carole and Candace.

Amy (-401.1(b)) as a co-trustee is a fiduciary owing obligations to trust beneficiaries Amy, Anita, Carl, Carole and Candace.

Independent Executor Carl owes fiduciary obligations to the Decedent and the Decedent’s devisee, the family trust, and by necessary implication to trust beneficiaries Amy, Anita, Carl, Carole and Candace.

Carole is not a fiduciary and owes no fiduciary obligations to Carl.

***Conversion,***

Candace and Carole have never been in possession, assumed control or exercised dominion over any property belonging to Carl.

***Negligence***

Candace and Carole owe no duties to Carl and carl has identified no duties owed by Candace or Carole in relation to any of his claims.

***Civil Conspiracy***

Civil conspiracy is not an independent tort, but rather, a theory of vicarious liability which requires some underlying wrong.

***Fraudulent Concealment***

Carl only plead this in regard to statutes of limitations

# 412,249-401.3

**Defendant Carole Brunsting’s Original Counter Claims vs Independent Executor Carl Brunsting**

(Filed May 5, 2013)

1. Breach of Fiduciary,
	1. ~~Tortious Interference with Inheritance Rights~~
	2. Actual Damages
	3. Punitive Damages
	4. Attorneys' fees, costs, and expenses
	5. declaratory judgment

While the estate (412249) was removed from the active docket with the approval of the inventory (4/5/2013) prior to any claims having been filed in the probate court on 4/9/2013, Independent Executor Carl Brunsting resigned the office leaving it vacant but has not been relieved of fiduciary liability nor has he distinguished his individual claims from those of the independent executor.

By filing civil tort claims in the probate court; in an independent administration; after the inventory had been approved and the probate dropped from the active docket, Carl converted the “independent administration” of a pour-over estate into a dependent administration of a living trust in violation of Section 6.04 of the wills and other specific provisions contained therein.

Carole Brunsting’s breach of fiduciary claims against independent executor Carl Brunsting cannot be severed from independent executor Carl Brunsting’s claims against non-fiduciary beneficiary Carole Brunsting.

# 412,249-401.4

**Defendant Co-trustee Anita and Amy Brunsting’s Original Counter Claims vs Carl**

Defendant Co-Trustees filed their original answers on May 13, 2013 with no counter claims. On November 4, 2019, 6 years, 5 months, 23 days later, the Defendant Co-Trustees filed their “original counter claims” against beneficiaries Carl and Candace, without reference to jurisdiction, venue or forum statutes. Those claims are as follows:

1. One or more of the causes of action asserted and/or declarations sought by Carl trigger forfeiture provisions.

One or more of the motions, responses, and/or replies filed by Carl trigger forfeiture provisions;

Carl did not have just cause to bring the action, and it was not brought in good faith;

Carl has forfeited his interest, and thus his interest passes as if he has predeceased the Founders;

If Carl has not forfeited his interest via asserting any of the identified claims, and is or becomes entitled to receive any interest in the Founders' estate, then Amy's and Anita's expenses in defending against Carl's claims are to be charged against his interest dollar for-dollar

All expenses incurred by Amy and Anita to legally defend against or otherwise resist the contest or attack by Carl and/or Curtis are to be paid from the Trust as expenses of administration.

It is an odd theory that defending beneficial interests in trust property equals forfeiture of those same beneficial interests, the equivalent of saying the beneficiary and the Co-Trustees are merely nominal. If the Defendant Co-Trustees have no obligations that can be enforced by the beneficiary, legal and equitable titles merge in the beneficiary, Trust Code § 112.032.

*Texas Property Code § 111.0035(b)(6) The terms of a trust will not be construed to prevent a beneficiary from seeking to compel a fiduciary to perform the fiduciary’s duties; from seeking redress against a fiduciary for a breach of the fiduciary’s duties; or seeking a judicial construction of a will or trust. (§ 112.038)*

*"The right to challenge a fiduciary's actions is inherent in the fiduciary / beneficiary relationship." McLendon,* [862 S.W.2d at 678](https://casetext.com/case/mclendon-v-mclendon-1#p678)*.” Lesikar v. Moon, 237 S.W.3d 361, 370 (Tex. App. 2007)*

# 412,249-401.5

**Defendants Anita and Amy Brunsting’s Original Counter Claims vs Candace**

1. One or more of the causes of action asserted and/or declarations sought by Candace trigger forfeiture provisions.

One or more of the motions, responses, and/or replies filed by Curtis trigger the Forfeiture provisions;

Curtis did not have just cause to bring the action, and it was not brought in good faith;

Curtis has forfeited her interest, and thus her interest passes as if she has predeceased the Founders;

If Curtis has not forfeited her interest via asserting any of the identified claims, and is or becomes entitled to receive any interest in the Founders' estate, then Amy's and Anita's expenses in defending against Curtis' claims are to be charged against her interest dollar-for-dollar;

All expenses incurred by Amy and Anita to legally defend against or otherwise resist the contest or attack by Carl and/or Curtis are to be paid from the Trust as expenses of administration.

If Defendant’s did not have counter claims available when they filed their original answers, they did not develop counter claims in the course of ignoring the fiduciary obligations of the office of trustee for more than eight years. Defendants do not have any claims against Carl and do not have any claims against Candace but have only demonstrated the disloyal intention they had from the onset.

# 412,249-402

**Candace Louise Curtis vs Anita Brunsting, Amy Brunsting and Does 1-100 filed U.S. District Court No. 4:12-cv-592 on 2/27/2012**

1. Breach of Fiduciary Duties,
	1. there is fiduciary relationship between the plaintiff and defendant;
	2. the defendant breached his fiduciary duty to the plaintiff; and
	3. the defendant's breach proximately caused injury to the plaintiff or benefit to the defendant.

Constructive Fraud, (Subset of breach and not a separate cause of action)

* 1. Constructive fraud is a breach of a legal or equitable duty that the law declares fraudulent, irrespective of moral guilt, because it tends to deceive others, violate confidences, or injure public interests. Constructive fraud, by its very definition, does not include an overt act.

Extrinsic Fraud, (Subset of breach and not a separate cause of action)

* 1. Fraudulent acts which keep a person from obtaining information about his/her rights to enforce a contract or getting evidence to defend against a lawsuit. This could include destroying evidence or misleading an ignorant person about the right to sue. Extrinsic fraud is distinguished from intrinsic fraud, which is the fraud that is the subject of a lawsuit

Intentional Infliction of Emotional Distress, a byproduct of breach and not a separate cause of action

* 1. the defendant acted intentionally or recklessly;
	2. the defendant's conduct was extreme and outrageous;
	3. the conduct caused the plaintiff emotional distress; and
	4. the emotional distress was severe

Intentional infliction of emotional distress is a "gap-filler" tort applicable only when "a defendant intentionally inflicts severe emotional distress in a manner so unusual that the victim has no other recognized theory of redress.

Defendant Co-Trustees Anita Kay Brunsting and Amy Ruth Brunsting filed their original answers in 4:12-cv-00592 [Dkt 29] jointly on March 1, 2013. Their original answers did not raise any counter claims.

Plaintiff Candace Curtis October 15, 2021 Addendum adds:

Money Had and Received

* 1. Money had and received is an equitable doctrine used to prevent unjust enrichment.

Conversion – Theft

* 1. Plaintiff owned, had legal possession of, or was entitled to possession of the property;
	2. Defendant assumed and exercised dominion and control over the property in an unlawful and unauthorized manner, to the exclusion of and inconsistent with plaintiff's rights;
	3. Plaintiff made a demand for the property;
	4. Defendant refused to return the property.

~~Tortious interference with inheritance rights~~

Declaratory Judgement

In Terrorem allegations against the co-trustee defendants

# 412,249-403

**Independent Executor Carl Brunsting vs Vacek & Freed P.L.L.C.**

Carl filed professional negligence claims in the District Court in his fiduciary capacity as independent executor for the estates of Elmer and Nelva Brunsting on January 29, 2013, three months before related claims were filed against all of the trust beneficiaries in the probate court. The professional negligence claims in the District Court were ordered transferred to the probate court April 4, 2019 without a pending probate administration. The -403 case has **remained without a plaintiff** since Carl’s resignation on February 19, 2015 and so has the -401.2.

1. Professional negligence,

Negligence Per Se- Violation of Texas Penal Code§ 32.43; Commercial Bribery

Negligence *Per Se-* Violation of Texas Penal Code §7.02(a)(2) & (3); Criminal Responsibility for Conduct of Another

Breach of Fiduciary Duty

Negligent Misrepresentation

Aiding & Abetting Current Trustees' Breaches of Fiduciary Duty

Assisting & Encouraging

Assisting & Participating

Concert of Action

Fraud

Conversion

Conspiracy

Deceptive Trade Practices

Fraudulent Concealment

Actual Damages

Forfeiture of Fees

Treble Damages

Punitive Damages

Attorney's Fees

Prejudgment Interest

# 412,249-404

**Plaintiff Curtis Statutory Bill of Review re Statutory Probate Court Jurisdiction**

District courts and statutory probate courts are the only courts with jurisdiction over trust proceedings. See Texas Property Code Ann. § 115.001 (West Supp. 2005); Schuele, 119 S.W.3d at 825. The jurisdiction of the District Court over trust proceedings is exclusive except for the authority granted to a probate court by Subsection (d):

*§ 115.001 (a) Except as provided by Subsection (d) of this section, a district court has original and exclusive jurisdiction over all proceedings by or against a trustee and all proceedings concerning trusts…*

The exception to the exclusive jurisdiction of the District Court provided by subsection § 115.001 (d) is limited to matters “*incident to an estate*” and apply only when a probate proceeding relating to such estate is actually “*pending*” in the probate court. See: *Baker v. Baker NO. 02-18-00051-CV (Tex. App. Sep. 6, 2018)(emphasis added)* There was no probate administration actually pending in the probate court when Carl filed the 412249-401 case on 4/09/2013. Further filing in the probate court after the recording of the will and the return of an inventory, appraisement and list of claims was a violation of very specific directives in the Wills thus converting an independent administration of a closed probate into a dependent administration of a living trust. Carl’s counsel filed conspiracy and professional negligence claims against the disloyal estate planning attorneys in the District Court and then filed conspiracy and other claims against the “suckers”, including the greedy beneficiaries the disloyal estate planning attorneys baited in order to disrupt the estate plan, thus opening the door that facilitated the generational asset transfer intercepting litigation.