

No. \_\_\_\_\_

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IN THE COURT OF APPEALS  
FOR THE FIRST OR FOURTEENTH DISTRICT OF TEXAS  
HOUSTON, TEXAS

=====  
In Re Candace Louise Curtis

Relator

=====  
Original Proceeding from the Harris County Probate Court No. 4

Cause No. 412,249-401 et seq.

=====  
**RECORD INDEX V2**  
=====

Candice Schwager  
Texas State Bar No. 24005603  
Schwager Law Firm  
16807 Pinemoor Way  
Houston, Texas 77058  
832.857.7173  
candiceschwager@outlook.com  
FOR RELATOR CANDACE CURTIS

# TAB 12

2010416611121028280

**LAST WILL  
OF  
ELMER H. BRUNSTING  
412248**

PROBATE COURT 4

04032012:1010:G0027

I, ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, of Harris County, Texas, make this Will and revoke all of my prior wills and codicils.

08162012:1012:G0007

**Article I**

**My Family**

I am married and my spouse's name is NELVA E. BRUNSTING.

All references to "my spouse" in my Will are to NELVA E. BRUNSTING.

The names and birth dates of my children are:

<u>Name</u>	<u>Birth Date</u>
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to my children in my will are to these children, as well as any children subsequently born to me, or legally adopted by me.

**Article II**

**Testamentary Gifts**

I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; the name of my revocable living trust is:

*Janice Hays*



04032012: 101D :G0028

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

04032012: 101D :G0028

All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration. It is my intent and purpose that the tax planning provisions of the BRUNSTING FAMILY LIVING TRUST apply, and that my estate pass for the benefit of my family with the least possible amount of death taxes.

If my revocable living trust is not in effect at my death for any reason whatsoever, then all of my property shall be disposed of under the terms of my revocable living trust as if it were in full force and effect on the date of my death, and such terms are hereby incorporated herein for all purposes.

08162012: 247 :G0008

**Article III**

**Appointment of Personal Representative**

I appoint NELVA E. BRUNSTING as my Personal Representative. In the event NELVA E. BRUNSTING fails or ceases to serve for any reason, I appoint the following individuals as my Personal Representative to serve in the following order:

- First, CARL HENRY BRUNSTING
- Second, AMY RUTH TSCHIRHART
- Third, CANDACE LOUISE CURTIS

The term "Personal Representative" will mean and refer to the office of Independent Executor and Trustee collectively. Reference to Personal Representative in the singular will include the plural, the masculine will include the feminine, and the term is to be construed in context. A Personal Representative will not be required to furnish a fiduciary bond or other security. I direct that no action be required in the county or probate court in relation

*Lucinda H. Hays*



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to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisal and list of claims as required by law.

04032012:1010 :G0029

**Article IV**

**Payment of Debts, Taxes, Settlement Costs and Exercise of Elections**

The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The Personal Representative of my estate and the Trustee of the BRUNSTING FAMILY LIVING TRUST may act jointly and may treat the property of my estate subject to probate and the property of the BRUNSTING FAMILY LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and making of elections.

08162012:1017 :G0009

**Section A. Payment of Indebtedness and Settlement Costs**

The Personal Representative will have the discretionary authority to pay from my estate subject to probate the costs reasonably and lawfully required to settle my estate.

**Section B. Special Bequests**

If property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient. The obligation to be assumed shall be the principal balance of the indebtedness on date of death, and the Personal Representative shall be entitled to reimbursement or offset for principal and interest payments paid by my estate to date of distribution.

**Section C. Estate, Generation Skipping, or Other Death Tax**

Unless otherwise provided in this will or by the terms of the BRUNSTING FAMILY LIVING TRUST, estate, inheritance, succession, or other similar tax shall be charged to and apportioned among those whose gifts or distributive share generate a death tax liability by reason of my death or by reason of a taxable termination or a taxable distribution under the generation skipping provisions of the Internal Revenue Code. To the extent I may lawfully provide, the Personal Representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in trust) the increment in taxes payable by reason of a required distribution or termination of interest

*Lucas H. Hays*



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(i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property or interest subject to the distribution or termination of interest has not been taken into account in determining the amount of such tax. To the extent a tax liability results from the distribution of property to a beneficiary other than under this will or under the BRUNSTING FAMILY LIVING TRUST, the Personal Representative will have the authority to reduce any distribution to the beneficiary from my estate by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the Personal Representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability. In making an allocation, my Personal Representative may consider all property included in my gross estate for federal estate tax purposes, including all amounts paid or payable to another as the result of my death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further contemplates and includes any tax which results from the inclusion of a prior transfer in my federal gross estate even though possession of the property previously transferred is vested in someone other than my Personal Representative. This provision does not include a reduction in the unified credit by reason of taxable gifts made by me. If the Personal Representative determines that collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by my estate and will reduce the amount distributable to the residuary beneficiaries. The Personal Representative's judgment with regard to the feasibility of collection is to be conclusive.

04032012:101D:G0030

08162012:blz:G0010

**Section D. Election, Qualified Terminable Interest Property**

The Personal Representative may, without liability for doing so or the failure to do so, elect to treat all or a part of my estate which passes in trust for NELVA E. BRUNSTING under the BRUNSTING FAMILY LIVING TRUST, in which NELVA E. BRUNSTING has an income right for life, as Qualified Terminable Interest Property pursuant to the requirements of Section 2056(b)(7) of the Internal Revenue Code. To the extent that an election is made, and unless NELVA E. BRUNSTING shall issue a direction to the contrary, the Trustee of the BRUNSTING FAMILY LIVING TRUST will pay from the irrevocable share the entire increment in the taxes payable by reason of the death of NELVA E. BRUNSTING to the extent that the total of such taxes is greater than would have been imposed if the property treated as qualified terminable interest property has not been taken into account in determining such taxes. It is my intent and purpose to provide my Personal Representative with the greatest latitude in making this election so that the least amount of federal estate tax will be payable upon my death and upon the death of NELVA E. BRUNSTING, and this

*Laura M. Harrell*



04032012: 101D: G0031

provision is to be applied and construed to accomplish this objective. The Personal Representative is to make distributions of income and principal to the Trustee of the BRUNSTING FAMILY LIVING TRUST until my total estate subject to probate and administration is distributed to the Trustee of the BRUNSTING FAMILY LIVING TRUST.

**Section E. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, my estate may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as Qualified Terminable Interest Property had not been made. Reference to the "Special Election For Qualified Terminable Interest Property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code. The term "GST Exemption" or "GST Exemption Amount" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 (entitled "Tax on Generation Skipping Transfers") which is exempt from the generation-skipping tax.

**Section F. Elective Deductions**

The Personal Representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Personal Representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of my estate or the estate of a deceased beneficiary.

**Article V**

**Service of the Personal Representative**

A Personal Representative may exercise, without court supervision (or the least supervision permitted by law), all powers and authority given to executors and trustees by the laws of the State of Texas and by this will.

04032012: 101D: G0031

08162012: 1017: G0011

*Lucas H. Hays*



21001:001:2102020

04032012:1010:G0032

**Section A. Possession, Assets, Records**

My Personal Representative will have the authority to take possession of the property of my estate and the right to obtain and possess as custodian any and all documents and records relating to the ownership of property.

**Section B. Retain Property in Form Received, Sale**

My Personal Representative will have authority to retain, without liability, any and all property in the form in which it is received by the Personal Representative without regard to its productivity or the proportion that any one asset or class of assets may bear to the whole. My Personal Representative will not have liability nor responsibility for loss of income from or depreciation in the value of property which was retained in the form which the Personal Representative received them. My Personal Representative will have the authority to acquire, hold, and sell undivided interests in property, both real and personal, including undivided interests in business or investment property.

08162012:1012:G0042

**Section C. Investment Authority**

My Personal Representative will have discretionary investment authority, and will not be liable for loss of income or depreciation on the value of an investment if, at the time the investment was made and under the facts and circumstances then existing, the investment was reasonable.

**Section D. Power of Sale, Other Disposition**

My Personal Representative will have the authority at any time and from time to time to sell, exchange, lease and/or otherwise dispose of legal and equitable title to any property upon such terms and conditions, and for such consideration, as my representative will consider reasonable. The execution of any document of conveyance, or lease by the Personal Representative will be sufficient to transfer complete title to the interest conveyed without the joinder, ratification, or consent of any person beneficially interested in the property, the estate, or trust. No purchaser, tenant, transferee or obligor will have any obligation whatsoever to see to the application of payments made to my Personal Representative. My Personal Representative will also have the authority to borrow or lend money, secured or unsecured, upon such terms and conditions and for such reasons as may be perceived as reasonable at the time the loan was made or obtained.

*Laura M. Harrell*





04032012:1010:G0033

04032012:1010:G0033

**Section E. Partial, Final Distributions**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Personal Representative; a release from any loss, liability, claim or question concerning the exercise of due care, skill, and prudence of the Personal Representative in the management, investment, retention, and distribution of property during the representative's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Personal Representative, to include the payment of attorneys' fees, from any asserted claim of any taxing agency, governmental authority, or other claimant. Any beneficiary having a question or potential claim may require an audit of the estate or trust as an expense of administration. Failure to require the audit prior to written acceptance of the Personal Representative's report, or the acceptance of payment, will operate as a final release and discharge of the Personal Representative except as to any error or omission having basis in fraud or bad faith.

08162012:1010:G0013

**Section F. Partition, Undivided Interests**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will have the authority (1) to partition any asset or class of assets and deliver divided and segregated interests to beneficiaries; (2) to sell any asset or class of assets (whether or not susceptible to partition in kind), and deliver to the beneficiaries a divided interest in the proceeds of sale and/or a divided or undivided interest in any note and security arrangement taken as part of the purchase price; and/or (3) to deliver undivided interests in an asset or class of assets of the beneficiaries subject to any indebtedness which may be secured by the property.

**Section G. Accounting**

My Personal Representative will render at least annually a statement of account showing receipts, disbursements, and distributions of both principal and income during the period of accounting and a statement of the invested and uninvested principal and the undistributed income at the time of such statement.

**Section H. Protection of Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts,

*Lucas H. Hight*



*Lauren M. Haggard*



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contracts, liabilities or torts of a beneficiary or be subject to seizure or other process by any creditor of a beneficiary.

04032012:1010:G0034

**Section I. Consultants, Professional Assistance**

My Personal Representative will have the authority to employ such consultants and professional help as needed to assist with the prudent administration of the estate and any trust. Any representative, other than a corporate fiduciary, may delegate, by an agency agreement or otherwise, to any state or national banking corporation with trust powers any one or more of the following administrative functions: custody and safekeeping of assets; record keeping and accounting, including accounting reports to beneficiaries; and/or investment authority. The expense of the agency, or other arrangement, will be paid as an expense of administration.

08162012:1010:G0014

**Section J. Compensation**

Any person who serves as Personal Representative may elect to receive a reasonable compensation, reasonable compensation to be measured by the time required in the administration of the estate or a trust and the responsibility assumed in the discharge of the duties of office. The fee schedules of area trust departments prescribing fees for the same or similar services may be used to establish reasonable compensation. A corporate or banking trustee will be entitled to receive as its compensation such fees as are then prescribed by its published schedule of charges for estates or trusts of similar size and nature and additional compensation for extraordinary services performed by the corporate representative. My Personal Representative will be entitled to full reimbursement for expenses, costs, or other obligations incurred as the result of service, including attorney's, accountant's and other professional fees.

**Section K. Documenting Succession**

A person serving as Personal Representative may fail or cease to serve by reason of death, resignation or legal disability. Succession may be documented by an affidavit of fact prepared by the successor, filed of record in the probate or deed records of the county in which this will is admitted to probate. The public and all persons interested in or dealing with my Personal Representative may rely upon the evidence of succession provided by a certified copy of the recorded affidavit, and I bind my estate and those who are its beneficial owners to indemnify and hold harmless any person, firm, or agency from any loss sustained in relying upon the recorded affidavit.





91109:0011:21028280

The foregoing Will was, on the day and year written above, published and declared by ELMER H. BRUNSTING in our presence to be his Will. We, in his presence and at his request, and in the presence of each other, have attested the same and have signed our names as attesting witnesses.

We declare that at the time of our attestation of this Will, ELMER H. BRUNSTING was, according to our best knowledge and belief, of sound mind and memory and under no undue duress or constraint.

04032012: 1010 : G0036

**Krysti Brull**  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

*Kristi Brull*  
WITNESS

08162012: 1012 : G0016

**April Driskell**  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

*April Driskell*  
WITNESS

*Stacy Stewart*  
COUNTY CLERK  
HARRIS COUNTY TEXAS

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*Stacy Stewart*



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**SELF-PROVING AFFIDAVIT**

04032012: JDID :G0037

STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared ELMER H. BRUNSTING, Kristi Brun and April Wiske, known to me to be the Testator and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said ELMER H. BRUNSTING, Testator, declared to me and to the said witnesses in my presence that said instrument is his Last Will and Testament, and that he had willingly made and executed it as his free act and deed; and the said witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testator that the said Testator had declared to them that the said instrument is his Last Will and Testament, and that he executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testator and at his request; that he was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

08162012: JDID :G0017

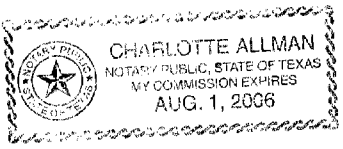
Elmer H Brunsting  
ELMER H. BRUNSTING

Kristi Brun  
WITNESS

April Wiske  
WITNESS

Subscribed and sworn to before me by the said ELMER H. BRUNSTING, the Testator, and by the said Kristi Brun and April Wiske, witnesses, on January 12, 2005.

Charlotte Allman  
Notary Public, State of Texas



*Lucinda Hedges*



412248

08162012: **142** :G0018  
04032012: **101D** :G0038

The Vacek Law Firm, PLLC  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079  
(281) 531-5800

08162012: 142: G0018



I, Teneshia Hudspeth, County Clerk of Harris County, Texas certify that these pages are a true and correct copy of the original record filed and recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office  
This June 20, 2022

Teneshia Hudspeth, County Clerk  
Harris County, Texas

Confidential information may have been redacted from the document in compliance with the Public Information Act.



# TAB 13



*Lucinda H. Hays*



NO. 412.248

ESTATE OF	§	IN	PROBATE	COURT
ELMER H. BRUNSTING,	§	NUMBER	FOUR (4)	OF
DECEASED	§	HARRIS	COUNTY,	T E X A S

**PROOF OF DEATH AND OTHER FACTS**

On this day, DRINA BRUNSTING ("Affiant"), personally appeared in Open Court, and after being duly sworn, stated the following:

1. Elmer H. Brunsting ("Decedent") died on April 1, 2009, in Houston, Harris County, Texas, at the age of 87 years and four years have not elapsed since the date of Decedent's death.
2. Decedent was domiciled and had a fixed place of residence in this County at the date of death.
3. The document dated January 12, 2005, now shown to me and which purports to be Decedent's Will was never revoked so far as I know.
4. A necessity exists for the administration of this Estate.
5. No child or children were born of or adopted by Decedent after the date of the Will.
6. Decedent was never divorced.
7. The Independent Executor named in the Will is Nelva E. Brunsting, but she is now deceased. The alternate or successor Independent Executor named in the Will is CARL HENRY BRUNSTING, who is not disqualified by law from accepting Letters Testamentary or from serving as Independent Executor, and is entitled to such Letters.
8. Decedent's Will did not name either the State of Texas, a governmental agency of the State of Texas, or a charitable organization as a devisee.

10101:5811:21028280



*Lucas Magallon*

County Clerk Harris County, Texas



SIGNED this 28<sup>th</sup> day of August, 2012.

*Drina Brunsting*  
DRINA BRUNSTING

SUBSCRIBED AND SWORN TO BEFORE ME by DRINA BRUNSTING, this 28<sup>th</sup> day of August, 2012, to certify which, witness my hand and seal of office.

STAN STANART County Clerk

Clerk of Probate Court No. 4  
of Harris County, Texas

By: *Lucas Magallon*  
Deputy



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*Stan Stanart*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

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I, Teneshia Hudspeth, County Clerk of Harris County, Texas certify that these pages are a true and correct copy of the original record filed and recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office  
This June 20, 2022

Teneshia Hudspeth, County Clerk  
Harris County, Texas

Confidential information may have been redacted from the document in compliance with the Public Information Act.



# TAB 14

NO. 412.248

ESTATE OF	§	IN	PROBATE	COURT
ELMER H. BRUNSTING,	§	NUMBER	FOUR (4)	OF
DECEASED	§	HARRIS	COUNTY,	T E X A S

ORDER ADMITTING WILL TO PROBATE AND AUTHORIZING LETTERS TESTAMENTARY

On this day came on to be heard the Application for Probate of Will and For Issuance of Letters Testamentary filed by CARL HENRY BRUNSTING ("Applicant") in the Estate of Elmer H. Brunsting, Deceased ("Decedent").

The Court, having heard the evidence and having reviewed the Will, and other documents filed herein, finds that the allegations contained in the Application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead and that four (4) years have not elapsed since the date of Decedent's death; that this Court has jurisdiction and venue of the Decedent's estate; that Decedent left a Will dated January 12, 2005, executed with the formalities and solemnities and under the circumstances required by law to make a valid Will; that on such date Decedent had attained the age of eighteen (18) years and was of sound mind; that such Will was not revoked by Decedent; that no objection to or contest of the probate of such Will has been filed; that all of the necessary proof required for the probate of such Will has been made; that in such Will, Decedent named Nelva E. Brunsting to serve as Executor, but she is now deceased; that in such Will, Decedent named CARL HENRY BRUNSTING to serve as alternate or successor Independent Executor, without bond; that CARL HENRY BRUNSTING is duly qualified and not disqualified by law to act as such and to receive Letters Testamentary; that a necessity exists for the administration of this estate; that Decedent's Will did not name either the State of Texas, a governmental agency of the State of Texas, or a charitable organization as a devisee; and that no

02104:5611:21029280

*Lauren M. Hays*



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interested person has applied for the appointment of appraisers and none are deemed necessary by the Court.

It is therefore ORDERED that such Will is admitted to probate, and the Clerk of this Court is ORDERED to record the Will, together with the Application, in the Minutes of this Court.

It is further ORDERED that no bond or other security is required and that upon the taking and filing of the Oath required by law, Letters Testamentary shall be issued to CARL HENRY BRUNSTING, who is appointed as Independent Executor of Decedent's Will and Estate, and no other action shall be necessary in this Court other than the filing of an Inventory, Appraisalment, and List of Claims or an Affidavit in Lieu of Inventory, Appraisalment and List of Claims and Probate Code Section 128A Notice, as required by law.

SIGNED this 28 day of August, 2012.

*Christine Butta*  
\_\_\_\_\_  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: *Dalia B. Stokes*  
\_\_\_\_\_  
*Bobbie G. Bayless*  
State Bar No. 01940600  
*Dalia B. Stokes*  
State Bar No. 19267900  
2931 Ferndale Street  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Applicant*

*Stan Stewart*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS  
2012 AUG 28 AM 10:08  
FILED





I, Teneshia Hudspeth, County Clerk of Harris County, Texas certify that these pages are a true and correct copy of the original record filed and recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office  
This June 20, 2022

Teneshia Hudspeth, County Clerk  
Harris County, Texas

Confidential information may have been redacted from the document in compliance with the Public Information Act.



# TAB 15



NO. 412.248

ESTATE OF § IN PROBATE COURT  
ELMER H. BRUNSTING, § NUMBER FOUR (4) OF  
DECEASED § HARRIS COUNTY, TEXAS

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Date of Death: April 1, 2009

The following is a full, true, and complete Inventory and Appraisement of all personal property and of all real property situated in the State of Texas, together with a List of Claims due and owing to this Estate as of the date of death, which have come to the possession or knowledge of the undersigned.

INVENTORY AND APPRAISEMENT

ASSETS	VALUE	ESTATE INTEREST
--------	-------	-----------------

- 1. **Real Estate:**  
See List of Claims
- 2. **Stocks and Bonds**  
See List of Claims
- 3. **Mortgages, Notes and Cash:**  
See List of Claims
- 4. **Insurance Payable to Estate**  
See List of Claims
- 5. **Jointly Owned Property**  
See List of Claims

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 Star Stewart  
 COUNTY CLERK  
 HARRIS COUNTY, TEXAS

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*Star Stewart*





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LIST OF CLAIMS

1. Based upon the information currently available to the personal representative of the estate, it is not possible to determine with certainty what assets were in the estate at the Decedent's death. That determination will have to be made the subject of further judicial proceedings. After that judicial determination is made, to the extent it becomes necessary, this Inventory, Appraisalment and List of Claims will be amended to reflect the descriptions and values of assets later determined to have been estate assets at the time of Decedent's death.

2. The estate has asserted a claim against Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC relating to actions taken and omissions made in the course of their representation of decedent and his wife which may result in additional estate assets. That case is pending under Cause No. 2013-05455, styled *Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC*, in the 164<sup>th</sup> Judicial District Court of Harris County, Texas.

3. The Brunsting Family Living Trust was signed by Decedent and his wife on October 10, 1996 and was restated on January 12, 2005 (the "Family Trust"). The Family Trust purported by its terms to provide for the creation of successor and/or subsequent trusts. The Family Trust also described other documents which, if created in compliance with the terms of the Family Trust, could impact the assets and status of the Family Trust. Attempts were made by various parties to change the terms and control of the Family Trust through later instruments which have been or will be challenged. The estate also asserts claims against Anita Brunsting and Amy Brunsting, the current purported trustees of the successor trusts or trusts arising from the Family Trust or documents

*Candace L. Kunz-Freed*





2022 JUN 20 10:53:50

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to the following interested parties as specified below on the 26<sup>th</sup> day of March, 2013, as follows:

Maureen Kuzik McCutchen  
Mills Shirley, LLP  
2228 Mechanic, Suite 400  
P.O. Box 1943  
Galveston, Texas 77553-1943  
Houston, Texas 77056  
*sent via Telecopier*

Candace Louise Curtis  
1215 Ulfian Way  
Martinez, California 94553  
*sent via U.S. First Class Mail*

Carole Ann Brunsting  
5822 Jason St.  
Houston, Texas 77074  
*sent via U.S. First Class Mail*

  
BOBBIE G. BAYLESS

*Carole Ann Brunsting*



*Shawn M. Teague*



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THE STATE OF TEXAS §  
  §  
COUNTY OF HARRIS §

I, CARL HENRY BRUNSTING, having been duly sworn, hereby state on oath that the foregoing Inventory, Appraisalment and List of Claims is a true and complete statement of all the property and claims of the Estate that have come to my knowledge.

*Carl Henry Brunsting*  
CARL HENRY BRUNSTING  
*Independent Executor of the Estate of  
Elmer H. Brunsting, Deceased*

SWORN TO and SUBSCRIBED BEFORE ME by the said CARL HENRY BRUNSTING,  
on this 26<sup>th</sup> day of March, 2013, to certify which witness my hand and seal of office.



*Shawn M. Teague*  
Notary Public in and for the  
State of TEXAS  
Printed Name: *Shawn M. Teague*  
My Commission Expires: 4-3-2015







I, Teneshia Hudspeth, County Clerk of Harris County, Texas certify that these pages are a true and correct copy of the original record filed and recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office  
This June 20, 2022

Teneshia Hudspeth, County Clerk  
Harris County, Texas

Confidential information may have been redacted from the document in compliance with the Public Information Act.





PROBATE COURT 4

NO. 412.249

ESTATE OF § IN PROBATE COURT  
NELVA E. BRUNSTING, § NUMBER FOUR (4) OF  
DECEASED § HARRIS COUNTY, TEXAS

ORDER APPROVING INVENTORY,  
APPRAISEMENT AND LIST OF CLAIMS

3930 (b)  
EFF 9-1-83

The foregoing Inventory, Appraisalment and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this 4 day of April, 2013.

Clementine Bonin  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: Bobbie G. Bayless  
Bobbie G. Bayless  
State Bar No. 01940600  
Dalia B. Stokes  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

Attorneys for Independent Executor

FILED  
2013 APR -5 AM 10:01  
St. J. Bonin  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

APR 05 2013





I, Teneshia Hudspeth, County Clerk of Harris County, Texas certify that these pages are a true and correct copy of the original record filed and recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office  
This June 20, 2022

Teneshia Hudspeth, County Clerk  
Harris County, Texas

Confidential information may have been redacted from the document in compliance with the Public Information Act.



# TAB 16

04052018:151:81025040

# DROP

NO. 412.248

PROBATE COURT 4

IN THE ESTATE OF  
Elmer H. Brunsting  
DECEASED

§  
§  
§

IN THE PROBATE COURT  
NUMBER FOUR OF  
HARRIS COUNTY, TEXAS

### DROP ORDER

On this day, it having been brought to the attention of this Court that the above entitled and numbered estate should be dropped,

**IT IS THEREFORE ORDERED** that the Clerk drop said estate from the Court's active docket.

**IT IS FURTHER ORDERED** that any costs incident to this order are hereby waived.

SIGNED this 9 day of April, 2013.

Christine Butts  
JUDGE CHRISTINE BUTTS  
PROBATE COURT NO. FOUR

FILED  
2013 APR -5 AM 10:01  
Sta. Defendant  
COUNTY CLERK  
HARRIS COUNTY TEXAS

*Christine Butts*





I, Teneshia Hudspeth, County Clerk of Harris County, Texas certify that these pages are a true and correct copy of the original record filed and recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office  
This June 24, 2022

Teneshia Hudspeth, County Clerk  
Harris County, Texas

Confidential information may have been redacted from the document in compliance with the Public Information Act.



# TAB 17



**STAN STANART**

Welcome [occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net) [Logout](#) | [Edit Profile](#) | [Change Password](#)

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## Probate Search - November 1837 to present

Case Number: 412249 Court: All File Date (From): MM/DD/YYYY <input type="text"/> (To): MM/DD/YYYY <input type="text"/> <input type="button" value="Search"/>	Images available Jan. 1, 2008 to present  <b>153 Record(s)                  Found.</b>
Last Name <input type="text"/> First Name <input type="text"/> Middle Name <input type="text"/> Party Attorney Company File Date (From ): MM/DD/YYYY <input type="text"/> (To): MM/DD/YYYY <input type="text"/> <input type="button" value="Search"/>	

CaseID	Case	File Date	Type Desc	Subtype	Style	Status	Judge	Court	View All
1597406	<a href="#">412249</a>	04/02/2012	ORIGINAL WILL DEPOSIT	DEPOSIT WILL WITH NO APPLICATION	NELVA E BRUNSTING	Closed	CHRISTINE BUTTS	4	<a href="#">Parties</a>

Case	Event Date	Event Desc	Comments			Pgs	
412249	02/01/2018	Misc. Notice	Notice of Change of Address	36503107	Brunsting - Notice of Change of Address.pdf	2 4	14388608 <a href="#">View</a>

412249	11/09/2017	Exhibit	to Amended Application for Payment of Fees for Temporary Administrator Pending Contest	36306240	Exhibit	4	4	14191230	<a href="#">View</a>
412249	11/08/2017	Order to Pay Attorney Fees	Ordered the total amount of \$10,620.73 be paid to MacIntyre, McCulloch, Stanfield & Young, LLP out of the assets of the Estate; Signed 11/08/2017	36306242	Order to Pay Attorney Fees	2	4	14191238	<a href="#">View</a>
412249	11/08/2017	Order to Pay Appointee Fees	Ordered the total amount of \$19,907.40 be paid to Greg Lester; Signed 11/08/2017	36306241	Order to Pay Appointee Fees	1	4	14191237	<a href="#">View</a>
412249	10/04/2017	Application to Pay Appointee Fees		36215332	Order.pdf	1	4	14103922	<a href="#">View</a>
				36215332	AmndAppForFeeExp.pdf	8	4	14103925	<a href="#">View</a>
412249	10/03/2017	Application to Pay Attorney Fees	Application for Payment of Attorney's Fees and Expenses for the Period August 1, 2015 Through May 31, 2017	36210665	fee app.pdf	19	4	14098917	<a href="#">View</a>
				36210665	order re fee app.pdf	2	4	14098918	<a href="#">View</a>
412249	10/03/2017	Order for Compensation	This Instrument Returned Unsigned by Judge's Office	36209486	Order for Compensation	1	4	14097100	<a href="#">View</a>
412249	09/28/2017	Application to Pay Debts		36199013	Exhibit A.pdf	3	4	14087497	<a href="#">View</a>
				36199013	Order draft.pdf	1	4	14087498	<a href="#">View</a>
				36199013	ApplicationForFeeExp.pdf	5	4	14087499	<a href="#">View</a>
412249	03/14/2016	Order to Transfer Docket (Dep.)	THIS INSTRUMENT RETURNED UNSIGNED BY JUDGE'S OFFICE Film code number PBT-2016-83153	23310981	Order to Transfer Docket (Dep.)	1	4	10889199	<a href="#">View</a>
412249	03/14/2016	Order to Transfer Docket (Dep.)	THIS INSTRUMENT RETURNED UNSIGNED BY JUDGE'S OFFICE Film code number PBT-2016-83152	23310980	Order to Transfer Docket (Dep.)	1	4	10889198	<a href="#">View</a>



412249	03/08/2016	RECEIPT		23300462		4
412249	03/08/2016	Instrument Over 25 Pages		23299483		4
412249	03/08/2016	Electronic Filing Fee		23299479		4
412249	03/08/2016	Response	NON PARTIES CANDACE L. KUNZ-FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM. PLLC RESPONSE TO CANDACE CURTIS MOTION TO TRANSFER CUASE FROM DISTRICT TO PROBATE COURT 4 Film code number PBT-2016-77014	23299475	Responses	45 4 10883498 <a href="#">View</a>
412249	03/07/2016	RECEIPT		23294671		4
412249	03/04/2016	Electronic Filing Fee		23294116		4
412249	03/04/2016	Notice of Hearing	3/9/2016 AT 2:30 P.M. Film code number PBT-2016-74332	23294114	Notice of Hearing	2 4 10880956 <a href="#">View</a>
412249	03/04/2016	Application for Continuance		23294110	Application for Continuance	4 4 10880954 <a href="#">View</a>
412249	03/03/2016	RECEIPT		23290145		4
412249	03/02/2016	Electronic Filing Fee		23289056		4
412249	03/02/2016	Memorandum	MEMORANDUM IN SUPPORT OF MOTION TO TRANSFER, CONSOLIDATE OR SNATCH RELATED DISTRICT COURT CASE Film code number PBT-2016-71625	23289053	Memorandum	28 4 10878428 <a href="#">View</a>
412249	02/10/2016	RECEIPT		23240756		4



412249	02/09/2016	Application to Transfer Docket (Indep.)	MOTION TO TRANSFER CAUSE FROM DISTRICT COURT TO PROBATE COURT 4 Film code number PBT-2016-44972	23238939	Application to Transfer Docket (Indep.)	4	4	10853170	<a href="#">View</a>
412249	02/09/2016	Electronic Filing Fee		23238934					4
412249	01/19/2016	RECEIPT		23189748					4
412249	01/19/2016	Amended	FIRST AMENDED TO REPORT OF TEMP ADM PENDING CONTEST Film code number PBT-2016-17758	23188763	Amended	6	4	10827412	<a href="#">View</a>
412249	01/19/2016	Electronic Filing Fee		23188759					4
412249	01/15/2016	RECEIPT		23183804					4
412249	01/14/2016	Electronic Filing Fee		23183321					4
412249	01/14/2016	Instrument Over 25 Pages		23183320					4
412249	01/14/2016	Reports of Miscellaneous Kinds	REPORT OF TEMPORARY ADMINISTRATOR PENDING CONTEST Film code number PBT-2016-14856	23183319	Reports of Miscellaneous Kinds	183	4	10824654	<a href="#">View</a>
412249	09/11/2015	Order to Retain on Docket	ORDERED THAT GREGORY A. LESTER IS GRANTED AUTHORITY TO RETAIN JILL W. YOUNG WITH THE LAW FIRM OF MACINTYRE, MCCULLOCH, STANFIELD & YOUNG, LLP,. SIGNED 09/10/15 Film code number PBT-2015-299043	22927181	Order to Retain on Docket	2	4	10694846	<a href="#">View</a>
412249	09/10/2015	RECEIPT		22921549					4
412249	09/09/2015	Electronic Filing Fee		22920939					4

412249	09/09/2015	Application of Miscellaneous kind	RESPONSE TO GREGORY A LESTER'S APPLICAITON TO RETAIN COUNSEL & APPLICATION TO APPOINT JILL YOUNG TO REPLACE GREGORY A LESTER AS TEMPORARY ADMINISTRATOR Film code number PBT-2015-295796	22920935	Application of Miscellaneous kind	3 4	10691746	<a href="#">View</a>
412249	09/08/2015	RECEIPT		22915015				4
412249	09/08/2015	Attorney Assigned		22914148				4
412249	09/04/2015	Electronic Filing Fee		22914149				4
412249	09/04/2015	Notice of Hearing	SEPTEMBER 10, 2015 AT 2:00PM Film code number PBT-2015-291784	22914137	Notice of Hearing	2 4	10687946	<a href="#">View</a>
412249	09/02/2015	RECEIPT		22906918				4
412249	09/01/2015	Electronic Filing Fee		22905752				4
412249	09/01/2015	Conform Copies	1 CONF COPY OF ORDER	22905751				4
412249	09/01/2015	Application of Miscellaneous kind	APPLICATION FOR AUTHORITY TO RETAIN COUNSEL MACINTYRE MCCULLOCH STANFIELD & YOUNG Film code number PBT-2015-287226	22905750	Application of Miscellaneous kind	9 4	10683644	<a href="#">View</a>
412249	07/28/2015	Letter Application	PICKED UP ON 7/28/15 Film code number PBT-2015-243000	22825194	Letter Application	1 4	10641738	<a href="#">View</a>
				22825194	Letter Application	2 4	10641742	<a href="#">View</a>
412249	07/27/2015	Court Registry Deposit	Deposit made for \$100.00	22825271				4
412249	07/27/2015	Notice of Cash Bond Deposit	\$100 CASH BOND PER ORDER SIGNED 7/23/15 Film code number	22825166	Notice of Cash Bond Deposit	1 4	10641712	<a href="#">View</a>

			PBT-2015-242973	22825166	Notice of Cash Bond Deposit	1 4	10641716	<a href="#">View</a>
412249	07/27/2015	RECEIPT		22824823				4
412249	07/24/2015	Electronic Filing Fee		22823241				4
412249	07/24/2015	Oath		22823240	Oath	1 4	10640741	<a href="#">View</a>
412249	07/24/2015	Order for Temporary Administration	LETTERS OF TEMPORARY ADMINISTRATION ISSUED TO GREG LESTER AS TEMPORARY ADMINISTRATOR PENDING CONTEST WITH A CASH BOND OF \$100.00. SIGNED 07/23/15 Film code number PBT-2015-240496	22820669	Order for Temporary Administration	3 4	10639334	<a href="#">View</a>
412249	07/24/2015	Folder Created		22820269				4
412249	07/14/2015	Order to Transfer Docket (Indep.)	THIS INSTRUMENT RETURNED UNSIGNED BY JUDGE'S OFFICE Film code number PBT-2015-240527	22820768	Order to Transfer Docket (Indep.)	6 4	10639362	<a href="#">View</a>
412249	07/14/2015	Notice of Hearing	ORAL HEARING Film code number PBT-2015-240477	22820639	Notice of Hearing	3 4	10639320	<a href="#">View</a>
412249	04/20/2015	RECEIPT		22616462				4
412249	04/20/2015	Electronic Filing Fee		22616267				4
412249	04/20/2015	Affidavit	CANDACE LOUISE CURTIS AFFIDAVIT OF FACT DOCUMENTING SUCCESSION AS PERSONAL REPRESENTATIVE OF THE ESTATE OF ELMER H BRUNSTING AND NELVA E BRUNSTING **DELETE**	22616261	Affidavit	2 4	10533872	<a href="#">View</a>

			AFFIDAVIT OF FACTS Film code number PBT-2015-128883				
412249	04/08/2015	Legacy Event	ORDERED THAT JASON B. OSTROM AND THE LAW FIRM OF OSTROMMORRIS, PLLC SHALL NO LONGER SERVE AS COUNSEL OF RECORD. SIGNED 4/7/15 Film code number PBT-2015-114805	22591154	Legacy Event	1 4	10520497 <a href="#">View</a>
412249	04/01/2015	Legacy Event		22577446			4
412249	03/31/2015	RECEIPT		22572235			4
412249	03/30/2015	Electronic Filing Fee		22571345			4
412249	03/30/2015	Legacy Event		22571343	Legacy Event	8 4	10509837 <a href="#">View</a>
412249	03/24/2015	RECEIPT		22558359			4
412249	03/23/2015	Objection	TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR Film code number PBT-2015-240487	22820657	Objection	4 4	10639326 <a href="#">View</a>
412249	03/23/2015	Electronic Filing Fee		22557656			4
412249	03/23/2015	Response	RESPONSE TO MOTION TO COMPEL DISCLOSURES Film code number PBT-2015-95797	22557655	Responses	2 4	10502603 <a href="#">View</a>
412249	03/18/2015	RECEIPT		22548205			4
412249	03/17/2015	Electronic Filing Fee		22546344			4
412249	03/17/2015	Response	RESPONSE TO OBJECTIONS TO APPLICATION FOR APPOINTMENT AND OBJECTION TO AMY	22546341	Responses	4 4	10496871 <a href="#">View</a>

			BRUNSTING'S APPLICATION FOR APPOINTMENT Film code number PBT-2015-89757					
412249	03/13/2015	RECEIPT		22537365				4
412249	03/13/2015	Attorney Assigned		22536534				4
412249	03/12/2015	Electronic Filing Fee		22536536				4
412249	03/12/2015	Application to Appoint Successor Executor	AMY RUTH BRUNSTING APPLICATION TO BE NAMED SUCCESSOR EXECUTOR RESPONSE TO CARL BRUNSTING APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND OBJECTION TO CANDACE CURTIS APPLICATION FOR APPOINTMENT AS SUCCESSOR EXECUTOR Film code number PBT-2015-84166	22536535	Application to Appoint Successor Executor	9	4	10491543 <a href="#">View</a>
412249	02/19/2015	Order for Continuance	ORDERED TRAIL IS RESET TO SEPTEMBER 14, 2015. SIGNED 2/18/15 Film code number PBT-2015-58243	22487867	Order for Continuance	1	4	10467098 <a href="#">View</a>
412249	02/19/2015	RECEIPT		22487309				4
412249	02/19/2015	Electronic Filing Fee		22486778				4
412249	02/19/2015	Application to Resign	CARL HENRY APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND CANDACE LOUISE CURTIS APPLICATION FOR APPOINTMENT AS	22486777	Application to Resign	4	4	10466485 <a href="#">View</a>

			SUCCESSOR PERSONAL REPRESENTATIVE Film code number PBT-2015-57597					
412249	02/18/2015	RECEIPT		22484418				4
412249	02/18/2015	RECEIPT		22483952				4
412249	02/18/2015	Exhibit Check In/Out Event		22483668				4
412249	02/18/2015	Legacy Event		22483664				4
412249	02/18/2015	Instrument Over 25 Pages		22483620	Instrument Over 25 Pages	133	4	10464872 <a href="#">View</a>
412249	02/18/2015	Electronic Filing Fee		22483617				4
412249	02/18/2015	Response	RESPONSE TO CANDACE'S SECOND MOTION FOR PARTIAL DISTRIBUTION FOR ATTORNEY'S FEES 	22483599				4
412249	02/18/2015	Exhibit Check In/Out Event		22483422				4
412249	02/18/2015	Legacy Event		22483379				4
412249	02/17/2015	Electronic Filing Fee		22483341				4
412249	02/17/2015	Objection	OBJECTION TO PLAINTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION FILED IN BASE DOCKET BY REQUEST OF CARLINDA COMSTOCK PROBATE COURT 4 Film code number PBT-2015-55734 	22483336	Objection	133	4	10464701 <a href="#">View</a>
412249	02/12/2015	Electronic Filing Fee		22473862				4
412249	02/10/2015	RECEIPT		22466902				4
412249	02/10/2015	RECEIPT		22466062				4
412249	02/09/2015	Electronic Filing Fee		22466015				4

412249	02/09/2015	Application for Continuance		22466012	Application for Continuance	5	4	10455695	<a href="#">View</a>
412249	02/09/2015	Electronic Filing Fee		22465171					4
412249	02/09/2015	Instrument Over 25 Pages		22465168					4
412249	02/09/2015	Motion Pertaining to Lawsuits Only (Indep.)		22465165	Motion Pertaining to Lawsuits Only (Indep.)	601	4	10455191	<a href="#">View</a>
412249	02/09/2015	RECEIPT		22463929					4
412249	02/06/2015	Electronic Filing Fee		22460602					4
412249	02/06/2015	Instrument Over 25 Pages		22460601					4
412249	02/06/2015	Misc. Notice	NOTICE OF FILING OF INJUNCTION AND REPORT OF MASTER Film code number PBT-2015-42743	22460594	Misc. Notice	51	4	10452527	<a href="#">View</a>
412249	02/06/2015	RECEIPT		22458660					4
412249	02/05/2015	Electronic Filing Fee		22458236					4
412249	02/05/2015	Application of Miscellaneous kind	PLAINTIFFS APPLICATION FOR PARTIAL DISTRIBUTION Film code number PBT-2015-41286	22458235	Application of Miscellaneous kind	10	4	10451148	<a href="#">View</a>
412249	12/10/2014	RECEIPT		22334014					4
412249	12/10/2014	Attorney Assigned		22333227					4
412249	12/09/2014	Electronic Filing Fee		22333229					4
412249	12/09/2014	Response	RESPONSE TO OBJECTION TO PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-396779	22333220	Responses	4	4	10390795	<a href="#">View</a>
412249	12/09/2014	RECEIPT		22331638					4





412249	12/08/2014	Electronic Filing Fee		22330894		4
412249	12/08/2014	Instrument Over 25 Pages		22330892		4
412249	12/08/2014	Response	REPLY TO REPOSE TO MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-395429	22330883	Responses	39 4 10389526 <a href="#">View</a>
412249	11/18/2014	RECEIPT		22293021		4
412249	11/17/2014	Electronic Filing Fee		22292328		4
412249	11/17/2014	Amended	SECOND AMENDED NOTICE OF HEARING NOVEMBER 17, 2014 AT 2:00PM Film code number PBT-2014-374213	22292326	Amended	2 4 10369481 <a href="#">View</a>
412249	11/04/2014	Miscellaneous Order	GRANTING PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS THIS INSTRUMENT RETURN UNSIGNED BY JUDGE'S OFFICE Film code number PBT-2014-358733	22261442	Miscellaneous Order	1 4 10354961 <a href="#">View</a>
412249	11/04/2014	RECEIPT		22260727		4
412249	11/03/2014	Electronic Filing Fee		22260378		4
412249	11/03/2014	Amended	NOTICE OF HEARING - RESCHEDULED FOR MONDAY, NOVEMBER 17, AT 2:00 PM Film code number PBT-2014-357957	22260375	Amended	2 4 10354278 <a href="#">View</a>
412249	10/29/2014	RECEIPT		22248956		4
412249	10/29/2014	Attorney Assigned		22247967		4
412249	10/28/2014	Electronic Filing Fee		22247969		4

412249	10/28/2014	Notice of Hearing	ON THURSDAY, NOVEMBER 6, 2014 AT 9:30 AM Film code number PBT-2014-351308	22247959	Notice of Hearing	2	4	10348075	<a href="#">View</a>
412249	10/21/2014	RECEIPT		22231753					4
412249	10/20/2014	Electronic Filing Fee		22230987					4
412249	10/20/2014	Application of Miscellaneous kind	PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-342716	22230985	Application of Miscellaneous kind	4	4	10339882	<a href="#">View</a>
412249	10/17/2014	Letter Application		22224386	Letter Application	1	4	10336365	<a href="#">View</a>
				22224386	Letter Application	2	4	10336366	<a href="#">View</a>
412249	06/06/2014	Miscellaneous Order	ORDER GRANTING PLAINTIFF'S MOTION TO REMAND, SIGNED MAY 15, 2014 Film code number PBT-2014-188311	21933282	Miscellaneous Order	2	4	10194300	<a href="#">View</a>
412249	05/22/2014	Miscellaneous Order	GRANTING PLAINTIFF'S MOTION TO REMAND SIGNED ON 5/15/2014 BY UNITED STATES DISTRICT JUDGE Film code number PBT-2014-170812	21899799	Miscellaneous Order	2	4	10178046	<a href="#">View</a>
412249	04/05/2013	Legacy Event	SIGNED APRIL 4, 2013, DOCKET DROP Film code number PBT-2013-111083	21096264	Legacy Event	1	4	9736056	<a href="#">View</a>
412249	04/05/2013	Order on Inventory (Indep.)	ORDERED INVENTORY, APPRAISEMENT AND LIST OF CLAIMS APPROVED, SIGNED APRIL 4, 2013 Film code number PBT-2013-111081	21096260	Order on Inventory (Indep.)	1	4	9736054	<a href="#">View</a>
412249	03/26/2013	Inventory (Indep.)		21077657	Inventory (Indep.)	7	4	9725231	<a href="#">View</a>

412249	12/26/2012	Misc. Notice	NOTICE OF APPEARANCE OF COUNSEL - MAUREEN KUZIK MCCUTCHEN Film code number PBT-2012-413506	20910821	Misc. Notice	2	4	9628446	<a href="#">View</a>
412249	12/05/2012	Order to Extension	ORDERED DATE FOR FILING INVENTORY EXTENDED TO MARCH 26, 2013, SIGNED 11/30/12 Film code number PBT-2012-396204	20880432	Order to Extension	1	4	9612329	<a href="#">View</a>
412249	11/26/2012	RECEIPT		20862546					4
412249	11/26/2012	RECEIPT		20862543					4
412249	11/26/2012	Conform Copies		20862530					4
412249	11/26/2012	Affidavit	PERSONAL REPRESENTATIVE'S AFFIDAVIT OF COMPLIANCE WITH NOTICE REQUIRMENTS UNDER SECTION 128A, TEXAS PROBATE CODE Film code number PBT-2012-383709	20862459	Affidavit	16	4	9600617	<a href="#">View</a>
412249	11/26/2012	Application for Extension		20862450	Application for Extension	2	4	9600615	<a href="#">View</a>
412249	09/05/2012	Legacy Event		20717141	Legacy Event	1	4	9518520	<a href="#">View</a>
412249	08/28/2012	Order Admitting Will and Issuance of Letters Testamentary	ORDERED WILL ADMITTED TO PROBATE, LETTERS TESTAMENTARY TO CARL HENRY BRUNSTING, WHO IS APPOINTED INDEPENDENT EXECUTOR, W/O BOND, APPRAISERS WAIVED, SIGNED AUGUST 28, 2012 Film code number PBT-2012-287037	20702884	Order Admitting Will and Issuance of Letters Testamentary	2	4	9509894	<a href="#">View</a>

412249	08/28/2012	Admitted Will	TO PROBATE Film code number PBT-2012-287034	20702879	Admitted Will	12	4	9509891	<a href="#">View</a>
412249	08/28/2012	Proof of Misc. Types	OF DEATH AND OTHER FACTS, DRINA BRUNSTING Film code number PBT-2012-287033	20702878	Proof of Misc. Types	2	4	9509890	<a href="#">View</a>
412249	08/28/2012	Oath		20702849	Oath	1	4	9509871	<a href="#">View</a>
412249	08/28/2012	Letter Application		20702832	Letter Application	1	4	9509857	<a href="#">View</a>
				20702832	Letter Application	2	4	9509858	<a href="#">View</a>
412249	08/27/2012	Citation Returned	SERVED CITATION ON APPLICATION FOR PROBATE OF LAST WILL BY POSTING Film code number PBT-2012-285513	20699975	Citation Returned	2	4	9508505	<a href="#">View</a>
412249	08/16/2012	Conversion Service Event	Executed: N;	20682104					4
412249	08/16/2012	PW-LT-Posting		20682103	PW-LT-Posting	2	4	9497868	<a href="#">View</a>
412249	08/15/2012	RECEIPT		20681940					4
412249	08/15/2012	Civil Case Information Sheet		20681934	Civil Case Information Sheet	1	4	9497778	<a href="#">View</a>
412249	08/15/2012	App to Probate Will and Issuance of Letters Testamentary	PW-LT POST DOD 04 01 2009 RETURN DATE AUGUST 27 2012 Film code number PBT-2012-274039	20681923	App to Probate Will and Issuance of Letters Testamentary	2	4	9497767	<a href="#">View</a>
412249	08/15/2012	Attorney Assigned		20681919					4
412249	04/02/2012	Purported Will		20681930	Purported Will	12	4	9497774	<a href="#">View</a>
412249	04/02/2012	Folder Created		20447689					4
412249	04/02/2012	Case Initiated Application (OCA)	PPURPORTED WILL Film code number PBT-2012-122649	20447688	Case Initiated Application (OCA)	12	4	9359616	<a href="#">View</a>

			SUCCESSOR PERSONAL REPRESENTATIVE Film code number PBT-2015-57597						
412249	02/18/2015	RECEIPT		22484418					4
412249	02/18/2015	RECEIPT		22483952					4
412249	02/18/2015	Exhibit Check In/Out Event		22483668					4
412249	02/18/2015	Legacy Event		22483664					4
412249	02/18/2015	Instrument Over 25 Pages		22483620	Instrument Over 25 Pages	133	4	10464872	<a href="#">View</a>
412249	02/18/2015	Electronic Filing Fee		22483617					4
412249	02/18/2015	Response	RESPONSE TO CANDACE'S SECOND MOTION FOR PARTIAL DISTRIBUTION FOR ATTORNEY'S FEES 	22483599					4
412249	02/18/2015	Exhibit Check In/Out Event		22483422					4
412249	02/18/2015	Legacy Event		22483379					4
412249	02/17/2015	Electronic Filing Fee		22483341					4
412249	02/17/2015	Objection	OBJECTION TO PLAINTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION FILED IN BASE DOCKET BY REQUEST OF CARLINDA COMSTOCK PROBATE COURT 4 Film code number PBT-2015-55734 	22483336	Objection	133	4	10464701	<a href="#">View</a>
412249	02/12/2015	Electronic Filing Fee		22473862					4
412249	02/10/2015	RECEIPT		22466902					4
412249	02/10/2015	RECEIPT		22466062					4
412249	02/09/2015	Electronic Filing Fee		22466015					4

412249	12/08/2014	Electronic Filing Fee		22330894		4
412249	12/08/2014	Instrument Over 25 Pages		22330892		4
412249	12/08/2014	Response	REPLY TO REPOSE TO MOTION FOR DISTRIBUTION OF TRUST FUNDS Film code number PBT-2014-395429	22330883	Responses	39 4 10389526 <a href="#">View</a>
412249	11/18/2014	RECEIPT		22293021		4
412249	11/17/2014	Electronic Filing Fee		22292328		4
412249	11/17/2014	Amended	SECOND AMENDED NOTICE OF HEARING NOVEMBER 17, 2014 AT 2:00PM Film code number PBT-2014-374213	22292326	Amended	2 4 10369481 <a href="#">View</a>
412249	11/04/2014	Miscellaneous Order	GRANTING PLAINTIFF'S MOTION FOR DISTRIBUTION OF TRUST FUNDS THIS INSTRUMENT RETURN UNSIGNED BY JUDGE'S OFFICE Film code number PBT-2014-358733	22261442	Miscellaneous Order	1 4 10354961 <a href="#">View</a>
412249	11/04/2014	RECEIPT		22260727		4
412249	11/03/2014	Electronic Filing Fee		22260378		4
412249	11/03/2014	Amended	NOTICE OF HEARING - RESCHEDULED FOR MONDAY, NOVEMBER 17, AT 2:00 PM Film code number PBT-2014-357957	22260375	Amended	2 4 10354278 <a href="#">View</a>
412249	10/29/2014	RECEIPT		22248956		4
412249	10/29/2014	Attorney Assigned		22247967		4
412249	10/28/2014	Electronic Filing Fee		22247969		4

412249	12/26/2012	Misc. Notice	NOTICE OF APPEARANCE OF COUNSEL - MAUREEN KUZIK MCCUTCHEN Film code number PBT-2012-413506	20910821	Misc. Notice	2	4	9628446	<a href="#">View</a>
412249	12/05/2012	Order to Extension	ORDERED DATE FOR FILING INVENTORY EXTENDED TO MARCH 26, 2013, SIGNED 11/30/12 Film code number PBT-2012-396204	20880432	Order to Extension	1	4	9612329	<a href="#">View</a>
412249	11/26/2012	RECEIPT		20862546					4
412249	11/26/2012	RECEIPT		20862543					4
412249	11/26/2012	Conform Copies		20862530					4
412249	11/26/2012	Affidavit	PERSONAL REPRESENTATIVE'S AFFIDAVIT OF COMPLIANCE WITH NOTICE REQUIRMENTS UNDER SECTION 128A, TEXAS PROBATE CODE Film code number PBT-2012-383709	20862459	Affidavit	16	4	9600617	<a href="#">View</a>
412249	11/26/2012	Application for Extension		20862450	Application for Extension	2	4	9600615	<a href="#">View</a>
412249	09/05/2012	Legacy Event		20717141	Legacy Event	1	4	9518520	<a href="#">View</a>
412249	08/28/2012	Order Admitting Will and Issuance of Letters Testamentary	ORDERED WILL ADMITTED TO PROBATE, LETTERS TESTAMENTARY TO CARL HENRY BRUNSTING, WHO IS APPOINTED INDEPENDENT EXECUTOR, W/O BOND, APPRAISERS WAIVED, SIGNED AUGUST 28, 2012 Film code number PBT-2012-287037	20702884	Order Admitting Will and Issuance of Letters Testamentary	2	4	9509894	<a href="#">View</a>

# TAB 18



4102  
LAST WILL  
OF  
NELVA E. BRUNSTING

PROBATE COURT 4

04032012: 1010 :G0040

I, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, of Harris County, Texas, make this Will and revoke all of my prior wills and codicils.

Article I

My Family

I am married and my spouse's name is ELMER H. BRUNSTING.

All references to "my spouse" in my Will are to ELMER H. BRUNSTING.

The names and birth dates of my children are:

<u>Name</u>	<u>Birth Date</u>
CANDACE LOUISE CURTIS	March 12, 1953
CAROL ANN BRUNSTING	October 16, 1954
CARL HENRY BRUNSTING	July 31, 1957
AMY RUTH TSCHIRHART	October 7, 1961
ANITA KAY RILEY	August 7, 1963

All references to my children in my will are to these children, as well as any children subsequently born to me, or legally adopted by me.

Article II

Testamentary Gifts

I give, devise and bequeath all of my property and estate, real, personal or mixed, wherever situated, to my revocable living trust; the name of my revocable living trust is:

04032012:1019:G0041

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

04032012:1019:G0041

All of such property and estate shall be held, managed, and distributed as directed in such trust. The exact terms of the BRUNSTING FAMILY LIVING TRUST will govern the administration of my estate and the distribution of income and principal during administration. It is my intent and purpose that the tax planning provisions of the BRUNSTING FAMILY LIVING TRUST apply, and that my estate pass for the benefit of my family with the least possible amount of death taxes.

If my revocable living trust is not in effect at my death for any reason whatsoever, then all of my property shall be disposed of under the terms of my revocable living trust as if it were in full force and effect on the date of my death, and such terms are hereby incorporated herein for all purposes.

### Article III

#### Appointment of Personal Representative

I appoint ELMER H. BRUNSTING as my Personal Representative. In the event ELMER H. BRUNSTING fails or ceases to serve for any reason, I appoint the following individuals as my Personal Representative to serve in the following order:

First, CARL HENRY BRUNSTING

Second, AMY RUTH TSCHIRHART

Third, CANDACE LOUISE CURTIS

The term "Personal Representative" will mean and refer to the office of Independent Executor and Trustee collectively. Reference to Personal Representative in the singular will include the plural, the masculine will include the feminine, and the term is to be construed in context. A Personal Representative will not be required to furnish a fiduciary bond or other security. I direct that no action be required in the county or probate court in relation

to the settlement of my estate other than the probate and recording of my Will and the return of an inventory, appraisal and list of claims as required by law.

#### Article IV

04032012: 1010 :G0042

#### Payment of Debts, Taxes, Settlement Costs and Exercise of Elections

The following directions concern the payment of debts, taxes, estate settlement costs, and the exercise of any election permitted by Texas law or by the Internal Revenue Code. The Personal Representative of my estate and the Trustee of the BRUNSTING FAMILY LIVING TRUST may act jointly and may treat the property of my estate subject to probate and the property of the BRUNSTING FAMILY LIVING TRUST as one fund for the purpose of paying debts, taxes, estate settlement costs, and making of elections.

##### Section A. Payment of Indebtedness and Settlement Costs

The Personal Representative will have the discretionary authority to pay from my estate subject to probate the costs reasonably and lawfully required to settle my estate.

##### Section B. Special Bequests

If property given as a special bequest or gift is subject to a mortgage or other security interest, the designated recipient of the property will take the asset subject to the obligation and the recipient's assumption of the indebtedness upon distribution of the asset to the recipient. The obligation to be assumed shall be the principal balance of the indebtedness on date of death, and the Personal Representative shall be entitled to reimbursement or offset for principal and interest payments paid by my estate to date of distribution.

##### Section C. Estate, Generation Skipping, or Other Death Tax

Unless otherwise provided in this will or by the terms of the BRUNSTING FAMILY LIVING TRUST, estate, inheritance, succession, or other similar tax shall be charged to and apportioned among those whose gifts or distributive share generate a death tax liability by reason of my death or by reason of a taxable termination or a taxable distribution under the generation skipping provisions of the Internal Revenue Code. To the extent I may lawfully provide, the Personal Representative may pay and deduct from a beneficiary's distributive share (whether the distribution is to be paid outright or is to be continued in trust) the increment in taxes payable by reason of a required distribution or termination of interest

(i.e., estate, gift, inheritance, or generation skipping taxes) to the extent that the total of such taxes payable by reason of a distribution or termination is greater than the tax which would have been imposed if the property or interest subject to the distribution or termination of interest has not been taken into account in determining the amount of such tax. To the extent a tax liability results from the distribution of property to a beneficiary other than under this will or under the BRUNSTING FAMILY LIVING TRUST, the Personal Representative will have the authority to reduce any distribution to the beneficiary from my estate by the amount of the tax liability apportioned to the beneficiary, or if the distribution is insufficient, the Personal Representative will have the authority to proceed against the beneficiary for his, her, or its share of the tax liability. In making an allocation, my Personal Representative may consider all property included in my gross estate for federal estate tax purposes, including all amounts paid or payable to another as the result of my death, including life insurance proceeds, proceeds from a qualified retirement plan or account, proceeds from a joint and survivorship account with a financial institution or brokerage company, proceeds from a buy-sell or redemption contract, and/or any other plan or policy which provides for a payment of death benefits. This provision further contemplates and includes any tax which results from the inclusion of a prior transfer in my federal gross estate even though possession of the property previously transferred is vested in someone other than my Personal Representative. This provision does not include a reduction in the unified credit by reason of taxable gifts made by me. If the Personal Representative determines that collection of an apportioned tax liability against another is not economically feasible or probable, the tax liability will be paid by my estate and will reduce the amount distributable to the residuary beneficiaries. The Personal Representative's judgment with regard to the feasibility of collection is to be conclusive.

#### **Section D. Election, Qualified Terminable Interest Property**

The Personal Representative may, without liability for doing so or the failure to do so, elect to treat all or a part of my estate which passes in trust for ELMER H. BRUNSTING under the BRUNSTING FAMILY LIVING TRUST, in which ELMER H. BRUNSTING has an income right for life, as Qualified Terminable Interest Property pursuant to the requirements of Section 2056(b)(7) of the Internal Revenue Code. To the extent that an election is made, and unless ELMER H. BRUNSTING shall issue a direction to the contrary, the Trustee of the BRUNSTING FAMILY LIVING TRUST will pay from the irrevocable share the entire increment in the taxes payable by reason of the death of ELMER H. BRUNSTING to the extent that the total of such taxes is greater than would have been imposed if the property treated as qualified terminable interest property has not been taken into account in determining such taxes. It is my intent and purpose to provide my Personal Representative with the greatest latitude in making this election so that the least amount of federal estate tax will be payable upon my death and upon the death of ELMER H. BRUNSTING, and this

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provision is to be applied and construed to accomplish this objective. The Personal Representative is to make distributions of income and principal to the Trustee of the BRUNSTING FAMILY LIVING TRUST until my total estate subject to probate and administration is distributed to the Trustee of the BRUNSTING FAMILY LIVING TRUST.

#### **Section E. Special Election for Qualified Terminable Interest Property**

For the purpose of identifying the "transferor" in allocating a GST exemption, my estate may elect to treat all of the property which passes in trust to a surviving spouse for which a marital deduction is allowed, by reason of Section 2056(b)(7) of the Internal Revenue Code, as if the election to be treated as Qualified Terminable Interest Property had not been made. Reference to the "Special Election For Qualified Terminable Interest Property" will mean and identify the election provided by Section 2652(a)(2) of the Internal Revenue Code. The term "GST Exemption" or "GST Exemption Amount" is the dollar amount of property which may pass as generation skipping transfers under Subtitle B, Chapter 13, of the Internal Revenue Code of 1986 (entitled "Tax on Generation Skipping Transfers") which is exempt from the generation-skipping tax.

#### **Section F. Elective Deductions**

The Personal Representative will have the discretionary authority to claim any obligation, expense, cost or loss as a deduction against either estate tax or income tax, or to make any election provided by Texas law, the Internal Revenue Code, or other applicable law, and the Personal Representative's decision will be conclusive and binding upon all interested parties and shall be effective without obligation to make an equitable adjustment or apportionment between or among the beneficiaries of my estate or the estate of a deceased beneficiary.

### **Article V**

#### **Service of the Personal Representative**

A Personal Representative may exercise, without court supervision (or the least supervision permitted by law), all powers and authority given to executors and trustees by the laws of the State of Texas and by this will.



**Section E. Partial, Final Distributions**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will prepare an accounting and may require, as a condition to payment, a written and acknowledged statement from each distributee that the accounting has been thoroughly examined and accepted as correct; a discharge of the Personal Representative; a release from any loss, liability, claim or question concerning the exercise of due care, skill, and prudence of the Personal Representative in the management, investment, retention, and distribution of property during the representative's term of service, except for any undisclosed error or omission having basis in fraud or bad faith; and an indemnity of the Personal Representative, to include the payment of attorneys' fees, from any asserted claim of any taxing agency, governmental authority, or other claimant. Any beneficiary having a question or potential claim may require an audit of the estate or trust as an expense of administration. Failure to require the audit prior to written acceptance of the Personal Representative's report, or the acceptance of payment, will operate as a final release and discharge of the Personal Representative except as to any error or omission having basis in fraud or bad faith.

**Section F. Partition, Undivided Interests**

My Personal Representative, in making or preparing to make a partial or final distribution from the estate or a trust, will have the authority (1) to partition any asset or class of assets and deliver divided and segregated interests to beneficiaries; (2) to sell any asset or class of assets (whether or not susceptible to partition in kind), and deliver to the beneficiaries a divided interest in the proceeds of sale and/or a divided or undivided interest in any note and security arrangement taken as part of the purchase price; and/or (3) to deliver undivided interests in an asset or class of assets of the beneficiaries subject to any indebtedness which may be secured by the property.

**Section G. Accounting**

My Personal Representative will render at least annually a statement of account showing receipts, disbursements, and distributions of both principal and income during the period of accounting and a statement of the invested and uninvested principal and the undistributed income at the time of such statement.

**Section H. Protection of Beneficiaries**

No beneficiary will have the power to anticipate, encumber or transfer any interest in my estate. No part of my estate or any trust will be liable for or charged with any debts.





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Article VI

04032012: 010 :G0048

No-Contest Requirements

I vest in my Personal Representative the authority to construe this will and to resolve all matters pertaining to disputed issues or controverted claims. I do not want to burden my estate with the cost of a litigated proceeding to resolve questions of law or fact unless that proceeding is originated by my Personal Representative or with the Personal Representative's written permission. Any other person, agency or organization who originates (or who shall cause to be instituted) a judicial proceeding to construe or contest this will or to resolve any claim or controversy in the nature of reimbursement, constructive or resulting trust or other theory which, if assumed as true, would enlarge (or originate) the claimant's interest in my estate, will forfeit any amount to which that person, agency or organization is or may be entitled, and the interest of any such litigant or contestant will pass as if he or she or it had predeceased me.

These directions will apply even though the person, agency or organization shall be found by a court of law to have originated the judicial proceeding in good faith and with probable cause, and even though the proceeding may seek nothing more than to construe the application of this no-contest provision. However, the no-contest provision is to be limited in application as to any claim filed by ELMER H. BRUNSTING, to the exclusion thereof if necessary, to the extent it may deny my estate the benefit of the federal estate tax marital deduction.

THIS WILL is signed by me in the presence of two (2) witnesses, and signed by the witnesses in my presence on January 12, 2005.

Nelva E. Brunsting  
NELVA E. BRUNSTING

04032012:010:G0049

The foregoing Will was, on the day and year written above, published and declared by NELVA E. BRUNSTING in our presence to be her Will. We, in her presence and at her request, and in the presence of each other, have attested the same and have signed our names as attesting witnesses.

We declare that at the time of our attestation of this Will, NELVA E. BRUNSTING was, according to our best knowledge and belief, of sound mind and memory and under no undue duress or constraint.

**Krysti Brull**  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

*Krysti Brull*  
\_\_\_\_\_  
WITNESS

**April Driskell**  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079

*April Driskell*  
\_\_\_\_\_  
WITNESS

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SELF-PROVING AFFIDAVIT

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STATE OF TEXAS  
COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day personally appeared NELVA E. BRUNSTING, Kristi Brun and April Prisker, known to me to be the Testatrix and the witnesses, respectively, whose names are subscribed to the annexed or foregoing instrument in their respective capacities, and, all of said persons being by me duly sworn, the said NELVA E. BRUNSTING, Testatrix, declared to me and to the said witnesses in my presence that said instrument is her Last Will and Testament, and that she had willingly made and executed it as her free act and deed; and the said witnesses, each on his or her oath stated to me, in the presence and hearing of the said Testatrix that the said Testatrix had declared to them that the said instrument is her Last Will and Testament, and that she executed same as such and wanted each of them to sign it as a witness; and upon their oaths each witness stated further that they did sign the same as witnesses in the presence of the said Testatrix and at her request; that she was at that time eighteen years of age or over (or being under such age, was or had been lawfully married, or was then a member of the armed forces of the United States or of an auxiliary thereof or of the Maritime Service) and was of sound mind; and that each of said witnesses was then at least fourteen years of age.

Nelva E. Brunsting  
NELVA E. BRUNSTING

Kristi Brun  
WITNESS

April Prisker  
WITNESS

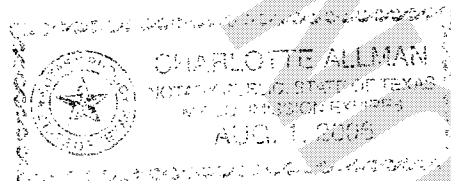
Stephine  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

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Subscribed and sworn to before me by the said NELVA E. BRUNSTING, the Testatrix, and by the said Kristi Brun and April Prisker, witnesses, on January 12, 2005.

Charlotte Allman  
Notary Public, State of Texas



PURPORTED WILL

04032012:1010:G0051

04032012:1010:G0051

412249

The Vacek Law Firm, PLLC  
11511 Katy Freeway, Suite 520  
Houston, Texas 77079  
(281) 531-5800

PURPORTED WILL

# TAB 19

NO. 412.249

ESTATE OF	§	IN	PROBATE	COURT
NELVA E. BRUNSTING,	§	NUMBER	FOUR (4)	OF
DECEASED	§	HARRIS	COUNTY,	T E X A S

**PROOF OF DEATH AND OTHER FACTS**

On this day, DRINA BRUNSTING ("Affiant"), personally appeared in Open Court, and after being duly sworn, stated the following:

1. Nelva E. Brunsting ("Decedent") died on November 11, 2011, in Houston, Harris County, Texas, at the age of 85 years and four years have not elapsed since the date of Decedent's death.
2. Decedent was domiciled and had a fixed place of residence in this County at the date of death.
3. The document dated January 12, 2005, now shown to me and which purports to be Decedent's Will was never revoked so far as I know.
4. A necessity exists for the administration of this Estate.
5. No child or children were born to or adopted by Decedent after the date of the Will.
6. Decedent was never divorced.
7. The Independent Executor named in the Will is Elmer H. Brunsting, but he predeceased Decedent in 2009. The alternate or successor Independent Executor named in the Will is CARL HENRY BRUNSTING, who is not disqualified by law from accepting Letters Testamentary or from serving as Independent Executor, and is entitled to such Letters.
8. Decedent's Will did not name either the State of Texas, a governmental agency of the State of Texas, or a charitable organization as a devisee.

09282012:1135:PO064

59004:5E11:21028280

SIGNED this 28<sup>th</sup> day of August, 2012.

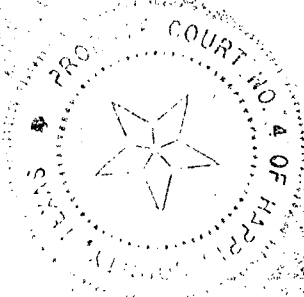
*Drina Brunsting*  
DRINA BRUNSTING

SUBSCRIBED AND SWORN TO BEFORE ME by DRINA BRUNSTING, this 28<sup>th</sup> day of August, 2012, to certify which, witness my hand and seal of office.

STAN STANART, County Clerk

Clerk of Probate Court No. 4  
of Harris County, Texas

By: *Stan Stanart*  
Deputy



*Stan Stanart*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

2012 AUG 28 AM 10:09

FILED

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**TAB 20**



NO. 412.249

ESTATE OF § IN PROBATE COURT  
NELVA E. BRUNSTING, §  
DECEASED § NUMBER FOUR (4) OF  
§ HARRIS COUNTY, TEXAS

08282012 11:35:0080

**ORDER ADMITTING WILL TO PROBATE AND  
AUTHORIZING LETTERS TESTAMENTARY**

On this day came on to be heard the Application for Probate of Will and For Issuance of Letters Testamentary filed by CARL HENRY BRUNSTING ("Applicant") in the Estate of Nelva E. Brunsting, Deceased ("Decedent").

The Court, having heard the evidence and having reviewed the Will, and other documents filed herein, finds that the allegations contained in the Application are true; that notice and citation have been given in the manner and for the length of time required by law; that Decedent is dead and that four (4) years have not elapsed since the date of Decedent's death; that this Court has jurisdiction and venue of the Decedent's estate; that Decedent left a Will dated January 12, 2005, executed with the formalities and solemnities and under the circumstances required by law to make a valid Will; that on such date Decedent had attained the age of eighteen (18) years and was of sound mind; that such Will was not revoked by Decedent; that no objection to or contest of the probate of such Will has been filed; that all of the necessary proof required for the probate of such Will has been made; that in such Will, Decedent named Elmer H. Brunsting to serve as Executor, but he predeceased Decedent in 2009; that in such Will, Decedent named CARL HENRY BRUNSTING to serve as alternate or successor Independent Executor, without bond; that CARL HENRY BRUNSTING is duly qualified and not disqualified by law to act as such and to receive Letters Testamentary; that a necessity exists for the administration of this estate; that Decedent's Will did not name either the State of Texas, a governmental agency of the State of Texas, or a charitable organization as a

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 7/29/2019  
**Diane Trautman, County Clerk**  
Harris County, Texas



  
Sterling G. Senechal III Deputy



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devisee; and that no interested person has applied for the appointment of appraisers and none are deemed necessary by the Court.

It is therefore ORDERED that such Will is admitted to probate, and the Clerk of this Court is ORDERED to record the Will, together with the Application, in the Minutes of this Court.

It is further ORDERED that no bond or other security is required and that upon the taking and filing of the Oath required by law, Letters Testamentary shall be issued to CARL HENRY BRUNSTING, who is appointed as Independent Executor of Decedent's Will and Estate, and no other action shall be necessary in this Court other than the filing of an Inventory, Appraisalment, and List of Claims or an Affidavit in Lieu of Inventory, Appraisalment and List of Claims and Probate Code Section 128A Notice, as required by law.

SIGNED this 28 day of August, 2012.

*Clementine Burt*  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: *[Signature]*

*Bobbie G. Bayless*  
State Bar No. 01940600  
*Dalia B. Stokes*  
State Bar No. 19267900  
2931 Ferndale Street  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Applicant*

FILED  
AUG 28 AM 10:09  
*Stan Stewart*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

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**Diane Trautman, County Clerk**  
Harris County, Texas



*[Signature]*  
Sterling G. Senechal III Deputy

# TAB 21

NO. 412.249

ESTATE OF § IN PROBATE COURT  
 NELVA E. BRUNSTING, § NUMBER FOUR (4) OF  
 DECEASED § HARRIS COUNTY, TEXAS

INVENTORY, APPRAISEMENT AND LIST OF CLAIMS

Date of Death: November 11, 2011

The following is a full, true, and complete Inventory and Appraisement of all personal property and of all real property situated in the State of Texas, together with a List of Claims due and owing to this Estate as of the date of death, which have come to the possession or knowledge of the undersigned.

INVENTORY AND APPRAISEMENT

ASSETS	VALUE	ESTATE INTEREST
--------	-------	-----------------

1. **Real Estate:**  
See List of Claims
2. **Stocks and Bonds**  
See List of Claims
3. **Mortgages, Notes and Cash:**  
See List of Claims
4. **Insurance Payable to Estate**  
See List of Claims
5. **Jointly Owned Property**  
See List of Claims

*Susan Stewart*  
 COUNTY CLERK  
 HARRIS COUNTY, TEXAS  
 2013 MAR 26 PM 3:16  
 FILED

03272013:0821:P0032

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09272019:0821: P0099

ASSETS	VALUE	ESTATE INTEREST
--------	-------	-----------------

6. **Miscellaneous Property**

6a. See List of Claims

6b. One-half (1/2) interest in  
2000 Buick LeSabre..... \$2,750.00  
VIN--1G4HR54K3YU229418

**TOTAL VALUE OF ESTATE**..... Yet to be determined

03272013:0821: P0034

LIST OF CLAIMS

1. Based upon the information currently available to the personal representative of the estate, it is not possible to determine with certainty what assets were in the estate at the Decedent's death. That determination will have to be made the subject of further judicial proceedings. After that judicial determination is made, to the extent it becomes necessary, this Inventory, Appraisement and List of Claims will be amended to reflect the descriptions and values of assets later determined to have been estate assets at the time of Decedent's death.

2. The estate has asserted a claim against Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC relating to actions taken and omissions made in the course of their representation of decedent and her husband which may result in additional estate assets. That case is pending under Cause No. 2013-05455, styled *Carl Henry Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC f/k/a The Vacek Law Firm, PLLC*, in the 164<sup>th</sup> Judicial District Court of Harris County, Texas.


3. The Brunsting Family Living Trust was signed by Decedent and her husband on October 10, 1996 and was restated on January 12, 2005 (the "Family Trust"). The Family Trust purported by its terms to provide for the creation of successor and/or subsequent trusts. The Family Trust also described other documents which, if created in compliance with the terms of the Family Trust, could impact the assets and status of the Family Trust. Attempts were made by various parties to change the terms and control of the Family Trust through later instruments which have been or will be challenged. The estate also asserts claims against Anita Brunsting and Amy Brunsting, the current purported trustees of the successor trusts or trusts arising from the Family

Trust or documents allegedly created pursuant to the terms of the Family Trust. Those claims will be the subject of separate proceedings and may result in additional estate assets.

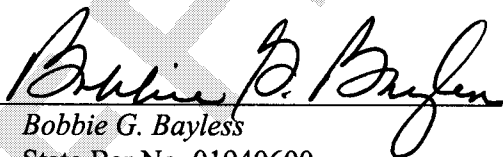
4. The estate also asserts a claim against Anita Brunsting, Amy Brunsting, and Carole Brunsting in their individual capacities for amounts paid and assets believed to also include, among other things, stocks and bonds which were removed from the Family Trust and/or the estate. This was accomplished either through the use of a power of attorney for Decedent, through their position as trustees, through their position as joint signatories on accounts and safe deposit boxes, or because they otherwise had access to the assets. Those claims will also be the subject of a separate proceeding and may result in additional estate assets.

There are no known claims due or owing to the Estate other than those shown on the foregoing Inventory and Appraisement.

The foregoing Inventory, Appraisement and List of Claims should be approved and ordered entered of record.

  
CARL HENRY BRUMSTING,  
*Independent Executor of the Estate of  
Nelva E. Brunsting*

BAYLESS & STOKES

By:   
*Bobbie G. Bayless*  
State Bar No. 01940600  
*Dalia B. Stokes*  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

03272013:0821: P0036

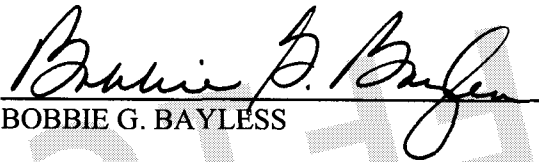
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded to the following interested parties as specified below on the 26<sup>th</sup> day of March, 2013, as follows:

Maureen Kuzik McCutchen  
Mills Shirley, LLP  
2228 Mechanic, Suite 400  
P.O. Box 1943  
Galveston, Texas 77553-1943  
Houston, Texas 77056  
*sent via Telecopier*

Candace Louise Curtis  
1215 Ulfian Way  
Martinez, California 94553  
*sent via U.S. First Class Mail*

Carole Ann Brunsting  
5822 Jason St.  
Houston, Texas 77074  
*sent via U.S. First Class Mail*

  
BOBBIE G. BAYLESS

COPY UNOFFICIAL



09272013:0821:P0097

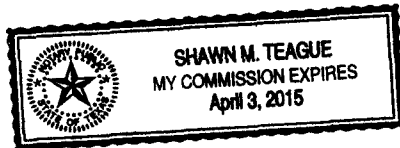
THE STATE OF TEXAS §

COUNTY OF HARRIS §

I, CARL HENRY BRUNSTING, having been duly sworn, hereby state on oath that the foregoing Inventory, Appraisalment and List of Claims is a true and complete statement of all the property and claims of the Estate that have come to my knowledge.

*Carl Henry Brunsting*  
CARL HENRY BRUNSTING  
*Independent Executor of the Estate of  
Nelva E. Brunsting, Deceased*

SWORN TO and SUBSCRIBED BEFORE ME by the said CARL HENRY BRUNSTING,  
on this 26<sup>th</sup> day of March, 2013, to certify which witness my hand and seal of office.



*Shawn M. Teague*  
Notary Public in and for the  
State of TEXAS  
Printed Name: Shawn M. Teague  
My Commission Expires: 4-3-2015

03272013:0821: P0038

NO. 412.249

ESTATE OF                                   §                   IN           PROBATE           COURT  
NELVA E. BRUNSTING,                   §                   NUMBER   FOUR   (4)   OF  
DECEASED                               §                   HARRIS COUNTY, TEXAS

**ORDER APPROVING INVENTORY,  
APPRAISEMENT AND LIST OF CLAIMS**

The foregoing Inventory, Appraisement and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

\_\_\_\_\_  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: 

*Bobbie G. Bayless*

State Bar No. 01940600

*Dalia B. Stokes*

State Bar No. 19267900

2931 Ferndale

Houston, Texas 77098

Telephone: (713) 522-2224

Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

04052013:1514:P0006

PROBATE COURT 4

NO. 412.248

ESTATE OF § IN PROBATE COURT  
ELMER H. BRUNSTING, § NUMBER FOUR (4) OF  
DECEASED § HARRIS COUNTY, TEXAS

ORDER APPROVING INVENTORY,  
APPRAISEMENT AND LIST OF CLAIMS

3930 (b)  
EFF 9-1-83

The foregoing Inventory, Appraisement and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this 4 day of April, 2013.

Cristine Bonin  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: Bobbie G. Bayless

*Bobbie G. Bayless*  
State Bar No. 01940600  
*Dalia B. Stokes*  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

*Attorneys for Independent Executor*

*Star Stewart*  
CLERK  
HARRIS COUNTY, TEXAS

2013 APR -5 AM 10:01

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APR 05 2013

TAB 22

NO. 412,249

ESTATE OF § IN PROBATE COURT  
NELVA E. BRUNSTING, § NUMBER FOUR (4) OF  
DECEASED § HARRIS COUNTY, TEXAS

**ORDER APPROVING INVENTORY,  
APPRAISEMENT AND LIST OF CLAIMS**

04052010:1322:POTTS

3930 (b)  
EFF 9-1-83

The foregoing Inventory, Appraisement and List of Claims of the above Estate, having been filed and presented, and the Court, having considered and examined the same and being satisfied that it should be approved and there having been no objections made thereto, it is in all respects APPROVED and ORDERED entered of record.

SIGNED on this 4 day of April, 2013.

*Christine B. ...*  
JUDGE PRESIDING

APPROVED:

BAYLESS & STOKES

By: *Bobbie G. Bayless*  
*Dalia B. Stokes*  
Bobbie G. Bayless  
State Bar No. 01940600  
Dalia B. Stokes  
State Bar No. 19267900  
2931 Ferndale  
Houston, Texas 77098  
Telephone: (713) 522-2224  
Telecopier: (713) 522-2218

Attorneys for Independent Executor

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APR 05 2013

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*Sterling G. Senechal III*  
Sterling G. Senechal III Deputy

TAB 23

04052010:1322:40115

# DROP

NO. 4/12.249

PROBATE COURT 4

IN THE ESTATE OF	§	IN THE PROBATE COURT
<u>Nelva E. Brunsting</u>	§	NUMBER FOUR OF
DECEASED	§	HARRIS COUNTY, TEXAS

### DROP ORDER

On this day, it having been brought to the attention of this Court that the above entitled and numbered estate should be dropped,

**IT IS THEREFORE ORDERED** that the Clerk drop said estate from the Court's active docket.

**IT IS FURTHER ORDERED** that any costs incident to this order are hereby waived.

SIGNED this 4 day of April, 2013.

Christine Butts  
 JUDGE CHRISTINE BUTTS  
 PROBATE COURT NO. FOUR

FILED  
 2013 APR -5 AM 10:01  
 STEPHEN STINEBAUGH  
 COUNTY CLERK  
 HARRIS COUNTY, TEXAS

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 Harris County, Texas

Sterling G. Senechal III Deputy

CON:458969|9736056



TAB 24



# Probate

Case Number

412249

Court

All

Status

-All

File Date (From)

MM/DD/YYYY 

File Date (To)

MM/DD/YYYY 

SEARCH

CLEAR

Party  Attorney  Company

Last Name

First Name

File Date (From)

MM/DD/YYYY 

File Date (To)

MM/DD/YYYY 

SEARCH

CLEAR

288 Record(s) Found.

Case	File Date	Type Desc	Subtype	Style	Status	Judge
412249-401	04/09/2013	ANCILLARY (LAWSUITS CASES) - CONVERSION		NELVA E. BRUNSTING, DECEASED	Open	JAMES HORWITZ

FIRST 1 2 LAST

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Harris County, Texas

  
Olivia Guerrero

Deputy



CON:471457|0



Event Date	Event Desc	Comments	Pgs
07/29/2019	CC & Non-CC Order	Tag # 458969---MAILED 07/31/19	<input type="checkbox"/>
07/23/2019	Order for Sanction	and/or Contempt	Order for Sanction 3 <input type="checkbox"/>
07/08/2019	Memorandum	Plaintiff Memorandum on Appointment of Administrator	2019-07-07 Memorandum re Appointment of Administrator.pdf 8 <input type="checkbox"/>
07/08/2019	Findings of Fact, Etc.		2019-07-07 Proposed Order after 8 Hearing.pdf <input type="checkbox"/>
06/12/2019	Response	Response to the Fiduciary's Application for the Beneficiary to be Held in Contempt with Petition for Partial Summary or Declaratory Judgment	2008-06-09 Elmer Incompetent.pdf 1 <input type="checkbox"/> 2007-09-06 2007 Amendment Brunsting Family Living Trust.pdf 2 <input type="checkbox"/> Petition for Declaratory Judgment.pdf 8 <input type="checkbox"/> 2005-01-12 P849-950 Restatement of Trust& Related Docs.pdf 102 <input type="checkbox"/>
05/21/2019	Notice of Hearing	on A. Brunsting's Motion for Sanctions and/or Contempt, June 28, 2019 at 3:00pm	Notice of Hearing.pdf 2 <input type="checkbox"/>
05/17/2019	Misc. Notice	Notice of Intention to Continue Deposition	2019-05-17 Depo Notice to C. Kunz-Freed.pdf 2 <input type="checkbox"/>

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*Olivia Guerrero*  
 \_\_\_\_\_  
 Olivia Guerrero

Deputy



CON:471457j0

05/15/2019	Application for Sanction	Amy Brunsting's Motion for Sanctions and/or Contempt	Ex. 5.pdf	3	<input type="checkbox"/>
			Ex. 4.pdf	2	<input type="checkbox"/>
			A. Brunstings Mtn. for Sanctions.pdf	7	<input type="checkbox"/>
			Ex. 1.pdf	2	<input type="checkbox"/>
			Ex. 2.pdf	7	<input type="checkbox"/>
			Ex. 3.pdf	2	<input type="checkbox"/>
04/06/2019	Order to Reset	Trial to 10-05-2015			
04/04/2019	Order to Transfer Docket	to Harris County Probate Court 4 from Harris County 164th Judicial District			
03/07/2019	Miscellaneous Order	Granting Appraisal	Miscellaneous Order	1	<input type="checkbox"/>
03/05/2019	Misc. Notice	Notice of Filing Privilege Log	Brunsting - Ntc of Filing Privilege Log.pdf	12	<input type="checkbox"/>
03/01/2019	Brief	Candace Kunz-Freed's Brief on Privilege	Brunsting - Freed's Brief on Privilege.pdf	4	<input type="checkbox"/>
			Brunsting - Exhibit B.pdf	15	<input type="checkbox"/>
			Brunsting - Exhibit A.pdf	7	<input type="checkbox"/>
03/01/2019	Brief	Carl Brunsting's Brief Concerning Attorney-Client Privilege Issues With Regard to the Deposition of Candace Freed	Carl's Brief re attorney-client privilege.pdf	4	<input type="checkbox"/>
03/01/2019	Brief	Anita and Amy Brunsting's Joint Brief regarding Texas Rule of Evidence 503	Anita and Amy Brunsting's Joint Brief.pdf	7	<input type="checkbox"/>
02/25/2019	Objection	Objection to Farm Appraisal Demand for Accounting	Objection to Farm Appraisal Demand for Accounting.pdf	5	<input type="checkbox"/>

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*Olivia Guernaro*  
 Olivia Guernaro

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02/25/2019	Misc. Notice	Notice of Deposition momo on Texas Rule of Evidence 503 (d)	2019-02-22 Notice of Dep Tx Rule Ev 503 5 (d).pdf	<input type="checkbox"/>
02/14/2019	Miscellaneous Order	Denying Pleas and Motion Filed by Candace Curtis	Miscellaneous Order 2	<input type="checkbox"/>
02/14/2019	Order to Transfer Docket	District Court Proceedings to Probate Court No. 4	Order to Transfer Docket	1 <input type="checkbox"/>
02/08/2019	Misc. Notice	Notice of Hearing re Motion for Appraisal(s)	2019-02-08 Ntc of Hrg re Apprsl.pdf	2 <input type="checkbox"/>
02/05/2019	Response	Amy Brunsting's Reply to Curtis' Response	Amy Brunsting's Reply to Curtis's Response.pdf	7 <input type="checkbox"/>

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*Olivia Guerrero*

Deputy



CON:4714570

Olivia Guerrero

02/05/2019 Answer

Candace Curtis Special  
Exceptions Motion in  
Limine Memorandum

E12_ October 2018 No-contest clause emails.pdf	22	<input type="checkbox"/>
E11_2014-05-13 IN RE_ Julie HANNAH.pdf	14	<input type="checkbox"/>
E7_2013-01-09 Curtis v. Brunsting_ 704 F.3d 406 Lexis.pdf	7	<input type="checkbox"/>
E8_2016-12-29 Mendel email to Carole Distribution Injunction Liquidity and Incurred Debt.pdf	4	<input type="checkbox"/>
E9_2015-08-03 Case 412249-401 Hearing Transcript - Wiretap.pdf	42	<input type="checkbox"/>
E10_2016-03-09 Case 412249-401 March 9, 2016 Hearing Transcript.pdf	54	<input type="checkbox"/>
Candace Louise Curtis Special Exceptions Motion in Limine -401.pdf	15	<input type="checkbox"/>
2019-01-28 Proposed Order Plea to the jurisdiction 401.pdf	3	<input type="checkbox"/>
E1_Application for Order to Show Cause.pdf	7	<input type="checkbox"/>
E2_Case 412-cv-592 Curtis Original Federal Complaint 2012-02-27.pdf	28	<input type="checkbox"/>

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*Olivia Guemaro*  
Olivia Guemaro

Deputy



CON:47145710

E3\_2014-05-22  
 Case 4-12-cv-592  
 Federal Order  
 Granting Remand 2   
 Case 412249-402  
 PBT-2014-  
 170812.pdf

E4\_2013-04-09  
 Case 412249-401  
 PBT-2013-115617 20   
 Bayless Original  
 Petition 2013-04-  
 09.pdf

E5\_2015-03-05  
 Case 412249-401  
 PBT-2015-76288 5   
 Agreed Order to  
 Consolidate  
 cases.pdf

E6\_2013-01-29  
 Case 2013-05455  
 District Court 20   
 Complaint against  
 Freed.pdf

02/04/2019 Answer

Response to Amy  
 Brunsting's Motion for  
 Clarification and/or Motion  
 to Dismiss

Proposed order  
 denying Application  
 to be named 2   
 Successor  
 Executor.pdf

Response to Motion  
 for Clarification.pdf 3

02/04/2019 Answer

Non-Party Witness  
 Candace Kunz-Freed's  
 Response to Amy  
 Brunsting's Motion for  
 Clarification

Freed's Rsps to  
 Amy's Mtn for 4   
 Clarification.pdf

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Olivia Guerrero

Deputy



CON:471457|0



01/29/2019	No Fee - Other	Amy Brunsting's Motion for Clarification and/or Motion to Dismiss	Exhibit A-5 to Motion for Clarification and Motion to Dismiss.pdf	4	<input type="checkbox"/>
			Exhibit A-4 to Motion for Clarification and Motion to Dismiss.pdf	1	<input type="checkbox"/>
			Exhibit A to Motion for Clarification and Motion to Dismiss.pdf	2	<input type="checkbox"/>
			Exhibit A-1 to Motion for Clarification and Motion to Dismiss.pdf	16	<input type="checkbox"/>
			Exhibit A-2 to Motion for Clarification and Motion to Dismiss.pdf	9	<input type="checkbox"/>
			Exhibit A-3 to Motion for Clarification and Motion to Dismiss.pdf	5	<input type="checkbox"/>
			Motion for Clarification and Motion to Dismiss.pdf	14	<input type="checkbox"/>
01/29/2019	Notice of Hearing	Notice of Hearing on Amy Brunsting's Motion for Clarification and/or Motion to Dismiss	Notice of Hearing - Motion for Clarification and Motion to Dismiss.pdf	2	<input type="checkbox"/>
01/29/2019	Application of Miscellaneous kind	Anita Brunsting s Motion to Join Amy Brunsting s Motion for Clarification and/or Motion to Dismiss	2019-01-29 A. Brunsting's Mtn to Join.pdf	3	<input type="checkbox"/>
01/28/2019	Proposed Order	Order Granting Appraisal	2019-01-28 Ord Grntng A. Brunsting's 1 Mtn fr Appraisal.pdf	1	<input type="checkbox"/>

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 Harris County, Texas



Olivia Guerrero

Deputy



CON:471457|0



01/28/2019	No Fee - Other	Defendant Co-Trustee Anita Brunsting s Motion to Obtain an Appraisal(s)	2019-01-28 A. Brunsting's Mtn fr Appraisal.pdf	3	<input type="checkbox"/>
01/25/2019	Motion Pertaining to Lawsuits Only (Dep.)		2019-01-25 Proposed Order to Make More Definite and Certain.pdf	4	<input type="checkbox"/>
			2019-01-25 Motion for Order to Make More Definite and Certain.pdf	7	<input type="checkbox"/>
01/24/2019	Order to Compel (Dep.)	Deposition of Non-Party Witness Candace Kunz-Freed	Order to Compel (Dep.)	1	<input type="checkbox"/>
01/23/2019	Response	Amy Brunsting's Reply to Kunz-Freed's Response to Anita Brunsting's Motion to Compel	Brunsting's Response to Motion to Compel.pdf	5	<input type="checkbox"/>
01/22/2019	Answer	Non-Party Witness Candace Kunz-Freed's Response tom Anita Brunsting's Motion to Compel	Brunsting - PO re Mtn to Compel.pdf	1	<input type="checkbox"/>
			Brunsting-Freed's Rsp's Brunsting's Mtn Compel.pdf	3	<input type="checkbox"/>
01/16/2019	Response	Anita Brunsting s Response to Candace Kunz-Freed s Motions to Quash and for Protection	2019-01-16 A. Brunsting's Resp to Mtn to Quash.pdf	4	<input type="checkbox"/>
12/28/2018	Notice of Hearing	January 24, 2019 at 10:00 am	2018-12-28 Ntc of Hrg re Mtn to Compel & Quash.pdf	2	<input type="checkbox"/>
12/26/2018	Subpoena Duces Tecum Return	Subpoena Returned Served	Subpoena Duces Tecum Return	4	<input type="checkbox"/>
12/20/2018	Subpoena Returned	SUBPOENA AND AFFIDAVIT OF SERVICE	SUBPOENA AND AFFIDAVIT OF SERVICE	4	<input type="checkbox"/>

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 Olivia Guerrero

Deputy



CON:47145710





12/18/2018	No Fee - Other	Anita Brunsting's Motion to Compel the Deposition of Candace Kunz-Freed	2018-12-18 A. Brunsting's Mtn to Cmpl.pdf	3	<input type="checkbox"/>
12/18/2018	Application to Compel (Indep.)	Anita Brunsting's Motion to Compel the Deposition of Candace Kunz-Freed	2018-12-18 A. Brunsting's Mtn to Cmpl.pdf	3	<input type="checkbox"/>
12/11/2018	Subpoena Returned	Subpoena to Appear for Oral &/or Video Deposition to Candace Kunz-Freed on 12/05/2018 at 3:30 pm	Subpoena Returned	4	<input type="checkbox"/>
11/30/2018	Application to Quash	Non-Party Witness Candace Kunz-Freed's Motion to Quash and Motion for Protection	Freed's Mtn to Quash and Mtn Protect Order.pdf PO re Mtn to Quash.pdf	9 2	<input type="checkbox"/> <input type="checkbox"/>
11/27/2018	Misc. Notice	Defendant Anita Brunsting's Notice of the Oral &/or Video Deposition of Candace Kunz-Freed	2018-11-27 Depo Ntc - C. Kunz-Freed.pdf	2	<input type="checkbox"/>
10/19/2018	Application to Dismiss	Plea to the Jurisdiction and Motion to Dismiss	2018-10-19 Plea to the Jurisdiction_Final.pdf	8	<input type="checkbox"/>
09/05/2018	Order for Continuance	Ordered motion is granted.	Order for Continuance	1	<input type="checkbox"/>
09/04/2018	Answer	Response to Candace Louise Curtis' Plea in Abatement	Proposed order denying Plea in Abatement.pdf Exhibit 4.pdf Response to Plea in Abatement.pdf Exhibit 1.pdf Exhibit 2.pdf Exhibit 3.pdf	2 29 5 13 6 3	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>

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*Olivia Guerrero*

Deputy



CON:471457/0

Olivia Guerrero

09/04/2018	Objection	Objection to Attachment of Exhibit A to Defendants' Joint Response to Plaintiff's Motion for Partial Summary Judgment	Proposed order sustaining objection to SJ evidence.pdf 2 <input type="checkbox"/>
			Objection to Response to Motion for Partial Summary Judgment.pdf 3 <input type="checkbox"/>
09/04/2018	Answer	Response to Defendants' Joint Motion for Continuance Regarding Carl Brunsting's Motion for Partial Summary Judgment	Proposed order denying Continuance.pdf 2 <input type="checkbox"/>
			Response to Motion for Continuance.pdf 4 <input type="checkbox"/>
09/04/2018	Addendum of Misc. Types	Addendum to Plea in Abatement	Exhibit 1_2015-03-09 Case 412249-401 PBT-2015-76288 Agreed Order to Consolidate cases.pdf 5 <input type="checkbox"/>
			2018-09-04 Addendum to Plea in Abatement.pdf 10 <input type="checkbox"/>
08/30/2018	Proposed Order	Order Denying Plaintiff's Motion for Partial Summary Judgment	Order - Denial of MSJ.pdf 1 <input type="checkbox"/>
08/29/2018	Response	Defendants' Joint Response to Plaintiff's Motion for Partial Summary Judgment	Exh A - Temp Admin Rpt.pdf 11 <input type="checkbox"/>
			2018-08-29 Resp to C. Brunsting's Partial MSJ.pdf 9 <input type="checkbox"/>
08/28/2018	Notice of Hearing	Notice of Hearing on Defendants' Joint Motion for Continuance Regarding Carl Brunsting's Motion for Partial Summary Judgment	2018-08-28 Ds' Ntc of Hearingrng re Mtn fr Cntnunc.pdf 2 <input type="checkbox"/>

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08/28/2018	Proposed Order	Granting Continuance on Carl Brunsting's Motion for Partial Summary Judgment	Order - Granting Continuance.pdf	1	<input type="checkbox"/>
08/28/2018	Motion for Summary Judgment	Defendants' Joint Motion for Continuance Regarding Carl Brunsting's Motion for Partial Summary Judgment	2018-08-27 Affdvt of S. Mendel.pdf	1	<input type="checkbox"/>
			2018-08-28 Ds' Jnt Mtn fr Cntunce re Ptl-MSJ.pdf	4	<input type="checkbox"/>
08/17/2018	Plea in Abatement	CARL BRUNSTING VS ANITA BRUNSTING ET AL	Plea in Abatement.pdf	9	<input type="checkbox"/>
			Exhibit 3.pdf	21	<input type="checkbox"/>
			Exhibit 1.pdf	20	<input type="checkbox"/>
			Exhibit 2.pdf	54	<input type="checkbox"/>
07/31/2018	Notice of Hearing		Notice of Hearing-Motion for Partial Summary Judgment.pdf	2	<input type="checkbox"/>
10/12/2016	Certificate		Certificate	4	<input type="checkbox"/>
10/12/2016	Application to Dismiss		Application to Dismiss	11	<input type="checkbox"/>
04/07/2016	Legacy Event	ORDERED DARLENE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016 Film code number PBT-2016-112549	Legacy Event	2	<input type="checkbox"/>

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 \_\_\_\_\_  
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Deputy

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03/14/2016	Legacy Event	ORDERED DARLNE PAYNE SMITH AND THE LAW FIRM OF CRAIN, CATON & JAMES ARE PERMITTED TO WITHDRAW AS COUNSEL OF RECORD; SIGNED 03/11/2016 Film code number PBT-2016-83225	Legacy Event	5	<input type="checkbox"/>
03/14/2016	Letter	CAROLE BRUNSTING Film code number PBT-2016-83130	Letter	2	<input type="checkbox"/>
03/09/2016	RECEIPT				<input type="checkbox"/>
03/08/2016	Electronic Filing Fee				<input type="checkbox"/>
03/08/2016	Misc. Notice	DEFENDANT ANITA KAY BRUNSTING NOTICE OF DESIGNATION OF ATTORNEY IN CHARGE Film code number PBT-2016-77711	Misc. Notice	2	<input type="checkbox"/>
03/07/2016	RECEIPT				<input type="checkbox"/>
03/07/2016	Electronic Filing Fee				<input type="checkbox"/>
03/07/2016	Legacy Event		Legacy Event	5	<input type="checkbox"/>
01/26/2016	RECEIPT				<input type="checkbox"/>
01/25/2016	Instrument Over 25 Pages				<input type="checkbox"/>
01/25/2016	Electronic Filing Fee				<input type="checkbox"/>
01/25/2016	Application for Summary Judgment	CANDACE LOUISE CURTIS VERIFIED MOTION FOR ARTIAL SUMMARY JUDGMENT WITH CONCURRENT PETITIONS FOR DECLARATORY JUDGMENT Film code number PBT-2016-26242	Application for Summary Judgement	703	<input type="checkbox"/>

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 \_\_\_\_\_  
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10/01/2015	Order for Continuance	Agreed; on 06-30-2016		
08/13/2015	Folder Created			<input type="checkbox"/>
08/13/2015	Folder Created			<input type="checkbox"/>
08/10/2015	RECEIPT			<input type="checkbox"/>
08/10/2015	Electronic Filing Fee			<input type="checkbox"/>
08/10/2015	Instrument Over 25 Pages			<input type="checkbox"/>
08/10/2015	Response	RESPONSE TO DEFENDANT RESPONSE TO CARL HENTRY BRYNSTING MOTION FOR PROTECTIVE ORDER Film code number PBT-2015-258999	Responses 49	<input type="checkbox"/>
08/03/2015	RECEIPT			<input type="checkbox"/>
08/03/2015	Electronic Filing Fee			<input type="checkbox"/>
08/03/2015	Amended	THIRD SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION AND REQUEST FOR INJUNCTIVE RELIEF Film code number PBT-2015-250703	Amended 6	<input type="checkbox"/>
08/03/2015	RECEIPT			<input type="checkbox"/>
07/31/2015	Electronic Filing Fee			<input type="checkbox"/>
07/31/2015	Response	DEFENDANTS' RESPONSE TO CARL HENRY BRUNSTING'S MOTION FOR PROTECTIVE ORDER Film code number PBT-2015-250083	Responses 6	<input type="checkbox"/>
07/24/2015	RECEIPT			<input type="checkbox"/>

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07/23/2015	Notice of Hearing	HEARING- 08-03-15 @ 11:00 AM Film code number PBT-2015- 240340	Notice of Hearing	2	<input type="checkbox"/>
07/23/2015	Electronic Filing Fee				<input type="checkbox"/>
07/21/2015	RECEIPT				<input type="checkbox"/>
07/20/2015	Conform Copies	CONF COPY			<input type="checkbox"/>
07/20/2015	Electronic Filing Fee				<input type="checkbox"/>
07/20/2015	Instrument Over 25 Pages				<input type="checkbox"/>
07/20/2015	Motion For Protective Order	CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER CARL HENRY BRUNSTING MOTION FOR PROTECTIVE ORDER NO SERVICE REQUESTED Film code number PBT-2015- 235874	Motion For Protective Order	51	<input type="checkbox"/>
07/20/2015	RECEIPT				<input type="checkbox"/>
07/20/2015	Attorney Assigned				<input type="checkbox"/>
07/17/2015	Electronic Filing Fee				<input type="checkbox"/>
07/17/2015	Instrument Over 25 Pages				<input type="checkbox"/>

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*Olivia Guerra*

Deputy



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Olivia Guerra

07/17/2015	Response	NON-PARTY'S CANDACE L KUNZ- FREED AND VACEK & FREED, PLLC F/K/A THE VACEK LAW FIRM, PLLC'S RESPONSE TO CARL HENRY BRUNSTING'S MOTION TO TRANSFER RELATED DISTRICT COURT CASE TO PROBATE COURT 4 Film code number PBT-2015- 234080	Responses	96	<input type="checkbox"/>
07/15/2015	Legacy Event				<input type="checkbox"/>
07/15/2015	RECEIPT				<input type="checkbox"/>
07/14/2015	Electronic Filing Fee				<input type="checkbox"/>
07/14/2015	Notice of Hearing	ON 7/21/2015 AT 2:00 PM Film code number PBT- 2015-228889	Notice of Hearing	3	<input type="checkbox"/>
07/14/2015	Application to Transfer Docket (Indep.)	RELATED DISTRICT COURT CASE TO PROBATE COURT 4 Film code number PBT-2015- 228888	Application to Transfer Docket (Indep.)	6	<input type="checkbox"/>
07/14/2015	RECEIPT				<input type="checkbox"/>
07/14/2015	RECEIPT				<input type="checkbox"/>
07/13/2015	Electronic Filing Fee				<input type="checkbox"/>
07/13/2015	Instrument Over 25 Pages				<input type="checkbox"/>

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Olivia Guerrero

07/13/2015	Response	PLAINTIFF CURTIS RESPONE TO DEFENDANTS NO EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT AND MOTION AND DEMAND TO PRODUCE EVIDENCE Film code number PBT-2015- 227757	Responses	47	<input type="checkbox"/>
07/13/2015	Electronic Filing Fee				<input type="checkbox"/>
07/13/2015	Notice of Hearing	AUGUST 3, 2015 AT 11:00 AM Film code number PBT-2015- 227302	Notice of Hearing	2	<input type="checkbox"/>
07/13/2015	RECEIPT				<input type="checkbox"/>
07/13/2015	Electronic Filing Fee				<input type="checkbox"/>
07/13/2015	Notice of Hearing	AUGUST 3, 2015 AT 11:00 AM Film code number PBT-2015- 226432	Notice of Hearing	2	<input type="checkbox"/>
07/13/2015	Legacy Event				<input type="checkbox"/>
07/13/2015	RECEIPT				<input type="checkbox"/>
07/10/2015	Electronic Filing Fee				<input type="checkbox"/>
07/10/2015	Amended	SECOND SUPPLEMENT TO PLAINTIFF FIRST AMENDED PETITION Film code number PBT- 2015-225377	Amended	3	<input type="checkbox"/>
07/10/2015	RECEIPT				<input type="checkbox"/>
07/09/2015	Electronic Filing Fee				<input type="checkbox"/>
07/09/2015	Instrument Over 25 Pages				<input type="checkbox"/>

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*Olivia Guemere*

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Olivia Guemere



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07/09/2015	Application for Summary Judgment	CARL HENRY BRUNSTING MOTION FOR PARTIAL SUMMARY JUDGMENT Film code number PBT-2015-225037	Application for Summary Judgement	260 <input type="checkbox"/>
07/08/2015	RECEIPT			<input type="checkbox"/>
07/07/2015	Electronic Filing Fee			<input type="checkbox"/>
07/07/2015	Notice of Intention to Take Written Deposition	NO POST REQUESTED Film code number PBT-2015-220731	Notice of Intention to Take Written Deposition	5 <input type="checkbox"/>
07/02/2015	Miscellaneous Order	ORDER DENYING LAW-MOTION-TO-SHOW-AUTHORITY-TRCP-12; THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE Film code number PBT-2015-216035	Miscellaneous Order	17 <input type="checkbox"/>
07/02/2015	RECEIPT			<input type="checkbox"/>
07/01/2015	Electronic Filing Fee			<input type="checkbox"/>
07/01/2015	No Fee - Other	AMY RUTH BRUNSTING DESIGNATION OF EXPERTS Film code number PBT-2015-214532	No Fee - Other	4 <input type="checkbox"/>
07/01/2015	RECEIPT			<input type="checkbox"/>
07/01/2015	RECEIPT			<input type="checkbox"/>
07/01/2015	Electronic Filing Fee			<input type="checkbox"/>

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Olivia Guarnato

Deputy



CON-471457|0

07/01/2015	Amended	CARL HENRY BRUNSTING FIRST AMENDED EXPERT WITNESS DESIGNATION AND FURTHER SUPPLEMENT TO CAROL RESPONSES TO ALL REQUESTS FOR DISCLOSURES Film code number PBT-2015- 213764	Amended	3	<input type="checkbox"/>
07/01/2015	Electronic Filing Fee				<input type="checkbox"/>
07/01/2015	No Fee - Other	ANITA KAY BRUNSTING EXPERT DESIGNATION Film code number PBT- 2015-213684	No Fee - Other	6	<input type="checkbox"/>
06/26/2015	RECEIPT				<input type="checkbox"/>
06/26/2015	Electronic Filing Fee				<input type="checkbox"/>
06/26/2015	Application for Summary Judgment	ANITA AND AMY BRUNSTING'S JOINT NO-EVIDENCE MOTION FOR PARTIAL SUMMARY JUDGMENT Film code number PBT- 2015-208305	Application for Summary Judgement	9	<input type="checkbox"/>
06/19/2015	RECEIPT				<input type="checkbox"/>
06/18/2015	Judge Signature Fee				<input type="checkbox"/>
06/18/2015	Electronic Filing Fee				<input type="checkbox"/>
06/18/2015	Rule 11 Agreement	STIPULATION AND RULE 11 AGREEMENT CONCERNING MOTION TO SHOW AUTHORITY Film code number PBT- 2015-198889	Rule 11 Agreement	17	<input type="checkbox"/>
04/10/2015	RECEIPT				<input type="checkbox"/>

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 \_\_\_\_\_ Deputy  
 Olivia Guerrero

 CON:47145710

04/10/2015	Application of Miscellaneous kind	LAW MOTION TO SHOW AUTHORITY TRCP 12 MOTION TO DISMISS FOR WANT OF JURISDICTION Film code number PBT-2015-117405	Application of Miscellaneous kind	7	<input type="checkbox"/>
03/31/2015	Order to Compel (Dep.)	THIS INSTRUMENT RETURNED UNSIGNED BY JUDGES OFFICE Film code number PBT-2015-105354	Order to Compel (Dep.)	43	<input type="checkbox"/>
03/25/2015	RECEIPT				<input type="checkbox"/>
03/24/2015	Electronic Filing Fee				<input type="checkbox"/>
03/24/2015	Instrument Over 25 Pages				<input type="checkbox"/>
03/24/2015	Response	RESPONSE TO ANITA BRUNSTING'S MOTION TO COMPEL CARL BRUNSTING TO RESPOND TO DISCLOSURES Film code number PBT-2015-97461	Responses	43	<input type="checkbox"/>
03/24/2015	RECEIPT				<input type="checkbox"/>
03/23/2015	Electronic Filing Fee				<input type="checkbox"/>
03/23/2015	Objection	OBJECTION TO AMY RUTH BRUNSTING'S APPLICATION TO BE NAMED SUCCESSOR EXECUTOR Film code number PBT-2015-95444	Objection	4	<input type="checkbox"/>
03/23/2015	Order to Compel (Dep.)	CARL AND CANDACE TO REPOOND TO DISCLOSURES; SIGNED 3/23/15 Film code number PBT-2015-95392	Order to Compel (Dep.)	2	<input type="checkbox"/>
03/23/2015	RECEIPT				<input type="checkbox"/>

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 \_\_\_\_\_ Deputy  
 Olivia Guerrero

 CON:471457|0

TAB 25

04102013:0818:P0048

*RM*

NO. 412.249-401

PROBATE COURT 4

ESTATE OF	§	IN	PROBATE	COURT
NELVA E. BRUNSTING,	§	NUMBER	FOUR (4)	OF
DECEASED	§	HARRIS	COUNTY, TEXAS	

CARL HENRY BRUNSTING,	§	IN	PROBATE	COURT
individually and as independent	§			
executor of the estates of Elmer H.	§			
Brunsting and Nelva E. Brunsting	§			

vs.

ANITA KAY BRUNSTING f/k/a  
 ANITA KAY RILEY, individually,  
 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;  
 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;  
 CAROLE ANN BRUNSTING, individually  
 and as Trustee of the Carole Ann  
 Brunsting Personal Asset Trust; and  
 as a nominal defendant only,  
 CANDACE LOUISE CURTIS

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

*1 pers. in  
4/19/13*

PETITION FOR DECLARATORY JUDGMENT, FOR AN ACCOUNTING,  
FOR DAMAGES, FOR IMPOSITION OF A CONSTRUCTIVE TRUST, AND FOR  
INJUNCTIVE RELIEF, TOGETHER WITH REQUEST FOR DISCLOSURES

ORIGINAL APR 10 2013 *fo*

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**Diane Trautman, County Clerk**

Harris County, Texas

*[Signature]*

Sterling G. Senechal III

Deputy



CON:458969|9740252



04102012:0811:0004

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Plaintiff, CARL HENRY BRUNSTING, individually and as Independent Executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting, filing his Petition for Declaratory Judgment, for Accounting, for Damages, for Imposition of a Constructive Trust, and for Injunctive Relief, together with Request for Disclosures, and in support thereof would show the Court as follows:

I.

Discovery Control Plan

1. Plaintiff intends to conduct discovery under Level 2 of the Texas Rules of Civil Procedure.

II.

Parties

2. Plaintiff is the duly appointed personal representative of the estates of both his father, Elmer H. Brunsting ("Elmer"),<sup>1</sup> and his mother, Nelva E. Brunsting ("Nelva").<sup>2</sup> These estates are collectively referred to herein as the "Estates." In his individual capacity, Plaintiff is referred to herein as "Carl." Carl was previously a successor trustee of the Brunsting Family Living Trust created on October 10, 1996 and restated on January 12, 2005 (the "Family Trust"). Carl is a beneficiary of the Family Trust and the other trusts created by its terms. Elmer was a trustee and a beneficiary of the Family Trust, and Nelva was also a trustee and beneficiary of the Family Trust and its successor trusts. The successor trusts of the Family Trust resulted pursuant to the terms of the

<sup>1</sup>Elmer died on April 1, 2009. Plaintiff qualified as Independent Executor of his estate on August 28, 2012.

<sup>2</sup>Nelva died on November 11, 2011. Plaintiff qualified as Independent Executor of her estate on August 28, 2012.

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Deputy



CON:458969|9740252



04102013:087E:P0050

Family Trust upon Elmer's death. Those successor trusts are the Elmer H. Brunsting Decedent's Trust ("Elmer's Decedent's Trust") and the Nelva E. Brunsting Survivor's Trust ("Nelva's Survivor's Trust"). Those are sometimes collectively referred to herein as the "Successor Trusts." Carl is also the beneficiary, but not the trustee, of the Carl Henry Brunsting Personal Asset Trust ("Carl's Trust") which was created pursuant to the terms of the Qualified Beneficiary Designation and Exercise of Testamentary Powers of Appointment signed on 8/25/10 (the "8/25/10 QBD"). As will be further discussed herein, Plaintiff believes the 8/25/10 QBD was the result of undue influence, was done when Nelva lacked capacity and/or was created by deception so that Nelva did not understand or consent to the document. In fact, it is far from clear what documents Nelva even signed or knew existed.

3. Defendant Anita Kay Brunsting f/k/a/ Anita Kay Riley is Carl's sister. It is believed that Anita's counsel will accept service, but, if not, Anita can be served with process at her home at 203 Bloomingdale Circle, Victoria, Victoria County, Texas 77904. In her individual capacity and when acting pursuant to the power of attorney purportedly executed by Nelva on August 25, 2010 ("8/25/10 POA"), this Defendant will be referred to herein as "Anita." Anita was named as a successor trustee under the terms of the tainted 8/25/10 QBD. Pursuant to the terms of that document, upon Nelva's death, Anita was to become co-trustee of the Family Trust and the Successor Trusts. On December 21, 2010, however, Nelva purportedly signed a resignation of her position as trustee and appointed Anita to be her successor even before her death. From that point until her mother's death on November 11, 2011, Anita acted as the sole trustee of the Family Trust and the Successor Trusts. As will be discussed herein, Plaintiff believes Anita convinced Nelva to resign from her trustee position and to appoint Anita as her replacement through improper means and for improper purposes. The terms of the tainted 8/25/10 QBD made Anita co-trustee of Carl's Trust.

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CON:458969|9740252



041020181008140094

Anita is also beneficiary and trustee of the Anita Kay Brunsting Personal Asset Trust ("Anita's Trust").

4. Defendant Amy Ruth Brunsting f/k/a/ Amy Ruth Tschirhart ("Amy") is Carl's sister. It is believed that Amy's counsel will accept service, but, if not, Amy can be served with process at her home at 2582 Country Ledge, New Braunfels, Comal County, Texas 78132. Pursuant to the terms of the tainted 8/25/10 QBD, Amy became a co-trustee of the Family Trust and the Successor Trusts upon Nelva's death. Anita and Amy in their capacity as trustees of the Family Trusts and the Successor Trusts are sometimes collectively referred to herein as the "Current Trustees". Amy is also the beneficiary and the trustee of the Amy Ruth Brunsting Personal Asset Trust ("Amy's Trust"). The terms of the tainted 8/25/10 QBD also made Amy co-trustee of Carl's Trust.

5. Defendant Carole Ann Brunsting ("Carole") is Carl's sister. Carole may be served with process either at her home at 5822 Jason St., Houston, Harris County, Texas 77074 or at her place of employment at Cameron's offices at 1333 West Loop South, Suite 1700, Houston, Texas 77027. Carole was named in Nelva's health care power of attorney and was made a joint signatory on Nelva's bank account when Anita took over as trustee. Carole is also the beneficiary and trustee of the Carole Ann Brunsting Personal Asset Trust ("Carole's Trust").

6. Candace Louise Curtis ("Candy") is Carl's sister. Candy is named in this action only because these claims impact her rights as a beneficiary of various trusts. Plaintiff does not seek to recover any damages from Candy, and it is anticipated that Candy will waive service of process. Candy and Carl were the only Brunsting siblings whose right to be trustees of their own trusts after Nelva died were extinguished by the changes implemented in the tainted 8/25/10 QBD. Candy is the beneficiary of the Candace Louise Curtis Personal Asset Trust ("Candy's Trust") of which Anita and Amy are the co-trustees.

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Deputy



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III.

Jurisdiction

7. Plaintiff brings this cause of action pursuant to Chapters 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code. More specifically, Plaintiff brings this proceeding to:

- (a) establish, construe the terms of, and determine the rights and liabilities of the parties under the Family Trust, the Successor Trusts, and the trusts purportedly created pursuant to the terms of the tainted 8/25/10 QBD;
- (b) require an accounting of all the trusts and other transactions resulting from Anita, Amy, and Carole's exercise of control over Elmer and Nelva's remaining assets, however held;
- (c) determine damages resulting from Anita, Amy, and Carole's wrongful acts, including, but not limited to, numerous breaches of fiduciary duties;
- (d) impose a constructive trust over assets wrongfully transferred, as well as anything of value obtained through the use of assets wrongfully transferred;
- (e) obtain injunctive relief to preserve Elmer and Nelva's assets, however held, until the records concerning the transfers of assets can be examined and appropriate remedies can be sought so that the improper transfers can be reversed and the assets can be properly allocated and distributed.

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 CLERK OF PROBATE COURT  
 HARRIS COUNTY, TEXAS

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IV.

Venue

8. Venue in this cause is in Harris County, Texas, pursuant to Tex. Civ. Prac. & Rem. Code §15.002(a)(1) because all, or substantially all, of the acts giving rise to Plaintiff's claims occurred in Harris County, Texas.

V.

Background Facts

9. On October 10, 1996, Elmer and Nelva established the Family Trust. The Family Trust was restated on January 12, 2005. The Family Trust was initially revocable, but only until the death of either Elmer or Nelva. Thus, when Elmer died on April 1, 2009, the Family Trust became irrevocable. At that point, the Family Trust's assets were to be divided between Elmer's Decedent's Trust and Nelva's Survivor's Trust pursuant to Article VII of the Family Trust.

10. At some point, Anita and Amy implemented a plan to take over their parents' remaining assets and divide the spoils. That plan was made feasible when Carl became seriously ill with encephalitis in July, 2010. Carl had been an obstacle to Anita and Amy's plans, so they seized the opportunity to become even more aggressive in controlling their mother's actions. Carole's initial resistance to Anita and Amy's scheme was apparently eliminated through transfers of assets to which she was not entitled.

11. Anita and Amy carried out their plan of replacing their mother's wishes with their own with the help of Nelva's own legal counsel. The result was the tainted 8/25/10 QBD. Through bullying and deception, that document was executed without regard to Nelva's capacity and notwithstanding Nelva's apparent lack of understanding, knowledge, or consent to what was occurring. The 8/25/10 QBD removed Carl from his successor trustee roles. At that time all prior

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powers of attorney were revoked and replaced with one giving Anita control of her mother's affairs. During the same period, Nelva's safe deposit box to which Carl had access was closed and a new one opened giving Anita access instead. Anita and Amy apparently determined which documents would be prepared, regardless of whether Nelva agreed with or even knew what they were doing. The only document which Anita and Amy wanted but seem to have been unsuccessful in implementing was a document intended to exclude Carl's daughter and granddaughter from inheriting through Nelva.

12. Perhaps because it became too difficult to even pretend to be obtaining Nelva's signature on documents needed to take all the steps Defendants wanted to take, or because Anita, Amy, and Carole did not want to wait for Nelva's death to begin using her assets for their own purposes, other steps were taken to obtain complete control of Nelva's assets, however held. Anita and Amy's continued efforts resulted in Nelva's purported resignation as trustee and purported appointment of Anita as substitute trustee of the Family Trust and the Successor Trusts on December 21, 2010. Thereafter, Anita used her position as trustee to repeatedly transfer assets for her own benefit and that of her children, for Amy's benefit and the benefit of Amy's children, and for Carole's benefit. Anita disregarded the terms of the Family Trust as she saw fit. For example, Anita began paying herself an exorbitant trustee's fee. Anita also began paying her own credit card bills, as well as other personal expenses, such as payments for her children's automobiles and educational expenses, from the Family Trust and Successor Trusts' accounts.

13. On December 31, 2010, an account was established, allegedly for Nelva's benefit to be used on day to day expenses but on which Carole was a signatory. Over the next year, more than \$150,000 was transferred from trust accounts by Anita and spent by Carole on what appears to be predominantly items for Carole's own benefit. At the same time, Anita was draining the other

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accounts owned by Elmer's estate, Nelva, or the Successor Trusts, at least in part for her own purposes and/or other improper purposes.

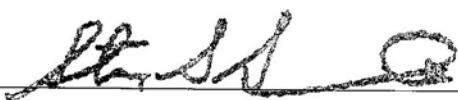
14. On March 24, 2011, Anita divided the more than 4,000 shares of Exxon Mobile stock purportedly owned by the Family Trust between Elmer's Decedent's Trust and Nelva's Survivor's Trust. Then on May 9, 2011, Anita transferred 1,120 shares of that stock from Nelva's Survivor's Trust to Amy. On June 13, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to herself, and on June 15, 2011, Anita transferred 160 shares from Nelva's Survivor's Trust to Candy. An finally, on June 15, 2011, Anita transferred 1,325 shares from Elmer's Decedent's Trust to Carole. No shares were transferred to Carl, despite Anita's knowledge of Carl's serious health crisis and large medical expenses. In fact, Carl's family was not even informed of the transfers of stock and did not learn about them until after Nelva's death.

15. On June 14, 2011, Anita also transferred 135 shares of Chevron stock purportedly owned by Nelva's Survivor's Trust to each of her two children and to each of Amy's two children. No similar gift was made to either Carl's daughter or granddaughter or to Candy's two sons. Moreover, Carl's entire family was excluded from conversations addressing the status of the Brunsting estate, changes in the trusts, and Nelva's removal from involvement with and control over the trusts. Instead of assisting with Carl's medical bills, it is believed that trust assets were used to hire investigators to follow Carl's wife of 30 years and that a GPS tracking device was even placed on Carl's wife's car without her consent, at the apparent direction of Anita and Amy.

16. On Nelva's death on November 11, 2011, Amy joined Anita as co-trustee of the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust. Assets were to be divided equally into separate trusts for each of the Brunsting children upon Nelva's death. Until the tainted 8/25/10 QBD, each of the Brunsting children would have been trustee of their own trusts, but in the

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tainted 8/25/10 QBD, both Carl and Candy were removed as trustees of their own trusts. Instead, Anita and Amy were named co-trustees of both Carl's Trust and Candy's Trust.

17. Of course, by the time of Nelva's death, the remaining assets had already been plundered. Indeed, two days before Nelva died, Anita even closed the safe deposit box used by Nelva and no inventory of its contents have ever been provided although it had been where valuable items and documents had been kept. A number of valuable items remain unaccounted for after Nelva's death, such as a significant amount of savings bonds which it is believed either Anita, Amy, or Carole have not admitted they discovered and kept. Likewise, no effort was made to value, preserve, inventory, and properly divide personal property.

18. Of course, many things have not been accounted for or properly shared with Plaintiff. Plaintiff has not, for example, been provided with a copy of the lease of the most valuable asset his parents owned, a multimillion dollar farm in Iowa. To the extent information has been provided because Plaintiff has sought it and even filed a pre-suit discovery action to obtain it, that information has made it clear the plundering started long ago and only court intervention or complete dissipation of the assets will stop it. Apparently the Current Trustees believe the division of assets should be made based on the terms of the tainted 8/25/10 QBD, and without taking into consideration what Anita, Amy & Carole have already taken.

v.

**Construction of Trust and Suit for Declaratory Judgment**

19. The 8/25/10 QBD contains a broad *in terrorem* clause providing that a party forfeits their interest in the resulting trust if contesting its provisions. Plaintiff asserts that the *in terrorem* clause is overly broad and void as against public policy because it prohibits the trust beneficiaries

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from questioning any of the circumstances surrounding the Current Trustees' improper actions in this case, thereby preventing them from protecting their interests.

20. In addition, Plaintiff seeks declaratory relief construing the validity, terms, responsibilities, and obligations of the various documents signed or purportedly signed by Elmer and Nelva. In other words, Plaintiff also asks this Court to determine Plaintiff's rights and Defendants' responsibilities.

21. If the Court fails to find that the *in terrorem* clause is void as against public policy to the extent it prohibits beneficiaries from questioning the actions resulting in the QBDs and the actions supposedly taken under its terms, Plaintiff asks, in the alternative, that the Court construe the documents at issue herein and declare that Plaintiff's actions in filing and pursuing this action do not violate the *in terrorem* clause.

22. Plaintiff, in fact, seeks to determine and enforce his parents' intent and to further the purposes of that intent. In doing so, Plaintiff was required to bring this action requesting declaratory relief and an accounting. Such actions would not constitute a contest even if the provision were not void because it is against public policy.

23. Plaintiff further asserts that he had just cause to bring this lawsuit and that he has brought the action in good faith. Therefore, no forfeiture should result from the action.

VI.

Demand for Trust Accounting

24. Defendants have provided insufficient, conflicting, and unsupported information to Plaintiff accounting for the assets and transactions concerning the Family Trust, Elmer's Decedent's Trust, and Nelva's Survivor's Trust.

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25. The Texas Trust Code and the trust indentures require the Current Trustees to keep complete and accurate books of account with regard to the trusts, trust property and all transactions pertaining thereto and to provide the appropriate information to the beneficiaries, but they have failed to do so. Plaintiff, therefore, requests that this Court order Defendants to account for the administration of all the trusts.

VII.

**Breach of Fiduciary Duties**

26. Defendants have breached their duties as fiduciaries, both because of their formal positions as trustees of the various trusts, as agents for Nelva, and/or because of their family relationship to their parents and their brother. Carole also had fiduciary duties to Plaintiff, particularly after becoming a signatory on Nelva's account. Not only is the family relationship one involving a high degree of trust, influence, and confidence, but in this particular case, the fiduciary obligations were magnified because of the dominance on the part of the fiduciaries and the weakness and dependence on the part of the parties to whom Defendants owed fiduciary duties. They have breached their responsibilities by, among other things, transferring valuable property without receiving appropriate consideration and taking assets for their own benefit and use and in violation of their duties and the trust instruments themselves. Breaches of fiduciary duty by Defendants include, but are not limited to, the following:

- a. failing to keep and provide clear, regular, accurate, and complete accountings of assets;
- b. resisting accountings of property and transactions;
- c. failing to abide by the terms of the various trust instruments;
- d. failing to preserve property and to prevent losses of property;

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- e. conveying property in ways which were detrimental and in violation of their obligations;
  - f. entering into transactions which were not in the best interests of persons and trusts to whom they owed fiduciary obligations;
  - g. becoming involved in matters in which Anita, Amy, and Carole represented interests which conflicted with those of their parents, Carl, and the trusts and their beneficiaries, including Nelva;
  - h. failing to be loyal to their family members and the trust beneficiaries and to take actions based upon the best interests of Nelva, Carl, and the trusts;
  - i. failing to deal impartially, fairly, and equally with Nelva, Carl, and the trusts;
  - j. failing to prevent transfers, gifts, or removal of assets;
  - k. failing to make appropriate and equal distributions;
  - l. failing to adequately inform the beneficiaries about assets and transactions and beneficiaries' rights;
  - m. misrepresenting or allowing misrepresentations concerning assets and transactions and beneficiaries' rights;
  - n. failing to prevent transactions which were detrimental to their family members and the trusts;
  - o. allowing the payment of inappropriate amounts from assets they purportedly held as fiduciaries; and
  - p. failing to follow and otherwise enforce the terms of the trust instruments.
27. In connection with actions by Defendants with regard to transactions involving self-dealing, Defendants, acting in a fiduciary capacity have the burden of establishing the propriety of

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those transactions. Defendants must prove those transactions were fair and equitable to Plaintiff, and the transactions at issue in this case clearly were not.

28. As a result of Defendants' various actions described herein, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

29. Because Defendants' actions were committed willfully and maliciously, Plaintiff also requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

**VIII.**

**Conversion**

30. Defendants' actions constitute conversion of property to which Plaintiff had a superior right, and as a result of such conversion, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

31. Because Defendants' conversion was committed willfully and maliciously, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

**IX.**

**Negligence**

32. Defendants had a duty to Plaintiff to use reasonable care to protect his interests in the capacities specified herein. Defendants failed to exercise such reasonable care, in that they allowed assets rightfully belonging to Elmer's estate, Nelva, and the various trusts of which Plaintiff was a beneficiary to be wrongfully removed, thereby improperly taking them or preventing their distribution to Plaintiff. As a result of Defendants' negligence, Plaintiff has been damaged in amounts in excess of the minimum jurisdictional limits of this Court.

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33. Defendants' actions constituted gross negligence in that Defendants had actual, subjective awareness of the risk involved, but nevertheless proceeded with conscious indifference to Plaintiff's rights. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

X.

**Tortious Interference with Inheritance**

34. Defendants' actions constitute tortious interference with Carl's inheritance rights.

35. As a direct and proximate result of Defendants' tortious interference with Carl's inheritance rights, Carl has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

36. Defendants' various actions were committed willfully, maliciously, and with the intent to conceal the true nature of the estate and the trusts to Carl's detriment. Accordingly, Carl requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of this Court.

XI.

**Constructive Trust**

37. Plaintiff seeks the imposition of a constructive trust over the assets to which he is entitled, including all property improperly transferred by Anita and Amy, including, but not limited to, the property received by Anita, Amy, Carole, and their insiders or related entities, as well as the profits Defendants received as a result of the transfer of those assets. Plaintiff also seeks the imposition of a constructive trust over the assets of Anita, Amy, and Carole's Trusts to the extent needed to reverse the improper transfers. Plaintiff thus requests a distribution of those assets in the

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amount lawfully due the Plaintiff, together with all interest accrued from the time such distribution should have been made.

**XII.**

**Civil Conspiracy**

38. Defendants combined to accomplish the unlawful objectives of facilitating the breach of duties to Plaintiff, as well as the commission of fraud and fraudulent concealment. Such actions by Defendants amount to a civil conspiracy.

39. As a direct and proximate result of the civil conspiracy between the Defendants, Plaintiff has been damaged in an amount in excess of the minimum jurisdictional limits of this Court.

40. Defendants' actions in furtherance of the civil conspiracy were taken willfully and maliciously, all to the detriment of Plaintiff. Accordingly, Plaintiff requests that exemplary damages be awarded against Defendants in a sum that exceeds the minimum jurisdictional limits of the Court.

**XIII.**

**Fraudulent Concealment**

41. Plaintiff was not aware of Defendants' wrongful actions. That is because Defendants took affirmative steps to deceive Nelva and Plaintiff and to conceal their wrongful actions from Nelva and Plaintiff. As a result of this affirmative deception by Defendants and Nelva and Plaintiff's reasonable reliance on that deception, Plaintiff did not know of these claims in this action until well after his mother's death on November 11, 2011, and, in fact, Plaintiff still does not know the full extent of his claims.

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XIV.

Discovery Rule

42. Plaintiff affirmatively pleads the discovery rule and asserts that his claims have been brought within the required periods from the date when he knew, or reasonably should have known, that his claims had accrued.

XV.

Tolling of Limitations

43. Tex. Civ. Prac. & Rem. Code Ann. §16.062 tolls the limitations period for Plaintiff because of Elmer and Nelva's deaths.

XVI.

Conditions Precedent

44. All conditions precedent to the recovery of the relief sought hereunder have occurred or have been performed. Plaintiff is prosecuting this action in good faith and with just cause for the purpose of determining and protecting the assets of the trusts.

XVII.

Prejudgment Interest

45. Plaintiff is also entitled to prejudgment interest on his claims.

XVIII.

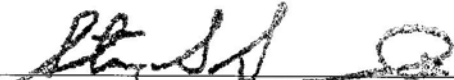
Request for Attorneys' Fees

46. Plaintiff requests that he be allowed to recover his fees and expenses for this action pursuant to Tex. Civ. Prac. Rem. Code Ann. §37.009. Plaintiff further requests that this Court award Plaintiff his costs and reasonable and necessary attorney's fees which had to be incurred prior to and

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in connection with this matter pursuant to Tex. Prop. Code Ann. §114.064. Plaintiff also seeks awards for any appellate fees that may be required in connection with this action.

**XIX.**

**Request for Injunctive Relief**

47. Plaintiff also seeks injunctive relief. The expedited consideration of this request is essential due to the need to preserve the information concerning these trusts and the assets in these trusts. Plaintiff asks for an Order preventing Defendants and their agents from destroying, hiding or transferring the records and assets of the Family Trust, the Successor Trusts, and any trust created pursuant to the terms of the 8/25/10 QBD, or taking any other steps normally afforded to parties in Defendants' purported positions with regard to such trusts or the property Defendants have received which would result in a loss or secretion of the property, which would remove property from this Court's jurisdiction or control, or which would frustrate this Court in its exercise of jurisdiction or control, or thwart the purposes of the trust instruments by depriving Plaintiff of his rights.

48. Plaintiff further requests the Court direct Defendants to refrain from conducting any business or entering into any transactions on behalf of the trusts without the prior written consent of Plaintiff during the pendency of this action.

49. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with the assets of the trust to which he is entitled, and that unless appropriate orders are issued by this Court, Defendants will make additional transfers to avoid Plaintiff's rights and this Court's authority. Plaintiff will suffer irreparable harm, damage, and injury unless Defendants, their relatives, partners, agents, servants, attorneys, accountants, employees, assigns, representatives and those persons in active concert or in participation with them are ordered by this Court to secure and preserve all documents and other information concerning the trusts wherever it

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may now be located. Plaintiff requests that Defendants be further ordered to refrain from taking any action with regard to the assets formerly or presently owned by Elmer, Nelva, or any of the trusts, moving or transferring any such assets, changing any positions of authority or exercising any powers or rights afforded to them as a result of the trusts, or applicable law. If orders are not entered as requested, Plaintiff will be irreparably harmed because assets can be further transferred, secreted or otherwise disbursed, and Defendants' prior actions while in control of these assets indicates they will indeed take those steps because they have already taken similar steps.

50. Plaintiff has no adequate remedy at law to preserve the assets at issue, and the loss of assets would be irreparable because if the assets are transferred or sold, the cash received in such a transaction could be even more easily be lost, hidden, or removed from this Court's control by Defendants, or if spent, will be lost to Plaintiff.

51. Defendants' previous conduct has indicated to Plaintiff that Defendants do not intend to provide Plaintiff with assets or income from the Trust, and Defendants and those acting in concert with them will continue to transfer assets in an attempt to avoid Plaintiff's rights. Unless appropriate orders are issued by this Court, nothing will prevent Defendants and those acting in concert with them will from continuing with their prior course of improper conduct. Therefore, Plaintiff will suffer irreparable harm, damage, and injury unless Defendants and their relatives, partners, agents, attorneys, employees, and those persons in active concert or in participation with them are ordered by this Court to cease all disbursements and transfers of assets from Elmer, Nelva, and the trusts, as well as from the assets they have already taken from Elmer, Nelva, and the trusts.

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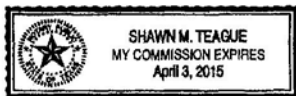
**VERIFICATION**

STATE OF TEXAS       §  
                                  §  
COUNTY OF HARRIS   §

BEFORE ME, the undersigned Notary Public, on this day personally appeared CARL HENRY BRUNSTING, who, being by me duly sworn on oath deposed and said that he is the Plaintiff in this action; that he has read the foregoing pleading and that every statement contained in that document is within his knowledge and is true and correct.

*Carl Henry Brunsting*  
CARL HENRY BRUNSTING

SUBSCRIBED AND SWORN TO BEFORE ME on the 8<sup>th</sup> day of April, 2013, to certify which witness my hand and official seal.



*Shawn M. Teague*  
Notary Public in and for the  
State of TEXAS  
Printed Name: Shawn M. Teague  
My Commission Expires: 4-3-2015

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TAB 26



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CAUSE NO. 412,249-401

PROBATE COURT 4

IN RE: ESTATE OF	§	IN THE PROBATE COURT
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
DECEASED	§	HARRIS COUNTY, TEXAS

MOTION TO ENTER TRANSFER ORDER

TO THE HONORABLE COURT:

Comes Now, Plaintiff, Candace Louis Curtis and files this Motion to Enter Transfer Order, and in support thereof would respectfully show as follows:

I. BACKGROUND

Plaintiff filed an Original Petition in the Federal Court for the Southern District of Texas against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust. She subsequently sought and was granted leave to amend her pleading to include necessary parties Carl Brunsting, Executor of the Estate of Nelva Brunsting, Deceased and Carole Brunsting. Although necessary, the addition of these two new parties destroyed federal diversity jurisdiction. Because similar issues of fact and law are currently pending before this Court, the Federal Court entered an order remanding Plaintiff's Federal Case to this Court. See Ex. A, Order of Remand.

II. TRANSFER

Pursuant to Texas Estates Code Sections 32.005, 32.006 and 32.007, this Court has jurisdiction over the parties and the claims alleged in Plaintiff's First Amended Petition. Accordingly, Plaintiff requests that this Court enter an order accepting the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*

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III. PRAYER

WHEREFORE, Plaintiff respectfully requests that the Court (a) accept the Order of Remand entered by the Federal Court and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, and (b) grant such other and further relief that the Court deems just and appropriate.

Respectfully Submitted,

OSTROM/*Sain*  
A limited Liability Partnership

BY: 

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Attorneys for Plaintiff

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 7/29/2019  
**Diane Trautman, County Clerk**  
Harris County, Texas



  
Sterling G. Senechal III Deputy

 CON:458969|10191039

06052014:0759:P0099

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument was served in accordance with Texas Rule of Civil Procedure 21a on the following on the 28 day of Aug, 2014:

Ms. Bobbie Bayless  
2931 Ferndale  
Houston, Texas 77098  
713.522.2224  
713.522.2218 (Facsimile)

Ms. Darlene Payne Smith  
1401 McKinney, 17<sup>th</sup> Floor  
Houston, Texas 77010  
713.752.8640  
713.425.7945 (Facsimile)

Mr. George W. Vie III  
1021 Main, Suite 1950  
Houston, Texas 77002  
713.225.0547  
713.225.0844 (Facsimile)

  
Jason B. Ostrom

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Sterling G. Senechal III

Deputy



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06052014:0759: P0100

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

CANDACE LOUISE CURTIS, <i>et al</i> ,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. 4:12-CV-592
	§	
ANITA KAY BRUNSTING, <i>et al</i> ,	§	
	§	
Defendants.	§	

**ORDER GRANTING PLAINTIFF'S MOTION TO REMAND**

The matter before the Court is the Plaintiff's Motion to Remand. Plaintiff seeks remand of the case to state court on substantive and procedural grounds including a lack of complete diversity between the parties and the existence of similar questions of law and fact currently pending before Harris County Probate Court Number Four under Cause Number 412,249. The Court finds that the remand should be GRANTED.

The Court finds that Plaintiff originally filed her Petition against Defendants Anita Brunsting and Amy Brunsting as Co-Trustees of the Brunsting Family Trust and that diversity jurisdiction existed between Plaintiff and Defendants. Plaintiff has sought and been granted leave to file her First Amended Petition, in which she has named additional necessary parties including Carl Brunsting, individually and as Executor of the Estate of Nelva Brunsting and Carole Ann Brunsting, which has destroyed diversity jurisdiction. Plaintiff's First Amended Petition also alleges questions of law and fact similar to those currently pending in Harris County Probate Court Number Four under Cause Number 412,249, and that the possibility of inconsistent judgments exists if these questions of law and fact are not decided simultaneously. The Court further finds that no parties are opposed to this remand and that no parties have filed any objection thereto.

1 / 2

Exhibit A

Confidential information may have been redacted from the document in compliance with the Public Information Act.

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Harris County, Texas

  
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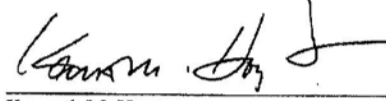


06052014:0759:P0101

It is, therefore, ORDERED that this case shall be and hereby is remanded to Harris County Probate Court Number Four, to be consolidated with the cause pending under Cause Number 412,429.

It is further, ORDERED that all Orders rendered by this Court shall carry the same force and effect through the remand that they would have had if a remand had not been ordered.

SIGNED on this 15<sup>th</sup> day of May, 2014.



Kenneth M. Hoyt  
United States District Judge

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**Diane Trautman, County Clerk**  
Harris County, Texas



Sterling G. Senechal III

Deputy



CON:458969|10191039



06052014:0759:P0102

CAUSE NO. 412,249-401

IN RE: ESTATE OF  
NELVA E. BRUNSTING,  
DECEASED

§  
§  
§  
§  
§

IN THE PROBATE COURT  
NUMBER FOUR (4) OF  
HARRIS COUNTY, TEXAS

ORDER OF TRANSFER

On this day came to be considered the Motion to Enter Transfer Order filed by Plaintiff Candace Curtis, seeking to have this Court accept the Order to Remand entered by the Federal Court for the Southern District of Texas and transfer to itself the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.* The Court is of the opinion that it has jurisdiction over the parties and claims pending under Cause Number 4:12-CV-00592 finds that the Motion to Enter Transfer Order should be granted. It is, therefore,

ORDERED that the Order of Remand entered by the Federal Court for the Southern District of Texas in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, is hereby accepted. It is further,

ORDERED that the pleadings and orders filed and entered in Federal Cause Number 4:12-CV-00592, *Candace Louise Curtis v. Anita Kay Brunsting et al.*, be and hereby are transferred to this Court to be held under Cause Number 412,249.-401.

SIGNED on this 3 day of June, 2014.

*Christine Boush*  
JUDGE PRESIDING

*Stan Stenmark*  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

FILED  
2014 JUN -4 AM 10:35

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**Diane Trautman, County Clerk**  
Harris County, Texas

*Sterling G. Senechal III*  
Sterling G. Senechal III Deputy

CON:458969|10191039



06052014:0759:PO108

APPROVED AS TO FORM:

OSTROM/*Sain*  
A limited Liability Partnership

BY: 

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Attorneys for Plaintiff

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**Diane Trautman, County Clerk**  
Harris County, Texas

  
Sterling G. Senechal III Deputy



CON:458969|10191039



03/20/2015	Electronic Filing Fee				<input type="checkbox"/>
03/20/2015	Amended	FIRST SUPPLEMENT TO PLAINTIFF'S FIRST AMENDED PETITION Film code number PBT-2015-94015	Amended	4	<input type="checkbox"/>
03/16/2015	Order to Consolidate	ordered that all pleadings filed under or assigned to Cuase Number 412249-402 be moved into Cuase Number 412249-401 per order signed March 16, 2015.	Order to Consolidate	4	<input type="checkbox"/>
03/11/2015	RECEIPT				<input type="checkbox"/>
03/11/2015	Electronic Filing Fee				<input type="checkbox"/>
03/11/2015	Application to Compel (Indep.)	CARL & CANDACE TO RESPOND TO DISCLOSURES Film code number PBT-2015-81853	Application to Compel (Indep.)	31	<input type="checkbox"/>
03/10/2015	RECEIPT				<input type="checkbox"/>
03/10/2015	Electronic Filing Fee				<input type="checkbox"/>
03/10/2015	Objection	OBJECTION TO CANDACE CURTIS' APPLICATION FOR APPOINTMENT AS PERSONAL REPRESENTATIVE Film code number PBT-2015-79533	Objection	16	<input type="checkbox"/>
03/06/2015	RECEIPT				<input type="checkbox"/>
03/05/2015	Conform Copies				<input type="checkbox"/>
03/05/2015	Electronic Filing Fee				<input type="checkbox"/>
03/05/2015	Order to Consolidate	ORDER NOT ENTERED Film code number PBT-2015-76288	Order to Consolidate	4	<input type="checkbox"/>

[http://www.hcclerk.net/Applications/MasterInquiry/CourtSearch\\_R.aspx?ID=5rboVfNJYS...](http://www.hcclerk.net/Applications/MasterInquiry/CourtSearch_R.aspx?ID=5rboVfNJYS...) 8/22/2019

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 Attest: 8/22/2019  
**Diane Trautman, County Clerk**  
 Harris County, Texas

*Olivia Guerrero*  
 \_\_\_\_\_  
 Olivia Guerrero

Deputy



CON:471457|0





02/20/2015	Agreed Order	AGREED DOCKET CONTROL ORDER; SIGNED 2/19/15 Film code number PBT-2015-59154	Agreed Order	2	<input type="checkbox"/>
02/19/2015	Miscellaneous Order	ORDER DENYING PLAINTIFF'S APPLICATION FOR PARTIAL DISTRIBUTION; SIGNED 2/18/15 Film code number PBT-2015-58239	Miscellaneous Order	2	<input type="checkbox"/>
02/18/2015	RECEIPT				<input type="checkbox"/>
02/17/2015	Electronic Filing Fee				<input type="checkbox"/>
02/17/2015	Misc. Notice	NOTICE OF SUBSTITUTION OF PARTY Film code number PBT-2015-56642	Misc. Notice	2	<input type="checkbox"/>
02/13/2015	RECEIPT				<input type="checkbox"/>
02/12/2015	Electronic Filing Fee				<input type="checkbox"/>
02/12/2015	Certificate	OF WRITTEN DISCOVERY Film code number PBT-2015-49926	Certificate	2	<input type="checkbox"/>
02/11/2015	Subpoena Returned		Subpoena Returned	1	<input type="checkbox"/>
12/09/2014	Miscellaneous Order	ORDER DENYING CANDACE CURTIS' MOTION FOR DISTRIBUTION OF TRUST FUNDS AND CARL BRUNSTING'S MOTION FOR DISTRIBUTION OF TRUST FUNDS; SIGNED 12/9/14 Film code number PBT-2014-396930	Miscellaneous Order	1	<input type="checkbox"/>

[http://www.hcclerk.net/Applications/MasterInquiry/CourtSearch\\_R.aspx?ID=5rboVfNJYS...](http://www.hcclerk.net/Applications/MasterInquiry/CourtSearch_R.aspx?ID=5rboVfNJYS...) 8/22/2019

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A Certified Copy  
 Attest: 8/22/2019  
**Diane Trautman, County Clerk**  
 Harris County, Texas



  
 \_\_\_\_\_ Deputy  
 Olivia Guerrero



TAB 27

ESTATE OF § IN PROBATE COURT  
ELMER H. BRUNSTING, § NUMBER FOUR (4) OF  
DECEASED § HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING'S APPLICATION TO RESIGN AS INDEPENDENT EXECUTOR AND CANDACE LOUISE CURTIS' APPLICATION FOR APPOINTMENT AS SUCCESSOR PERSONAL REPRESENTATIVE

TO THE HONORABLE PROBATE COURT:

COMES NOW Carl Henry Brunsting ("Carl") and files his Application to Resign as Independent Executor of the estate of Elmer H. Brunsting and request for immediate appointment of a successor personal representative. Candace Louise Curtis ("Candace") seeks appointment as successor Independent Executrix.

1. Carl was appointed personal representative of the estate of Elmer H. Brunsting on August 28, 2012.

2. Carl presents his resignation as personal representative to the Court. No funds have ever been received by the estate. Other than claims which are currently being litigated, the only known asset of the estate is a one-half interest in a 2000 Buick LaSabre automobile in the possession of Carole Brunsting. Because no funds have ever been in the estate, Carl has personally borne the expenses of the estate. Carl will file an application to address those estate expenses when funds are available to pay them.

3. A necessity still exists for the administration of this estate, and the immediate appointment of a successor personal representative is needed to pursue and manage the claims owed to the estate which are the subject of the following actions:

02192015 11:22:01:00000

*Stan Stanart*



#0004:5221:51026120

- a. Cause No. 412,249-401; *Carl Henry Brunsting, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting*; In Probate Court Number Four (4) of Harris County, Texas; and
- b. Cause No. 2013-05455; *Carl H. Brunsting, Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting v. Candace L. Kunz-Freed and Vacek & Freed, PLLC, f/k/a The Vacek Law Firm, PLLC*; In the 164<sup>th</sup> Judicial District Court of Harris County, Texas.

4. Under the terms of the Will, the successor personal representative, in the event Carl steps down, is Amy Brunsting. However, having been named as a defendant in litigation filed by the estate, Amy Brunsting is disqualified from serving as personal representative of the estate.

5. The next successor personal representative named in the Will is Candace, who is an individual residing in California, but who has already retained Houston counsel. Candace is qualified to accept Letters Testamentary and seeks appointment as Independent Executrix of this estate.

6. All persons interested in the estate are already represented by counsel and have been informed of this Application.

WHEREFORE, PREMISES CONSIDERED, Applicants pray that citation issue as required by law to all persons interested in the estate, that Carl's resignation as Independent Executor be approved, that Candace be appointed Independent Executrix of the estate, that Letters Testamentary be issued to Candace, and that all such other orders be entered as the Court may deem proper.

*Janice H. Hight*



56004:5221:51025120

Respectfully submitted,

BAYLESS & STOKES

By: /s/ Bobbie G. Bayless

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Telecopier: (713) 522-2218  
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*Attorneys for Carl Henry Brunsting*

ostrommorris, PLLC

By: /s/ Jason B. Ostrom

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R. Keith Morris, III  
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Telecopier: (713) 863-1051

*Attorneys for Candace Louise Curtis*

*Louise Harris*



**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a true and correct copy of the above and foregoing instrument was forwarded on the 19<sup>th</sup> day of February, 2015, as follows:

Bradley E. Featherston  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079  
281.759.3214 - *via telecopier*

Neal E. Spielman  
Griffin & Matthews  
1155 Dairy Ashford, Suite 300  
Houston, Texas 77079  
281.870.1647 - *via Telecopier*

Darlene Payne Smith  
Crain, Caton & James, P.C.  
1401 McKinney, 17<sup>th</sup> Floor  
Houston, Texas 77010  
713.658.1921 - *via telecopier*

/s/ Bobbie G. Bayless  
BOBBIE G. BAYLESS

02182015 11:29:40 AM

*Janice Matthews*



TAB 28

No. 412,249-401

ESTATE OF	§	PROBATE COURT
<u>Nelva E. Brunsting,</u>	§	NUMBER FOUR (4) OF
<u>Deceased</u>	§	HARRIS COUNTY, TEXAS

**AGREED DOCKET CONTROL ORDER**

The following docket control order shall apply to this case unless modified by the Court. If no date is given below, the item is governed by the Texas Rules of Civil Procedure.

1. N/A **JOINDER.** All parties must be added and served, whether by amendment or third party practice, by this date. THE PARTY CAUSING THE JOINDER SHALL PROVIDE A COPY OF THE SCHEDULING ORDER AT THE TIME OF SERVICE
2. ↓ **EXPERT WITNESS DESIGNATION.** Expert witness designations are required and must be served by the following dates. The designation must include the information listed in Rule 194.2(f). Failure to timely respond will be governed by Rule 193.6:
  - (a) 7/11/15 Experts for parties seeking affirmative relief.
  - (b) 8/1/15 All other experts.
3. **DISCOVERY LIMITATIONS.** The discovery limitations of Rule 190.2, if applicable, or otherwise, of Rule 190.3, apply, unless changed below:
  - (a) By Rules Total hours per side for oral depositions.
  - (b) By Rules Number of interrogatories that may be served by each party on any other party.
4. **ALTERNATIVE DISPUTE RESOLUTION.** ADR conducted pursuant to the agreement of the parties must be completed by this date. **If the parties do not agree on a date and/or facilitator for ADR, the Court may sign an order compelling ADR and appointing a mediator for same.**
5. 8/4/15 **DISCOVERY PERIOD ENDS.** All discovery must be completed before the end of the discovery period. Parties seeking discovery must serve requests sufficiently far in advance of the end of the discovery period that the deadline for responding will be within the discovery period. Counsel may conduct discovery beyond this deadline by agreement. Incomplete discovery will not delay the trial.
6. **DISPOSITIVE MOTIONS AND PLEAS.** Must be heard as follows:
  - (a) 8/3/15 Dispositive motions or pleas subject to an interlocutory appeal must be heard by this date.
  - (b) 8/3/15 Summary Judgment motions not subject to an interlocutory appeal must be heard by this date.
  - (c) 6/1/15 Rule 166a(i) motions may not be filed before this date.
7. 9/1/15 **CHALLENGES TO EXPERT TESTIMONY.** All motions to exclude expert testimony and evidentiary challenges to expert testimony must be filed by this date, unless extended by leave of court.
8. 8/4/15 **PLEADINGS.** All amendments and supplements must be filed by this date. This order does not preclude prompt filing of pleadings directly responsive to any timely filed pleadings.

02202015:1134: P0007

Laurie M. Haggerty





Shirley H. Hays

County Clerk Harris County, Texas



9. Sept. 4, 2015 Noon JOINT PRETRIAL ORDER. Parties shall provide to the Court, by fax, email, or delivery to our offices, a copy of the signed Joint Pretrial Order by this date. Parties shall bring the original Agreed Joint Pretrial Order to the Pretrial Conference.

10. Sept. 11, 2015 10:00 AM PRETRIAL CONFERENCE. Parties shall be prepared to discuss all aspects of trial with the Court at this time. Parties shall file and exchange (if jury trial) proposed jury charge questions, instructions and definitions at this conference. Parties should be prepared to mark exhibits. Failure to appear will be grounds for dismissal for want of prosecution.

11. Sept. 14-18, 2015 TRIAL.

Signed this 19 day of February, 2015.

C. Ouellet  
Judge Presiding

Shirley H. Hays  
COUNTY CLERK  
HARRIS COUNTY, TEXAS

FILED  
2015 FEB 20 AM 8:49

Party: Carole Brunsting

Party: Andy Brunsting

Counsel Name: Darlene Payre Smith  
SBN: 18643525

Counsel Name: Juon B. Ostrom  
SBN: 24027710

Counsel Signature: [Signature]  
Firm: Crain, Catoan, James  
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St 1700, Hous, Tx 77010  
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Email: juon@ostrommorris.com

Party: Amy Brunsting

Party: Carl Brunsting

Counsel Name: Noel Spidman  
SBN: 00794678

Counsel Name: Bobbie G. Bayless  
SBN: 01940600

Counsel Signature: [Signature]  
Firm: Griffin & Matthews  
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Fax: 713-522-2218  
Email: bayless@baylessstokes.com

PARTY: Anita Brunsting  
COUNSEL: Brad Featherston (24038892)  
The Mendel Law Firm  
1155 Dairy Ashford Suite 104, Houston, TX 77079  
(O) 281-759-3213 (F) 281-759-3214 Email- brad@mendellawfirm.com

000001:0001:01020220





I, Teneshia Hudspeth, County Clerk of Harris County, Texas certify that these pages are a true and correct copy of the original record filed and recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office  
This June 20, 2022

Teneshia Hudspeth, County Clerk  
Harris County, Texas

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I, Teneshia Hudspeth, County Clerk of Harris County, Texas certify that these pages are a true and correct copy of the original record filed and recorded in my office, electronically or hard copy, as it appears on this date.

Witness my official hand and seal of office  
This June 20, 2022

Teneshia Hudspeth, County Clerk  
Harris County, Texas

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# TAB 29

412249-401

Harris County - County Probate Court No. 4

FILED  
3/5/2015 3:21:27 PM  
Stan Standart  
County Clerk  
Harris County

**DATA ENTRY**  
**PICK UP THIS DATE**

PROBATE COURT 4

CAUSE No. 412,249 - 401

IN RE: ESTATE OF  
NELVA E. BRUNSTING,  
DECEASED

§  
§  
§  
§  
§

IN THE PROBATE COURT  
NUMBER FOUR (4) OF  
HARRIS COUNTY, TEXAS

\*\*\*\*\*

CAUSE No. 412,249 - 402

IN RE: ESTATE OF  
NELVA E. BRUNSTING,  
DECEASED

§  
§  
§  
§  
§

IN THE PROBATE COURT  
NUMBER FOUR (4) OF  
HARRIS COUNTY, TEXAS

**AGREED ORDER TO CONSOLIDATE CASES**

On this day came to be considered the oral Motion to Consolidate Cases seeking to have the pleadings assigned to Cause Number 412,249-402 consolidated into Cause Number 412,249-401. The Court finds that the actions involve the same parties and substantially similar facts, and that they should be consolidated and prosecuted under Cause Number 412,249-401. It is, therefore,

ORDERED that Cause Number 412,249-402 is hereby consolidated into Cause Number 412,249-401. It is further,

ORDERED that all pleadings filed under or assigned to Cause Number 412,249-402 be moved into Cause Number 412,249-401.

SIGNED on this 16 day of March, 2015.

Cristine Butts  
JUDGE PRESIDING

17-20360.2289

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A Certified Copy  
Attest: 7/29/2019  
**Diane Trautman, County Clerk**  
Harris County, Texas

Sterling G. Senechal III

Deputy



CON:458969|14976845

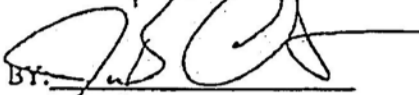


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03092015:0815:PO003

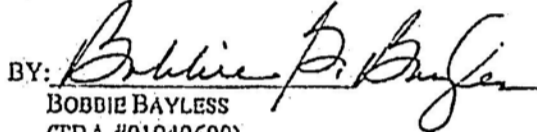
APPROVED AS TO FORM:

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Attorney for Drina Brunsting, Attorney in Fact  
for Carl Brunsting

BY: \_\_\_\_\_

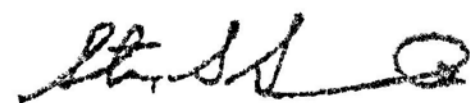
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Attorney for Carole Brunsting

17-20360.2290

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Harris County, Texas



Sterling G. Senechal III

Deputy



CON:458969|14976845



03092015:0815:P0004

APPROVED AS TO FORM:

ostrommorris, PLLC

*[Handwritten signature]*

BY: \_\_\_\_\_  
JASON B. OSTROM  
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R. KEITH MORRIS, III  
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Attorneys for Cundace Curtis

BY: \_\_\_\_\_  
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713.522.2218 (Facsimile)

Attorney for Drinn Brunsting, Attorney in Fact  
for Carl Brunsting

*[Handwritten signature]*  
BY: \_\_\_\_\_  
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Attorney for Carole Brunsting

17-20360.2291

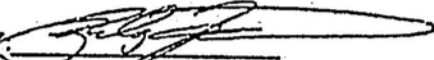
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**Diane Trautman, County Clerk**  
Harris County, Texas

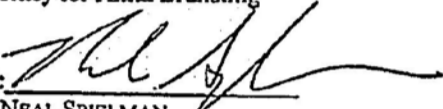
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Sterling G. Senechal III Deputy



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Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 7/29/2019  
**Diane Trautman, County Clerk**  
Harris County, Texas



  
Sterling G. Senechal III Deputy

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**TAB 30**

United States Courts  
Southern District of Texas  
FILED

APR 07 2022

Nathan Ochsner, Clerk of Court

EXHIBIT J

NO. 412,249-401

ESTATE OF	§	IN PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS

CARL HENRY BRUNSTING, et al	§
	§
v.	§
	§
ANITA KAY BRUNSTING, et al	§

**Anita & Amy Brunsting’s Joint  
No-Evidence Motion for Partial Summary Judgment**

Defendants, Anita Brunsting and Amy Brunsting (“Defendants”), file this joint no-evidence motion for partial summary judgment and would respectfully show the Court as follows:

**I. Summary of the Argument**

This litigation started more than thirty-eight (38) months ago. Plaintiffs had sufficient time for discovery in this suit and the three (3) other actions<sup>1</sup> related to the 8/25/10 QBD (defined below). Plaintiffs challenge the 8/25/10 QBD on the following grounds, for which there is no evidence:

1. Nelva’s signature on the 8/25/10 QBD was forged.
2. Nelva lacked capacity when she executed the 8/25/10 QBD.
3. Nelva was unduly influenced into executing the 8/25/10 QBD.
4. Nelva was fraudulently induced into executing the 8/25/10 QBD.
5. Nelva executed the 8/25/10 QBD under duress.

<sup>1</sup> Those three other proceedings are: (1) No. 4:12-CV-00592; *Candace Louise Curtis v. Anita Kay Brunsting*; United States District Court for the Southern District of Texas, Houston Division; (2) CA No. 2012-14538; *In re Carl Brunsting* (202 Petition); 80<sup>TH</sup> Judicial District Court of Harris County, TX; and (3) CA No. 2013-05455; *Carl Henry Brunsting v. Candace Freed & Vacek & Freed*; 164<sup>TH</sup> Judicial District Court of Harris County, TX.

## **II. Background**

This is a family dispute among five (5) siblings of the Brunsting family: Carl, Candace, Carol, Anita, and Amy. The dispute involves a trust created by their parents: Elmer Brunsting (“Elmer”) and Nelva Brunsting (“Nelva”).

Elmer and Nelva created the Brunsting Family Living Trust on or about October 10, 1996. The trust was restated on January 12, 2005 (the "Family Trust"). Elmer and Nelva served as trustees of the Family Trust until 2008, when Elmer lost the ability to handle his financial affairs and Nelva served as trustee alone. In 2008, Nelva appointed Carl and Anita to serve as successor co-trustees.

Shortly after Elmer died in April 2009, in accordance with the Family Trust, successor trusts resulted: the Elmer H. Brunsting Decedent's Trust ("Elmer's Decedent's Trust"); and the Nelva E. Brunsting Survivor's Trust ("Nelva's Survivor's Trust"). Nelva served as the trustee of both trusts, with Carl and Anita to serve as successor co-trustees.

In May 2010, Candace wrote, “[Nelva] has saved my house for me a few years in a row now by giving me the money to pay the property taxes. This time I told her she should take it out of my inheritance (that's what Daddy always said). She said no, she could help me.” Candace then continued, “[Nelva] always wants to know what I spend all my money on. Why I have no savings. Why I didn't plan better. [Nelva] treats me like such a FAILURE.” Apparently, Nelva thought Candace was a spendthrift and not good at handling her own financial affairs.

In or about July 2010, Carl was hospitalized for an extended period of time due to herpes encephalitis, an acute infection and inflammation of his brain. As a result, Carl’s mental capacity and cognitive abilities were severely compromised. Carl continues to suffer from residual symptoms, which is why his wife Drina was substituted into this case as his attorney-in-fact.

In accordance with the Family Trust, on August 25, 2010, Nelva executed a Qualified

Beneficiary Designation and Exercise of Testamentary Powers of Appointment (the "8/25/10 QBD"). In short, the document is an exercise of Nelva's testamentary powers of appointment as contemplated by the Family Trust. The document was notarized by Nelva's attorney, Ms. Freed.<sup>2</sup> The chief change that prompted plaintiffs' challenge to the 8/25/10 QBD is that the co-trustees for Carl's and Candace's interest under the trust changed from: (1) Anita and Carl; to (2) Anita and Amy. Apparently, the change in co-trustees from Anita and Carl to Anita and Amy offends Carl and Candace.

Carl and Candace ("Plaintiffs") brought several proceedings alleging every conceivable means to challenge the 8/25/10 QBD. Candace filed a case in Federal Court in February 2012. Carl originally filed a Rule 202 Petition in March 2012. In January 2013, Carl filed a lawsuit against Nelva's attorneys that drafted the 8/25/10 QBD. Carl filed this litigation in this Court in April 2013. Thus, Carl and Candace have had more than thirty-eight (38) months in four (4) separate proceedings to gather evidence regarding the 8/25/10 QBD.

### **III. Argument & Authorities**

This motion relates solely to plaintiffs challenges to the 8/25/10 QBD. It is important to put matters into perspective on plaintiffs' claims related to the 8/25/10 QBD. Ordinarily the laundry list of challenges a contestant makes to an instrument is when there is a disproportionate change in the distribution of property. Here, the 8/25/10 QBD does not affect the percentage of assets each child will receive in trust nor the distributions standards. For plaintiffs, the sole impact is the change in co-trustees from: (1) Anita and Carl; to (2) Anita and Amy.

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<sup>2</sup> The attorneys' name is Candace Lynne Kunz Freed. Ms. Freed is used to prevent confusion between Nelva's attorney, Candace Freed, and Nelva's daughter, Candace Curtis, since they share the same first name.

Plaintiffs' challenges to the 8/25/10 QBD center on the contention that Nelva would never have appointed Amy to serve in Carl's place as a co-trustee. However, plaintiffs ignore the fact that Carl suffered from herpes encephalitis in July 2010, which caused Carl's substantially diminished physical and mental capacity.

**A. No Evidence Nelva's Signature on the 8/25/10 QBD was Forged.**

Plaintiffs allege the 8/25/10 QBD was forged.

A document is forged if a person signs the document so that it purports to be the act of another who did not authorize the act.<sup>3</sup> The burden of proof rest on those seeking to set aside the instrument to show forgery.<sup>4</sup>

There is no competent summary judgment evidence to support that someone other than Nelva executed the 8/25/10 QBD. Accordingly, this no-evidence motion for summary judgment must be granted.

**B. No Evidence Nelva Lacked Capacity When Executing 8/25/10 QBD.**

Plaintiffs allege Nelva lacked capacity when executing the 8/25/10 QBD.

The law presumes that a trustor has sufficient mental capacity at the time of execution to understand her legal rights.<sup>5</sup> Therefore, the burden of proof rests on those seeking to set aside the instrument to show lack of mental capacity at the time of execution.<sup>6</sup>

Here, plaintiffs must provide competent summary judgment evidence Nelva lacked sufficient

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<sup>3</sup> TEXAS PATTERN JURY CHARGES: EXPRESS TRUSTS PJC 235.4 (2014); *See In re Estate of Flores*, 76 S.W.3d 624, 630 (Tex. App.—Corpus Christi 2002, no pet.).

<sup>4</sup> *In re Estate of Flores*, 76 S.W.3d 624, 630 (Tex. App.—Corpus Christi 2002, no pet.)

<sup>5</sup> *Walker v. Eason*, 643 S.W.2d 390, 391 (Tex. 1982); *Bradshaw v. Naumann*, 528 S.W.2d 869, 873 (Tex. Civ. App.—Austin 1975, writ dism'd); and TEX. PROP. CODE § 112.007.

<sup>6</sup> *Walker v. Eason*, 643 S.W.2d 390, 391 (Tex. 1982).

mind and memory to understand the nature and consequences of her acts and the business she was transacting when she executed the 8/25/10 QBD.<sup>7</sup> Plaintiffs can provide no such evidence. Accordingly, this no-evidence motion for summary judgment must be granted.

**C. No Evidence Nelva was Unduly Influenced to Sign the 8/25/10 QBD.**

Plaintiffs alleged Nelva's execution of the 8/25/10 QBD was procured by undue influence.

"Undue influence" means that—

1. an influence existed and was exerted, and
2. the influence undermined or overpowered the mind of the person executing the document at the time of its execution, and
3. the person would not have executed the document but for such influence.<sup>8</sup>

The burden of proving undue influence is upon the party contesting its execution.<sup>9</sup>

Here, there is no evidence that Anita and/or Amy exerted any influence, much less undue influence, to make themselves trustees of Carl's and Candance's share of the trust after Nelva's death.

There is no evidence that, prior to its execution, Nelva had discussions with Anita and/or Amy regarding the terms of the 8/25/10 QBD.

There is no evidence that Anita and/or Amy contacted Nelva's attorney, Ms. Freed, and prescribed the terms or even discussed the terms of the 8/25/10 QBD.

There is no evidence that Anita and/or Amy participated in the drafting of the 8/25/10 QBD.

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<sup>7</sup> See *Mandell & Wright v. Thomas*, 441 S.W.2d 841, 845 (Tex. 1969).

<sup>8</sup> TEXAS PATTERN JURY CHARGES: EXPRESS TRUSTS PJC 235.3 (2014); *Rothermel v. Duncan*, 369 S.W.2d 917, 922 (Tex. 1963).

<sup>9</sup> *Rothermel v. Duncan*, 369 S.W.2d 917, 922 (citing *Scott v. Townsend*, 166 S.W. 1138 (Tex. 1914)).

There is no evidence that Anita and/or Amy were present when Nelva executed the 8/25/10 QBD.

Assuming, without admitting, there was an influence, there is no evidence that Nelva was mentally or physically compromised in August 2010, such that her free will was susceptible to being overcome.

Accordingly, this no-evidence motion for summary judgment must be granted.

**D. No Evidence Nelva Executed the 8/25/10 QBD as a Result of Fraud.**

Plaintiffs allege that Nelva executed the 8/25/10 QBD as a result of fraud. This type of allegation is a species of undue influence.<sup>10</sup> Nevertheless, in an abundance of caution and in the interest of judicial economy, Anita and Amy will specifically address plaintiffs' fraud claims as a separate allegation.

Fraud occurred if—

1. a person made a material misrepresentation, and
2. the misrepresentation was made with knowledge of its falsity or made recklessly without any knowledge of the truth and as a positive assertion, and
3. the misrepresentation was made with the intention of inducing the trustor to sign the document, and
4. Trustor relied on the misrepresentation in signing the document.

“Misrepresentation” means:

A false statement of fact [or]

A promise of future performance made with an intent, at the time the promise was made, not to perform as promised [or]

A statement of opinion based on a false statement of fact [or]

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<sup>10</sup> TEXAS PATTERN JURY CHARGES: WILL CONTESTS PJC 230.6; *Curry v. Curry*, 270 S.W.2d 208 (Tex. 1954).



A statement of opinion that the maker knows to be false [or]

An expression of opinion that is false, made by one claiming or implying to have special knowledge of the subject matter of the opinion.

“Special knowledge” means knowledge or information superior to that possessed by Trustor and to which Trustor did not have equal access.<sup>11</sup>

The contestant claiming fraud has the burden of proof.<sup>12</sup>

There is no evidence that Anita and/or Amy made any representation to Nelva with the intention of inducing Nelva to sign the 8/25/10 QBD.

Assuming, without admitting, that Anita and/or Amy made a representation to Nelva with the intention of inducing Nelva to sign the 8/25/10 QBD, there is no evidence such representation was false.

Assuming, without admitting, that Anita and/or Amy made a false representation, there is no evidence Nelva relied on the misrepresentation in executing the 8/25/10 QBD.

Accordingly, this no-evidence motion for summary judgment must be granted.

**E. No Evidence Nelva Signed 8/25/10 QBD Under Duress.**

Plaintiffs alleged the 8/25/10 QBD is invalid because Nelva executed it under duress.

Duress is the mental, physical, or economic coercion of another, causing that party to act contrary to his free will and interest.<sup>13</sup>

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<sup>11</sup> TEXAS PATTERN JURY CHARGES: WILL CONTESTS PJC 230.6.

<sup>12</sup> TEXAS PATTERN JURY CHARGES: WILL CONTESTS PJC 230.6; *In re Estate of Graham*, 69 S.W.3d 598, 612 (Tex. App.—Corpus Christi 2001, no pet.).

<sup>13</sup> TEXAS PATTERN JURY CHARGES: CONTRACTS PJC 101.26; *Black Law Pipe Line Co. v. Union Construction Co.*, 538 S.W.2d 85 n.2 (Tex. 1976); *Brooks v. Taylor* 359 S.W.2d 539, 542 (Tex. Civ. App.—Amarillo 1962, writ ref’d n.r.e.); and *Housing Authority of City of Dallas v. Hubbell*, 325 S.W.2d 880, 905 (Tex. Civ. App. – Dallas 1959, writ ref’d n.r.e.).

The contestant claiming duress bears the burden of proof.<sup>14</sup>

As the Texas Pattern Jury Charge warns, duress is only reached if the alleged coercion can legally constitute duress.<sup>15</sup> “It is never duress to threaten to do that which a party has a legal right to do.”<sup>16</sup>

There is no evidence that Anita and/or Amy used mental coercion to cause Nelva to act contrary to her own free will and interest in executing the 8/25/10 QBD.

There is no evidence that Anita and/or Amy used physical coercion to cause Nelva to act contrary to her own free will and interest in executing the 8/25/10 QBD.

There is no evidence that Anita and/or Amy used economic coercion to cause Nelva to act contrary to her own free will and interest in executing the 8/25/10 QBD.

Accordingly, this no-evidence motion for summary judgment must be granted.

#### **IV. Prayer**

For these reasons, Defendants pray that their no-evidence motion for partial summary judgment be granted and that Defendants receive all other relief, general and special, legal and equitable, to which they or the trusts may be entitled.

[SIGNATURES ON FOLLOWING PAGE]

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<sup>14</sup> *Sudan v. Sudan*, 199 S.W.3d 291, 292 (Tex. 2006).

<sup>15</sup> TEXAS PATTERN JURY CHARGES: CONTRACTS PJC 101.26.

<sup>16</sup> *Ulmer v. Ulmer*, 162 S.W.2d 944, 947 (Tex. 1942).

TAB 31

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NO. 412,249-401

PROBATE COURT 4

CANDACE LOUISE CURTIS

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IN PROBATE COURT

*Plaintiff,*

V.

NUMBER FOUR (4) OF

ANITA KAY BRUNSTING, ET AL

*Defendants.*

HARRIS COUNTY, TEXAS

**PLAINTIFF CURTIS' RESPONSE TO DEFENDANTS' NO-EVIDENCE MOTION FOR  
PARTIAL SUMMARY JUDGMENT AND MOTION AND DEMAND TO PRODUCE  
EVIDENCE PURSUANT TO EVIDENCE CODES §§1002, 1003**

TO THE HONORABLE PROBATE COURT:

Plaintiff Candace Louise Curtis (Curtis) brings her response to the No-Evidence Motion for Partial Summary Judgment filed jointly by Defendants Anita Brunsting and Amy Brunsting, and will respectfully show that more than a scintilla of evidence exists as to a genuine issue of material fact relating to the existence, authenticity, and validity of an instrument referred to as the 8/25/10 QBD, as hereinafter more fully appears.

**TRUST CHRONOLOGY**

In 1996 Elmer Brunsting and his wife Nelva Brunsting created The Brunsting Family Living Trust for their benefit and for the benefit of their 5 children (The Trust).

In 2005 Elmer and Nelva restated their trust, completely replacing the original 1996 trust (Restatement).

In 2007 the first and only Amendment to "The Trust" was signed by both Elmer and Nelva, and replaced Amy with Candace as successor co-trustee with Carl (Amendment).

Allegedly, an Appointment of Successor Trustees was executed July 1, 2008 appointing Anita as successor co-trustee with Carl. (7/1/08 AST)

The Brunsting Family Living Trust became irrevocable at the death of Elmer Brunsting on April 1, 2009, pursuant to Article III (B) of the Restatement, and could only be amended by a court of competent jurisdiction.

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Upon the death of Elmer on April 1, 2009, The Elmer H. Brunsting Decedent's Trust (DT) was created as an irrevocable trust pursuant to Article III (B) and Article VII (A) of the Restatement, and could only be amended by a court of competent jurisdiction.

Also upon the death of Elmer on April 1, 2009, the Nelva E. Brunsting Survivor's Trust (ST) was created. The ST was revocable and amendable, pursuant to Article III Section (B) and Article VII Section (B)(1) of the Restatement.

On June 15, 2010, a "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", was introduced (6/15/10 QBD).

On August 25, 2010, a "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement", was introduced (8/25/10 QBD).

Upon the death of Nelva, all of the aforementioned Trusts were to terminate, resulting in the creation of five equal (5) Personal Asset Trusts (PAT), one for each beneficiary.

**OBJECTION NO. 1 ASSUMING FACTS - BEST EVIDENCE REQUIRED  
MOTION PURSUANT TO EVIDENCE CODES §§1002, 1003**

There are legitimate questions regarding the existence and authenticity of the 8/25/2010 QBD instrument, as hereinafter more fully appears. Plaintiff Curtis objects to Defendants assuming facts not in evidence, and objects to Defendants' improper attempts at shifting the burden of bringing forth evidence onto Plaintiff(s).

Plaintiff Curtis further objects to the introduction of alleged copies and, therefore, pursuant to Evidence Code §§1002 & 1003, Plaintiff demands Defendants produce only the 8/25/2010 QBD actually signed by Nelva Brunsting, and herein moves the Court for an order that only the original instrument with the wet signed signature page be allowed in evidence on the following ground.

**The Allegation of No-Evidence**

Defendants' "Joint No-Evidence Motion for Partial Summary Judgment" alleges five (5) blanket no-evidence claims, without reference to a particular petition brought by a particular claimant. Defendants are clearly using the petition brought by Carl Brunsting as Executor of the Estate of Nelva Brunsting, and not the petition brought by Plaintiff Curtis, and do not distinguish although the petitions are plainly distinguishable. Defendants' no-evidence claims are:

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1. Nelva's signature on the 8/25/10 QBD was forged.
2. Nelva lacked capacity when she executed the 8/25/10 QBD.
3. Nelva was unduly influenced into executing the 8/25/10 QBD.
4. Nelva was fraudulently induced into executing the 8/25/10 QBD.
5. Nelva executed the 8/25/10 QBD under duress.

Inherent in the first assertion is the notion that Nelva did not sign the 8/25/2010 instrument, while the subsequent assertions are based upon a presumption that Nelva Brunsting did sign the 8/25/2010 instrument, but that the signature was somehow obtained improperly.

Plaintiff Curtis has two pending petitions for declaratory judgement. Only one petition refers to the 8/25/2010 QBD, and it raises ground upon which the 8/25/2010 QBD fails that are not addressed in Defendants' joint motion and, thus, are beyond the scope of this response. However, based upon the five specific no evidence challenges presented, it necessarily follows that the rudimentary division in these 5 contentions is but twofold:

1. Nelva did not sign the 8/25/2010 instrument
2. Nelva signed the 8/25/2010 instrument

If one chooses to believe that Nelva did not sign the instrument, the questions begin with how did the likeness of Nelva's signature and Freed's signature and notary stamp find their way to these papers?<sup>1</sup> A plethora of further inquiries would necessarily follow.

If, on the other hand, one chooses to believe that Nelva did sign the instrument, the subdivisions of inquiry are again twofold:

1. Nelva signed the 8/25/2010 instrument knowledgeably and intentionally
2. Nelva signed the 8/25/2010 instrument, but did so under some form of duress, deception, mistake, or diminished capacity.

Defendants seek to shift the burden onto Plaintiff(s) to prematurely prove the secondary aspects related to the "assumed fact" that Nelva signed the instrument, while at the same time Defendants' motion is quick to say:

*"There is no evidence that Anita and/or Amy were present when Nelva executed the 8/25/10 QBD."*

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<sup>1</sup> The term "these" is plural and was purposely selected as will be shown.

There is also no evidence in the record that suggests Plaintiff Curtis or Plaintiff Brunsting were present when Nelva allegedly executed the 8/25/10 QBD. There is no evidence that Defendant Carole Brunsting was present when Nelva executed the 8/25/10 QBD.

### **Did Nelva Sign the 8/25/2010 Instrument with Knowledge and Intent?**

Defendants insist the 8/25/2010 QBD is valid, but admit they have no personal knowledge of its creation or execution, so what exactly do we know?

Emails attached to Plaintiff's federal petition and affidavit show Plaintiff telling Defendant Carole Brunsting she spoke to their Mother on the phone the day after the October 25, 2010 phone conference<sup>2</sup>, and asked about this August 25, 2010 QBD and what it purports, and that Nelva insisted she did no such thing. Nelva followed that conversation with a hand written note regarding Amy and Anita's claims of being co-trustees for the Plaintiffs' Personal Asset Trusts saying "not true". (Exhibit A)<sup>3</sup>

Nelva's hand written notecard states:

*"So I heard you were concerned that any money you receive after I 'leave this mortal coil' will be put in a trust and Anita would have to deal it out.*

*This not true. You'll will get whatever share is yours. If you don't know how to manage money by now it's too late."*

### **Substantial Evidence is Already Before the Court**

The Record clearly shows 3 distinctly different "true and correct copies" of the 8/25/2010 QBD, all bearing the likeness of a Nelva signature, a Candace Freed signature and the image of Freed's notary seal, but the three "true and correct copies" do not share the same image of Nelva's signature.

1. In Anita's 156 page objection filed December 5, 2014 the QBD appears at pdf pages 96 through 132 with signature page 37 at p132 bearing bates stamp P229. (Exhibit B\_1)
2. In Carole's 133 page objection filed Feb. 17, 2015 the QBD appears at pdf pages 97 through 133 with signature page 37 appearing at p133 bearing Bates stamp P192. (Exhibit B\_2)

<sup>2</sup> Affidavit attached to Curtis original federal complaint Exhibit P-8 filed with this court 02102015:1527:P0074

<sup>3</sup> This exhibit was attached to the petition filed in the federal court on February 27, 2012 as Plaintiff Exhibit 16 made a part of the record of this court Feb. 9, 2015 at pages 66 & 67 in Document #BT-2015-45555

3. Curtis original federal court complaint, affidavit and exhibits were made a part of the probate court record on February 9, 2015. In the 601 page pdf document the August 25, 2010 "Qualified Beneficiary Designation and Testamentary Power of Appointment under Living Trust Agreement" (QBD) appears at pdf pages 552 through 588 with signature page 37 at p588. (Exhibit B\_3)

Plaintiff Curtis obtained Candace Freed's notary logs for August 25, 2010 (Exhibit C). These pages show a notary log book that does not conform to Tex. Gov't Code §406.014.

Based upon the obvious inability of the Defendants to agree as to what "version" of this mysterious 8/25/2010 QBD is the one "true and correct" version, and given that none of them claim personal knowledge of its creation or signing, and given that the notary logs are unusual and no certifiable copy of an "original" 8/25/2010 QBD has been introduced into evidence, certainly there are genuine questions raised as to a material fact regarding the instrument.

It would necessarily follow that questions surrounding the existence of the instrument would precede ancillary inquiries into the validity of the instrument's authenticity, precede questions addressing the improper purposes the instrument attempts to accomplish, precede inquiries into the opacities created from the instrument's attempted amalgamation of incompatible powers, and precede any discussion of the instrument's attempt to improperly merge incompatible trusts.

#### **Defendants' Background Statement**

Defendants' Motion seeks to mischaracterize the breach of fiduciary and conspiracy to steal the family inheritance suits as merely a "family dispute". These suits are more properly characterized under the civil law and the laws of equity as fiduciary relationship actions. The questions surrounding Defendants' actions would also seem to invoke Texas Penal Code considerations, and the fact that Plaintiffs and Defendants are siblings is a secondary premise, having no immediate evidentiary value.

Defendants' Motion relates the first background part as:

*"Elmer and Nelva created the Brunsting Family Living Trust on or about October 10, 1996. The trust was restated on January 12, 2005 (the "Family Trust") Elmer and Nelva served as trustees of the Family Trust until 2008, when Elmer lost the ability to handle his financial affairs and Nelva served as trustee alone. In 2008, Nelva appointed Carl and Anita to serve as successor co-trustees"*



Defendants are asking the Court to assume facts that are not in evidence and consistently skip from the 2005 restatement to some other place in time. In this instance they skip to the alleged July 1, 2008 appointment (Exhibit D), never once having mentioned the 2007 Amendment. (Exhibit E)

### **The July 1, 2008 Appointment of Successor Trustees**

Defendants' Motion claims:

*"This litigation started more than thirty-eight (38) months ago. Plaintiffs had sufficient time for discovery in this suit and the three (3) other actions related to the 8/25/10 QBD".*

The disclosure CD received from the Defendants at the federal injunction hearing April 9, 2013 (more than a year after the federal suit was filed) contained Bates #'s BRUNSTING000001 - BRUNSTING 004922. Defendants claimed they had disclosed and accounted for everything, while Plaintiff continued to allege that known assets of the trust remained unaccounted for, and that true and correct copies of all trust documents in Defendants' possession had not yet been disclosed.

Normally 38 months would be more than ample time for litigants to exchange disclosures and discovery. Despite the fact that Anita's June 4, 2015 interrogatory replies claim it had already been disclosed, it was not until June 25, 2015, the day before Defendants' no-evidence motion was filed, that the Defendants finally responded to Plaintiff's continued requests for disclosure of the alleged 2008 appointment instrument. Defendants even rely on the instrument to assert at page 2 of their Motion:

*"In 2008, Nelva appointed Carl and Anita to serve as successor co-trustees."*

The claim that Nelva appointed Anita to serve as successor co-trustee with Carl in 2008 is a fact question in dispute, as under the terms of the 2005 Restatement Nelva held no such power. Nelva's power to remove trustees was limited to those she had individually selected. (See Article IV Page 4-2 (Bates P240) Attached as Exhibit F).

### **De jure, De facto, or Usurper?**

In the 2007 Amendment Amy was removed as a successor co-trustee with Carl and replaced by Candace. If Carl or Candace failed to serve the alternate was to be Frost Bank.

Prior to making that change Nelva emailed Candace asking if she would be willing to serve as co-trustee with Carl stating that she thought Candace had a better relationship with her siblings. (Exhibit G)

The 2007 Amendment was the first and only amendment to the trust signed by both Elmer and Nelva Brunsting. After the incapacitation or death of one of the founders, the trust could only be amended by a court of competent jurisdiction. The July 1, 2008 instrument was only signed by Nelva, clearly indicates that Elmer was incompetent, and therefore is invalid.

The trustees for the irrevocable decedent's trust at the death of Elmer Brunsting would be those named by both Elmer and Nelva in the 2007 Amendment to the family Trust, and prior to Elmer's death there were no individual trustee appointments to be changed by Nelva alone.

This sound legal reasoning also applies to the invalidity of the alleged appointments dated August 25, 2010 and December 21, 2010, and the certificates of trust based thereon.

Defendants are not now and have never been de jure trustees for the irrevocable family or Decedent's Trust and defendant's motion disingenuously seeks to avoid any such deliberations.

#### **Objection No. 2 Defendants' Motion is Disingenuous**

Defendants improperly use their motion to advance irrelevant allegories. In Defendants' motion at page 3 they claim Plaintiff(s)' Petition(s) for Declaratory Judgment are ground in petty emotions:

*"The chief change that prompted plaintiffs' challenge to the 8/25/10 QBD is that the co-trustees for Carl's and Candace's interest under the trust changed from: (1) Anita and Carl; to (2) Anita and Amy. Apparently, the change in co-trustees from Anita and Carl to Anita and Amy offends Carl and Candace"*

Defendants continue by contending that the focus of their Motion is very narrow and specific:

#### *III. Argument & Authorities*

*"This motion relates solely to plaintiffs challenges to the 8/25/10 QBD"*

Defendants make this claim while simultaneously using their Motion to advance a false thesis, to suggest false conclusions, to assume facts, to falsely claim honorable intentions, and to make numerous assertions about other matters already settled in plaintiff's favor or remaining in dispute, as if those matters were settled and established in defendant's favor.

Defendants' go on to downplay the significance of their Trojan horse as negligible:

*"For plaintiffs, the sole impact is the change in co-trustees from:  
(1) Anita and Carl; to (2) Anita and Amy"*

The evidence will, in fact, show the alleged change was from Carl and Candace to Anita and Amy, that the alleged change was improper and that the intended impact on Plaintiff(s) is the one stated in Anita's December 5, 2014 "Response to Candace's Motion for Distribution of Trust Funds".

On page 1 at item 4 Anita says:

*"4. If the Court finds the in terrorem clause is enforceable, then Candace and Carl have no right to any distribution from the trust".*

In recent interrogatories and requests for fiduciary disclosures returned by Amy Brunsting June 25, 2015, Curtis asks a series of questions regarding the fiduciaries' distribution standards. The questions were taken directly from the Northern Trust Company web site informational area. Defendant's response to the inquiry they renumbered as 15 is telling:

*"15. What circumstances should or should not exist prior to a distribution from "the trust"?"*

*RESPONSE: Defendant objects to this interrogatory as unintelligible. Defendant further objects because it is unclear which "trust" the question is seeking information about because the question is not limited to a time period (i.e., before Nelva's death or after Nelva's death) and is, therefore, vague.*

*Subject to and without waiving the foregoing objections, currently, with respect to Candace, the Court must resolve Candace's claims and allegations in the pending lawsuit and, in particular, Candace's allegation that the no contest provisions in the trust instruments are unenforceable, prior to a distribution"*

Is it trustees burdened with the fiduciary duties of loyalty and utmost good faith owed to beneficiaries Carl and Candace who are making these claims, or is it conflicted co-beneficiaries who seek to stifle inquiry into illicit conduct? The answer should be obvious.

The manifest impact of this alleged successor trustee "change" is alterations to the trust that could not be done under terms of the trust; actions prohibited by law and by the trust that have been performed and acts required by the terms of the trust that have not been performed and the negative impact of this "change" on the trust has been absolute economic devastation.

**Objection No. 3 Defendants' Motion is Vague and Productive Only of Confusion**

Plaintiff Candace Louise Curtis objects to Defendants Amy and Anita Brunsting's Joint Motion for No-Evidence Partial Summary Judgment, on the ground that the Motion is vague and misleading.

Relevant to Defendants' Motion, two separate lawsuits were brought by two different plaintiffs, in two different courts, 14 months apart, with separate and distinct claims, notwithstanding the fact that both Plaintiffs' claims involve the same parties, acts and events, or that there are other related lawsuits involving additional defendants and claims.

Defendants' Motion makes numerous assertions while failing to distinguish between the plaintiffs, the lawsuits, or the pleadings, attempting to create some sort of egocentric mélange. This same amalgamation methodology of ambiguity is a fundamental defect of the 8/25/2010 QBD addressed in Curtis' Petition for Declaratory Judgment, but not mentioned in Defendants' Motion at all.

Plaintiffs are siblings not Siamese twins. The records and pleadings in one lawsuit cannot be juxtaposed as if they were the records and pleadings in the other. Using the term "plaintiffs" as a reference, without distinguishing the particular plaintiff, the particular case, or citing to the specific pleadings to which Defendants Amy and Anita Brunsting jointly refer, has created nothing but opacities.

**The Proper Party, Case and Declaratory Judgment Distinctions**

Plaintiff Carl Henry Brunsting filed suit against Amy, Anita and Carole Brunsting in the Harris County Probate Court, individually and as Executor for the estates of Nelva and Elmer Brunsting, seeking declaratory judgment and accounting, on the same day a hearing was held on Curtis' application for injunction in the federal court, April 9, 2013.

Plaintiff Candace Louise Curtis filed suit against Amy and Anita for breach of fiduciary, in the United States District Court for the Southern District of Texas on February 27, 2012, not raising any issues relating to the 8/25/10 QBD.

Plaintiff Curtis' pleadings in the federal court did not seek declaratory judgement until May 9, 2014, when she filed her first amended petition. Under the federal rules a plaintiff can only amend a complaint with leave of the Court, and only on an application showing the assent of opposing counsel, or a statement detailing efforts to obtain the assent of the parties and

expressing the reasons for plaintiff's inability to do so. This is all in the public record and Plaintiff Curtis would respectfully ask the Court to take Judicial Notice of the Federal Record.<sup>4</sup>

The amendment to Curtis' federal complaint was part of a stipulation approved by Defendants' counsel, as stated in the application for the Court's leave to amend. The stipulation involved a number of concessions and conditions exemplified by: 1) an application for leave to amend; 2) the Amended Complaint; and 3) Plaintiff's Motion for Remand to this Court.

The stipulation for remand involved amending the complaint to: 1) add necessary Party Carole Brunsting; 2) add involuntary Plaintiff Carl Brunsting, thus polluting the diversity required by 28 USC §1332; and 3) the addition of declaratory judgment claims. The remand also included keeping the federal injunction in full force and effect as a condition of the remand.

The petitions for declaratory judgment added by Curtis' first amended petition do not mirror the petitions for declaratory judgment brought by Carl Brunsting.

**SUMMARY OF PLAINTIFF'S RESPONSE TO DEFENDANTS' NO-EVIDENCE  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Defendants seek to trivialize several lawsuits involving conspiracy to steal the family inheritance, fraud, breach of fiduciary, co-mingling, self-dealing, and other secreted acts, as if such claims represent challenges to a single document and, more absurdly, a sibling rivalry motivated by petty emotions.

*"Carl and Candace ("Plaintiffs") brought several proceedings  
alleging every conceivable means to challenge the 8/25/10 QBD"*

This statement of the record is a gross exaggeration. The 8/25/10 QBD is the object of two separate and distinct petitions for declaratory judgment, brought at dissimilar stages of separate proceedings by diverse plaintiffs.

The several lawsuits were by no means brought specifically to challenge the 8/25/10 QBD, as it is but a small piece in a much larger fraud mosaic.

---

<sup>4</sup> 4:12-cv-00592 Candace Louise Curtis v. Anita Kay Brunsting et al Case remanded to Harris County Probate Court No. 4. Kenneth M. Hoyt, presiding, Date filed: 02/27/2012, Date terminated: 05/15/2014, Date of last filing: 05/15/2014

**LEX NON COGIT AD IMPOSSIBILIA**

The respondent is not required to marshal its proof and need only point out evidence that raises a genuine fact question on the challenged elements.”<sup>5</sup>

The absence of a reliable instrument in evidence forecloses Defendants’ no-evidence challenge as improperly seeking to shift the burden of bringing forth evidence onto Plaintiff(s), who cannot be called upon to prove the non-existence of the asserted fact of its existence.

Plaintiff has shown substantially more than the marginal amount of evidence required to defeat Defendants’ Motion. The burden of bringing forth evidence to establish the existence and validity of an 8/25/2010 QBD rests squarely upon these Defendants, who are the only proponents of the existence, validity and applicability of the instrument.

**CONCLUSION**

If one of the three exhibits of the 8/25/2010 QBD is a true and correct copy of an original wet signed document, what are the other two exhibits true and correct copies of?

If Nelva knowingly and willfully executed the 8/25/2010 QBD, why does she say in regard to what it purports “this not true”?

Why does the content of Candace Freed’s Notary Log not conform to the requirements of Tex. Gov’t Code §406.014, and why does it contain such unusual line/page anomalies?

If the 8/25/2010 QBD is benign, and merely changes trustee appointments as Defendants claim, why do they cling to it so dearly despite admitting no personal knowledge of its creation or execution?

Unless and until such an instrument can be physically produced and qualified as evidence with declaration as to the full chain of custody, the inquiries into whether Nelva signed the instrument and under what conditions are as moot as discussions of the applicability of the alleged instrument’s content.

Plaintiff Candace Louise Curtis herein affirms, under penalty of perjury pursuant to the laws of Texas that the foregoing statements are true and correct and based upon personal knowledge.

---

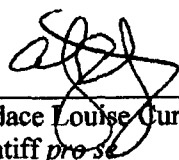
<sup>5</sup> TEX. R. CIV. P. 166a(i)

Furthermore, references to the record and the attached Exhibits are true and correct references and representations of the things to which they speak.

Plaintiff Candace Louise Curtis has herein presented sufficient evidence in response to Defendants' Motion for No-Evidence Partial Summary Judgment to raise a genuine issue of a material fact. The Court should properly deny Defendants' Motion for the numerous reasons shown, and Plaintiff so moves the Court.

Plaintiff seeks the above judicial remedy and prays for an order for Defendants to pay all costs associated with hearings on their Motion, including Plaintiff's transportation, lodging, meals and legal costs.

Respectfully submitted,

  
\_\_\_\_\_  
Candace Louise Curtis  
Plaintiff *pro se*  
218 Landana Street  
American Canyon CA 94503  
Tel: 925-759-9020  
[occurtis@sbcglobal.net](mailto:occurtis@sbcglobal.net)

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 13<sup>th</sup> day of July 2015, to the following via e-service or email:

Bradley E. Featherston  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079  
[brad@meddellawfirm.com](mailto:brad@meddellawfirm.com)

Attorney for Anita Kay Brunsting

Neal E. Spielman  
Griffin & Matthews  
1155 Dairy Ashford, Suite 300  
Houston, Texas 77079  
[nspielman@grifmatlaw.com](mailto:nspielman@grifmatlaw.com)

Attorney for Amy Ruth Brunsting

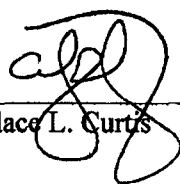
07142015:1525:0151

Bobbie G. Bayless  
Bayless & Stokes  
2931 Ferndale  
Houston, Texas 77098  
bayless@baylessstokes.com

Darlene Payne Smith  
Crain, Caton & James  
Five Houston Center  
1401 McKinney, 17<sup>th</sup> Floor  
Houston, Texas 77010  
dsmith@craincaton.com

Attorney for Drina Brunsting,  
Attorney in Fact for Carl Henry Brunsting

Attorney for Carole Ann Brunsting

  
Candace L. Curtis



07142015:1525:PO152

NO. 412,249-401

CANDACE LOUISE CURTIS

*Plaintiff,*

V.

ANITA KAY BRUNSTING, ET AL

*Defendants.*

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IN PROBATE COURT

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

**ORDER DENYING DEFENDANTS' JOINT NO-EVIDENCE  
MOTION FOR PARTIAL SUMMARY JUDGMENT**

Having considered Plaintiff Candace Louise Curtis' Response to Defendants' Joint No-Evidence Motion for Partial Summary Judgment the Court is of the opinion that plaintiff has met her burden and Defendants' No-Evidence Motion should properly be DENIED.

It is so ordered;

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JUDGE PRESIDING

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071420151159:20159

NO. 412,249-401

CANDACE LOUISE CURTIS

*Plaintiff,*

V.

ANITA KAY BRUNSTING, ET AL

*Defendants.*

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IN PROBATE COURT

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

**ORDER GRANTING PLAINTIFF'S MOTION TO PRODUCE EVIDENCE PURSUANT  
TO EVIDENCE CODE §§1002, 1003**

Having considered Plaintiff Candace Louise Curtis' Motion and Demand to Produce Evidence pursuant to Evidence Code §§1002, 1003, the Court finds just cause to question the efficacy of copies of trust instruments and that the Plaintiff's Evidence Code Motion should be GRANTED.

Defendants will not be allowed to introduce copies of trust instruments alleged to have been signed by Nelva Brunsting after the death of Elmer Brunsting on April 1, 2009 except by stipulation between the parties or the approval of the Court and must produce only the original instruments.

It is so ordered;

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JUDGE PRESIDING

07:42:51:1525:40154

NO. 412,249-401

CANDACE LOUISE CURTIS

*Plaintiff,*

V.

ANITA KAY BRUNSTING, ET AL

*Defendants.*

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§

IN PROBATE COURT

NUMBER FOUR (4) OF

HARRIS COUNTY, TEXAS

**ORDER DENYING DEFENDANTS' JOINT NO-EVIDENCE  
MOTION FOR PARTIAL SUMMARY JUDGMENT AND  
GRANTING PLAINTIFF'S MOTION AND DEMAND TO PRODUCE EVIDENCE  
PURSUANT TO EVIDENCE CODE §§1002, 1003**

Having considered Plaintiff Candace Louise Curtis' Response to Defendants' No-Evidence Motion for Partial Summary Judgment and her Motion and Demand to Produce Evidence Pursuant to Evidence Code §§1002, 1003, the Court is of the opinion that plaintiff has met her burden and the Defendants' No-Evidence Motion should be DENIED.

The Court further finds just cause to question the efficacy of copies of trust instruments and that the Plaintiff's Evidence code §§1002, 1003 Motion should be GRANTED. Defendants will not be allowed to introduce any alleged copies of trust instruments alleged to have been signed by Nelva Brunsting after the death of Elmer Brunsting on April 1, 2009 and must produce only the original wet signed instruments.

It is so ordered;

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
JUDGE PRESIDING

07142015:1525:P0155

**EXHIBIT**

**A**

UNOFFICIAL COPY

Nelva Brunsting  
13630 Pinerock Ln.  
Houston TX 77058



Candy Coates,  
1415 W. Community,  
Montgomery, CA  
97133

Post Office Box 10000, Dallas, TX 75208

Can  
you  
send  
me  
a  
copy  
of  
the  
book



Some day I will  
get a lap desk. I find  
I'm too lazy to sit at the  
desk. I usually write while  
watching TV at night.

Which I find your lovely  
conducting. I started out  
left handed but my left  
teacher made me write  
right handed so I'm  
~~the~~ home here.

Hallmark

STATIONERY STORE

07142015:1525:PO159

EXHIBIT

B


COPY

UNOFFICIAL



ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

*EXECUTED* and effective on August 25, 2010.

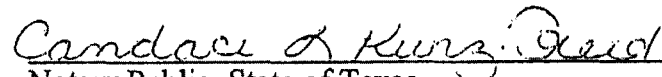
  
\_\_\_\_\_  
NELVA E. BRUNSTING,  
Founder and Beneficiary

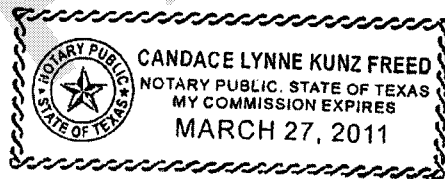
*ACCEPTED* and effective on August 25, 2010.

  
\_\_\_\_\_  
NELVA E. BRUNSTING,  
Trustee

STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.

  
\_\_\_\_\_  
Notary Public, State of Texas



07142015:1525:PO161

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

**EXECUTED** and effective on August 25, 2010.

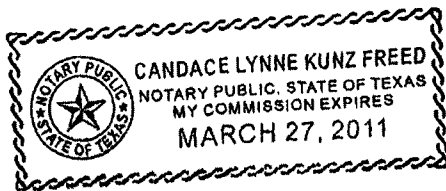
*Nelva E. Brunsting*  
\_\_\_\_\_  
NELVA E. BRUNSTING,  
Founder and Beneficiary

**ACCEPTED** and effective on August 25, 2010.

*Nelva E. Brunsting*  
\_\_\_\_\_  
NELVA E. BRUNSTING,  
Trustee

STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.



*Candace Lynne Kunz Freed*  
\_\_\_\_\_  
Notary Public, State of Texas

ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

**EXECUTED** and effective on August 25, 2010.

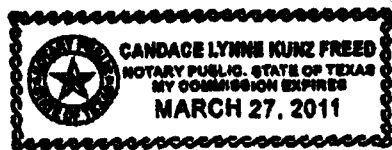
  
\_\_\_\_\_  
NELVA E. BRUNSTING,  
Founder and Beneficiary

**ACCEPTED** and effective on August 25, 2010.

  
\_\_\_\_\_  
NELVA E. BRUNSTING,  
Trustee

STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on August 25, 2010, by NELVA E. BRUNSTING, in the capacities stated therein.



  
\_\_\_\_\_  
Notary Public, State of Texas

07142015:1525:PO1B3

EXHIBIT

C

UNOFFICIAL

COPY

PRODUCED BY: 51024720

## VACEK & FREED, PLLC

ALBERT E. VACEK, JR.\*  
SUSAN S. VACEK  
CANDACE L. KUNZ-FREED  
PAUL J. BROWER  
JULIE A. MATHIASON  
BERNARD L. MATHEWS, III, *Of Counsel*  
\*Board Certified Estate Planning and Probate Law  
Texas Board of Legal Specialization

11777 Katy Freeway, Suite 300 South  
Houston, Texas 77079

(281) 531-5800  
1-800-229-3002

Telefax (281) 531-5885  
E-mail Address: [consult@vacek.com](mailto:consult@vacek.com)

January 15, 2013

Mr. Rik Munson  
218 Landana St.  
American Canyon, CA 94503

Dear Mr. Munson:

Per your request, enclosed are copies of my notary pages for book entries dated August 25, 2010 and December 21, 2010. The additional pages you request for dates June 1, 2010 through April 15, 2012 total 24 pages. Please remit the exact fee of \$12.00 for these additional pages, if you so request them. You will need to once again provide a self-addressed return envelope for these additional copies.

Finally, you will find a check for \$8.00 payable to you for the return of the money order you previously submitted, less the cost of the four pages included herein. I am unable to hold these funds on account.

Sincerely,

*Candace L. Kunz-Freed*  
Candace L. Kunz-Freed

CLF/sp  
Enclosures

Notarization Date/Time	Document Date	Type of Notarization	Name of Signer	Signer's Signature	Signer's Address and Telephone Number
11/22/10	11/22/10		Shelley Gates	X Shelley Gates	14311 Islandwoods Dr. Houston, TX 77095
11/24/10	11/24/10		Floy Stockdick	X Floy Stockdick	6011 Franz Katy, TX 77403
11/24/10	11/24/10		Roseanne Lopez	X Roseanne Lopez	6011 Franz Katy, TX 77403
12/1/10	12/1/10		Dr. C.V. Beghtol	X C.V. Beghtol	11434 Valley Spring Houston TX 77063
12/9/10	2/9/10		M. Chan	X M. Chan	21326 Rose Hollow Houston/Katy TX 77450
12/14/10	12/14/10		Irene Kovar	X Irene Kovar	
12/21/10	12/21/10		Deva Brunsting	X Deva Brunsting	13630 Pinerock Houston TX 77067
12/21/10	2/21/10		Anita Brunsting	X Anita Brunsting	203 Bloomingdale Cir Victoria, TX 77904
12/21/10	2/21/10		Herbert C. McKee	X Herbert C. McKee	8010 Huff Houston, Texas
12/29/10	12/29/10		Kyung Jacobs	X Kyung Jacobs	8326 Ash Garden Ct. Houston TX 77083
12/30/10	12/30/10		J.W. Burns	X J.W. Burns	11806 Tidwood Houston TX 77044
1/03/11	1/03/11		Kyung Jacobs	X Kyung Jacobs	8326 Ash Garden Ct. Houston, TX 77083
1/26/11	1/26/11		John Sumnerland	X John Sumnerland	415 Southman Lane Houston TX 77024
1/26/11	1/26/11		Ellen Suthedana	X Ellen Suthedana	Podere Binacco 58020 Scarlino (GR) Italy
1/26/11	1/26/11		Karen Lee Cook	X Karen Lee Cook	2210 Deer Tree Loop Houston TX 77057
2/9/11	2/9/11		M. Chan	X M. Chan	21326 Rose Hollow Ln Katy TX 77450

Type of Identification <input type="checkbox"/> D.L. <input type="checkbox"/> I.D. Card <input type="checkbox"/> Personally Known <input type="checkbox"/> Credible Witness <input type="checkbox"/> Passport <input type="checkbox"/> Other	Description of Document, Additional Information, or Comments	Fee	Signer's Right Thumbprint	
			Top of Thumbprint	Top of Thumbprint
Personal Knowledge	HIPAA - PAT TRUSTEES DESIGNATION OF SUCCESSOR TRUSTEE CERT. of Tr.	\$ 0	161	162
Personal Knowledge	Qualified Benef. Design.	\$	163	164
Personal Knowledge	Appt. of Succ Trustees Qualified Benef. Designation	\$	165	166
Personal Knowledge	Funding Pkg. COTS(ST)DT,LT(3) Med POA HIPAA, QBD, APPT SUCC TRUSTEE G.W.B.'s and AC KNOWL.	\$	167	168
Personal Knowledge	Amended Affidavit/Oath	\$	169	170
Personal Knowledge	Appt. of Succ Tee Resignation documents.	\$	171	172
Personal Knowledge	COT's (3) Acceptance as <sup>Succ</sup> Trustee	\$	173	174
Personal Knowledge		\$	175	176
Personal Knowledge	Beneficiary form for Chase IRA	\$		
Personal Knowledge	Birth Certificate Correction	\$		
P.K.		\$		
Personal Knowledge	Farmers Insurance Claim Trustee Stmt for LT	\$		
Personal Knowledge	Resignation of Tee Med POA	\$		
Personal Knowledge	Accept of Succ Co Tee COT, Delegation of Auth	\$		
Personal Knowledge	Accept of Succ Co Tee Accept of Delegation COT	\$		
Personal Knowledge	Funding (PMZ) Med POA; COT'S (3) Deed HS, Deed other, Assign P/P.	\$		

Notarization Date/Time	Document Date	Type of Notarization	Name of Signer	Signer's Signature	Signer's Address and Telephone Number
7/23/10	7/23/10	in office	Robert Holmes	X Robert Holmes	13218 Verbena Houston TX 77083
7/23/10	7/23/10	in office	Nancy Kanistaraux	X Nancy Kanistaraux	1873 Birchwood Dr. Okemos, MI 48864
7/27/10	7/27/10		Carol L. Noyes	X Carol L. Noyes	5206 Summerfield Ln Spring, TX 77827
7/27/10	7/27/10		Karen Renee Noyes	X Karen Renee Noyes	13819 CAOY COURT HOUSTON, TX 77077
7/27/10	7/27/10		Lisa Hanney	X Lisa Hanney	5706 Lane Cedar Biggswood, TX 77345
8/3/10	8/3/10	in office	Louise Godbold	X Louise Godbold	8148 Willow Forest Dr. Tomball TX 77315
8/10/10	8/10/10	"	"	X Louise Godbold	"
8/17/10	8/17/10		Irene R. Goddard	X Irene R. Goddard	1510 Breezy Bend Katy TX 77494
			Fred Ben Himbarg	X Fred Ben Himbarg	
			Patricia Renee Mullins	X Patricia Renee Mullins	
			Suzan Faye Stringer	X Suzan Faye Stringer	
			Phyllis Himbarg Delane	X Phyllis Himbarg Delane	
8/25/10			Nelva Brausting	X Nelva E. Brausting	13630 Piping Rock HOUSTON TX 77079
8/26/10			Betty Jean Baancy	X Betty Jean Baancy	8915 Opelika HOUSTON TX 77080
9/8/10			Mark R. Yarbrough	X Mark R. Yarbrough	4701 Murray Ave Houston TX 77079
9/18/10			Jeffrey S. Yarbrough	X Jeffrey S. Yarbrough	2617 Piping Rock Tr. Austin TX 78748



<b>Type of Identification</b> <input type="checkbox"/> D.L. <input type="checkbox"/> I.D. Card <input type="checkbox"/> Personally Known <input type="checkbox"/> Credible Witness <input type="checkbox"/> Passport <input type="checkbox"/> Other	<b>Description of Document, Additional Information, or Comments</b>	<b>Fee</b>	<b>Signer's Right Thumbprint</b>	
Personal Knowledge	Memil Lynch DT Memil Lynch ST	\$	129	130
Personal Knowledge	COT for Noyes Fur	\$	131	132
Personal Knowledge	COT for Noyes FLT	\$	133	134
Personal Knowledge	COT for Noyes Jannity living trust	\$	135	136
COTS(8) Personal Knowledge	COTS(8) Funding Bks.	\$	137	138
"	Funding forms	\$ —	139	140
Personal Knowledge	Funding Bk.	\$	141	142
Personal Knowledge	QBD, COTS(3) MEDPOA, DSGPOA, APPT SUCC TEE DEED	\$	143	144
Personal Knowledge	SS4 COTS Aff of Heir Mtr. Vehicle (a)	\$	143	144
Personal Knowledge	SS4 Aff. Heirship for Mtr. Veh(a)	\$	143	144

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EXHIBIT  
D

07142015:1525:PO170

### APPOINTMENT OF SUCCESSOR TRUSTEES

WHEREAS, NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, is a Founder of the Brunsting Family Living Trust dated October 10, 1996, as amended, (the "Trust Agreement"); and,

WHEREAS, Pursuant to Article IV, Section B, of the Brunsting Family Living Trust entitled "Our Successor Trustees," an original Trustee will have the right to appoint his or her own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any other reason, as well as specify conditions relevant to such appointment; and,

WHEREAS, ELMER H. BRUNSTING is no longer able to manage his financial affairs, as is evidenced by the physicians' letters attached. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone

WHEREAS, the said NELVA E. BRUNSTING is desirous of her right as original Trustee to designate, name and appoint her own successors to serve as Trustees in the event that she ceases to serve by reason of death, disability or for any other reason, as well as specify conditions of such appointment;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS:

NELVA E. BRUNSTING makes the following appointment:

If I, NELVA E. BRUNSTING, fail or cease to serve by reason of death, disability or for any other reason, then the following individuals will serve as successor Co-Trustees:

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

In order to maintain the integrity of the Trust Agreement and to meet my estate planning desires and goals, my Trustees shall comply with the directive set forth below to assure compliance with the Health Insurance Portability and Accountability Act (HIPAA) of 1996.

BRUNSTING005805

## **1. Successor Trustee Required to Provide an Authorization For Release of Protected Health Information**

Each successor Trustee (or Co-Trustee) shall be required to execute and deliver to the Co-Trustee (if any) or next successor Trustee an "Authorization for Release of Protected Health Information" pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and any other similarly applicable federal and state laws, authorizing the release of said successor's protected health and medical information to said successor's Co-Trustees (if any) and to all alternate successor Trustees (or Co-Trustees) named under this document or any subsequent documents signed by the Founders, to be used only for the purpose of determining in the future whether said successor has become incapacitated (as defined in the Trust Agreement).

If said successor is already acting in the capacity of Trustee (or Co-Trustee) and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, or if an event has occurred which triggers said successor's power to act but said successor has not yet begun to act in said capacity and fails to so execute and deliver such Authorization within thirty (30) days of actual notice of said requirement, then for purposes of the Trust Agreement, said successor shall be deemed incapacitated.

"Actual notice" shall occur when a written notice, signed by the Co-Trustees (if any) or next successor Trustee, informing said successor of the need to timely execute and deliver an authorization as set forth above (and, in the case where said successor has not yet begun to act, informing him or her of the event that has triggered said successor's power to act), is (i) deposited in the United States mail, postage prepaid, addressed to the last address of said successor known to the Co-Trustees or next successor Trustee or (ii) hand delivered to said successor, provided such delivery is witnessed by a third party independent from the Co-Trustees or next successor Trustee within the meaning of Internal Revenue Code Sections 672(c) and 674(c) and said witness signs a statement that he or she has witnessed such delivery.

## **2. Obtain the Release of Protected Health Information**

The Trustee is empowered to request, receive and review any information, verbal or written, regarding Founder's physical or mental health, including, but not limited to, protected health and medical information, and to consent to their release or disclosure. The Founder has signed on this same date or an earlier date an "Authorization For Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of any and all health and medical information to the Trustee (or next successor Trustee, even if not yet acting) for the purposes of determining the Founder's incapacity (or for other stated purposes therein).

In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as Founder's legal representative, to execute a new authorization on Founder's behalf, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under this agreement), naming the Trustee (or next successor Trustee even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

### 3. Determination of "Incompetence" or "Incapacity"

For purposes of the Trust Agreement, and notwithstanding any other conflicting provisions contained in the Trust Agreement or any previous amendments thereto, the term "incompetency" and/or "incapacity" shall mean any physical or mental incapacity, whether by reason of accident, illness, advanced age, mental deterioration, alcohol, drug or other substance abuse, or similar cause, which in the sole and absolute discretion of the Trustee makes it impracticable for a person to give prompt, rational and prudent consideration to financial matters and, if said disabled person is a Trustee (including an appointed Trustee who has yet to act), (i) a guardian of said person or estate, or both, of said person has been appointed by a court having jurisdiction over such matters or (ii) two (2) attending physicians of said person, who are licensed to practice and who are not related by blood or marriage to such person, have stated in writing that such incompetency or incapacity exists.

If said disabled person is a Trustee (including an appointed Trustee who has yet to act), upon the court determination of the person's competency or capacity or upon the revocation of the writings of the two (2) attending physicians above or upon written determination of competency or capacity to give prompt, rational and prudent consideration to financial matters by two (2) other attending physicians, who are licensed to practice and who are not related by blood or marriage to such person, subject to written notice being given to the then acting successor Trustee, the original Trustee (including an appointed Trustee who has yet to act) removed for "incompetency" or "incapacity" shall be reinstated as Trustee.

Any third party may accept physicians' writings as proof of competency or capacity or incompetency or incapacity as set forth above without the responsibility of further investigation and shall be held harmless from any loss suffered or liability incurred as the result of good faith reliance upon such writings.

In addition to any "Authorization for Release of Protected Health Information" executed by the Founder, the Founder hereby voluntarily waives any physician-patient privilege or psychiatrist-patient privilege and authorizes physicians and psychiatrists to examine them and disclose their physical or mental condition, or other

personal health or medical information, in order to determine their competency or incompetency, or capacity or incapacity, for purposes of this document. Each person who signs this instrument or an acceptance of Trusteeship hereunder does, by so signing, waive all provisions of law relating to disclosure of confidential or protected health and medical information insofar as that disclosure would be pertinent to any inquiry under this paragraph. No Trustee shall be under any duty to institute any inquiry into a person's possible incompetency or incapacity (such as, but not limited to, by drug testing), but if the Trustee does so, the expense of any such inquiry may be paid from the Trust Estate of said person's trust or, if no such trust exists, the Trust Estate of the Trust.

It is the Founder's desire that, to the extent possible, a named successor Trustee be able to act expeditiously, without the necessity of obtaining a court determination of a Founder's incapacity or the incapacity of a preceding appointed successor Trustee (including if that preceding appointed successor Trustee has not yet acted). Therefore, if an Authorization for Release of Protected Health Information executed by a Founder, or an appointed successor Trustee (even if not yet acting), or by a "personal representative" or "authorized representative" on behalf of a Founder or such an appointed successor Trustee, is not honored in whole or in part by a third party such that physicians' writings cannot be obtained as necessitated by this subparagraph, then the Trust Protector named under the Trust Agreement (if any), or if there is no such Trust Protector provided under the Trust Agreement then the next succeeding Trustee (even if not yet acting) who is independent, that is not related to or subordinate to, said Founder or such appointed successor Trustee within the meaning of Internal Revenue Code Section 672(c), may declare in writing said Founder or such appointed successor Trustee to be incapacitated; provided, however, the Trust Protector or next succeeding Trustee making such declaration shall have first made good faith efforts to obtain the physicians' writings described above, and the provisions above relating to reinstatement upon two (2) physicians' written determination of competency or capacity shall continue to apply.

In the event the Trust Agreement does not provide for an Independent Trustee as set forth in the above paragraph, such an Independent Trustee shall be elected by a majority vote of the then current adult income beneficiaries of the trust (or by the legal guardians of all minor or disabled current income beneficiaries) and such Independent Trustee shall not be related to nor subordinate to any of the beneficiaries participating in the said vote within the meaning of Internal Revenue Code 672(c). In the event that there are only two (2) beneficiaries, one of which is acting as Trustee, the remaining beneficiary may appoint such an Independent Trustee who is neither related to nor subordinate to such beneficiary as those terms are defined in and within the meaning of Internal Revenue Code 672(c).

The Founder has signed on this same date or on an earlier date an "Authorization for Release of Protected Health Information," in compliance with HIPAA, immediately authorizing the release of health and medical information to the Trustee (or next

successor Trustee, even if not yet acting), so the Trustee may legally defend against or otherwise resist any contest or attack of any nature upon any provision of the Trust Agreement or amendment to it (or defend against or prosecute any other legal matter within his or her powers set forth in the Trust Agreement). In the event said authorization cannot be located, is by its own terms no longer in force or is otherwise deemed invalid or not accepted in whole or in part, the Founder hereby grants the Trustee (or next successor Trustee, even if not yet acting) the power and authority, as the Founder's legal representative to execute a new authorization on the Founder's behalf, even after Founder's death, immediately authorizing the release of any and all health and medical information for the purpose of determining the Founder's incapacity (and for the purpose of carrying out any of the Trustee's powers, rights, duties and obligations under the Trust Agreement naming the Trustee (or next successor Trustee, even if not yet acting) as the Founder's "Personal Representative," "Authorized Representative" and "Authorized Recipient."

This Appointment of Successor Trustees is effective immediately upon execution of this document by the Founder, with the said successor Trustees to act at such times and in such instances as provided in the Brunsting Family Living Trust dated October 10, 1996, as amended.

All other provisions contained in the Brunsting Family Living Trust October 10, 1996, as amended, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby or by previous amendments or appointments still in effect.

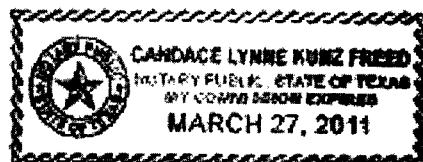
WITNESS MY HAND on July 1, 2008.

*Nelva E. Brunsting*  
 \_\_\_\_\_  
 NELVA E. BRUNSTING,  
 Founder and Original Trustee

THE STATE OF TEXAS  
 COUNTY OF HARRIS

This instrument was acknowledged before me on July 1, 2008 NELVA E. BRUNSTING, as Founder and Original Trustee.

*Candace L. Kunz-Freed*  
 \_\_\_\_\_  
 Notary Public, State of Texas



07142015:1525:PO175

## CERTIFICATE OF TRUST

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the subject trust was:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

2. ELMER H. BRUNSTING, died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust Agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.
3. For purposes of asset allocation, transfer of property into the trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the said trust shall now be known as:

NELVA E. BRUNSTING, Trustee, or the successor Trustees,  
under the BRUNSTING FAMILY LIVING TRUST dated  
October 10, 1996, as amended.

The tax identification number of the BRUNSTING FAMILY LIVING TRUST is 481-30-4685.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the remaining original Trustee fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

BRUNSTING005810



5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.
6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.
7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their powers over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

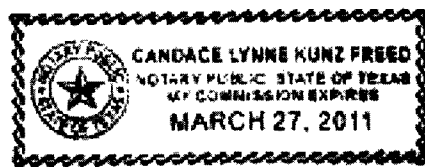
The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

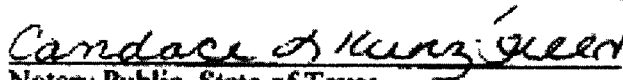
  
NELVA E. BRUNSTING,  
Founder and Trustee

STATE OF TEXAS  
COUNTY OF HARRIS

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING, as Founder and Trustee.

Witness my hand and official seal.



  
Candace Lynne Kunz Freed  
Notary Public, State of Texas

07142015:1525:P0177

CERTIFICATE OF TRUST  
FOR THE  
ELMER H. BRUNSTING DECEDENT'S TRUST

The undersigned Founder hereby certifies the following:

1. This Certificate of Trust refers to a joint revocable living trust agreement executed by ELMER HENRY BRUNSTING, also known as ELMER H. BRUNSTING, and NELVA ERLEEN BRUNSTING, also known as NELVA E. BRUNSTING, Founders and original Trustees. The full legal name of the original trust was:

ELMER H. BRUNSTING or NELVA E. BRUNSTING,  
Trustees, or the successor Trustees, under the BRUNSTING  
FAMILY LIVING TRUST dated October 10, 1996, as  
amended.

2. ELMER H. BRUNSTING died on April 1, 2009. Therefore, pursuant to Article IV, Section B, of the Brunsting Family Living Trust agreement, the remaining original Trustee, NELVA E. BRUNSTING, continues to serve alone.

3. The BRUNSTING FAMILY LIVING TRUST authorized the creation of the subsequent irrevocable trust known as the ELMER H. BRUNSTING DECEDENT'S TRUST. For purposes of asset allocation, transfer of property into the Decedent's Trust, holding title to assets, and conducting business for and on behalf of the trust, the full legal name of the Decedent's Trust shall now be known as:

NELVA E. BRUNSTING, Trustee, or the successor Trustees, of  
the ELMER H. BRUNSTING DECEDENT'S TRUST dated  
April 1, 2009, as established under the BRUNSTING FAMILY  
LIVING TRUST dated October 10, 1996, as amended.

The tax identification number of the ELMER H. BRUNSTING DECEDENT'S TRUST is 27-6453100. The Trust is irrevocable and no longer qualifies as a grantor trust.

An acceptable abbreviation for account titling is as follows:

NELVA E. BRUNSTING, Tee of the ELMER H. BRUNSTING  
DECEDENT'S TR dtd 4/1/09, as est UTD 10/10/96.

4. Pursuant to that certain Appointment of Successor Trustees dated July 1, 2008, if the said NELVA E. BRUNSTING, the surviving original Trustee, fails or ceases to serve as Trustee by reason of death, disability or for any reason, then the following individuals will serve as successor Co-Trustees:

CARL HENRY BRUNSTING and ANITA KAY BRUNSTING

BRUNSTING005812

**CARL HENRY BRUNSTING and ANITA KAY BRUNSTING** shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then CANDACE LOUISE CURTIS shall serve as sole successor Trustee. In the event CANDACE LOUISE CURTIS is unable or unwilling to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

5. The Trustee under the trust agreement is authorized to acquire, sell, convey, encumber, lease, borrow, manage and otherwise deal with interests in real and personal property in the trust name. All powers of the Trustee are fully set forth in Article XII of the trust agreement.
6. The trust has not been revoked and there have been no amendments limiting the powers of the Trustee over trust property.
7. No person or entity paying money to or delivering property to any Trustee shall be required to see to its application. All persons relying on this document regarding the Trustees and their power over trust property shall be held harmless for any resulting loss or liability from such reliance.

A copy of this Certificate of Trust shall be just as valid as the original.

The undersigned certifies that the statements in this Certificate of Trust are true and correct and that it was executed in the County of Harris, in the State of Texas, on February 24, 2010.

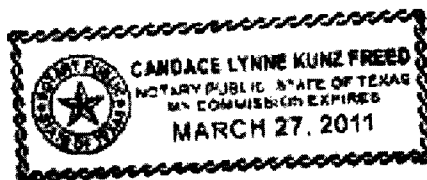
*Nelva E. Brunsting*  
 \_\_\_\_\_  
 NELVA E. BRUNSTING,  
 Founder and Trustee

THE STATE OF TEXAS §  
 §  
 COUNTY OF HARRIS §

The foregoing Certificate of Trust was acknowledged before me on February 24, 2010, by NELVA E. BRUNSTING as Founder and Trustee.

Witness my hand and official seal.

*Candace Lynne Kunz Freed*  
 \_\_\_\_\_  
 Notary Public, State of Texas



07142015:1525:PO179

**UNOFFICIAL**  
**E**  
**EXHIBIT**

**COPY**

FIRST AMENDMENT TO THE RESTATEMENT TO  
THE BRUNSTING FAMILY LIVING TRUST

ELMER H. BRUNSTING and NELVA E. BRUNSTING, the Founders of the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, hereby amend the said Trust, as follows, to-wit:

1. The said trust entitled "The Brunsting Family Living Trust dated October 10, 1996" is hereby amended so that any and all references to "ANITA RILEY" shall be to "ANITA BRUNSTING". Said correction is incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996 for all purposes.
2. Article IV, Section B of the said Trust entitled "Our Successor Trustees" is hereby amended so that from henceforth Article IV, Section B is replaced in its entirety with the Article IV, Section B set forth in Exhibit "A" attached hereto and incorporated herein as a part of the Brunsting Family Living Trust dated October 10, 1996, as restated on January 12, 2005, for all purposes.
3. All amendments set forth in this instrument are effective immediately upon execution of this document by the Founders.
4. All other provisions contained in the Brunsting Family Living Trust dated October 10, 1996 as restated on January 12, 2005, are hereby ratified and confirmed and shall remain in full force and effect except to the extent that any such provisions are amended hereby.

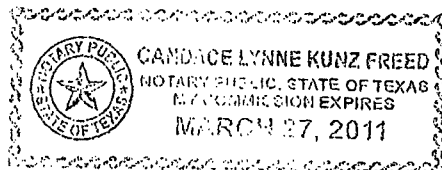
WITNESS OUR HANDS this the 6th day of September, 2007.

  
ELMER H. BRUNSTING,  
Founder and Trustee

  
NELVA E. BRUNSTING,  
Founder and Trustee

THE STATE OF TEXAS  
COUNTY OF HARRIS

This instrument was acknowledged before me on the 6th day of September, 2007, by ELMER H. BRUNSTING and NELVA E. BRUNSTING, as Founders and Trustees.



  
Notary Public, State of Texas

EXHIBIT "A"

Article IV

Our Trustees

**Section B. Our Successor Trustees**

Each of the original Trustees will have the right to appoint their own successor or successors to serve as Trustees in the event that such original Trustee ceases to serve by reason of death, disability or for any reason, and may specify any conditions upon succession and service as may be permitted by law. Such appointment, together with any specified conditions, must be in writing.

If an original Trustee does not appoint a successor, the remaining original Trustee or Trustees then serving will continue to serve alone.

If both of the original Trustees fail or cease to serve by reason of death, disability or for any reason without having appointed a successor or successors, then the following individuals or entities will serve as Co-Trustees:

**CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS**

CARL HENRY BRUNSTING and CANDACE LOUISE CURTIS shall each have the authority to appoint his or her own successor Trustee by appointment in writing.

If a successor Co-Trustee should fail or cease to serve by reason of death, disability or for any other reason, then the remaining successor Co-Trustee shall serve alone. However, if neither successor Co-Trustee is able or willing to serve, then THE FROST NATIONAL BANK shall serve as sole successor Trustee.

Successor Trustees will have the authority vested in the original Trustees under this trust document, subject to any lawful limitations or qualifications upon the service of a successor imposed by any Trustee in a written document appointing a successor.

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

07142015:1525:PO182

EXHIBIT

UNOFFICIAL

COPY

A successor Trustee will not be obliged to examine the records, accounts and acts of the previous Trustee or Trustees, nor will a successor Trustee in any way or manner be responsible for any act or omission to act on the part of any previous Trustee.

**Section C. No Bond is Required of Our Trustees**

No one serving as Trustee will be required to furnish a fiduciary bond as a prerequisite to service.

**Section D. Resignation or Removal of Our Trustees**

We may each remove any Trustee we may have individually named as our respective successors. Any appointee serving or entitled to serve as Trustee may resign at any time and without cause, and the instructions in this trust will determine who the successor will be. All removals or resignations must be in writing.

In the event that no Trustee is remaining who has been designated in this trust, a majority of all adult income beneficiaries and the legal guardians of all minor or disabled beneficiaries of the trust shares created hereunder shall have the power to appoint any corporate or banking institution having trust powers as the successor Trustee. Such power shall be exercised in a written instrument in recordable form which identifies this power, identifies the successor Trustee, contains an acceptance of office by such successor Trustee and identifies the effective time and date of such succession.

A majority of all adult beneficiaries and the legal guardians of all minor or disabled beneficiaries who are then entitled to receive distributions of income from the trust, or distributions of income from any separate trust created by this document, may only remove any corporate or institutional Trustee then serving, the notice of removal to be delivered in writing to the said Trustee.

If such beneficiaries shall fail to appoint a successor corporate or institutional Trustee, the selection of a successor to the Trustee will be made by a court of competent jurisdiction.

**Section E. Affidavit of Authority to Act**

Any person or entity dealing with the trust may rely upon our Affidavit of Trust, regardless of its form, or the affidavit of a Trustee or Trustees in substantially the following form:



COPY

07142015:1525:PO184

EXHIBIT

G

UNOFFICIAL

From: Nelva Brunsting  
To: Candy Curtis  
Date: Saturday, July 28, 2007 7:16:21 AM

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Hi: I have a question for you Candy. Would you be willing to serve as co-trustee with Carl? Amy is on there now but I'm going to take her off because I don't think she is stable enough. I'll think of a good excuse so she won't get her feelings hurt. It might entail a trip or two when the time comes(doesn't that sound ominous????!!) but you would b paid for your traveling expenses. I think you have a better relationship with your siblings than she. Let me know.

07142015:1525:PO185

COPY

UNOFFICIAL

**RECORDER'S MEMORANDUM:**

At the time of recordation, this instrument was found to be inadequate for the best photographic reproduction because of illegibility, carbon or photo copy, discolored paper, etc. All blockouts, additions and changes were present at the time the instrument was filed and recorded.

Respectfully Submitted,

/s/ Brad Featherston

---

Stephen A. Mendel (13930650)  
Bradley E. Featherston (24038892)  
The Mendel Law Firm, L.P.  
1155 Dairy Ashford, Suite 104  
Houston, Texas 77079  
Tel: 281-759-3213  
Fax: 281-759-3214  
stephen@mendellawfirm.com  
brad@mendellawfirm.com

Counsel for Anita Kay Brunsting  
In Capacities at Issue

Respectfully Submitted,

/s/ Neal Spielman (w/permission /s/ BEF)

---

Samuel S. Griffin, III (008473800)  
Neal Spielman (00794678)  
Griffin & Matthews  
1155 Dairy Ashford, Suite 300  
Houston, TX 77079  
Tel: 281-870-1124  
Fax: 281-870-1647  
sgriffin@grifmatlaw.com  
nspielman@grifmatlaw.com

Counsel for Amy Ruth Brunsting  
In Capacities at Issue

### **Certificate of Service**

I certify that a true and correct copy of the foregoing instrument was served on the following:

Candace Louis Curtis  
218 Landana Street  
American Canyon, CA 94503  
Tel: 925-759-9020

*Pro Se*

Bobbie G. Bayless  
2931 Ferndale  
Houston, Texas 77098  
O: 713-522-2224; F: 713-522-2218

Attorney for Drina Brunsting,  
Alleged Attorney in Fact for  
Carl Brunsting

Darlene Payne Smith  
1401 McKinney, 17TH Floor  
Houston, Texas 77010  
O: 713-752-8640; F: 713-425-7945

Attorney for Carol Ann Brunsting

via e-service or email on June 26, 2015.

/s/ Brad Featherston

---

Bradley E. Featherston

17-20360.2293

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 7/29/2019  
**Diane Trautman, County Clerk**  
Harris County, Texas



A handwritten signature in black ink, appearing to read "Sterling G. Senechal III".

Sterling G. Senechal III

Deputy



CON:458969|14976845

TAB 32

CANDACE LOUISE CURTIS  
Plaintiff,

v

Anita Kay Brunsting,  
Amy Ruth Brunsting,  
Does 1-100

Defendants.

CIVIL ACTION NO. 4:12-cv-00592  
Harris County Probate No. 4  
No 412,249-402

Breach of Fiduciary

~~CARL HENRY BRUNSTING  
Individually and as independent executor  
of the estates of Elmer H.  
Brunsting and Nelva E. Brunsting~~

~~Harris County Probate No. 4  
No 412,249-401~~

vs

ANITA KAY BRUNSTING f/k/a  
ANITA KAY RILEY, individually,  
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;  
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;  
CAROLE ANN BRUNSTING,  
individually and as Trustee of the  
Carole Ann Brunsting Personal  
Asset Trust; and as a Nominal Defendant  
Only: Candace Louise Curtis

~~412,249~~  
IN RE: ESTATE OF  
NELVE BRUNSTING  
DECEASED

IN THE PROBATE COURT  
NUMBER FOUR (4) OF  
HARRIS COUNTY, TEXAS

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 7/29/2019

Diane Trautman, County Clerk  
Harris County, Texas

Deputy

Sterling G. Senechal III



CON:458969|15074529



**NOMINAL DEFENDANT'S VERIFIED FIRST AMENDED PLEA IN ABATEMENT  
TO THE HONORABLE JUDGE OF SAID COURT:**

1. Comes now Candace Louise Curtis, Nominal Defendant in the above titled and numbered cause and files this Motion to Dismiss, herein respectfully moving this Honorable Court for an Order of Abatement, dismissing the above-titled and numbered action on jurisdictional ground.
2. Relator, would respectfully notice this Honorable Court that lawsuits involving the same inherently interrelated subject matter, persons, transactions, events, substantive rights, questions of law and fact, and requiring construction of the same instruments, **have been filed in three separate courts.**
3. This can only lead to the gross and unnecessary waste of economic and judicial resources, as a case tried in the wrong court will automatically be reversed on appeal after judgment. Therefore, Nominal Defendant Curtis herein moves the Court to abate this third suit, that the matter may proceed in the Court of Dominant Jurisdiction.

**STATEMENT OF CASE**

4. In 1996, Elmer H. and Nelva E. Brunsting, Texas residents, established the Brunsting Family Living Trust ("the Trust") for the benefit of their offspring. At the time of its creation, the Trust was funded with various assets. Both the will of Mr. Brunsting and the will of Mrs. Brunsting (collectively "the Brunstings' Wills") include pour-over provisions, providing that all property in each estate is devised and bequeathed to the Trust.
5. Elmer H. Brunsting passed away on April 1, 2009, and Nelva E. Brunsting passed away on November 11, 2011. The current dispute arises out of the administration of the Trust. The beneficiaries, Candace Curtis, Carole Brunsting, Carl Brunsting, Anita Brunsting, and Amy Brunsting, are siblings.

Confidential information may have been redacted from the document in compliance with the Public Information Act.

A Certified Copy  
Attest: 7/29/2019  
**Diane Trautman, County Clerk**  
Harris County, Texas

  
Sterling G. Senechal III

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### The First Brunsting Trust Related Lawsuit

6. On February 27, 2012, Candace Curtis ("Curtis") filed a breach of fiduciary suit into the United States District Court for the Southern District of Texas under diversity jurisdiction.<sup>1</sup>
7. That complaint alleged that Anita and Amy Brunsting, while acting as co-trustees of the Trust, had breached their fiduciary duties to Curtis, a beneficiary of the Trust. Specifically, she alleged that Anita and Amy had failed to provide her with documents related to administration of the Trust and had failed to provide accurate and timely accounting. The complaint alleged claims for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. Curtis sought compensatory damages, punitive damages, a temporary restraining order against "wasting the estate," and an injunction compelling both an accounting of Trust property and non-probate assets, as well as production of documents and accounting records.
8. On March 1, 2012, the District Court denied Curtis' application for a temporary restraining order and injunction because the Defendants had not been served with process. In the order the District Court noted that it "*appears that the court lacks subject matter jurisdiction over the claim(s) asserted.*" On March 6, 2012, in response to the lis pendens Curtis had filed related to property in Texas and Iowa, Anita and Amy, represented by Vacek & Freed staff attorney Bernard Mathews, filed an emergency motion to remove the lis pendens.
9. The motion noted that it was subject to the Defendants' contention that the federal district court lacked subject matter jurisdiction under the probate exception to federal court jurisdiction, an issue that the Defendants said would be raised in a separate Rule 12(b) motion to dismiss.
10. On March 8, 2012, following a telephone conference with the parties, the District Court Judge entered a sua sponte order dismissing the case for lack of subject matter jurisdiction. In

<sup>1</sup> *Candace Louise Curtis vs. Anita and Amy Brunsting and Does 1-100. No. 4:12-cv-592 filed 2/27/2012*

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doing so, he concluded that the case falls within the probate exception to federal diversity jurisdiction. Plaintiff Curtis filed timely Notice of Appeal<sup>2</sup>.

11. On March 9, 2012 Attorney Bobbie G. Bayless (Bayless) representing Carl Brunsting (Carl) filed "*Carl Henry Brunsting's Verified Petition to Take Depositions Before Suit*" No. 2012-15538 in the 80<sup>th</sup> Judicial District Court of Harris County. Thus, while Plaintiff Curtis' breach of fiduciary lawsuit was on appeal, Bayless was moving forward with deposition and discovery.

12. On January 9, 2013 the Fifth Circuit Court of Appeals announced their unanimous opinion in No. 12-20164, published *Curtis v Brunsting* 704 F.3d 406 (Jan 9, 2013), in which the Justices determined Curtis' claims for breach of fiduciary duty against the co-trustees of an inter vivos trust did not implicate the probate exception.

*HN5 As a threshold matter, the probate exception only applies if the dispute concerns property within the custody of a state court. The federal court cannot exercise in rem jurisdiction over a res in the custody of another court. Both of the Brunstings' Wills were admitted to probate after the district court dismissed the case, and probate proceedings are ongoing.<sup>11</sup> However, nothing suggests that the Texas probate court currently has custody or in rem jurisdiction over the Trust. It likely does not. HN6 Assets placed in an inter vivos trust generally avoid probate, since [\*410] such assets are owned by the trust, not the decedent, and therefore are not part of the decedent's estate.<sup>12</sup> In other words, because the assets in a living or inter vivos trust are not property of the estate at the time of the decedent's death, having been transferred to the trust years before, the trust is not in the [\*\*8] custody of the probate court and as such the probate exception is inapplicable to disputes concerning administration of the trust. The record also indicates that there would be no probate of this Trust's assets upon the death of the surviving spouse.<sup>13</sup> Finding no evidence that this Trust is subject to the ongoing probate proceedings, we conclude that the case falls outside the scope of the probate exception. The district court below erred in dismissing the case for lack of subject-matter jurisdiction.*

*IV.*

*For the reasons set forth above, we REVERSE the district court's dismissal of the case and REMAND for further proceedings. REVERSED AND REMANDED.*

<sup>2</sup> Fifth Circuit Appeal No. 12-20164

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### The Second Brunsting Trust Related Lawsuit

13. On January 29, 2013 Bayless filed a malpractice suit against Brunsting trust and estate plan attorneys Vacek & Freed in the Harris County District Court styled:<sup>3</sup> Carl Brunsting Executor for the Estate of Nelva Brunsting<sup>4</sup>.

### Back in the United States District Court for the Southern District of Texas

14. On April 9, 2013 there was a hearing in the Southern District of Texas on Curtis' renewed application for a preliminary injunction. Judge Hoyt issued the injunctive order at the conclusion of the hearing which he published on April 19, 2013. In the Order Judge Hoyt summarized Plaintiff Curtis complaint as follows:

*"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 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."*

15. In essence the Court found all of the elements necessary to issue the injunction which just happen to also be all the elements necessary to establish Curtis' claim that Anita Brunsting, while occupying the office of trustee, had breached the fiduciary duties owed to her as a beneficiary of the Brunsting Trusts.

### The Third Brunsting Trust Related Lawsuit

<sup>3</sup> No. 2013-05455 164th Judicial District Court of Harris County Texas

<sup>4</sup> Made a part of the probate court record in Case 412,249 [03032016: 1510: P0065]

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16. April 9, 2013, Bayless knew the Harris County District Court was the second court to entertain the Brunsting trust controversy when she filed a third action exclusively related to the Brunsting inter vivos trusts in Harris County Probate Court Four (4) No. 412,249-401 styled:

*CARL HENRY BRUNSTING, individually and as independent executor of the estates of Elmer H. Brunsting and Nelva E. Brunsting*

vs.

*ANITA KAY BRUNSTING f/k/a ANITA KAY RILEY, individually, 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; 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; CAROLE ANN BRUNSTING, individually and as Trustee of the Carole Ann Brunsting Personal Asset Trust; and as a nominal defendant only, CANDACE LOUISE CURTIS*

17. At this juncture, regardless of the way they are styled, the theories pled or the parties named, lawsuits arising from a common nucleus of operative facts have been filed in three separate courts. Whether or not either state court action properly involved the Brunsting Trusts when filed, and whether or not either state court can render a binding judgment under the conditions present here, is a valid inquiry better had before trial than after.

**In the United States District Court for the Southern District of Texas**

18. On May 9, 2013 United States District Court Judge Kenneth Hoyt issued an Order appointing a Special Master to perform an accounting of the Brunsting Trusts. The trustees were ordered to cooperate with the Special Master in the Performance of his duties. It was this inquiry that produced evidence of misapplication of fiduciary and self-dealing.

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## DOMINANT COURT JURISDICTION

### The Multiplication Factor

19. "Courts are erected to settle controversies, not to multiply them." *Cleveland v. Ward*, 285 S.W. 1063, 1071 (1926).

*"The general common law rule in Texas is that the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts." As a result, when two suits are inherently interrelated, "a plea in abatement in the second action must be granted."*<sup>5</sup>

20. On August 17, 2018, Relator filed a Plea in Abatement raising the dominant jurisdiction question. In Item 2 of Bayless' "*Response to Plea in Abatement*" she states:

*"2. An abatement based on dominant jurisdiction must be alleged and proved by Curtis. That burden requires Curtis to prove that a suit is still pending in another court which involves the same parties and the same dispute. Wyatt v. Shaw Plumbing Company, 760 S.W.2d 245 (Tex. 1988)."*

21. The dominant jurisdiction analysis proceeds in three distinct parts and begins by asking whether we must reach the dominant-jurisdiction question at all.

22. *Wyatt v. Shaw Plumbing Co. supra.*, explains that this question only arises "[w]hen an inherent interrelation of the subject matter exists in two pending lawsuits." Thus, we first ask whether there is an inherent interrelation between the subject matter of the two pending lawsuits that triggers the dominant-jurisdiction question here.

23. Bayless filed a Petition for Partial Summary Judgment in this Court on July 9, 2015. At page 2 Bayless states:

### *Summary Judgment Issues*

<sup>5</sup> *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974).

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*This is a case involving, among other things, a dispute about changes<sup>6</sup> purportedly made to a trust of which all of the parties are beneficiaries, as well as the administration of that trust and disbursements made from that trust after the parties' mother resigned as trustee and Defendant, Anita Kay Brunsting ("Anita"), took over the trustee duties. This Motion for Partial Summary Judgment seeks relief on two specific points at issue in this case.*

*1. Carl seeks a determination, as a matter of law, that the August 25, 2010 Qualified Beneficiary Designation is null and void because it violates the terms of the Brunsting Family Living Trust as restated on January 12, 2005 (the "Family Trust") which prohibits amendments after the death of the first founder. Elmer, the first founder to die, died in 2009. (Exhibit 4, p. P4347).*

24. Five days later, on July 14, 2015, Bayless filed a Motion to Transfer the District Court case to Probate Court Four (4)<sup>7</sup> in which **Bayless herself said** the actions were related:

*"The District Court Case is related to the probate proceedings and indeed to this cause of action. The issues in the District Court Case and this case are related and the damages sought in each action are potentially impacted by the other. Many of the same witnesses and some of the same evidence will also be used in both cases."*

25. In Bayless "Response to Plea in Abatement" she claims (*emphasis added*):

*"4. The assertion is also made by Curtis that the existence of the legal malpractice action filed in Harris County District Court against Vasek & Freed, who prepared the trust instruments at issue, can be asserted to support some type of dominant jurisdiction in a court other than this one. Curtis is not even a party to that proceeding. The proceeding involves legal malpractice issues, and does not involve the same parties or really even the same dispute."*

26. That is exactly the opposite of what Bayless' said in her District Court Complaint. In Bayless District Court Complaint against Vacek & Freed at page 2 she claims:

*"5. Other parties and entities involved in the facts relevant to this petition but who are not named as defendants herein include the following:"*

<sup>6</sup> This is essentially what Plaintiff Curtis said in her First Amended Federal Complaint  
<sup>7</sup> 2015-07-14 Motion to Transfer the District Court case to Probate Court Four (4) [Case 412249-401 PBT-2015-228888]

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27. Bayless then lists the family trust and all the trust beneficiaries, except Carl, and on page 3 she describes exactly what the District Court case is about.

*"This is a case involving Defendants' negligence, breach of fiduciary duty and other acts or omissions in their representation of Elmer and Nelva, both individually and in their capacities as trustees of the Family Trust. Defendants' actions constitute negligent misrepresentation, negligence per se, deceptive trade practices, conversion, fraud, commercial bribery, breaches of their fiduciary duties, as well as aiding and abetting, assisting and encouraging repeated breaches of*

*-3-*

*fiduciary duty. Alternatively, a conspiracy existed between Defendants, and the Current Trustees for that unlawful purpose.*

*The Defendants assisted the Current Trustees in implementing a scheme to change the terms of the Family Trust, to ultimately remove Nelva from her position as trustee of the Family Trust, and to improperly remove assets from Elmer and Nelva's estates and from the Family Trust.*

*Because of the actions of the Defendants, the Current Trustees were able to alter Elmer and Nelva's wishes, resulting in the improper transfer of assets to Anita, Amy, and Carole, all to Plaintiffs detriment."*

28. Bayless says, "a conspiracy existed between Defendants, and the Current Trustees". When Bayless says "Defendants" she is talking about the defendants in the District Court. When she says "Current Trustees" she is talking about the (de facto Trustee) defendants in the Probate Court.

29. In Bayless' *Memorandum in Support of Motion to Transfer*<sup>8</sup> she argues:

*"Transfer to the 164th Judicial District Court of Harris County, Texas, the Honorable Smoots-Hogan presiding, would be perfectly acceptable to Plaintiff, but because the Harris County Probate Court is a statutory Probate Court a transfer of the probate proceedings to the District Court is not authorized under Estates Code Chapter 32."*

<sup>8</sup> 2016-03-02 Case 412249-401 PBT-2016-71625 Bayless Memorandum in Support of Motion to transfer

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30. Bayless filed her Brunsting Trust related claims in the District Court in the name of the Estate of Nelva Brunsting knowing that the controversy over the administration of the Brunsting inter vivos trusts was not a probate matter.

31. Now Bayless argues that because she filed a related lawsuit against “current trustee co-conspirators” in a Probate Court, that it is suddenly a probate matter governed under the Estates Code.

32. The fact that Harris County Probate Court is a statutory Probate Court does not convert the in personam breach of fiduciary trust administration matter into an in rem probate proceeding, nor does it convert the non-probate assets of the Brunsting trusts into assets belonging to the decedent’s estate subject to probate.

33. On page three of her *Memorandum in support of Motion to Transfer* Bayless states:

*“The Consideration of Relatedness*

*The legal theories are irrelevant, as the standard for determining relatedness for consolidation purposes is measured by the facts and whether the actions are so related that the evidence presented will be material, relevant, and admissible in each case.*

*Once we have established that the cases are related the questions become whether or not consolidation would 1) promote judicial economy and the efficient administration of Justice, 2) reduce the burden of duplicate hearings on the witnesses and the Court, 3) Reduce the risk of conflicting findings of fact or conclusions of law 4) or, in the negative, whether consolidation would be productive of prejudice to the Defendants or confusion for the jury.*

*Under examination it becomes inarguable that the summary judgment motions and petitions for declaratory judgment in the two pending suits turn on but one set of facts, and that the cases are so factually related that the evidence presented will be material, relevant, and admissible in each case.”*

34. Bayless’ final argument in her opposition to the Plea in Abatement is focused on Curtis’ March 2, 2016 Motion in Support of Transfer. On page 1 of Bayless’ Memorandum in Support of her Motion to Transfer, Bayless states:

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*"A previous transfer motion was filed by Carl Brunsting, February 9, 2015, in estate case 412249 (PBT-2016-44972). The motion was discussed at a hearing in July 2015, but no hearing on the motion was ever set. Opposition to the transfer motion was filed July 17, 2015 by V & F (PBT-2015-234080) in which they:*

*"adamantly oppose transfer and believes the 164th Judicial District Court of Harris County, Texas, the Honorable Smoots-Hogan presiding should decide the dispute between Brunsting and V & F"*

<sup>1</sup>  
*Transfer to the 164th Judicial District Court of Harris County, Texas, the Honorable Smoots-Hogan presiding, would be perfectly acceptable to Plaintiff, but because the Harris County Probate Court is a statutory Probate Court a transfer of the probate proceedings to the District Court is not authorized under Estates Code Chapter 32."*

35. While this may be true for "probate proceedings", the Brunsting inter vivos trusts contain only non-probate assets that do not come within the definition of a "probate matter".<sup>9</sup>

36. This fundamental distinction was the focus of the Texas Court of Appeals in *Mayfield v Peek*<sup>10</sup>, a case decided February 28, 2017, where there was a guardianship, a probate, and a trust lawsuit. At its core the *Mayfield* case involved two siblings fighting over an inheritance from their parents. The two principal issues before the Court were not so much the merits of the dispute, but whether one sibling had standing to complain of the other's actions, and in what court the fight should take place.

37. *Mayfield* filed claims in the District Court of Dallas claiming in part that her brother, Appellee Gary Bruce Peek, (Bruce) prevailed upon their mother to remove assets from a revocable trust at a time when their mother allegedly lacked the mental capacity to do so. Bruce convinced the district court that *Mayfield* lacked standing to make that claim. He also claimed that another

<sup>9</sup> See Texas Estates Code §§ 22.029 and 22.012 *infra*.

<sup>10</sup> 2018-08-07 Plea in Abatement - Exhibit 3 LINDA MAYFIELD, Appellant, v. GARY BRUCE PEEK, EXECUTOR OF THE ESTATE OF DOROTHY PEEK, Appellee. No. 08-15-00018-CV

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court should hear that sort of claim, because by the time of the trust suit his mother had passed away and her will was in probate.

### **Impeachment by Self-Contradiction**

38. Bayless' argument that these cases could be seen as something other than integrally related after arguing their relatedness herself is preposterous. Once it has been established that an inherent interrelation of the subject matter exists, as in these two pending lawsuits, dominant jurisdiction must be assessed. However, if no inherent interrelation of the subject matter exists, dominant jurisdiction is not an issue and both suits may proceed.

39. The general common law rule in Texas is that the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts. Thus, if the suits are inherently interrelated, the first filed Court is presumed to be the Court of dominant jurisdiction and the burden shifts to the later filed Plaintiff to show why an exception should apply.

40. Since Bayless is the author of the integrally related lawsuits filed in both state courts, the burden to show why an exception should apply falls squarely on her shoulders.

### **DOMINANT JURISDICTION EXCEPTIONS**

41. There are three exceptions to application of the dominant jurisdiction rule delineated in *Cleveland v. Ward, supra*, that the court where suit is first filed acquires dominant jurisdiction: (1) conduct by a party that estops him from asserting prior active jurisdiction; (2) lack of persons to be joined if feasible, or the power to bring them before the court; and (3) lack of intent to prosecute the first lawsuit. *Young*, 128 Tex. at 636-37, 101 S.W.2d at 800-01; see also *Curtis*, 511 S.W.2d at 267.

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42. While all three factors are present throughout, and there is a great deal of overlap in the application of the same facts to all three categories, none of the facts operate as exceptions to the dominant jurisdiction rule but, because of the peculiar dynamics, each works to taint both state court filings inasmuch as comity, dominant jurisdiction and complete remedy are concerned.

#### **The Inequitable Conduct Exception**

43. It has been held that the plaintiff in the first suit may be guilty of such inequitable conduct as will estop him from relying on that suit to abate a subsequent proceeding brought by his adversary. *V.D. Anderson Co. v. Young*, 128 Tex. 631, 101 S.W.2d 798 (1937); *Russell v. Taylor*, 121 Tex. 450, 49 S.W.2d 733 (1932); *Johnson v. Avery*, 414 S.W.2d 441 (Tex.1966).

44. Bayless, who has clearly argued that these two cases are related **and** clearly argued that these two cases are unrelated, filed claims in the Harris County District Court knowing there was an integrally related action arising from the same nucleus of operative facts already pending in the federal court. Bayless filed her claims in the Harris County District Court in the name of Carl Brunsting, only as Executor for the Estate of Nelva Brunsting, knowing that Carl was not competent to receive letters testamentary and that he was not competent to perform the duties of that office.

45. Bayless then filed claims in the Harris County Probate Court in the name of "*Carl Brunsting Individually and as Executor for the Estate of Nelva Brunsting*" knowing inherently interrelated claims arising from the same nucleus of operative facts were already pending in two other courts, that Carl lacked the capacity to perform the duties of the executor's office and that the trust administration controversy had already been held not to be a probate matter<sup>11</sup>.

<sup>11</sup> *Curtis v Brunsting* 704 F.3d 406.

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46. Carl resigned due to his lack of capacity and not only has the probate court refused or otherwise failed to fill that office, Bayless has refused or otherwise failed to distinguish claims belonging to Carl Brunsting individually from those alleged to belong to the estate.

47. The reality of this case is that both state court actions appear to have been filed by Bayless with the manifest intention of interfering with the due process rights of the trusts' living beneficiaries to obtain remedy. Bayless refused to file a proper joinder to the active federal court suit and instead filed the action in Harris County District Court in which she failed to include all necessary parties.

48. Not only did the filing of both state court actions run afoul of the inequitable conduct exception but due to Bayless actions, the litigation was multiplied while the prospects for resolution diminished proportionally.

#### **The Second Exception – The Due Diligence Exception**

49. The second exception is satisfied when the first-filer filed suit merely to obtain priority, without a bona fide intention to prosecute the suit. Texas Appeals Courts have said that “the mere physical filing of the petition is not sufficient” to establish the requisite intent. Instead, the first-filer must exhibit “actual diligence thereafter in getting out citation and otherwise prosecuting his suit.”

50. Had Bayless intended to seek resolution for her client she would have filed a proper joinder to pollute diversity. Instead Bayless multiplied the controversy by filing an action inherently interrelated with Curtis' federal suit in Harris County District Court, in which she failed to include all necessary parties. Bayless followed her District Court claims by filing related claims in Harris County Probate Court in which she again failed to include all necessary parties.

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51. Had Bayless intended to seek resolution for her client she would not have filed an inherently interrelated action in Harris County Probate Court in which she again failed to include all necessary parties, nor would she have argued in favor of transferring the second filed case (Harris County District Court) to the third court (Harris County Probate Court No. 4), nor would she have opposed abating the third court suit (Probate Court) so the inherently interrelated non-probate actions could proceed in the court of dominant jurisdiction.
52. Had Bayless intended to seek resolution for her Estate of Nelva Brunsting claims she would have insisted the office be filled before agreeing to move forward in her probate court action without someone to prosecute the claims she claimed belonged to the estate.
53. Bayless has not demonstrated a bonafide interest in prosecuting these suits. Quite the contrary, Bayless appears to have done everything in her power to prevent resolution by filing multiple state court suits for that sole purpose.
54. The plea in abatement must be raised in a timely manner, or it is waived. Cleveland, 116 Tex. at 21, 285 S.W.2d at 1071-72. However, there can be no such thing as untimely in this case, as no findings of fact or conclusions of law have ever been entered after hearing in the Probate Court. That would be because there have been no evidentiary hearings, with one exception: The August 3, 2015 hearing on the "Emergency Motion for Protective Order" involving illegally obtained and illegally disseminated telephone wiretap recordings.
55. In that evidentiary hearing there were no fact witnesses called to testify and no evidence was offered or even asked for by the Court. No findings of fact, conclusions of law or orders after hearing ever followed.

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**The Third Exception – Necessary Parties Exception**

56. It is not required that the exact issues and all the parties be included in the first action before the second is filed, provided that the claim in the first suit may be amended to bring in all necessary and proper parties and issues. 760 S.W.2d at 247.
57. The District Court suit could not have been amended to bring in all necessary and proper parties at the time it was filed, as the Brunsting Trust Controversy was already pending in the federal court and Curtis is a California resident over which the state District Court has no personal jurisdiction.
58. Bayless could have filed a proper joinder in the federal court to pollute diversity, but refused or otherwise failed to bring in all necessary and proper parties. Bayless chose instead to file integrally related claims in two different state courts, with no intention of obtaining resolution in either. This goes to the second and third exceptions which also operate as an estoppel.
59. The only inherently interrelated actions to exhibit evidence of effort to include all necessary parties was filed by Plaintiff Curtis. First, her original federal action styled “Candace Louise Curtis v Anita and Amy Brunsting and Does 1-100”. Second was Curtis’ May 1, 2013 First Amended Complaint in the federal court specifically adding Candace Kunz-Freed and the law firm of Vacek and Freed P.L.L.C. Curtis’ First Amended Complaint in the federal court was dismissed sua sponte because it was filed without leave of the Court and did not contain a certificate of conference.

**WHO OWNS THE CLAIMS AND WHAT COURT PROPERLY HAS POSSESSION OF THIS CONTROVERSY?**

60. While a trustee owes their duties to the settlor so long as the trust is revocable, and as a general rule, the trustee cannot be held to account by other successor beneficiaries for its administration of a revocable trust during the settlor's lifetime. The same rule does not apply to

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irrevocable trusts. The successor beneficiaries of irrevocable trusts are vested and have standing to address the administration of the trust and hold a trustee accountable for past wrongs affecting their beneficial interests as soon as they become income beneficiaries. This is especially true where, as here, the trustees are beneficiaries with equitable interests equal to those to whom they owe fiduciary duties and where there are claims of conspiracy, undue influence, forgery, self-dealing and other frauds.

61. The Brunsting Trust administration controversy was already pending in the federal court when Bayless filed integrally related claims arising from a common nucleus of operative facts in the Harris County District Court in the name of the Estate of Nelva Brunsting and both of these suits were pending when Bayless filed integrally related claims arising from the same nucleus of operative facts in the Harris County Probate Court in the Name of Carl Brunsting both Individually and as Executor for the Estate of Nelva Brunsting.

62. Carl resigned as executor in February 2015 and the exact nature of the claims in the Probate Court alleged to belonging to the Estate of Nelva Brunsting remains a mystery.

63. The question of whether the living or the dead own the claims, looms large here where privity with the founder was abandoned and where the abandoner entered into a conspiracy with members of the beneficiary class resulting in injury to the other beneficiaries.

#### **The Estate of Nelva Brunsting**

64. The "Estate of Nelva Brunsting" in the present context is nothing but a gateway artifice Bayless used to interfere with remedy belonging to the living beneficiaries of an inter vivos trust. There is no probate matter. The claims filed in all three courts are integrally related to administration of the Brunsting trusts and belong to the trust and to the injured trust beneficiaries respectively and not to any decedent's "estate".

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65. Texas Estates Code §22.012 defines "Estate" to mean a **decedent's property**. While the matter before the Court is labeled "Estate of Nelva Brunsting", the subject matter is entirely focused on the Brunsting inter vivos trusts, created and funded in 1996, which have nothing to do with property belonging to the decedent at the time of her death.<sup>12</sup>

66. The action filed in this Court was brought in the name of Carl Brunsting individually and as executor for the Estate of Nelva Brunsting. Carl Brunsting resigned the office of Executor on February 19, 2015 and his individual claims have never been bifurcated from the claims brought in the name of the estate ("decedent's property").

67. On July 24, 2015 Gregory Lester was appointed Temporary Administrator and charged with a duty to evaluate the estates claims<sup>13</sup>. In writing his report, Mr. Lester never mentions the Pour-over Will, never identifies a devisee, never mentions heirs<sup>14</sup>, never mentions or identifies the nature of any interested persons,<sup>15</sup> never mentions the inventory and approved list of claims and never identifies a single claim belonging to the Estate pending in the Probate court.

68. Mr. Lester's report also fails to even mention the problem of multiple suits, involving the same persons, parties, events, and instruments having been filed in separate courts or even approach the question of dominant jurisdiction.

69. While the Lester Report refers to the original federal lawsuit as "that previous federal case" when pointing to the Report of Special Master from the case, Lester ignores the Fifth Circuit Court of Appeals Opinion and the injunction issued prior to Bayless' filing in this Court and never

<sup>12</sup> Candace Louise Curtis v. Anita and Amy Brunsting 704 F.3d 406 (Jan 2013)

<sup>13</sup> 07242015: 1343; P0046

<sup>14</sup> Sec. 22.015. HEIR. "Heir" means a person who is entitled under the statutes of descent and distribution to a part of the estate of a decedent who dies **intestate**. The term includes the decedent's surviving spouse.

<sup>15</sup> Sec. 22.018. INTERESTED PERSON; PERSON INTERESTED. "Interested person" or "person interested" means: (1) an heir, devisee, spouse, creditor, or any other having a property right in or claim against an estate being administered;

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mentions that all orders and rulings entered in the federal court case are binding upon this Court by the express terms of the federal Remand Order that this Court accepted without reservation.

70. The controversy here is not whether the cases are related but who owns the inter vivos trust related claims and which court should hear the matter. The distinction between administration of an inter vivos trust and the probate of an estate is well addressed by the court in Mayfield where the claims are broken down into three categories expressed and discussed as (the 'Trust Claim'), (the 'Guardianship Claim') and (the 'Will Claim'). The analysis proceeds as follows:

*As to the Trust Claim, the Property Code authorized the 271st District Court to hear the issues raised. Subject to exceptions we discuss below, a district court has original and exclusive jurisdiction over all proceedings against a trustee and all proceedings concerning a trust. TEX.PROB.CODE ANN. § 115.001(a)(West 2014). A non-exclusive list of those matter specifically include: "determinations of fact affecting the administration, distribution, or duration of a trust"; relieving a trustee of duties; and requiring an accounting. Id. at § 115.001(a)(6), (7), (8), and (9). Mayfield sued Bruce for breach of his duties as trustee of the Peek Family Revocable Trust (2000). She sought an accounting, complained of his actions with respect to administering the assets of Peek Family Revocable Trust (2000), and sought his removal as trustee of the PK Revocable Living Trust (the trust allegedly set up to hold the improperly transferred assets).*

*But while the district court had jurisdiction of those claims, its jurisdiction was not exclusive. Section 115.001 declares that the district court's jurisdiction is exclusive "except for jurisdiction conferred by law on a county court at law." Id. at § 115.001(d)(6). This exception, added in 2011, would create concurrent jurisdiction with a county court at law if it were also authorized to hear trust disputes. See Act of June 17, 2011, 82nd Leg., ch. 657, 2011 TEX.GEN.LAWS 1605, 1606 (adding county courts at law to exceptions). That authorization is found in the last major revision to the Probate Code before it was incorporated into the Estates Code.*

*A court exercising original probate jurisdiction also has jurisdiction over "matters related to the probate proceeding" as specified in former Section 4B of the Probate Code. Act of June 19, 2009, 81st Leg., R.S., ch. 1351, § 4A, 2009 TEX.GEN.LAWS 4273, 4275 (formally codified at TEX.PROB.CODE ANN. § 4A, now repealed and replaced with TEX.EST.CODE ANN. § 32.001(a)(West 2014)). Section 4B in turn provided that in a county with no statutory probate court, but a county court at law exercising original probate jurisdiction, one of the matters that can be "related" to a probate proceeding is the "interpretation and administration of an inter vivos trust created by the decedent whose will has been admitted to probate in the court."*

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*Id.* at § 4B(3)(now codified at TEX. EST. CODE ANN. 31.002(b)(3)). Though the textual grant of jurisdiction is not as broad as that given to a district court, it might fairly encompass Mayfield's claim because the transfer of property is an aspect of administration of a trust.

From these authorities, we discern that the Trust Claim could have been heard by the 271st District Court, or one of the county courts at law for Wise County if they were exercising original probate jurisdiction. As to the Trust Claim, the issue is not one of exclusive jurisdiction, but rather dominant jurisdiction. *In re Puig*, 351 S.W.3d 301, 305 (Tex. 2011) ("When the jurisdiction of a county court sitting in probate and a district court are concurrent, the issue is one of dominant jurisdiction.")

71. Just as in Mayfield, the District Court would have automatically declined to hear a probate matter and, just as in Mayfield, the Probate Court could also have heard the trust dispute but because the jurisdiction between the two courts is concurrent as to trusts the issue is not one of exclusive jurisdiction but rather dominant jurisdiction. Because the trust dispute was first filed in the District Court, a Plea in Abatement filed in this Court *must be granted*.

### DEMAND FOR EVIDENTIARY HEARING

#### Demand for Hearing on Plea in Abatement

72. The purpose of abatement is to save the time and expense of a trial when the plaintiff's suit cannot be maintained in the form originally presented. The Jurisdictional defects generated by this sequence of events are much too serious to be ignored unless you want your lawsuits to drag on for sixteen years or more without resolution<sup>16</sup>.

73. The pending plea in abatement, the addendum and this First Amended Verified Plea in Abatement provide the Court with sufficient notice of its want of jurisdiction over the Brunsting trust controversy!

<sup>16</sup> The Lesikar Alpert Method Syndrome

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74. Critical issues remain unresolved or not addressed and this course of action is not going to lead to any form of dispositive resolution for the parties, because it cannot. The notion of setting trial in this Court is extremely problematic for a multitude of reasons. In fact, setting trial in any court without first resolving these foundational issues is pointless:

- a. All of the Necessary Parties are not in one Court;
- b. Harris County Probate is not the Court of Dominant Jurisdiction;
- c. Carl Brunsting resigned the office of executor, the office remains vacant and,
- d. in order to move forward with the question of appointing an administrator one would need to distinguish the claims filed in the probate court that belong to the estate, if any, from the claims filed in the probate court that belong to Carl Brunsting individually.

75. This should be a simple matter of clarification for Ms. Bayless since she drafted the claims but to date, Bayless has refused or otherwise failed to do so and the Temporary Administrator was apparently incompetent to distinguish the Brunsting inter vivos trust administration controversy (beneficiary claims against trustees in personam - a.k.a the trust matter) from claims belonging to the decedent's estate (in rem administration of a decedents property - a.k.a. the probate matter).

#### The Standard of Review

76. A relator need only establish a trial court's abuse of discretion to demonstrate entitlement to mandamus relief with regard to a plea in abatement in a dominant-jurisdiction case.<sup>17</sup>

<sup>17</sup> IN RE: J.B. Hunt Transport, Inc., Relator, NO. 15-0631 Supreme Court of Texas, Decided: May 27, 2016

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77. An Order denying a plea in abatement regarding dominant-jurisdiction is reviewed under the deferential abuse-of-discretion standard.<sup>18</sup> A trial court abuses its discretion when it acts “arbitrarily, unreasonably, or without regard to guiding legal principles.”<sup>19</sup> With regard to factual questions, the abuse-of-discretion standard is more akin to a clear-error standard.<sup>20</sup> But with regard to questions of law, “[a] trial court has no ‘discretion’ in determining what the law is or in applying the law to the facts.”<sup>21</sup> This principle applies “even when the law is unsettled.”<sup>22</sup> We must thus carefully establish the controlling legal principles at issue in this case.

78. “The general common law rule in Texas is that the court in which suit is first filed acquires dominant jurisdiction to the exclusion of other coordinate courts.” As a result, when two suits are inherently interrelated, “a plea in abatement in the second action *must* be granted.”<sup>23</sup> The dominant jurisdiction issue has been raised before this court in two previous pleadings without a ruling.<sup>24</sup>

79. The first-filed rule flows from “principles of comity, convenience, and the necessity for an orderly procedure in the trial of contested issues.”<sup>25</sup> The default rule thus tilts the playing field in favor of according dominant jurisdiction to the court in which suit is first filed. Once the first filed rule is settled, the issue, if any, comes down to the exceptions to that general rule if any can be shown and none have.

<sup>18</sup> See, e.g., *Street v. Honorable Second Ct. of Appeals*, 756 S.W.2d 299, 300 (Tex. 1988).

<sup>19</sup> *Bocquet v. Herring*, 972 S.W.2d 19, 21 (Tex. 1998)

<sup>20</sup> *Goode v. Shoukfeh*, 943 S.W.2d 441, 446 (Tex. 1997).

<sup>21</sup> *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992).

<sup>22</sup> *In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 136 (Tex. 2004) (orig. proceeding).

<sup>23</sup> *Curtis v. Gibbs*, 511 S.W.2d 263, 267 (Tex. 1974).

<sup>24</sup> On 07/17/2015 in Case No. 412249-401, PBT-2015-234080, Vacek and Freed Response to Bayless Motion (Art II p.3), and, 03/08/2016 in Case No. 412249, PBT-2016-77014, Vacek and Freed Response to Curtis Motion (Art III p.5)

<sup>25</sup> *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 247 (Tex. 1988) (emphasis added). See also *Curtis*, 511 S.W.2d at 267 (“Any subsequent suit involving the same parties and the same controversy must be dismissed if a party to that suit calls the second court’s attention to the pendency of the prior suit by a plea in abatement.”).

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**Conclusion**

80. Despite appearances, this Court never properly acquired jurisdiction over the Brunsting trust controversy and because it could not compose itself a court of competent jurisdiction. There was no Court to receive a remand of Curtis' improperly polluted federal diversity case, which now sits in limbo with no immediate hope for substantive resolution.
81. There is no lawful choice but to abate the interrelated non-probate action filed in the Probate Court and if it is necessary to have a hearing on the Plea in Abatement in order to get Bayless to clarify which of her diametrically opposed positions she is willing to verify under oath, and to determine what claims belonging to the Estate, if any, are pending in this Court, then a hearing should be set and Bayless should be ordered to file her affidavit clarifying the distinctions between Carl's individual claims and the claims filed in the probate court, belonging to the Estate of Nelva Brunsting, no less than ten days before the Plea in Abatement hearing.
82. Realtor herein further moves the Court to take judicial notice of the law and the facts and to bifurcate the Brunsting inter vivos trust action from the probate matter pending in this Court.

Respectfully submitted,

\_\_\_\_\_  
Candace Louise Curtis

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Deputy



VERIFICATION

Before me the undersigned Notary Public, personally appeared Candace Louise Curtis and after having been properly identified and duly sworn, did declare and state under penalty of perjury as follows:

My name is Candace Louise Curtis. I am of the age of majority and competent to testify. I have personal knowledge of the facts stated in the Plea in Abatement I filed August 17, 2018 in the Harris County Probate Court and the Addendum of Memorandum in Support of the Plea in Abatement that I filed September 4, 2018; Those instruments are incorporated by this reference as if fully set forth herein and;

I have personal knowledge of the facts stated in this First Amended Plea in Abatement and I declare under penalty of perjury pursuant to the laws of the United States of America and the State of Texas, that the facts stated in all three pleadings are true and correct.

Respectfully submitted,

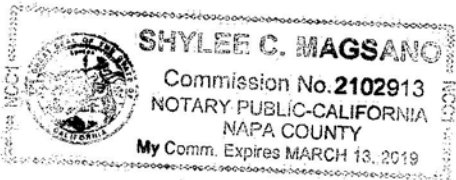
*[Handwritten signature of Candace Louise Curtis]*

Candace Louise Curtis

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  
Subscribed and sworn to (or affirmed) before me on this Monday  
of October 2018 by Candace Louise Curtis  
proved to me on the basis of satisfactory evidence to be the  
person(s) who appeared before me.

Signature *[Handwritten Signature]* (seal)



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Harris County, Texas



*[Handwritten Signature]* Deputy  
Sterling G. Senechal III

TAB 33

CANDACE LOUISE CURTIS §  
Plaintiff, § Harris County Probate No. 4 No 412,249-402  
v § Federal Civil Action No. 4:12-cv-00592  
Anita Kay Brunsting, §  
Amy Ruth Brunsting, §  
Does 1-100 §  
Defendants. §

---

CARL HENRY BRUNSTING §  
Individually and as independent executor § Harris County Probate No. 4  
of the estates of Elmer H. § No 412,249-401  
Brunsting and Nelva E. Brunsting §  
§  
vs §  
§  
ANITA KAY BRUNSTING f/k/a §  
ANITA KAY RILEY, individually, §  
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; §  
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; §  
CAROLE ANN BRUNSTING, §  
individually and as Trustee of the §  
Carole Ann Brunsting Personal §  
Asset Trust; and Candace Louise Curtis §  
as Nominal Defendant Only §

---

## Plea to the Jurisdiction

1. Comes now Real Party in Interest, Candace Louise Curtis, herein respectfully moving this Honorable Court for an Order dismissing the above-titled and numbered action for want of subject matter jurisdiction.
2. This Court is without authority to determine the subject in controversy because Plaintiff's Petition does not show on its face that the Court has subject matter jurisdiction. Quite the contrary.
3. Bayless' complaint in 412,249-401, filed April 9, 2013, declares the jurisdiction for Plaintiff's cause of action to be Chapter 37 of the Texas Civil Practice and Remedies Code and Chapter 115 of the Texas Property Code.
4. Bayless also cites to the venue provisions in Texas Civil Practices & Remedies Code §15.002(a)(1).
5. Bayless goes on to state that the purpose for the claims are to:
  - (a) establish, construe the terms of, and determine the rights and liabilities of the parties under the Family Trust, the Successor Trusts, and the trusts purportedly created pursuant to the terms of the tainted 8/25/10 QBD;
  - (b) require an accounting of all the trusts and other transactions resulting from Anita, Amy, and Carole's exercise of control over Elmer and Nelva's remaining assets, however held;
  - (c) determine damages resulting from Anita, Amy, and Carole's wrongful acts, including, but not limited to, numerous breaches of fiduciary duties;



- (d) impose a constructive trust over assets wrongfully transferred, as well as anything of value obtained through the use of assets wrongfully transferred;
- (e) obtain injunctive relief to preserve Elmer and Nelva's assets, however held, until the records concerning the transfers of assets can be examined and appropriate remedies can be sought so that the improper transfers can be reversed and the assets can be properly allocated and distributed.

### **Probate Proceedings**

6. As of January 1, 2014, the former Texas Probate Code has been repealed and replaced with the Texas Estates Code. See *In re Estate of Aguilar*, No. 04–13–00038–CV, 2014 WL 667516, \* 1 n. 1 (Tex.App.-San Antonio Feb. 19, 2014, pet. filed) (mem.op.); *In re Estate of Dixon*, No. 14–12–01052–CV, 2014 WL 261020, \*1 n. 1 (Tex.App.-Houston [14th Dist.] Jan. 23.2014, pet. filed). All citations herein will be to the Texas Estates Code.
7. For Bayless’ suit to be subject to the jurisdiction and venue provisions of the Texas Estates Code, it must qualify either as a “probate proceeding” or a “matter related to a probate proceeding” as defined by the Estates Code. See, e.g., Tex. Est.Code §§ 32.001(a)<sup>1</sup>, 33.002, 33.052, 33.101; see also Tex. Est.Code § 21.006 (stating procedure in Title 2 of the Estates Code “governs

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<sup>1</sup>See Tex. Est.Code §§32.001(a) (“All probate proceedings must be filed and heard in a court exercising original probate jurisdiction. The court exercising original probate jurisdiction also has jurisdiction of all matters related to the probate proceeding as specified in Section 31.002 for that type of court.” (emphasis added)), 33.002 (providing that with one exception not relevant here, “venue for any cause of action related to a probate proceeding pending in a statutory probate court is proper in the statutory probate court in which the decedent's estate is pending”

all probate proceedings”). Thus, we turn to the definitional provisions of the Estates Code.<sup>2</sup>

8. Tex. Est.Code § 31.001. SCOPE OF "PROBATE PROCEEDING" FOR PURPOSES OF CODE. The term "probate proceeding," as used in this code, includes:

- (1) the probate of a will, with or without administration of the estate;
- (2) the issuance of letters testamentary and of administration;
- (3) an heirship determination or small estate affidavit, community property administration, and homestead and family allowances;
- (4) an application, petition, motion, or action regarding the probate of a will or an estate administration, including a claim for money owed by the decedent;
- (5) a claim arising from an estate administration and any action brought on the claim;
- (6) the settling of a personal representative's account of an estate and any other matter related to the settlement, partition, or distribution of an estate; and
- (7) a will construction suit.

9. It is clear from this list that none of Bayless’ claims fall within the provisions of § 31.001 and thus, by definition, are not probate matters.

---

<sup>2</sup> See also Tex. Est.Code § 22.029 (“The terms ‘probate matter,’ ‘probate proceedings,’ ‘proceedings in probate,’ and ‘proceedings for probate’ are synonymous and include a matter or proceeding relating to a decedent's estate.”). Tex. Est.Code § 22.012: “estate” means a decedent's property...”

## **Matters Related to Probate Proceedings**

10. The Estates Code includes a distinct definition of “a matter related to a probate proceeding,” see Tex. Est.Code § 31.002, and has jurisdiction and venue provisions specific to such matters, see, e.g., Tex. Est.Code § 32.001(a), 33.002.
11. Tex. Est.Code § 31.002(a), (b) & (c) “A matter related to a probate proceeding” is defined based on whether a county has a statutory probate court or county court at law exercising probate jurisdiction.<sup>3</sup>
12. Tex. Est.Code § 31.002 MATTERS RELATED TO PROBATE PROCEEDING. (a) For purposes of this code, in a county in which there is no statutory probate court or county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:
  - (1) an action against a personal representative or former personal representative arising out of the representative's performance of the duties of a personal representative;
  - (2) an action against a surety of a personal representative or former personal representative;
  - (3) a claim brought by a personal representative on behalf of an estate;
  - (4) an action brought against a personal representative in the representative's capacity as personal representative;
  - (5) an action for trial of title to real property that is estate property, including the enforcement of a lien against the property;
  - (6) an action for trial of the right of property that is estate property;

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<sup>3</sup> IN RE: Julie HANNAH Court of Appeals of Texas, Houston (14th Dist.) No. 14–14–00126–CV.  
Decided: May 13, 2014

- (7) the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court; and
  - (8) the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.
13. Tex. Est.Code § 31.002 (b) For purposes of this code, in a county in which there is no statutory probate court, but in which there is a county court at law exercising original probate jurisdiction, a matter related to a probate proceeding includes:
- (1) All matters and actions described in Subsection (a);
  - (2) the interpretation and administration of a testamentary trust if the will creating the trust has been admitted to probate in the court; and
  - (3) the interpretation and administration of an inter vivos trust created by a decedent whose will has been admitted to probate in the court.
14. Tex. Est.Code § 31.002 (c) For purposes of this code, in a county in which there is a statutory probate court, a matter related to a probate proceeding includes:
- (1) All matters and actions described in Subsections (a) and (b); and
  - (2) Any cause of action in which a personal representative of an estate pending in the statutory probate court is a party in the representative's capacity as personal representative.
- Added by Acts 2009, 81st Leg., R.S., Ch. 1351 (S.B. 408), Sec.13(a), eff. January 1, 2014.*
15. Respondents will likely argue that § 31.002(a)(8) and § 31.002(b)(3) apply because the matter before the Court involves the interpretation and administration of an inter vivos trust created by a decedent whose will has



## 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 19th day of October 2018.

//s//

---

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**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 Monday, October 08, 2018 to the following attorneys and unrepresented parties.

//s//

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TAB 34



Candace Louise Curtis	§	
	§	412249-402
v.	§	Feb 27, 2012
	§	
Anita Brunsting et al.,	§	
<hr/>		
IN RE: THE ESTATE OF	§	PROBATE COURT
	§	
NELVA E. BRUNSTING,	§	NUMBER FOUR (4) OF
	§	
DECEASED	§	HARRIS COUNTY, TEXAS
	§	412,249 April 2, 2012
	§	
	CLOSED	
<hr/>		
Carl Henry Brunsting	§	
Individually	§	
	§	412,249-401
v.	§	April 9, 2013
	§	
Anita Brunsting et al.,	§	
<hr/>		
Executor for Estate of	§	
Nelva Brunsting	§	412,249-401
v.	§	April 9, 2013
	§	
Anita Brunsting et al.,	§	
<hr/>		

**Order**

The Court has reviewed the Plea in Abatement and Plea to the Jurisdiction filed by Candace Curtis in the Estate of Nelva Brunsting 412,249 and the ancillary cases. The Court has also reviewed the opposition to the Abatement filed by Carl Brunsting’s attorney Bobbie G. Bayless. No opposition to the Plea to the Jurisdiction has been filed.

The court has examined the record, considered the Pleas and the applicable law and finds that the matter before it is not a probate matter, but an inter vivos trust administration dispute brought under the Texas Civil Practice and Remedies Code.

Ordinarily this court would have jurisdiction over this type of dispute but the Court also finds that lawsuits integrally related to the same nucleus of operative facts, involving the same transactions, events and persons and requiring interpretation of the same instruments, have been filed into three separate courts when only one court can hear and decide this controversy.

The record shows that the Brunsting Trust controversy was first filed in the United States District Court for the Southern District of Texas and that the controversy was pending in that court when a related action was filed in the Harris County District Court. Both of those cases were active when related claims were filed in this Court. Because this Court is not the Court in which Brunsting inter vivos trust related claims were first filed, it is not the court of dominant jurisdiction and could not take cognizance of this matter at the time it was filed. The want of jurisdiction cannot be cured nunc pro tunc.