

C.A. No. 412249-401

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

CARL HENRY BRUNSTING	§
	§
V.	§
	§
ANITA KAY BRUNSTING &	§
AMY R. BRUNSTING, Et Al	§

**Agreed Emergency Motion for Authority for the
Co-Trustees to Sell the Iowa Farm**

Carl Brunsting, Carole Brunsting, and the Co-Trustees, Anita Brunsting and Amy Brunsting (collectively the “Remaining Beneficiaries”), file this motion for authority for the Co-Trustees to place the Iowa Farm under a purchase and sale contract (“Contract”), such Contract to be subject to Court approval.

The Remaining Beneficiaries request that the relief sought herein be granted as soon as possible. The Co-Trustees and the current tenant/farmer (“Buyer”) desire to execute the final negotiated Contract on or before March 31, 2024, so that the Court can approve the Contract in April 2024 (if not sooner), and the closing can occur on May 31, 2024 (if not sooner).

I. Procedural Status

1.01. The Brunsting Family Trust, which includes the Nelva E. Brunsting Survivor’s Trust (“Survivor’s Trust”) and the Elmer H. Brunsting Decedent’s Trust (“Decedent’s Trust”), are three (3) of several trusts (collectively the “Trust”) subject to this Court’s jurisdiction. Furthermore, material transactions related to the Trust require Court approval because of an injunction currently in place.

1.02. On February 25, 2022, the Court granted the Co-Trustees motion for summary judgment, which found the plaintiff, Candace Curtis (“Curtis”), forfeited her interest as a beneficiary under the Trust. As such, the term “Remaining Beneficiaries” as used herein does not include Curtis. The term “Remaining Beneficiary” means Carl Brunsting, Carole Brunsting, Amy Brunsting, or Anita Brunsting, as determined by the context.

1.03. As a forfeited devisee, Curtis has no standing to challenge the relief sought by this motion.

1.04. Curtis appealed this case on the ground that this Court lacks subject matter jurisdiction. As of February 22, 2024, the Court of Appeals requires Curtis to tender additional briefing to refute the Co-Trustees argument that Curtis' appeal is untimely. The additional briefing is required on or before March 7, 2024. The Court of Appeals' Notice of Intent to Dismiss is attached hereto as Exhibit A, and incorporated by reference as though set forth in full herein.

1.05. The status of Curtis' appeal has no effect on the relief sought herein, as either most or all of the Farm must be sold in order for one or more Remaining Beneficiaries to receive a Trust distribution of liquid assets. Each Remaining Beneficiary has the right, but not the obligation to receive some of the acreage of the Iowa Farm in lieu of a monetary distribution.

II. The Iowa Farm

2.01. Decedent's Trust owns approximately 145 acres (+/-) of farm land in Sioux County, Iowa (the "Iowa Farm" or "Property").¹ On February 19, 2024, the Co-Trustees received a signed, ***nonbinding*** letter of intent ("LOI") from the current tenant/farmer ("Buyer"). The LOI is attached hereto as Exhibit B, and incorporated by reference as though set forth in full herein. (Emphasis added).

2.02. The sale would be a cash sale, in that no third party financing will be involved. The negotiated sales price is \$3,249,000.00, which is ninety-five percent (95%) of the appraised value of \$3,420,000.00.

2.03. Per the LOI, the Co-Trustees and the Buyer desire to finalize a contract by March 31, 2024, which if completed by that date, increases the probability the sale can be closed by May 31, 2024.

2.04. The Contract will provide that no closing regarding the Iowa Farm can occur until this Court approves the final Contract signed by the Buyer and signed by one or both Co-Trustees.

¹ The term "Iowa Farm" or "Property" means the real property and improvements thereon of 144.37 acres of land in Sioux County, Iowa, and which is more particularly described as follows:

The fractional NW1/4 of Section 02, Township 96 North, Range 45 West of the 5TH P.M., Sioux County, Iowa; EXCEPT the North 542.50 feet of the West 660.00 feet (both as measured at right angles) of the Fr'L NW1/4 of said NW1/4; containing a total of 144.37 acres, inclusive of 4.45 acres of a public roadway easement, and being subject to any and all other easements, be they of record or not (hereinafter the "Farm").

(Note: the foregoing legal description assumes the North line of the Fr'L NW1/4 of said Section 02 bears South 89° 23' 08" East, as shown from the Iowa Regional Coordinate System, Zone 1: Spencer).

Prayer

Carl Brunsting, Carole Brunsting, and the Co-Trustees request that the Court authorize the Co-Trustees to negotiate and execute the above-referenced Contract for the sale of the Iowa Farm, reasonably consistent with the terms and conditions of the LOI, and on such other and further terms as the Co-Trustees in their discretion consider reasonable and necessary.

The execution of the Contract will be subject to review and approval of this Court, and the agreement of any Remaining Beneficiary to this agreed motion is without waiver of their right to object to the terms and conditions of the executed Contract tendered to this Court for approval.

The Remaining Beneficiaries request that the Court grant them such other and further relief, general and special, legal and equitable, to which they may be entitled to receive.

Respectfully submitted,

// s // Stephen A. Mendel

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Respectfully submitted,

// s // Neal E. Spielman

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Attorneys for Amy Brunsting

Certificate of Conference

As indicated in the motion, the only parties with standing to agree or oppose this motion are Carl Brunsting, Carole Brunsting, and the Co-Trustees, Anita Brunsting and Amy Brunsting (collectively the "Remaining Beneficiaries").

By his electronic signature below, the undersigned certifies that he communicated with the Remaining Beneficiaries with standing, and the relief sought herein is agreed.

// s // Stephen A. Mendel

Stephen A. Mendel

Certificate of Service

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

Neal E. Spielman (SBN 00794678) Griffin & Matthews 1155 Dairy Ashford, Suite 300 Houston, TX 77079 O: 281-870-1124 / F: 281-870-1647 E: nspielman@grifmatlaw.com	Attorney for Co-Trustee, Amy Brunsting
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Bobbie G. Bayless (SBN 01940600) Bayless & Stokes 2931 Ferndale Houston, Texas 77098 O: 713-522-2224 / F: 713-522-2218 E: bayless@baylessstokes.com	Attorney for Drina Brunsting, Alleged Attorney in Fact for Carl Brunsting
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Ms. Carole A. Brunsting 5822 Jason St. Houston, TX 77074 C: 713-560-6381 E: cbrunsting@sbcglobal.net	Pro Se
--	--------

Cory S. Reed/ Zandra Foley Thompson, Coe, Cousins & Irons, LLP One Riverway, Suite 1400 Houston, Texas 77056 O: 713-403-8213 E: creed@thompsoncoe.com	Attorneys for Candace Kunz-Freed & Vacek & Freed, P.L.L.C.
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via eService, email, telefax, or first-class mail, on this February 28, 2024.

// s // Stephen A. Mendel

Stephen A. Mendel

Exhibit A



**COURT OF APPEALS FOR THE
FIRST DISTRICT OF TEXAS AT HOUSTON**

NOTICE OF INTENT TO DISMISS

Appellate case name: Candace Louise Curtis v. Carl Henry Brunsting, Individually and as Independent Executor of the Estates of Elmer H. Brunsting and Nelva E. Brunsting

Appellate case number: 01-23-00362-CV

Trial court case number: 412249-401

Trial court: Probate Court No. 4 of Harris County

The Court's records indicate that appellant's notice of appeal, filed on April 26, 2023, may not have been timely filed to appeal (1) the trial court's order signed on February 14, 2019 denying appellant's plea to the jurisdiction; (2) the trial court's order signed on February 25, 2022 granting summary judgment in favor of Amy Ruth Brunsting and Anita Kay Brunsting, in their individual capacities and as co-trustees of The Brunsting Family Living Trust a/k/a The Restatement of the Brunsting Family Living Trust; and (3) "any other rulings subsumed with Cause No, 412249-401." *See* TEX. R. APP. P. 26.1 (requiring notice of appeal to be filed within thirty days after judgment is signed or ninety days after judgment is signed if party timely files motion for new trial, motion to modify, motion to reinstate or, under certain circumstances, request for findings of fact and conclusions of law). The clerk's record filed in this appeal does not reflect that any post-judgment motion was filed. *See* TEX. R. CIV. P. 329b(a) (requiring motion for new trial to be filed within thirty days after judgment or other order complained of is signed); *see also* TEX. R. CIV. P. 329b(g). Without a timely filed notice of appeal, this Court lacks jurisdiction over an appeal. *See* TEX. R. APP. P. 25.1.

Accordingly, the Court has directed me to notify appellant that unless, **within fourteen days of the date of this notice**, appellant responds in writing with citation to the record, statutes, rules, and case law, demonstrating that the Court has appellate jurisdiction over this appeal, the appeal is subject to dismissal for lack of jurisdiction. If a meritorious response is not received by the deadline, the Court may dismiss the appeal for want of jurisdiction without further notice. *See* TEX. R. APP. P. 42.3(a).

Clerk's Signature: /s/ Deborah M. Young

Date: February 22, 2024

Exhibit B

Anita K. Brunsting, Co-Trustee
Elmer H. Brunsting Decedent's Trust
801 Bassington Ct.
Pflugerville, Texas 78660

VIA EMAIL

February 17, 2024

Re: Letter of Intent – 144.37 Acres (+/-) in Sioux County, Iowa

Mr. Doyle Wissink
1526 Willow St.
Hull, Iowa 51239

Dear Doyle:

As a Co-Trustee of the Elmer H. Brunsting Decedent's Trust, dated April 1, 2009 (the "Trust"), this correspondence is a letter of intent ("LOI") from the Trust to you regarding the sale of that one certain 144.37 acres of Trust land (more or less) in Sioux County, Iowa.

As used in this LOI, the term "Buyer" means you or your assigns. The term "Seller" means the Trust, the current owner of record for the real property described below. The term "Party" means either Buyer or Seller as determined by the context. The term "Parties" means the Buyer and Seller.

The term "Property" means the real property and improvements thereon of 144.37 acres of land in Sioux County, Iowa, and which is more particularly described as follows:

The fractional NW1/4 of Section 02, Township 96 North, Range 45 West of the 5THP.M., Sioux County, Iowa; EXCEPT the North 542.50 feet of the West 660.00 feet (both as measured at right angles) of the Fr'L NW1/4 of said NW1/4; containing a total of 144.37 acres, inclusive of 4.45 acres of a public roadway easement, and being subject to any and all other easements, be they of record or not (hereinafter the "Farm").

(Note: the foregoing legal description assumes the North line of the Fr'L NW1/4 of said Section 02 bears South 89° 23' 08" East, as shown from the Iowa Regional Coordinate System, Zone 1: Spencer.

Absent a signed written contract for the sale of the Property, this LOI, and subsequent versions of this LOI, and any oral statements regarding the Property are nonbinding.

This LOI is intended to address the material terms of the sale of the Property from the Seller to the Buyer and, as such, is not intended to include every term and/or provision that would be necessary to effectuate the sale of the Property.

At this time, Seller sees the material terms of the sale as follows:

1. Seller will not, prior to February 29, 2024, solicit, initiate, or negotiate any sale proposals or offers with any persons or entities other than Buyer (hereinafter the "Non-Solicitation Period").
2. Notwithstanding the limitations of the preceding paragraph, negotiations by, among, or between any remaining Trust beneficiaries are always permitted.
3. If on or before February 29, 2024, there is mutual understanding of the material terms to be drafted into a binding written contract, then the Non-Solicitation Period shall be extended through and including March 29, 2024, so that binding contractual agreements can be finalized and executed.
4. Purchase Price - \$3,249,000.00, which equals \$22,504.68 per acre for the entirety of the Property. The purchase price is ninety-five (95%) of the appraised value of \$3,420,000.00.
5. The sale is a cash sale, which no financing shall be involved.
6. Carole Brunsting:
 - A. Buyer is aware that Carole Brunsting is one of the remaining Trust beneficiaries, and she desires that part of the ultimate Trust distribution to her be up to a potential 28.87 acres of the Property (hereinafter the "Carole Brunsting Distribution" or the "CBD").
 - B. Subject to the approval of Probate Court No. 4, of Harris County, Texas (the "Probate Court"), the CBD will be located along the west property line of the Property. The length of the CBD shall not exceed 1,980.33 feet in a northerly direction starting from the southwest corner of the Property, nor exceed 635.02 feet in an easterly direction from the southwest corner of the Property.
7. Buyer shall acquire the Property in two transactions:
 - A. Buyer shall purchase 115.50 acres of the Property (144.37 acres less 28.87 acres for the CBD) for a sales price of \$2,599,290.54. The closing for this transaction shall be on or before 5:00 p.m., Central time, May 31, 2024, but not later than 5:00 p.m., Central time, July 1, 2024; provided, however, the closing date shall be extended as reasonably necessary to complete an abstract and lien search. Closing costs for the deed and abstract of the 115.50 acres shall be paid by Seller.

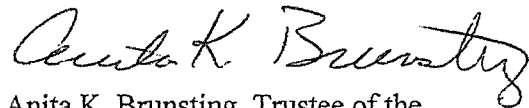
- B. If on the one-year anniversary of the closing of the sale of 115.50 acres to Buyer, there remains any portion of the 28.87 acres for the CBD, then Buyer agrees to buy such remaining acreage from Seller at a price of \$22,504.68 per acre. The closing for this transaction shall be not later than thirteen (13) months from the closing date regarding the foregoing 115.50 acres. Closing costs for the deed and abstract for the remainder and residue of the CBD shall be paid by Seller.
8. Absent an agreement between Buyer and Seller, the CBD shall start at the southwest corner of the Property and shall be not less than 1,980.33 square feet as measured in a northerly direction from the southwest corner of the Property. The width of the CBD shall be determined by the amount of acreage allocated to the CBD. By way of example, and not as a limitation:
 - A. If Seller wanted the CBD to be 28.87 acres, then the width of the CBD would be 635.02 feet easterly from the southwest corner of the Property. Under this example, there would be no subsequent sale to Buyer.
 - B. If Seller wanted the CBD to be 15.00 acres, then the length of the 15 acres would be 1,980.33 feet along Hickory Ave., with the width of the 15-acre tract being 329.95 feet easterly of the southwest corner of the Property. Under this example, the remaining acreage would be 13.87 acres (28.87 acres less 15.00 acres), and the purchase price would be \$312,139.91 (13.87 acres x \$22,504.68/acre).
9. The title company for this transaction shall be as mutually agreed by the parties.
10. Except for the cost of the deed and abstract to be paid by Seller, each Party shall bear their own costs and fees, whether accounting fees, attorneys' fees, expert fees, inspection fees, etc., regarding the subject matter of this transaction.
11. Buyer shall receive a credit against the Purchase Price for all rent paid by Buyer in 2024, if, and only if, the sale of the Property closes in calendar year 2024.
12. Agreements contemplated are as follows:
 - A. Real estate contract.
 - B. Trustees' real estate affidavit.
 - C. Purchaser's real estate affidavit.
 - D. Trustee's deed, with provisions regarding title defense as to claims by, through, or under the Trust, and that all acreage is purchased as-is with all faults, if any, known and unknown. As part of the deed, Buyer shall execute an acceptance of the terms and conditions of the deed.
 - E. Notice of no oral agreements.

F. Such other agreements and/or affidavits as reasonably necessary to effectuate the sale of the Property.

13. Prior to a closing as contemplated by this LOI, the sale of the Property, including, but not limited to, the closing dates, and/or the termination of the sale, and all other terms and conditions of the sale shall be subject to all orders of any Texas courts, including, but not limited to Probate Court No. 4, of Harris County, Texas.

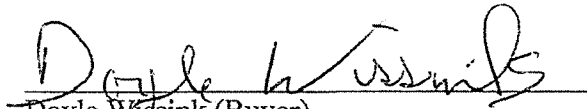
If the foregoing accurately describes many of the material provisions of the sale, then please confirm same by your signature in the space provided below.

Very truly yours,



Anita K. Brunsting, Trustee of the
Elmer H. Brunsting Decedent's Trust,
Dated April 1, 2009 (Seller)

SUBJECT TO THE NONBINDING
NATURE OF THIS LETTER OF INTENT,
AGREED AS OF THE DATE BELOW:


Doyle Wissink (Buyer)

Date Signed: February 19, 2024

Automated Certificate of eService

This automated certificate of service was created by the e filing system. The filer served this document via email generated by the e filing system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Stephen Mendel
Bar No. 13930650
info@mendellawfirm.com
Envelope ID: 85016944
Filing Code Description: Application of Miscellaneous kind
Filing Description: Agreed Emergency Motion for Authority for the Co-Trustees to Sell the Iowa Farm
Status as of 2/29/2024 8:08 AM CST

Associated Case Party: ANITAKAYBRUNSTING

Name	BarNumber	Email	TimestampSubmitted	Status
Stephen A.Mendel		info@mendellawfirm.com	2/28/2024 4:16:23 PM	SENT

Associated Case Party: CANDACELKUNZ-FREED

Name	BarNumber	Email	TimestampSubmitted	Status
Cory SReed		creed@thompsoncoe.com	2/28/2024 4:16:23 PM	SENT

Associated Case Party: AMYRUTHBRUNSTING

Name	BarNumber	Email	TimestampSubmitted	Status
Neal Spielman		nspielman@grifmatlaw.com	2/28/2024 4:16:23 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Carole BrunstingBrunsting		cbrunsting@sbcglobal.net	2/28/2024 4:16:23 PM	SENT
Bobbie GBayless		bayless@baylessstokes.com	2/28/2024 4:16:23 PM	SENT
John BrusterLloyd		bruse@jgl-law.com	2/28/2024 4:16:23 PM	SENT