



NO. 412,249-401

CARL HENRY BRUNSTING, et al	§	IN PROBATE COURT
v.	§	NUMBER FOUR (4) OF
ANITA KAY BRUNSTING, et al	§	HARRIS COUNTY, TEXAS

CO-TRUSTEES' OBJECTIONS TO NOTICE OF REMOVAL

TO THE HONORABLE JUDGES HORWITZ AND COMSTOCK:

AMY RUTH BRUNSTING ("Amy") and ANITA KAY BRUNSTING ("Anita") (the "Co-Trustees"), in their individual capacities and as the co-trustees of The Brunsting Family Living Trust a/k/a The Restatement of The Brunsting Family Living Trust (the "Trust") file this their Objections to Candace Louise Curtis's Notice of Removal.

I. ARGUMENT AND AUTHORITY

The Co-Trustees object to the Notice of Removal (the "Removal") filed by Candace Louise Curtis ("Curtis") on or about April 8, 2022. While the objections presented have merit, they are also "preliminary" in the sense that Co-Trustees reserve the right to supplement these objections with additional information and identify other objections, defects and/or reasons why Curtis's Removal is procedurally and substantively improper.

As described in 28 U.S. Code §1441, only a defendant has the option of removing a civil action from state court to federal court. To the extent certain exceptions may exist by which a plaintiff may remove an action to federal court, no such exceptions have been identified by Curtis, and none apply.

Objection No. 1 Curtis is neither a plaintiff nor a defendant.

Recently, the Court signed an Order granting the Co-Trustees' Motion for Summary Judgment. Via the Motion and Order, all claims by or against Curtis were resolved in the Co-Trustees' favor. Further, via the Order, it has been confirmed that Curtis's beneficiary status under



Jessica M. Hight

the Trust has been forfeited. As a result of the Motion and the Order, Curtis is a “stranger” to this case. She is neither a plaintiff, defendant, nor a beneficiary. She is, at best, a potential appellant. She has no basis for removing this case to federal court. Accordingly, the Co-Trustees object to the Removal.

Objection No. 2 Prior to forfeiture, Curtis was a plaintiff and a counter-defendant.

In addition to and/or in the alternative to Objection No. 1, the Co-Trustees object to the Removal because Curtis is not/was never just a “defendant.” She is not authorized to remove this matter under the removal statute.

As this Court has been made aware, in February 2012, Curtis initiated legal proceedings regarding the Trust/against the Co-Trustees in the United States District Court for the Southern District of Texas [Houston] Division. As a plaintiff, Curtis sued the Co-Trustees and Does 1-100.

Over time, at Curtis’s request, her claims were amended and transferred to Probate Court No. 4. As time went by, Curtis – as a plaintiff – pursued her claims in Probate Court No. 4 in various ways. Eventually, the Co-Trustees asserted counterclaims against Curtis, at which time she also became a counter-defendant. Curtis answered and attempted to defend herself against the asserted counterclaims.

At no time was Curtis just a “defendant” in this matter. Without that capacity, she has no basis for removing this case to federal court.

Additionally, her status as a counter-defendant affords her no right of removal. In *Home Depot U.S.A., Inc. v. Jackson*, — U.S. —, 139 S. Ct. 1743, 1745 (2019), the United States Supreme Court determined/confirmed that the general removal statute does not permit removal by any counterclaim defendant.



**Objection No. 3 The Removal does not divest this Court of jurisdiction.**

In *Gonzalez Guilbot v. Estate of Gonzalez y Vallejo*, 267 S.W.3d 556, 559 (Tex.App.—Houston [14th Dist.] 2008), the Court of Appeals opined that “[i]f a party follows the proper procedure for removing a case to federal court, the state court loses jurisdiction and may not proceed further unless the case is remanded”), *aff’d in part, rev’d in part on other grounds, and remanded by, Guilbot Serros de Gonzalez*, 315 S.W.3d at 534–41. As noted via Objection No. 1 and/or Objection No. 2, Curtis’s Removal is not procedurally proper. Curtis is not in compliance with the removal statute generally and/or with Local Rule 81, as promulgated by the United States Southern District of Texas. Because the Removal is not procedurally proper, the Court does not lose jurisdiction.

Accordingly, the Co-Trustees object to the Removal generally, and specifically as to any direct or indirect reference to or implication that this Court has lost jurisdiction. The Co-Trustees extend this objection to any argument or communication presented to the Court by Curtis directly or through counsel by methods other than the Removal, including without limitation: any e-mail communications.

WHEREFORE, PREMISES CONSIDERED, Defendants, AMY RUTH BRUNSTING and ANITA KAY BRUNSTING request that:

1. This Court grant the Co-Trustees objections and proceed forward with further determination of this case as it deems proper in the normal and customary exercise of its jurisdiction; and
2. Grant/award the Co-Trustees such other and further relief at law and in equity to which either or both may be justly entitled, and/or as needed to effectuate the issues identified in this Supplemental Motion.



James H. Mendel

County Clerk Harris County, Texas



Respectfully submitted,

GRIFFIN & MATTHEWS

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing instrument has been sent on this 11th day of April 2022, to all counsel of record/pro se parties via E-file and/or direct e-mail.

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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 April 18, 2022

Teneshia Hudspeth, County Clerk
Harris County, Texas

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