# Petition for Summary and Declaratory Judgment Pursuant to the Uniform Enforcement of Foreign Judgments Act

## Introduction

Plaintiff, Candace Louise Curtis, is one of five beneficiaries of an inter vivos family trust. Defendants Anita Brunsting and Amy Brunsting are beneficiaries of the family trust who also occupy the office of co-trustee. The trustee has fiduciary duties to hold and manage the property for the benefit of the beneficiaries owing Plaintiff fiduciary duties of unwavering good faith, fair dealing, loyalty and fidelity over the trust's affairs and its corpus and have a fiduciary obligation to hold and manage the property for the sole benefit of the beneficiaries.

Rather than honor their sacred trust, Defendant’s implemented a scheme to abscond with the corpus causing litigation to be brought by the beneficiary to obtain accounting and disclosure information owed to the beneficiary wherein the trustee would claim violation of an in Terrorem clause. On November 4, 2019 Defendants used the litigation they caused to be brought to claim the beneficiary violated a no contest clause provision triggering forfeiture of their property interest. Defendants have breached their fiduciary duty of undivided loyalty and fidelity over the trust's affairs and its corpus and have intractably shown bad faith and malicious intentions in their failure to perform any affirmative fiduciary obligations. Defendant’s failure to perform fiduciary duties owed to Plaintiff has resulted in injury to Plaintiff and unjust enrichment to Defendants.

Plaintiff has already established the law of the case, has already established breach of fiduciary, has obtained an injunctive order commanding specific performance and is entitled to both summary and declaratory judgment on the record along with an award for real damages as hereinafter more fully appears.

## Background

 Elmer and Nelva Brunsting created a family trust for their benefit and for the benefit of their five issues, Candace, Carl, Carole, Amy and Anita, whom they named successor beneficiaries in common with equitable property interests of equal value.

A trust is a mechanism used to transfer property. Bradley v. Shaffer, 535 S.W.3d 242, 247 (Tex. App.—Eastland 2017, no pet.); Hallmark v. Port/Cooper-T. Smith Stevedoring Co., 907 S.W.2d 586, 589 (Tex. App.—Corpus Christi 1995, no writ).

Elmer Brunsting passed April 1, 2009.

Nelva Brunsting passed November 11, 2011.

Remainder rights in entrusted property vested in the remainder beneficiary at the passing of the second Settlor, both under the private law of the trust and under the public law of Texas (Tex. Est. Code § 101).

November 11, 2019 marked the eighth year since the passing of the last Settlor when rights in property vested equally in each of the five beneficiaries and the eighth consecutive year that not one dime has been distributed to any income beneficiary of the Brunsting trusts.

Before moving further it should be noted that this controversy has already seen seven different courts. District Court No. 109 is the eighth. It should also be noted that only one trial court has entered findings of fact, conclusions of law and order after hearing, on any dispositive issue. Those findings and conclusions and the Order for a preliminary injunction are now before this court under Texas Civil Practices and Remedies Codes §§ 35.002, .003, .004 the Uniform Enforcement of Foreign Judgments Act. The Order for preliminary injunction remains in full force and effect throughout the controversy between the parties thereto by order of the foreign court that entered it. No other court has entered or even held a hearing on the matters covered by the foreign court order and the action filed in this court is barred by neither latches nor limitations.

April 19, 2020 marked the seventh consecutive year in which the portion of the federal preliminary injunction commanding that income to be deposited into an “appropriate account for the beneficiary” has been ignored.

April 9, 2020 marked the seventh anniversary of the filing of Ancillary Matter 412249-401 in probate court four and the seventh year in which no dispositive issue has been determined beginning with:

a. What are the instruments that created the trust the estate poured-over into at the death of Nelva Brunsting November 11, 2011?

b. Who are the trustees?

c. What affirmative obligations does the trustee owe the beneficiary in relation to the trust property?

d. Has the trustee performed those obligations?

## Real Damages

The economic injuries to the corpus as a result of defendants reckless indifference, calculated from the time Anita Brunsting first occupied the office of trustee, is more than seven hundred and fifty thousand dollars ($750,000.00). This amount is supported by bank and brokerage statements and does not include damages that are not so easily calculated such as loss of use. Interest at 10% per annum for the time period covered is more than $600,000 which, when added to the principal injury equals in excess of $1,350,000. This number, one million three hundred fifty thousand dollars, also does not include more than $120,000 in excess taxes incurred as a direct result of failure to distribute the income as directed, nor does it include the costs to the beneficiaries resulting from the forced need to protect property interests caused by the conflicted co-trustees malfeasance.

## The Foreign Judgment

This case has been plagued by jurisdictional dysfunctions from inception. Plaintiff Curtis filed her suit for breach of fiduciary in the Southern District of Texas. The matter went to the Fifth Circuit under the probate exception and was reversed and remanded for further proceedings.

While the case was in transition between the Circuit Court and the Southern District of Texas, a malpractice action was filed by Carl Brunsting against the estate planning attorneys in Harris County District Court.

Upon return to the Southern District of Texas Plaintiff obtained a preliminary injunction and the appointment of a Special Master to assemble books and records of accounts. On the day of the injunction hearing an ancillary matter was filed in Harris County Probate Court No. 4.

After hearing on the Report of Special Master the pro se Plaintiff retained Houston Attorney Jason Ostrom who had the case remanded to Harris County Probate Court No. 4 wherein the case disappeared, if in fact it ever arrived. Ostrom asked to have the transfer order entered as “Estate of Nelva Brunsting No. 412249-402” which is not the case that was transferred from the Southern District of Texas.

## The Law of the Case

The law of the case doctrine provides that “the initial determination of questions of law will be held to govern the case throughout its subsequent stages.”  Trevino v. Turcotte, 564 S.W.2d 682, 685 (Tex.1978);  see also Briscoe v. Goodmark Corp., 102 S.W.3d 714, 716 (Tex.2003);  In re Estate of Chavana, 993 S.W.2d 311, 314–15 (Tex.App.—San Antonio 1999, no pet.).

Plaintiff first established the law of the case in the Fifth Circuit Court of Appeal; published Curtis v Brunsting 704 F.3d 406 (Jan 9, 2013).

## **Curtis v Brunsting 704 F.3d 406**

***Procedural Posture***

Plaintiff, the beneficiary of a trust, sued defendant co-trustees of the trust, for breach of fiduciary duty, extrinsic fraud, constructive fraud, and intentional infliction of emotional distress. The United States District Court for the Southern District of Texas dismissed the case for lack of subject matter jurisdiction, concluding that the case fell within the probate exception to federal diversity jurisdiction. The beneficiary appealed.

***Overview***

The court found that the case was outside the scope of the probate exception under the first step of the inquiry because the trust was not property within the custody of the probate court. Because the assets in a living or inter vivos trust were not property of the estate at the time of decedent's death, having been transferred to the trust years before, the trust was not in the custody of the probate court and as such the probate exception was inapplicable to disputes concerning administration of the trust. The record also indicated that there would be no probate of the trust's assets upon the death of the surviving spouse. Finding no evidence that the trust was subject to the ongoing probate proceedings, the case fell outside the scope of the probate exception. The district court below erred in dismissing the case for lack of subject-matter jurisdiction.

**HN6** Assets placed in an inter vivos trust generally avoid probate, since such assets are owned by the trust, not the decedent, and therefore are not part of the decedent's estate. 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 custody of the probate court and as such the probate exception is inapplicable to disputes concerning administration of the trust.

Estate, Gift & Trust Law > Estate Administration > Nonprobate Transfers > Living Trusts

**HN7** Any property held in a revocable living trust is not considered a probate asset. Avoidance of probate perhaps is the most publicized advantage of the revocable living trust. Assets in a living trust are not subject to probate administration.

***Counsel:*** *CANDACE LOUISE CURTIS, Plaintiff - Appellant, Pro se, Martinez, CA.*

Candace Louise Curtis vs. Anita Brunsting and Amy Brunsting No. 4:12-cv-592 is not a probate case, matter or proceeding, but a case involving an inter vivos trust that is the only devisee of the decedents wills. The wills are pour-over-wills that, once having been probated, avoid probate administration as a matter of law. (Tex. Est. Code § 254.001)

Secondly, Plaintiff established the law of the case in the Southern District of Texas, evidenced by the preliminary injunction.

[T]he burden of proof at the preliminary injunction phase tracks the burden of proof at trial ...." Thalheimer v. City of San Diego , [645 F.3d 1109, 1116](https://casetext.com/case/thalheimer-v-city-of-san-diego#p1116) (9th Cir. 2011).

“The elements which a movant is required to prove for issuance of a preliminary injunction are (1) a substantial likelihood of success on the merits, (2) a substantial threat of irreparable harm if the injunction is not issued, (3) that the threatened harm exceeds any harm flowing from the injunction, and (4) that the injunction would serve the public interest. Landmark Land Co., Inc. v. Office of Thrift Supervision, [990 F.2d 807](https://casetext.com/case/landmark-land-co-inc-v-ots) (5th Cir. 1993); Tesfamichael v. Gonzales, [411 F.3d 169](https://casetext.com/case/tesfamichael-v-gonzales) (5th Cir. 2005).” In re Hardaway, CASE NO: 06-20691, ADVERSARY NO. 06-2084, at \*2 (Bankr. S.D. Tex. Mar. 1, 2007)

…the elements of a breach of fiduciary duty claim under Texas law are: "(1) a fiduciary relationship between the plaintiff and defendant; (2) the defendant must have breached his fiduciary duty to the plaintiff; and (3) the defendant's breach must result in injury to the plaintiff or benefit to the defendant." Jones v. Blume , [196 S.W.3d 440, 447](https://casetext.com/case/jones-v-blume#p447) (Tex. App.—Dallas 2006, pet. denied) ; see also Navigant Consulting, Inc. v. Wilkinson , [508 F.3d 277, 283](https://casetext.com/case/navigant-consulting-inc-v-wilkinson-06-11071-5th-cir-11-15-2007#p283) (5th Cir. 2007) (reciting the same elements).

Plaintiff is a beneficiary of an inter vivos family trust. Defendants occupy the office of trustee and owe fiduciary duties to Plaintiff. Defendant’s have failed to perform fiduciary duties owed to Plaintiff has directly and proximately caused injury to Plaintiff and benefit to the Defendants.

## Jurisdiction

## Standard of Review