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

ORDER GRANTING
CO-TRUSTEES' MOTION FOR SUMMARY JUDGMENT
AS TO CANDACE LOUISE CURTIS ONLY

On the 25 **day of** February **202**2, the Court, at its' discretion, considered, via submission, the Motion for Summary Judgment (the "Motion") filed by 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") originally set for oral hearing on December 14, 2021.

The Court considered the Motion on no-evidence and traditional grounds. Via submission, the Court considered (1) the Motion and its summary judgment evidence, as well as the Co-Trustees' Reply to Candace Louise Curtis's Answer to Co-Trustee's Motion for Summary Judgment and Motion to Strike (the "Reply"); (2) any responses from counsel/pro se parties, including without limitation, the "*Answer to Co-Trustee's Motion for Summary Judgment and Motion to Strike*" filed by Candace Louise Curtis ("Curtis"); and (3) the pleadings on file in this cause.

As part of its consideration of this matter, the Court considered Curtis's position as set forth in her Motion to Strike. The Court **FINDS** that the Motion and the Reply were timely filed, procedurally proper and that the Motion is ripe for ruling. Accordingly, Curtis's Motion to Strike is **DENIED** in all respects.

As part of its consideration of this matter, the Court considered the Co-Trustees' objections to materials submitted by Curtis as summary judgment evidence. The Court **FINDS** that one or more of the submitted exhibits violate the Texas Rules of Evidence for one or more of the reasons described by the Co-Trustees in the Reply. Accordingly, the Court **ORDERS** as follows:

Exhibit	**Exhibit Description**	**Objection to Exhibit**	**Disposition**
Exhibit Pg. 1	Trust Flow Chart	Hearsay; not authenticated; not a testamentary instrument that would alter the 2005 Restated Trust or the 2010 QBDs.	X Sustained ____ Overruled
Exhibit Pgs. 2-3	2007 Amendment	Not authenticated; not a controlling instrument; not relevant to any issue raised by the co-trustees' motion for summary judgment.	X Sustained ____ Overruled
Exhibit Pgs. 4-5	Article III 2005 Restatement	Not authenticated; not relevant to any issue raised by the co-trustees' motion for summary judgment.	X Sustained ____ Overruled
Exhibit Pg. 6	Affidavit filed in federal court Feb. 27, 2012 describing Anita's plan.	Hearsay; not authenticated.	X Sustained ____ Overruled
Exhibit Pgs. 7-10	Nelva Brunstings' hand-written greeting card say-ing "That's Not true!"	Hearsay; not authenticated; the card does not negate the *in terrorem* provisions in the 2005 Restated Trust and/or QBD.	X Sustained ____ Overruled
Exhibit Pgs. 11-13	Estate Plan Purposes	Hearsay; not authenticated; not a testamentary instrument that would alter the 2005 Restated Trust or the 2010 QBDs.	X Sustained ____ Overruled

Exhibit Pg. 14	Estate Planning Attorney-Candace Kunz-Freed explaining the reason for subjecting Nelva to a competency evaluation.	Hearsay; not authenticated.	X Sustained ____ Overruled

Consistent with the above and foregoing, the Court **FINDS** that Curtis has failed to meet her summary judgment burden on the Motion's traditional and no-evidence points. The Court **FINDS** that Curtis has forfeited her interest as a beneficiary of the Trust, by taking one or more actions in violation of the Trust and/or the August 2010 QBD (as such terms are defined in the Motion). The Court **FINDS** that the Co-Trustees shall first recover attorneys' fees from Curtis (and/or from her forfeited interest in the Trust) via Article IV, Section G of the Trust; via Miscellaneous Provisions: Item A of the August 2010 QBD; and/or via the Declaratory Judgment Act.

Accordingly, the Court **GRANTS** the Motion as to Curtis only, **RENDERS** judgment for the Co-Trustees against Curtis only and **ORDERS**:

(1) That Co-Trustees' Motion for Summary Judgment is **GRANTED** as to Curtis in its totality;

(2) That Curtis **TAKE-NOTHING** by way of her claims against Amy, Anita, the Co-Trustees and/or the Trust;

(3) That the Co-Trustees are awarded attorneys' fees payable by Curtis (and/or from her forfeited interest in the Trust) in an amount to be subsequently determined; and

(4) That court costs are taxed against the party incurring same.

This Order disposes of all claims and causes of action asserted against Amy, Anita, the Co-Trustees and/or the Trust by Curtis, and no other claims or causes of action are pending against Amy, Anita, the Co-Trustees and/or the Trust from Curtis.

If and as necessary, the Court, upon motion properly filed, will enter an order of severance.

SIGNED AND ENTERED on this 25 day of February, 2022.

JUDGE PRESIDING