

Cause No. D-1-GN-12-002777

ALAN L. HAMILTON,  
*Individually and as Co-Successor  
 Trustee and Beneficiary of the  
 Hamilton Family Trust and as  
 Independent Executor of the Estate  
 of Maurine P. Hamilton*

Plaintiff

V.

SYLVIA L. HAMILTON  
*Individually and as Co-Successor  
 Trustee of the Hamilton Family  
 Trust*

Defendant

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

200TH JUDICIAL DISTRICT

**PLAINTIFF'S ORIGINAL PETITION**

COMES NOW, Plaintiff, ALAN L. HAMILTON, *Individually and as Co-Successor Trustee and Beneficiary of the Hamilton Family Trust and as Independent Executor of the Estate of Maurine P. Hamilton*, in the above referenced cause of action and files this his Plaintiff's Original Petition, complaining of SYLVIA L. HAMILTON, *Individually and as Co-Successor Trustee of the Hamilton Family Trust* (hereinafter known as Defendant), and in support thereof would show unto this Honorable Court the following:

**I. DISCOVERY CONTROL PLAN**

1.1 Discovery is intended to be conducted under Level 3 of TEXAS RULE OF CIVIL PROCEDURE 190.

**II. PARTIES**

2.1 Plaintiff, ALAN L. HAMILTON is an individual who resided in Texas at the time of the incident made the basis of this cause of action.

2.2 Defendant, SYLVIA L. HAMILTON is a resident citizen of Travis County who may be served with process by personal service at her last known address, SYLVIA L. HAMILTON, 9008 East Drive, Austin, TX 78753.

### **III. VENUE AND JURISDICTION**

3.1 Venue is appropriate in Travis County, Texas because Defendant, SYLVIA L. HAMILTON, resided in Travis County at the time the cause of action accrued, and all or a substantial part of the events or omissions giving rise to this lawsuit occurred in Travis County, Texas. *See* TEX. CIV. PRAC. REM. CODE §§ 15.035 and 15.002. Jurisdiction is proper in this Court because the amount in controversy exceeds its minimum jurisdictional amount necessary to confer jurisdiction on this Court.

### **IV. FACTS**

4.1 On or about October 27, 2009, SYLVIA HAMILTON, filed a trust accounting and information related to THE HAMILTON FAMILY TRUST revealing that substantial assets were missing from the aforementioned trust and that she had been taking money from her mother, her mother's estate, and the trust in order to send money to a women in Las Vegas that had possessed her. This petition and the causes of action in the petition are seeking compensation for the aforementioned actions.

4.2 On October 6, 2006, MAURINE P. HAMILTON passed away. Upon the death of MAURINE P. HAMILTON, SYLVIA L. HAMILTON began serving as Co-Successor Trustee of THE HAMILTON FAMILY TRUST. It was not until October 27, 2009 that SYLVIA L. HAMILTON provided any accounting information to Co-Successor Trustee, ALAN L. HAMILTON, and still to this date has failed to provide a full accounting of all of her actions as Trustee of THE HAMILTON FAMILY TRUST.

4.3 On October 28, 2008, ALAN L. HAMILTON was appointed Independent Executor of the ESTATE OF MAURINE P. HAMILTON. As Independent Executor of the ESTATE OF MAURINE P. HAMILTON, ALAN L. HAMILTON made several requests to SYLVIA L. HAMILTON for a full accounting of all estate assets that SYLVIA L. HAMILTON may have taken from MAURINE P. HAMILTON prior to her death or estate assets taken after the death of MAURINE P. HAMILTON.

4.5 Further, SYLVIA L. HAMILTON intentionally and knowingly failed to file necessary tax returns in an attempt to fraudulently conceal money that she took from the trust, the ESTATE OF MAURINE P. HAMILTON, and from MAURINE P. HAMILTON.

4.6 While fulfilling his duties as Co-Successor Trustee and Executor, ALAN L. HAMILTON discovered that trust assets and a large part of the ESTATE OF MAURINE P. HAMILTON was missing and that Defendant, SYLVIA L. HAMILTON, had been taking money and assets from MAURINE P. HAMILTON for several years. SYLVIA L. HAMILTON unilaterally took control of her elderly mother's financial affairs for many years, and during that time a significant amount of money went missing from MAURINE P. HAMILTON's financial accounts.

4.7 ALAN L. HAMILTON has made several requests for an accounting of the money that has been taken and has further demanded that any money or assets wrongfully taken from the trust and/or the estate be immediately returned.

4.8 Defendant, SYLVIA L. HAMILTON, has refused both requests, thereby making this lawsuit necessary.

## **V. CONVERSION, FRAUD, FRAUDULENT CONCEALMENT, THEFT, BREACH OF CONSTRUCTIVE FIDUCIARY DUTY, ELDER ABUSE, AND UNJUST ENRICHMENT**

5.1 Defendant, SYLVIA L. HAMILTON, assumed control of MAURINE P. HAMILTON's

finances over the course of several years. By doing so, a constructive fiduciary relationship was created, and with it a corresponding fiduciary duty to act in the best interests of MAURINE P. HAMILTON. SYLVIA L. HAMILTON wrongfully took a substantial sum of money and assets from MAURINE P. HAMILTON over a course of several years. Not only did SYLVIA L. HAMILTON wrongfully take this money, she did so fraudulently and through undue influence over MAURINE P. HAMILTON.

5.2 By her actions, Defendant was unjustly enriched. Plaintiff hereby sues Defendant for wrongful conversion, fraud, fraudulent concealment, theft, elder abuse, breach of constructive fiduciary duty, and unjust enrichment.

## **VI. DAMAGES**

6.1 As a result of the incident made the basis of this lawsuit, described in the preceding paragraphs, and fraud, fraudulent concealment, elder abuse, and conversion committed by the Defendant, the trust and estate has suffered significant damages.

6.2 Plaintiff seeks actual monetary damages caused by the elder abuse, fraud, fraudulent concealment and conversion committed by the Defendant.

6.3 Plaintiff seeks punitive damages and attorney's fees as allowed by law.

6.4 Plaintiff seeks both prejudgment and post-judgment interest as allowed by law, for all costs of court, and all other relief, both at law and in equity, to which he may be justly entitled.

## **VII. REQUEST FOR DISCLOSURE**

7.1 Pursuant to Rule 194, Defendants are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) - (k).

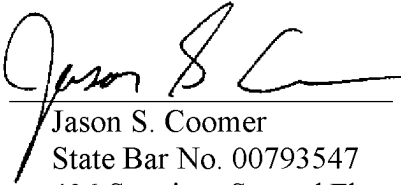
## **VIII. PRAYER**

8.1 WHEREFORE, PREMISES CONSIDERED, Plaintiff prays that Defendant be cited in

terms of law to appear and answer herein, that upon final trial and hearing hereof, that Plaintiff have and recover damages in accordance with the evidence, costs of Court herein expended, interest to which he is justly entitled under the law, and for such other further relief, both general and special, both at law and in equity, to which he may be justly entitled.

Respectfully submitted,

**Law Office of Jason S. Coomer, PLLC**

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**ALAN L. HAMILTON,**  
*Individually and as Co-Successor*  
*Trustee and Beneficiary of the Hamilton*  
*Family Trust and as Independent Executor*  
*of the Estate of Maurine P. Hamilton*