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Amalia Rodriguez-Mendoza District Clerk Travis District

D-1-GN-12-002777

ALAN L. HAMILTON,

**IN THE DISTRICT COURT**

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

OF TRAVIS COUNTY, TEXAS

V.

SYLVIA L. HA**MIL**TON §

Individually and as Co-Successor Trustee of the Hamilton Family Trust

**200TH JUDICIAL DISTRICT**

Daniel Davila III,

CPA for Maurine P. Hamilton, Sylvia Hamilton, Alan Hamilton and the Hamilton Family Estate and Trust

Defendants

**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 Plaintiffs Original Petition, complaining of SYLVIA L. HAMILTON, Individually and as Co-Successor Trustee of the Hamilton Family Trust (hereinafter known as Defendant), and DANIEL DAVILA III, CPA-PFS (Personal Financial Specialist) for Maurine P. Hamilton, Sylvia Hamilton, Alan Hamilton and of the Hamilton Family Trust (hereinafter known as Defendant-2), and in support thereof would show unto this Honorable Court the following:

I. DISCOVERY CONTROL PLAN

1. Discovery is intended to be conducted under Level 3 of TEXAS RULE OF CIVIL PROCEDURE 190.
2. PARTIES
3. 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.
4. 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.
5. If it unknown where DANIEL DAVILA lives personally but his office is just over the Travis County line on McNeil, in Williamson County, apparently.
6. VENUE AND JURISDICTION
7. 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.
8. DANIEL DAVILA III Venue? Just across county line in Williamson County.
9. Mutual of Omaha is in Omaha, Nebraska. Was Texas State court REALLY the correct place to file this? What happens if we add Mutual of Omaha later? Do Texas State courts have jurisdiction?
10. FACTS
11. 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.
12. 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.
13. 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.
14. 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.
15. 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.
16. 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.
17. Defendant, SYLVIA L. HAMILTON, has refused both requests, thereby making this lawsuit necessary.
18. On August 6, 2004, DANNY DAVILA III, created and delivered to Mutual of Omaha, a Mystery DPOA which stated that he would take over as Successor Agent if Sylvia Hamilton failed to perform her duties. Therefore Fiduciary Duty was owed to Maurine Hamilton and her Estate and Trust. (Duty 1 – Element 1)
19. With that Mystery DPOA was a letter written by DANNY DAVILA III, on behalf of Maurine P. Hamilton, that she wanted to withdraw all of her Annuities immediately, so DANNY DAVILA III, knew very well of the promise made to Maurine P. Hamilton, regardless of the mysterious origins of this DPOA. Therefore Fiduciary Duty was owed to Maurine Hamilton and her Estate and Trust. (Duty 2 – Element 1)
20. On 4/29/2005, 8/30/2005, and 4/30/2006, DANNY DAVILA III filed tax extensions for the Maurine P Hamilton. Though he knew the taxes were not being done, DANNY DAVILA III, did no due diligence as to his Fiduciary Duties to Maurine P. Hamilton. Therefore Fiduciary Duty was owed to Maurine Hamilton and her Estate and Trust. (Duty 3 – Element 1)
21. DANIEL DAVILA III sent Alan Hamilton a bill after he became Executor, for $2072.29. If you bill someone, you are working for them, and if you are a CPA, Fiduciary Duty is a Legal Presumption . Therefore Fiduciary Duty was owed to Alan Hamilton, Executor of the Maurine Hamilton Estate and Trust, and as a beneficiary of the Maurine Hamilton Estate and Trust . (Duty 4 – Element 1)
22. Alan Hamilton requested that the Trust taxes be done, but no 1041s or K1s were ever filed by DANIEL DAVILA III, though the IRS 1099s clearly say Hamilton Trust on them. Instead fraudulent 1040 taxes were filed to cover up the annuity theft by Sylvia Hamilton. DANIEL DAVILA III also did Sylvia Hamilton’s taxes, leaving the money he told us she embezzled on the Estate taxes. Alan Hamilton asked DANIEL DAVILA III to report the missing money to the IRS on form 4684s or whatever form was required and he did not do so. (Breach of Duty 1 – Element 2)
23. On September 10, 2008, Alan Hamilton met DANNY DAVILA III at his office with his attorney Wayne Gronquist and his wife Marjorie Miller. DANNY DAVILA III confirmed that Sylvia Hamilton had admitted to taking the missing Annuity money, and all of it was gone and and SYLVIA HAMILTON had told him that she didn’t even have any money to pay her CPA bill to him. DANNY DAVILA III then presented a ticker tape accounting to Alan Hamilton of the **$789,402** in Annuities missing from the Estate and that he said he had assisted Sylvia and Maurine in getting an early withdrawal from Mutual of Omaha “because they were broke”. DANNY DAVILA III told Alan Hamilton that “Police never look into to these kinds of things, and he’d better just split what left of the Estate with Sylvia Hamilton and forget about it.” (Breach of Duty 2 – Element 2)
24. The 2003 taxes which DANNY DAVILA III prepared for Maurine P Hamilton in July of 2004, shows $2034 taxable interest paid in 2003, which at 1% interest, is about $200,000 in the interest earning bank accounts alone. Maurine P Hamilton was not broke and the actual reason and/or fraud, for the early withdrawal of the Mutual of Omaha annuities, remains a “genuine issue of material facts”, which will only be found out during discovery. (Breach of Duty 3with GIMF – Element 2)
25. Sometime in late 2008, SYLVIA HAMILTON and DANIEL DAVILA III filed taxes for 2004 which did not mention the missing $800,000. DANIEL DAVILA III also did SYLVIA HAMILTON taxes, presumably not adding the missing $800,000 to her taxes either. (Breach of Duty 4 – tax fraud and evasion – Element 2)
26. On or about March 13, 2009, despite telling Alan Hamilton on 9/10/2008 that $800,000 was missing from the Estate, DANNY DAVILA III presented to Alan Hamilton which again did not mention the missing $800,000. (Breach of Duty 5 – Element 2)
27. On April 14, 2009, under threat of the Probate Judge appointment on April 15, 2009, DANNY DAVILA III allowed Alan Hamilton and his wife, Marjorie Miller, to copied his Hamilton Estate folder for 10 cent a page, self-service. This is the same date that he finally gave Alan Hamilton the many times requested 2004-2008 billing records which showed the tax extensions he filed, rather than do his Fiduciary Duties. (Breach of Duty 6 – Element 2)
28. On April 14, 2009, after copying the folder, and asking DANNY DAVILA III a few questions about the fact that the 2004 Mystery DPOA was in his Hamilton folder, as were the 2003 taxes he had said he did not have a copy of, and mentioning Maurine P. Hamilton’s untimely death with no money left in the bank, 2 years after he released her life savings to her caretaker daughter, and in whose care she died, DANNY DAVILA III blew up in front of his employees and ordered his receptionist to call the police on us because “he had not murdered anyone”. No Forensic investigation though a sign on his office wall said “Forensic Attorney”. (Breach of Duty 7 – Element 2)
29. DANNY DAVILA III refused to assist and even stymied attempts in obtaining accounting records from Sylvia Hamilton. DANNY DAVILA III told Alan Hamilton that he had her bank records in her hands while doing her taxes, but refused to share them with us, while Sylvia Hamilton kept telling us to get the accounting records from her CPA DANNY DAVILA III. (Breach of Duty 7 – Element 2) (Breach of Duty 8 – Element 2)
30. DANNY DAVILA III has been contacted in 2011 by FINRA (Financial Industry Regulatory Authority) and in 2012 by TDI (Texas Department of Insurance) and has continued to conceal his involvement and responsibility in this matter, making this lawsuit necessary, at the recommendation of TDI. (Breach of Duty 9 – Element 2)
31. CONVERSION, FRAUD, FRAUDULENT CONCEALMENT, THEFT, BREACH OF CONSTRUCTIVE FIDUCIARY DUTY, ELDER ABUSE, AND UNJUST ENRICHMENT
32. 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.

5.3 DANNY DAVILA III (Defendant-2) wrote the DPOA with his own Fiduciary Duties to Maurine P Hamilton and yet did not do them, as evidenced by DANNY DAVILA III’s own billing records showing repeated filing of extensions, rather than taking over the duties of the non-performing agent, as promised to Maurine P Hamilton.

5.4 By his actions, Defendant-2 was unjustly enriched. Plaintiff hereby sues Defendant-2 for wrongful conversion, fraud, fraudulent concealment, theft, elder abuse, breach of constructive fiduciary duty, and unjust enrichment.

5.4 Maurine P. Hamilton and the Maurine P. Hamilton Estate, Trust and beneficiaries suffered

1. DAMAGES
2. 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.
3. Plaintiff seeks actual monetary damages caused by the elder abuse, fraud, fraudulent concealment and conversion committed by the Defendant.
4. Plaintiff seeks punitive damages and attorney’s fees as allowed by law.
5. 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

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

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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