

Cause No. _____

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

Plaintiff

V.

DANIEL DAVILA III

Defendant

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IN THE DISTRICT COURT

OF TRAVIS COUNTY, TEXAS

____ JUDICIAL DISTRICT

PLAINTIFF’S ORIGINAL PETITION

COMES NOW, Plaintiff, ALAN L. HAMILTON *Individually and as Successor Trustee 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 DANIEL DAVILA III, (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 a resident citizen of Travis County, Texas who resides in Texas and resided in Texas at the time of the incident made the basis of this cause of action.

2.2 Defendant, DANIEL DAVILA III is a resident citizen of Travis County who may be served with process by personal service at his last known address, DANIEL DAVILA III, 8329 Lime Creek Road, Volente, Texas 78641.

III. VENUE

3.1 Venue is proper in Travis County, Texas because the underlying probate proceeding in the Estate of Maurine Hamilton, Deceased, Cause No. C-1-PB- 89444 was properly filed in this county as MAURINE HAMILTON was a resident of Travis County Texas at the time of her death and fraudulent tax documents for her estate are a significant part of this case; the occurrences giving rise to this lawsuit occurred in Travis County, Texas; Defendant resides in Travis County, Texas; and Defendant does business and advertises in Travis County, Texas. *See* TEX. CIV. PRAC. REM. CODE §§ 15.035 and 15.002.

IV. FACTS

4.1 Defendant is a Personal Financial Specialist (PFS), Certified Retirement Counselor (CRC), and Certified Public Accountant that was hired by Sylvia Hamilton to perform work including financial planning, investment planning, drafting of a durable power of attorney, and collection of annuities for Plaintiff's Elderly Mother, Maurine Hamilton.

4.2 The DPOA which defendant drafted, named himself, the defendant, a CPA-PFS, as the Successor agent, if Sylvia Hamilton did not perform her duties. Defendant submitted the DPOA he drafted to Mutual of Omaha with the request for the annuities, acknowledging the content and expectations of the DPOA he drafted for Maurine Hamilton. Instead of taking over the duties Sylvia Hamilton did not perform, the defendant filed tax extensions, acknowledging that he knew the duties were not being performed. It also strangely spelled the plaintiff's name wrong, in a document supposedly signed by his mother, leaving the question whether the mother ever saw the document and implies that the document was forged.

4.3 Further while performing the aforementioned work, Defendant helped transfer significant assets that were in annuities to the control of Sylvia Hamilton. As such, Defendant used his position as a fiduciary for Maurine Hamilton to take advantage of an elderly woman including forging documents and negotiating to have Maurine Hamilton's life savings released early from annuities and transferred into Sylvia Hamilton's control. These actions resulted in a significant loss to Plaintiff's elderly mother, her estate, her trust, and the Plaintiff as a beneficiary of the trust and estate.

4.4 After securing the release of the annuities, Defendant received payments from Sylvia Hamilton to conceal the transfer of these annuities and his wrongful actions in these wrongful actions. This concealment included his work as a Certified Public Accountant who was hired to perform tax work for Maurine Hamilton and the Estate of Maurine Hamilton. In performing the tax work, Defendant intentionally concealed crucial information regarding financial transfers that would have revealed his fraud, breach of fiduciary duty, and other wrongful acts that he committed. As the estate Certified Public Accountant, Defendant had a duty to disclose this crucial information and intentionally failed to disclose this information.

4.5 Defendant delayed the filing of the taxes, then filed fraudulent tax returns and then prepared more fraudulent taxes which re-asserted the fraudulence, rather than prepare the non-fraudulent Trust taxes requested by the Plaintiff in writing, to cover up the true nature of his wrongful actions and intentionally hid his wrong doing.

4.6 On April 14, 2009, after numerous attempts to obtain information regarding his elderly mother's and his elderly mother's estate taxes. Defendant finally allowed the Plaintiff to retrieve some billing statements, accounting, tax records, emails and documents in defendant's

“Hamilton Tax Folder”, that revealed Defendant’s wrongful actions including fraud and breach of fiduciary duty that was acted upon Plaintiff’s elderly mother, Maurine Hamilton.

4.7 On April 14, 2009, Plaintiff again requested the non-fraudulent Trust taxes to be prepared reporting the Theft-Loss to the beneficiaries and IRS, so that he could make Theft-Loss claims on his taxes.

4.8 Defendant still has not accounted for the missing money that defendant himself informed Plaintiff was missing, anywhere on any of the fraudulent taxes he has prepared or filed. After Defendant prepared taxes for Sylvia Hamilton, new Executor Alan Hamilton refused to sign them because they were fraudulent, and informed Defendant of this and the need for the non-fraudulent Trust taxes reporting the Theft-Loss to be done, with 1041’s and K-1s to beneficiaries, which included Maurine Hamilton and Plaintiff.

4.9 Plaintiff has recently prepared a report and submitted fraudulent taxes that Defendant attempted to hide, and then coerce Plaintiff to sign without reviewing, to the IRS for further investigation.

4.10 Even after producing this crucial information including several years of tax documents, Defendant continued to deny and fraudulently conceal information regarding evidence of his fraud, misrepresentations, and breach of fiduciary duty. By hiding these documents and crucial information which he failed to disclose and constantly denied, Defendant fraudulently concealed the fraud, misrepresentations, and breach of fiduciary duty that he committed. Defendant had a duty to disclose all documents and billings as the Estate CPA to Plaintiff as the newly appointed Executor and instead he stymied any investigation, even as he displayed a “forensic accountant” sign in his business office.

4.11 Plaintiff also contacted professional association and government licensing agencies and regulators to try to work on the issues with Defendant. Defendant continued to mislead regulators with denials of his involvement, what happened or even knowing about what happened, and again leaving out defendant's "Mystery Davila DPOA" which allowed it all to happen. Defendant never shared the "Mystery Davila DPOA" with Plaintiff.

4.12 While fulfilling his duties as 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 later discovered that Defendant had been concealing his wrongful actions that allowed the Defendant to benefit from these wrongful actions.

V. FRAUD AND BREACH OF FIDUCIARY DUTY

5.1 Defendant has committed fraud and breach of fiduciary duty. Plaintiff hereby files suit against Defendant for fraud and breach of fiduciary duty.

5.2 Defendant fraudulently made material false representations to Plaintiff's elderly mother and Plaintiff as the executor of his mother's estate.

5.3 Plaintiff hereby sues Defendant for fraud and breach of fiduciary duty. Further, the Defendant committed fraudulent concealment to hide these wrongful actions.

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, and breach of fiduciary duty committed by the Defendant, the Plaintiff, Trust, and Estate has suffered significant damages.

6.2 Plaintiff seeks actual monetary damages caused by the fraud and breach of fiduciary duty 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

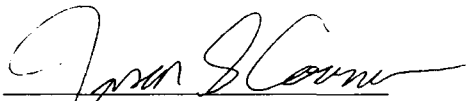
7.1 Pursuant to Rule 194, Defendant are requested to disclose, within fifty (50) days of service of this request, the information or material described in Rule 194.2 (a) - (k).

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

By: 

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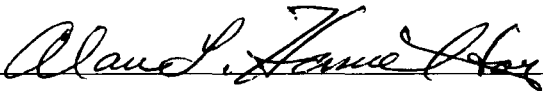
**ATTORNEY FOR PLAINTIFF
ALAN L. HAMILTON,
*Individually and as Successor
Trustee of the Hamilton Family
Trust and as Independent Executor
of the Estate of Maurine P. Hamilton***

STATE OF TEXAS §
COUNTY OF TRAVIS §

KNOW ALL MEN BY THESE PRESENTS:

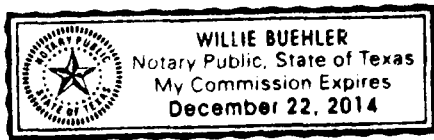
BEFORE ME, the undersigned authority, on this day personally appeared ALAN L. HAMILTON, and after being duly sworn, stated that:

Insofar as is known to me, all the allegations of the foregoing PLAINTIFF'S ORIGINAL PETITION are true in substance and in fact and that no material fact or circumstance has, within my knowledge, been omitted from the Application.



ALAN L. HAMILTON

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by ALAN L. HAMILTON on this 12th day of April, 2013, to certify which witness my hand and seal of office.



NOTARY PUBLIC, STATE OF Texas