**IN THE THIRTEENTH JUDICIAL CIRCUIT COURT**

**IN AND FOR TRAVIS COUNTY, TEXAS**

Case No. 2012-123

Judge Sam Sparks

ALAN L. HAMILTON,

Plaintiff,

v.

DANNY DAVILA,

SYLVIA HAMILTON,

Defendants.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_/

**COMPLAINT**

PLAINTIFF Alan L. Hamilton sues defendant Danny Davila et al for money damages and states:

**JURISDICTIONAL ALLEGATIONS AND VENUE**

1. This is an action for money damages in excess of $15,000.
2. At all times material to this lawsuit, Alan Hamilton was a resident of Travis County, Texas.
3. At all times material to this lawsuit, Sylvia Hamilton and Danny Davila were residents of Travis County and/or Williamson County.
4. The embezzled Annuities were from Mutual of Omaha. Mutual of Omaha is in Omaha, Nebraska and is licensed to do business in the State of Texas.
5. The embezzled money was sent in under $10,000 amounts via Western Union to Las Vegas, Nevada by Sylvia Hamilton.
6. All acts necessary or precedent to the bringing of this lawsuit occurred or accrued in Travis and or Williamson County, Texas.
7. This Court has jurisdiction. (??? – crosses state lines)

**SUMMARY OF THE ACTION**

In August 2004, CPA/PFS Danny Davila created and signed a new DPOA for Maurine Hamilton which said he would take over the Fiduciary Duties if the named agent Sylvia Hamilton failed to perform the duties.

After doing the 2003 taxes in July 2004, Danny Davila filed tax extensions for tax years 2004, 2005 and 2006. Danny Davila knew the Fiduciary Duties were not being performed and yet did nothing.

During the years in which these tax extensions were filed, Alfred and Maurine Hamilton’s Estate/Trust was embezzled to insolvency, losing more than $2 million dollars.

In 2008 and 2009, Danny Davila then tried to cover up the embezzlement by filing fraudulent taxes for Maurine Hamilton and the Estate, never filing the necessary IRS Trust 1041, and K-1s to the financially harmed beneficiary Alan Hamilton, so as to conceal the crime.

**GENERAL FACTUAL ALLEGATIONS**

1. On April 8, 2004, the day of Alfred Hamilton’s death, the value of the Estate $1 million dollars, with a projected value of $2 million dollars in 2017, when the Mutual of Omaha annuities matured. IRS 1099s from 2004 show approximately $500,000 in bank accounts via $5556 total interest earned, assuming a 1% interest rate in a bank account. Maurine Hamilton received $315,000 in death benefits in May-June 2004 as well, after her husband’s death.
2. On August 6, 2004 Sylvia Hamilton, Danny Davila and supposedly Maurine Hamilton, entered into a written Durable Power of Attorney agreement. A copy of the agreement is attached and labeled, Exhibit 1.
3. Terms of the DPOA written agreement required Defendant to perform the Fiduciary Duties of the Estate if named agent Sylvia Hamilton did not.
4. Fiduciary Duties of an Estate include doing the taxes, managing the investments, keeping beneficiaries informed with annual accountings of the Estate.
5. Fiduciary Duties of the Estate include doing the taxes and sending annual K1 tax filings to the beneficiaries.
6. In January 2005, Alan Hamilton finally received Danny Davila’s name and number from Sylvia Hamilton, as the new family CPA she had hired. Alan Hamilton then called Danny Davila and asked for his 2004 K-1 and Annual Report for the Hamilton Family Trust, so that he could do his taxes. Danny Davila said he not talked to Maurine and Sylvia in a while and had no knowledge about his K-1 and Trust Annual Report.
7. Alan Hamilton finally received Danny Davila’s billing records on April 14, 2009, which showed Danny Davila had filed tax extensions rather than do his Fiduciary Duties.
8. Sylvia Hamilton did not do the taxes after 2003, and Danny Davila filed extensions for many years until Alan Hamilton finally got a lawyer in August 2008, Wayne Gronquist, to demand that the taxes be done.

**COUNT ONE: BREACH OF FIDUCIARY DUTY**

The elements of a breach of fiduciary duty claim are: (1) a fiduciary relationship must exist between the plaintiff and defendant; (2) the defendant must have breached this duty; and (3) the breach must result in injury to the plaintiff or benefit to the defendant.

1. Plaintiff realleges and restates the foregoing jurisdictional allegations and general factual allegations.
2. Defendant Sylvia Hamilton had a Fiduciary Duty as the Agent/DPOA for Maurine Hamilton and the Family Trust for which Maurine Hamilton was the Trustee. Instead she has confessed to embezzling the Estate to Insolvency.
3. Defendant Danny Davila was paid by Sylvia Hamilton/Maurine Hamilton for the execution of the DPOA.
4. Defendant Danny Davila was obligated by the contract to deliver take over the responsibilities of the Estate if Sylvia Hamilton did not perform them.
5. Defendant Danny Davila used the 2004 DPOA to obtain the early release from Mutual of Omaha of $439,000 in annuities into Sylvia Hamilton care.
6. Defendant Danny Davila did not check up on the reinvestment or use by Sylvia Hamilton of the $439,000 from the early released annuities or the $315,000 in death benefits which he had helped Maurine Hamilton file for in May 2004.
7. Defendant Danny Davila filed tax extensions in April 2005, Oct 2005 and April 2006.
8. Defendant Danny Davila did not check on the condition of the Estate or his client, Maurine Hamilton, which he had promised to do in the DPOA.
9. The August 6, 2004 written contract for Durable Power of Attorney (DPOA)/Fiduciary Duty, between Danny Davila, Maurine Hamilton and Sylvia Hamilton, transfers to Maurine Hamilton, Trustee of the Maurine P. Hamilton Estate/Trust, per the Fiduciary Duties of Maurine Hamilton’s Trust.
10. Alan Hamilton is now the Executor/Successor Trustee of the Maurine P. Hamilton Estate/Trust, per a Probate Court order, after Danny Davila did not take over after Sylvia Hamilton’s non-performance of duties, per the DPOA agreement of 2004. Thus a Fiduciary Duty exists between plantiff and defendant. (1st Element-Danny Davila). See Exhibit DPOA2004
11. Alan Hamilton was a beneficiary of Maurine Hamilton’s Trust. Therefore he was owed a Fiduciary Duty as a beneficiary as well, by the responsible Fiduciary Agent.
12. Defendant Danny Davila demanded $2,072.29 from Alan Hamilton, for Sylvia Hamilton and the Hamilton Estate’s old bills to date that were unpaid by Sylvia Hamilton, before he would show him the 2004 Amended, 2005 and 2006 taxes. If you demand payment from someone, you are working for them and a Fiduciary Duty is then owed.
13. Danny Davila concealed existence of new and dubious DPOA from Alan Hamilton. Alan Hamilton’s first knowledge of the DPOA was when he received a reply from Mutual of Omaha in January 2009 about his inquiry into the status of the Annuities.
14. Had Danny Davila taken over the Estate duties for a non-performing Sylvia Hamilton in April 2005, Oct 2005, or April 2006, instead of filings tax extensions, the embezzlement could not have continued and Maurine Hamilton would have made it to the long-term nursing care home for which she had insured herself for many years. Maurine Hamilton died in Sylvia Hamilton’s care on Oct 6, 2006, as Alan Hamilton’s attorney began inquiring with Sylvia Hamilton about the missing Trust payments , K-1s and Trust Annual Reports that Alan Hamilton Hamilton had been requesting. Therefore, the defendant breached his Fiduciary Duty to Maurine Hamilton and her Estate. (2nd Element-Danny Davila). See Exhibit Danny Davila’s Hamilton billing records
15. The 2003 taxes clearly show Danny Davila had to be aware of the Hamilton Trust and Alan Hamilton’s relationship to that Trust. (see Exhibit bank account 1099s from 2003 taxes)
16. The 2004 Amended tax returns done by Danny Davila and not given to Alan Hamilton until March 2009, still did not subtract the missing $749,000 which Danny Davila had told Alan Hamilton on Sept 11, 2008 was missing from the Estate. It was also not subtracted in the 2005 or 2006 taxes done by Danny Davila.
17. Defendant Sylvia Hamilton, according to her confession, did willfully steal the annuities and other monies from the Estate for her own use. The bank records clearly show Maurine Hamilton’s accounts containing the annuities being drained immediately after obtaining the “early release”, with the assistance of a CPA, Danny Davila. Bank records show large $150,000 transfers to Sylvia Hamilton’s account from Maurine Hamilton’s annuity accounts, continuing after her death(?) (get exact dates of last withdrawals – would prove she went to bank without Maurine aok). (see Exhibit $150,000 transfer receipt)
18. The Estate was found to be Insolvent, upon the examination of Alan Hamilton’s Probate attorney between Sept 2008 and the present, though financial records for the estate continue to be willfully concealed and withheld from the Executor by Sylvia Hamilton and Danny Davila in her place, and as Sylvia Hamilton’s CPA.
19. As a direct result of Defendants breach, Plaintiff suffered substantial money damages, in excess of $2 million. (3rd Element) (see Exhibit Sylvia’s embezzlement confession/accounting for Probate Judge – all bank accounts near $0.00)

WHEREFORE Alan Hamilton, as the Executor and a beneficiary of the Maurine P. Hamilton Estate/Trust demands judgment for money damages against Danny Davila et al, together with such other and further relief as the Court may deem reasonable and just under the circumstances.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Alan L. Hamilton, Plaintiff