No. 19-212

In The

Supreme Court of the United States

HANH THAI WILLIAMS,

Petitioner,

v.

SUCCESSION OF FRED LANGFORD HOUSTON,

Respondent.

On Petition For A Writ Of Certiorari To The Louisiana 2nd Circuit Court Of Appeal

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether Armand Roos' participation as Plaintiff's attorney and primary witness was procedurally and evidentiary concern a violation of Due Process. Further, Roos' familiarity with the trial judge and Petitioner's two attorney witness by a handshake and shoulder clasp in front of the jury, along with the admittedly false testimony of plaintiff's accountant and accounting and the denial of right to present evidence was unfair and deprivation of Due Process pursuant to the Fourteenth Amendment.

2. Judge Jeff Cox was the writing judge in the Louisiana Second Circuit Court of Appeals. At the time of the trial in District Court, Jeff Cox was running against a 20-year incumbent for the appellate court. Following the district court trial and verdict, Cox received campaign contributions from the Wiener, Wiess & Madison law firm, Roos and all the attorneys that worked on this case. Cox won the election and immediately became the writing Judge. The question presented is whether Judge Cox's failure to disclose these contributions is violative of the Due Process Clause of the Fourteenth Amendment.

STATEMENT OF RELATED CASES

Succession of Fred Langford Houston, No. 52,181-CA, Court of Appeal, Second Circuit, State of Louisiana. Judgment entered August 15, 2018.

Succession of Fred Langford Houston, No. 525,127, 1st Judicial District Court, Parish of Caddo, State of Louisiana. Judgment entered December 15, 2016.

Succession of Fred Langford Houston, No. 2019-C-0458, Supreme Court of the State of Louisiana. Review denied May 20, 2019.

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The opinion of the Louisiana 2nd circuit court is published at ___ So.3d ___ (2018).

JURISDICTION

The jurisdiction of this court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISION INVOLVED

The 14th amendment to the U.S. Constitution provided in relevant part:

> "No state shall . . . deprive any person of life, liberty, or property, without due process of law . . . "

This appeal by Petitioner, Hanh T. Williams arises from a jury trial beginning October 31, 2016, awarding $1,100,000.00 in damages from a Trust claim and $460,605.00 from the Estate claim, forfeiting her testamentary twenty percent (20%) compensation, together with legal interests and costs of the proceedings.

The Petition for Appeal was filed on March 20, 2017. Petitioner was granted an Appeal by order dated March 22, 2017. An opinion was issued by the Second Circuit Court of Appeal on August 15, 2018, written by Judge Jeff Cox. A request for rehearing was timely

filed by Petitioner. On August 17, 2018, two days after the opinion was written, the entire Second Circuit recused. On October 8, 2018, the Louisiana Supreme Court transferred the matter to the Third Circuit Court of Appeal which denied Petitioner's Motion for Rehearing on February 20, 2019. A Writ Application to the Louisiana Supreme Court was timely made and denied without an opinion.

STATEMENT OF THE CASE

Petitioner respectfully requests this Court review the fundamentally unfair proceeding which resulted in a substantial verdict against Hanh Williams which should be reviewed and reversed as it has and will continue to ruin this individual but more cogently, a fair trial was denied. Further, the departure from proper judicial proceedings in allowing the attorney to become a witness and testify beyond personal knowledge with no designation of an expert by wearing the mantel of court sanctioned independent executor, attorney of record, with accompanying perceived expertise by the jury and familiarity with the trial judge.

In this case, Armand Roos, the attorney for the Plaintiff, who also served as the Dative Independent Executor, appointed two (2) years after the Testator's death, was Plaintiff's most expansive witness. The trial court allowed the attorney, over objection, to testify on all aspects of plaintiff's allegations, causes of action, and damages. The attorney/witness had no

personal knowledge of the underlying transactions, facts or people relating to the Testator/Trustee. When he was listed as a witness, he was deposed shortly before trial. However, the attorney-client/work product privilege was used to block salient areas of inquiry. (Roos' Depo p. 7).

At the conclusion of his testimony to the jury, the attorney/witness stood up and approached the trial judge, shaking hands and clasping his shoulder in an obvious display of familiarity and perceived bias, witnessed by the jurors who were still in the courtroom. A mistrial was immediately requested. This was a very small courtroom with Roos' table next to the jury box. The Petitioner, a female Vietnamese immigrant, who escaped communist Vietnam at age 14, sat at the furthest table from the jury box. The witness box was a single chair.

Louisiana judges are elected. The trial judge, Ramon Lafitte, was elected without opposition in 2008 and re-elected unopposed in 2014. His next election would be in 2020. The trial was in 2016.

After the trial Roos, the lead counsel (John Frazier), the Weiner, Weiss & Madison law firm and two partners of the firm gave contributions to Judge Ramon Lafitte. While the case was on appeal several motions were filed by plaintiff to revoke property transfers and for distribution of Succession funds to Roos and his law firm, Weiner, Weiss & Madison. Plaintiff, his attorneys and law firm gave the trial judge

$3,000 which was more than ¼ of his $11,000 debt (personal loan to his campaign).

Finally, the Court of Appeal has erroneously interpreted the laws that provide fundamental due process in a jury trial, the application of the Trust Code's preemption and evidentiary interpretations of intent which decisions will cause material injustice to the Petitioner. One issue revolved around whether an annual accounting was provided. This issue was not presented to the jury and thus, not answered.

Additionally, any tribunal permitted by law to try cases and controversies not only must be unbiased but also must avoid even the appearance of bias. Commonwealth Coating Corp v. Cont'l Cus. Co., 393 U.S. 145, 150 (1968). Also, Caperton v. A.T. Massey Coal Co., 556 U.S. 868 (2009). The writing judge, Jeff Cox, in the Louisiana 2nd Circuit receive multiple contributions from plaintiff, the attorneys for plaintiff in this case, their associates and the law firm. Judge Cox was elected to the 2nd circuit court of appeals and immediately became the writing judge. Judge Cox did not disclose these contributions to the Petitioner. If he had Petitioner could have moved for his recusation.

REASONS FOR GRANTING THE PETITION

On September 23, 2008, Fred Lanford Houston Died. According to Houston's Will, Hanh Williams was the Independent Executrix, entitled to receive twenty percent (20%) of the Estate value. She opened the

Succession with an attorney on September 30, 2008. Six (6) of the seven (7) legacies were delivered as set forth in the Will. The Will also allowed for a Testamentary Trust or foundation to be established which was Williams' intent through an independent law firm. On July 2, 2009, the State of Louisiana intervened and filed various pleadings and discovery requests. On September 1, 2010, the Succession was converted to regular administration with a co-executer, Armand Roos, to serve with Williams.

On September 17, 2010, Williams voluntarily and for the purposes of moving the matter forward temporarily stepped aside as the Executrix. Armand Roos would not be co-executor of the Estate with her or anyone else. Mr. Roos then was appointed by the Court as the Dative Independent Administrator. The Judgment provided that Williams was entitled to receive compensation for her services as Executrix of the Succession of Fred Langford Houston at twenty percent (20%).

Armand Roos then enrolled himself as attorney for the Estate. At that time, it was the intent of the parties that Attorney Roos would wind up the affairs of the Estate, in short order. Consequently, he was allowed an hourly rate of $365.00 rather than the statutory (2½) percent. However, Attorney Roos filed a Petition and later an Amended and Restated Petition against Williams scrutinizing the activities of an Inter Vivos Trust established by Houston during his lifetime as well as the activities of the Estate.

Motion in Limine were filed and the jury trial commenced on October 31, 2016, eight years after Houston's death and six years after Roos' appointment, not completing until November 15, 2016, due to numerous interruptions for court holidays. After a forty (40) minute jury deliberation, the jury returned a substantial verdict against Williams. (Court Minutes R. 10)

FACTS

After Eleanor Houston died, her widower, Fred Houston ("Houston"), brought her life insurance policy to the Jefferson Pilot Office in Shreveport, Louisiana in 2002. At that time, Houston met Hanh Williams ("Williams") and requested she assist him in collecting the proceeds. They were introduced by Jack Yost who ran the office and trained Williams. Mr. Yost considered her his best agent in a fifty (50) year career. Houston continued to come to Williams for investment advice. She was very successful in increasing his portfolio. They became friends and Houston took up more and more of her time to the point she stopped taking on new clients. Over time, he requested Williams to help him managed his wife's oil and gas interests. The oil and gas interests were complicated working interests in Webster Parish with Samson and El Paso. It required an expertise to determine when to participate, if to participate and how to monitor the participation to maximize the return. Williams, with the help of a local geologist, Rick Taylor, developed a knowledge

that increased (triple) Houston's return from the Webster Parish oil and gas interests.

Williams attempted to teach Houston on how to manage these minerals, but he refused and insisted that Williams continue to manage these mineral working interests. He gave Williams one half to do so. Williams received this one half before the trust was created and thereafter. The trust agreement recognized Williams' half interest in the minerals.

Because of Williams' business acumen, she also successfully advised Houston's conversion of assets into investments and annuities, which greatly increased his net worth. She also successfully litigated on behalf of Houston, increasing a stream of income from a Coushatta Truck Stop rental property from $18,000.00 to $60,000.00 a year.

Over time Houston depended on Williams to manage his business affairs. Most Sundays he had dinner with Williams and her children. In addition, he had frequent, if not daily, interaction with Williams requesting her advice.

Jack Yost testified about the relationship between the two and of Williams' efforts on behalf of Houston. Houston gave Williams his Power of Attorney on September 2, 2003. In 2005, he also made her his agent for health care decisions. On August 3, 2005, Houston formed the "Fred L Houston Inter Vivos Trust." Local Attorney, Jerry Jones, drafted the Trust. Houston placed most of his assets, but not all, in the Trust. As testified by Mr. Jones at trial, Houston trusted Williams and he

needed protection from his bad habits, so Attorney Jones performed his due diligence to be sure Williams herself was not taking advantage of Houston. His "bad habits" were prostitutes and cocaine.

Tom Chavanne, a local accountant, kept the books for the Trust and concurred with Mr. Jones' trial testimony that Houston trusted Williams to take care of his affairs and was aware, through scheduled as well as informal meetings, of the Trust assets, transactions, tax returns and accounting worksheets; all Houston's questions were answered. Houston considered Williams to be his daughter. He had no children or immediate family.

With the advice of counsel, Dan Lagrone, Houston then drafted a Will leaving six (6) specific legacies to individuals and the remainder of his Estate to a Trust to benefit LSU School of Veterinary Medicine to fund pet oncologic research. Houston made Williams the Independent Executrix with compensation set at twenty percent (20%) of the Estate. Pam Branagan notarized the Will. She also described Houston's relationship to Williams as father/daughter.

Under the terms of the Trust, Williams was to be compensated with her fifty percent (50%) of the profit of the Webster Parish oil and gas revenues, which she managed before and during the Trust. This clause actually recognized Williams' ownership of one half of the working mineral interest. Williams was also entitled, under the Trust Instrument, to additional compensation

and reimbursement of her expenses. (*See*, Trust Instrument D-2, Section 7.6).

Williams paid all of Houston's bills, including all of his daily living expenses. She also advanced him, at his request, cash. The arrangement was subject to accounting by Tom Chavanne and the legal advice of Dan Lagrone, a local attorney.[1] It was efficient and effective in allowing Houston to conduct the lifestyle he chose without becoming penniless. In fact, Williams' business acumen, increased the value of his Estate.

Soon after Houston died, Williams opened the Succession with legal representation. Legacies under the Will were distributed. The Webster Parish oil and gas working interests were continued to be managed profitably. Houston's home on W. Cavett in Shreveport, Louisiana, was in disrepair. This was remedied and the house sold as well as his vehicles. The annuities with death benefits Williams had advised were cashed resulting in a huge financial benefit to the Estate. Williams then asked another law firm, to implement the Testamentary Trust provisions of the Will. Williams retained Curtis Shelton to supplement the interim accounting deal with the State of Louisiana attorney's and bring the Succession to a Judgment of Possession.

Larry Porter, CPA, was engaged to handle the Estate accounting. After Mr. Shelton's numerous battles with the LSU Vet School attorneys, all parties agreed, with the consent of Williams, that Roos would be

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[1] Dan Lagrone died before the trial and obviously could not testify.

appointed the Executor, in hopes of quickly wrapping up the affairs of Houston. That was a pipe dream. LSU Vet school was dismissed. Roos eventually sued Williams. Roos and his law firm has taken most of the Succession funds.

The trial of this case was continued at the request of Plaintiff on more than one occasion. Petitioner counsel objected to the last trial setting because of the many interruptions anticipated.

Since the Plaintiff would not agree to a continuance as suggested by the trial court, the jury trial of this matter started on October 31, 2016 with declared interruptions of All Saints Day, Election Day, Court Holiday and Veteran's Day. These interruptions occurred at critical times during Petitioner's presentation so that three (3) days passed between Petitioner's first significant witness and the resumption of trial testimony and three and one-half (3½) days between Williams' direct examination and the cross. The redirect of Petitioner came after the start of the third week of the jury trial and after the jury had been told the case would have been given to them the day before. Consequently, Petitioner's crucial rebutting testimony and exhibits were presented to a frustrated, impatient and inattentive jury. Despite the complexities of the evidence, the length of trial and the complicated interrogatories given to the jury, the deliberation lasted from 12:14 p.m. until 1:05 p.m. with a 9 to 3 vote against Petitioner. (*See*, Appendices XI, 1).

During the course of the trial, Plaintiff called one (1) attorney, Armand Roos, and another attorney, Curtis Shelton, hired by Petitioner to set up the trust as provided for in the last testament and will, two (2) collateral witnesses and a recently hired accountant. Petitioner on the other hand called several witnesses who had personal knowledge of the relationship between Houston and Williams and the fact that the dealings between them were appropriate and monitored by accounting and attorney professionals. (*See*, Testimony of Tom Chavanne, Hanh Williams, Jerry Jones, Jack Yost, Pam Branagan, and Larry Porter, CPA). Tom Chavanne dealt with Houston in a Trust setting. Attorney Shelton and Larry Porter assisted Williams with the Estate. However, the trial judge would not allow these witnesses to testify to Houston's intent.

Plaintiff's lead counsel hired his wife, Alice Frazier, to do an accounting. She had no personal knowledge of Houston and Williams or the Trust or Estate activities. She made assumptions requested by Plaintiff's attorney, Armand Roos. She misread the Trust instrument to exclude compensation to Williams for the oil and gas working interests which she claimed Williams was not entitled to. Although available, Alice Frazier did not testify. Rather, a new CPA, testified as to what Frazier report stated.

The new CPA witness testified that the reason she could not fully explain the Trust accounting to the jury was because Williams would not produce her personal bank statements. This was simply not true. The next

day at trial the Plaintiff's attorney attempted to introduce those very same personal bank statements which were in his possession and did so as Plaintiff's Exhibit 90. A mistrial was requested and should have been granted on this significantly false suggestion to the jury that Williams was not being honest and forthright. Plaintiff only called Roos and this accountant to establish a breach of fiduciary duty. Consequently, the question testimony was significantly prejudicial. All this resulted in a forty (40) minute jury deliberation in which twelve (12) jurors in a 9 to 3 vote, elected a foreperson, answered eleven interrogatories, awarded a million and one-half dollars, all without eating lunch or asking for any evidence. Obviously, the majority of this jury was simply ready to be done and a fair trial was denied Williams.

A. The trial court committed error in allowing Armand Roos, attorney of record, to testify on all aspects of the case even though he had no personal knowledge of the matter, had not been designated as an expert and refused to answer pertinent questions at his pre-trial deposition. His participation as attorney, court appointed administrator of the Estate and familiarity with the judge and the attorney/ witnesses was so fundamentally unfair it was a deprivation of due process.

By agreement of the parties, at the hearing on September 17, 2010, Armand Roos became the Independent Executor. He then enrolled himself as attorney of

record. However, on the joint pre-trial order he was listed as a witness. He was not listed as an expert and no report was furnished. Consequently, Attorney Roos' deposition was taken a few days before trial (October 13, 2016) to determine why he was listed as a witness since he was the attorney of record. The attorney-client privilege was asserted when questions were directed to Attorney Roos about the scope of his anticipated testimony. (Roos Depo. P.7). This deposition was introduced into the record at the December 13, 2016 hearing. Roos was asked if he was performing legal services and he answered in the affirmative. (Roos Depo. P. 14). When specifically asked about his testimony at the upcoming trial, Mr. Tabor: "That's privileged, and I'm going to instruct you not to answer that to the extent it calls for privileged information." (Roos Depo. P. 16). When asked if his hourly charges were for Executor fees or attorney work, he responded, "both".

When asked what exhibits Attorney Roos may use at the trial of this case for any purpose, the objection of attorney-client privilege was made. (Roos Depo. P.65). Even though the date was October 13, 2016, at 3:00 in the afternoon, counsel refused to allow Attorney Roos to answer questions concerning the exhibits and witness testimony that would be presented at the October 31, 2016 trial. (Roos Depo. P.68).

However, at trial he was the Plaintiff's primary witness. To add to the unfairness, at the end of this testimony, while jurors were still in the courtroom, he rose from his chair (4th floor courtroom of the Caddo Courthouse has no true witness stand) moved to the judge

and engaged him in a greeting that was more than a handshake. A mistrial was requested. Since the Plaintiff's primary witness was Roos who knew nothing personally about the matter in question and a recently retained accountant interpreting another CPA's accounting, this conduct and testimony of the attorney of record was very unfair and prejudicial. Defendant was denied a fair trial. She appeared to the jury as an outsider. U.S. v. Prantil, 764 F.2d 548.

Attorney Roos' characterization of the participants on the Plaintiff's side was also unfair:

> Q. You mentioned Alice Frazier, who is Alice Frazier?
>
> A. Alice Frazier is the tax, the tax partner with Heard, McElroy, & Vestal, local accounting firm. She is Meg Frazier's mom, my partner John Frazier's wife and very, very good friend of mine and a great accountant.

Attorney Roos was then allowed, unfairly, to comment on accounting (he was not listed as an expert). He was then allowed to introduce tax returns that he did not prepare, over objection of counsel. He was then asked (again not tendered as an expert) questions about amended Trust Estate Returns. These were shown to the jury, although objections were made. When Attorney Roos responded that there were mistakes in previous returns filed by Petitioner, this caused the need for repeated objections by Petitioner counsel to keep out obvious opinions from a witness

who was not listed as an expert and from whom Petitioner was not allowed fair discovery in a deposition two (2) weeks before trial. The unfairness of allowing the attorney of record to testify in a jury case was highlighted when objection as to exceeding the scope of a lay witness would be sustained and then Plaintiff's counsel would simply ask what Attorney Roos did in addressing alleged improprieties which response would be allowed and would be taken by a lay jury as fact. (*See* Appendices XI, 3).

Attorney Roos was then asked questions about the DeSoto Parish litigation on which a Motion in Limine had been filed to exclude. Attorney Roos was the attorney of record in the DeSoto Parish litigation. The information allowed through Attorney Roos' testimony was very prejudicial to Williams and caused repeated objections by Petitioner counsel to inappropriate questions.

An objection was entered that Attorney Roos was not an expert, but an attorney enrolled in the Desoto Parish case. However, Attorney Roos was allowed to answer that question despite strenuous sidebar argument.

Then incredibly, the witness was asked, "Are these additional amounts that you're asking the jury to award the Succession in connection with recovering (Desoto Parish) minerals? Yes sir, they are. What is that amount?" To continue the unusual proceeding, Roos was then allowed to read the allegations from the Desoto Parish petition. Objection was timely

made. However, counsel for Plaintiff continued to ask improper questions requiring petitioner counsel to object repeatedly. Not of record are the numerous sidebars concerning this witness' testimony which were conducted in the courtroom, off the record, in the presence of the jury. Despite numerous objections, the judge allowed counsel of record to go through the allegations of the Desoto Parish petition, explaining it to the jury. Again, wearing the mantle of a court appointed Independent Executor and an attorney who practices trust and estate law. The scenario of the attorney of record reading the allegations of his Petition against the Petitioner to the jury and commenting with repeated objections by the petitioner counsel, was bizarre, particularly with the court overruling petitioner counsel's objections suggesting to the jury that these allegations were true without any evidence.

This abuse which deprived Williams of any chance of a fair trial then morphed into a request by the attorney of record, Armand Roos, for money. Petitioner counsel's frustration with inappropriate questions suggesting factual occurrences which needed evidence not argument, is evident on page 3968 of the Record. All of this took place in front of the jury unfairly depriving Williams of any chance that subsequent proceedings could result in a fair trial. The witness' testimony concerning opinions continued. Finally, defense counsel moved for a mistrial.

"He has been placed on the witness stand and often asked questions that would elicit an expert opinion. I've been put to the task of having to object

repeatedly, as the record will reflect, to that and its continuing even until the very end of this testimony which I think should have been over long ago." The judge allowed the attorney of record to tell the jury what money they should award. (R 3984).

Attorney Roos has no personal knowledge of the relationship between Houston and Williams or what occurred before he became involved in September of 2010. At the conclusion of his testimony, he approached the judge with a handshake, shoulder clasp and familiar conduct in front of jurors, prompting a second motion for mistrial in connection with this unfortunate deprivation of Williams' right to a fair trial. (R. 4015).

In addition, Attorney Roos, wearing the cloak of the court sanctioned Dative Independent Executor and an attorney hat, approached Petitioner's professional witnesses, Jerry Jones and Curtis Shelton (attorneys), clasping their shoulder, shaking their hand, in view of jurors. This was inappropriate and grounds for a mistrial. After his testimony, Attorney Roos stayed in the courtroom participating, passing notes continually to other counsel and making suggestions, on a few occasions, loud enough so the remarks could be heard by the jury. Consequently, the environment of the courtroom was unfairly hostile to Williams. She was simply viewed by the jury as an outsider, who was not part of the courthouse network, which is not evidence, but which prejudiced the jury against her. The jury went into its brief deliberation and deprived her of a fair trial. The court's explanation in United States v. Prantil, supra, is illustrative:

> "The advocate-witness rule prohibits an attorney from appearing as both a witness and an advocate in the same litigation. The venerable rule is a necessary corollary to the more fundamental tenet of our adversarial system that juries are to ground their decisions on the facts of a case and not on the integrity or credibility of the advocates. Accordingly, adherence to this time-honored rule is more than just an ethical obligation of individual counsel; enforcement of the rule is a matter of institutional concern implicating the basic foundations of our system of justice."

In Matthews v. Stolier, No. 13-6638, 2015 U.S. Dist. LEXIS 171752 (D.C. La. December 23, 2015), the court held that the circumstances of the negotiations of the transactions would be key to proving several of plaintiffs' claims, including their fraud, malpractice, and breach of fiduciary duty claims. As the attorney had unique personal knowledge of the circumstances of these negotiations based on her participation as counsel for plaintiffs, the court held that she would be a necessary witness. Finding no applicable exception, the court granted the motion to disqualify the attorney.

Petitioner respectfully suggests that the Second Circuit's addressing of this issue was misplaced. Petitioner did not raise an issue under the Code of Professional Responsibility (Rule 3.7). The issue being raised is more fundamental to the due process right to a fair trial. The opinion of the La. Second Circuit does not address this assignment of error. In fact, the case cited, *Farrington v. law firm of Sessions, Fishman*, 96-1486

(La. 2/25/97) 687 So.2d 997, is factually different and the language in that case is supportive of Applicant's position.

B. The jury verdict was clearly erroneous based upon the evidence, particularly a finding of gross negligence which deprived Williams of her testamentary 20% Executrix fee as well as ownership of ½ half of the Webster Parish working mineral interest.

Plaintiff's case consisted primarily of one (1) attorney, himself, and a hired CPA, none of whom would know Houston from a two (2) person lineup. None of them had any personal knowledge of the personal or professional dealings between Williams and Houston prior to his death. In fact, no witness called by Plaintiff did. Significantly, the Petitioner witnesses did know Houston and what he was attempting to accomplish with his Trust and his Will with Williams:

> Q. My question to you Mr. Jones, in your discussions with Mr. Houston, what was he trying to do?
>
> A. Mr. Houston was wanting to essentially protect himself from his money – Mr. Houston has no family, he has no children, no one that he was close to. He was a good bit of, access to a good bit of money. He has some personal habits that were destructive, he knew they were destructive, and he was concerned that if he did

> not basically put a buffer between himself and his money that it might be gone.

(Testimony of Jerry Jones, the attorney who drafted the Trust). Mr. Jones, an attorney in Shreveport at the time, went on to state that he had several meetings with Houston to be sure Williams was not taking advantage of Houston. Mr. Jones took his role as the attorney drafting the Trust seriously and ensured that Williams was not exerting undue influence.

Jack Yost, the manager of the business where Williams worked and her mentor, testified about the progression of Houston's dealings with the Jefferson Pilot office and why Houston chose Williams to manage his affairs after his wife died. Mr. Yost had personal dealings with Houston, and personal knowledge of his business interest and personal knowledge of Williams' abilities and her relationship with Houston. He felt Williams was one of the better agents he had hired in his fifty (50) years in the business and that she was honest.

Pam Branagan who notarized the Will and the Affidavit of Death and Heirship confirmed that Houston had no family. She also confirmed that the relationship between Houston and Williams was like father-daughter. It did not surprise Branagan that Houston wanted Williams to have twenty percent (20%) of his Estate. (R. 4274).

Likewise, the testimony of Tom Chavanne, accountant for Houston and preparer of his tax returns

in the years before his death, confirmed that Williams and Houston had a good relationship like father-daughter and that Houston intended for Williams to protect him from his bad habits.

Houston knew exactly what Williams was doing for him, how much it was costing and how his money was being managed. During his time as accountant, Chavanne was not aware of any improprieties in the management of the Trust or other financial arrangements.

Likewise, Larry Porter, a CPA who handled the Estate accounting was asked:

> Q. Mr. Porter, out of – after reviewing all of these documents and all that you reviewed and coming in here and sharing your opinions with the jury, have you seen any evidence that Ms. Williams did anything wrong in the handling of the Trust or the Estate as the trustee or the independent executrix?
>
> A. I have no evidence, no, sir.

(R. 4445-4446)

The testimony of these individuals who had personal knowledge of the relationship, factual dealing and financial matters between Houston and Williams should not be trumped by the testimony of one attorney (Roos) and a retained accountant who had no personal information. There was no other probative evidence about the relationship and the financial dealing

based upon a firsthand knowledge other than what the Petitioner presented. The jury's finding of a breach of a fiduciary duty to a gross negligence degree, in forty (40) minutes or less, was clearly erroneous. *See Rosell v. Esco*, 549 So2d 840 (La 1989). *See* also, *Morris v. Owens-Illinois, Inc.*, 582 So2d 1349 (La App. 2 Cir. 1991), *writ denied*, 588 So2d 1119 (La 1991).

C. The confusing testimony of Plaintiff's retained accountant combined with misleading presentation of the accounting was significant enough to justify a mistrial or reversal.

One (1) of two (2) professional witnesses presented by Plaintiff at this trial was retained to reconstruct an accounting done by Alice Frazier, Plaintiff's lead attorney's wife, concerning the Trust and the Estate. This witness has no first-hand knowledge concerning the working of the Trust or the relationship between Williams and Houston. In preparing her testimony, the retained witness requested documentation from Attorney Roos, which the accountant never received. If Attorney Roos did not provide her with what she felt was sufficient documentation, she classified the expense as a distribution to the Trustee.

The retained witness testified that she asked to see Williams' personal bank accounts and did not receive them. During redirect, the trial court allowed counsel for Plaintiff to question the accountant as to the availability of Williams' personal checking accounting.

The trial judge allowed counsel for Plaintiff to "testify" as to "facts" without any foundation and elicit a response that the accountant had "heard" that. (R. 4135). Counsel for Plaintiff then asked:

Q. Now, Ms. Killough, are you aware of Mr. Roos asking Ms. Williams for her own checking accounts, do you know if that's come up?

A. I believe – yes, sir, many times. I was told that it was requested.

Q. And we're sitting here and we don't have any of that checking account information, do we?

A. No, sir

Q. So, Mr. Woodley seemed to be insinuating that you had asking from Mr. Roos and Mr. Roos just didn't get it, but in reality, Ms. Williams wouldn't give it to him; is that correct?

MR. WOODLEY: I'm going to have to object to this. If he's going to testify, he really –

THE COURT: Actually, it's already been answered. Next question.

Q. (By Mr. Tabor) Let me ask it this way, Ms. Killough, different question.

A. Okay.

Q. Would it be extremely helpful for reviewing what went out of the estate and where

that money went if we could just look at Ms. Williams' bank accounts?

A. It would be –

(R. 4135, 4136).

The next day, during the cross-examination of Larry Porter, a witness for the Petitioner, the attorney for Plaintiff produced Williams personal bank records and questioned Porter about them. Counsel for Plaintiff was allowed to use this evidence, over objection, to insinuate checks made out to the Trust were inappropriately deposited into Williams' personal checking account. There were the same documents counsel for Plaintiff has just discussed with the retained witness Killough who denied they were produced and suggesting Williams was hiding important financial information.

At the conclusion of Porter's testimony, Petitioner moved for a mistrial on the basis of the significant misstep and, as importantly, the presentation of evidence by counsel which either he or the witness should have known to be false, but still presented to a lay jury. (R. 4405-4406).

The trial court recognized that counsel for Plaintiff had proffered inaccurate testimony and that the witness had misrepresented the facts. The trial court felt this could be handled on cross or with another witness. That is not the case.

The only inference which could have been drawn from this inaccurate testimony was that Williams had

used her own personal accounts to siphon funds from the Trust and hide it from the Estate and refused to provide the bank account information which would have proven it. The jury was led to believe Williams had something to hide; otherwise, why would she resist the Executor's requests. That erroneous presumption could not be addressed through some other witness. Testimony that the records would have been helpful; along with the testimony that the records had been requested many times but not provided, was so prejudicial there was no way to overcome it at trial.

In addition, there was no true forensic accounting presented to the lay jury as indicated by Attachment K to Plaintiff's Exhibit 26. This was supposed to be a reconciliation of the Trust accounting; however, a quick review of Attachment K establishes that if Attorney Roos could not determine the circumstances surrounding a sum of money, it was simply attributed to Hanh Williams as improper compensation or money she received and owed the Estate with no underlying proof.

This procedure was in direct contradiction to the testimony of Jerry Jones and Tom Chavanne. As an example, Variance Number 3 in Attachment K attributes Franklin Templeton money totaling $257,893.62 to Williams. (*See* Appendices XI, 4). Williams never received this money and there is no proof that she ever received this money. In fact, the testimony at trial was that Houston received this money directly. It was never deposited into the Trust. Without any evidence or justification to place these substantial amounts of cash assets to Williams, the Plaintiff's accounting witness

simply did so at the request of Roos. Again, this was contradicted by the testimony of Petitioner. Plaintiff's Exhibit 26 brought the total to $325,096.51 of cash to Williams that Item Number 3 on Attachment K indicated could not be explained so these amounts were simply attributable to Williams. *See also*, Variance 10 of Attachment K, Appendices XI, 4):

> Heard, McElroy, & Vestal, LLC was given no information as to the location of the difference of $325,096.51 and therefore, it has been classified as a distribution made to Hanh Williams, Trustee. (Attachment E).
>
> There is no evidence to support this decision.

Compounding the accounting error, the Plaintiff simply allocated fifty percent (50%) of the Webster Parish mineral interests as unauthorized compensation to Williams when, in fact, the Trust Agreement provided this amount of money was to be given to her as Trustee compensation. (*See* Variance 7, Attachment K, Plaintiff's Exhibit 26). With no evidence and in direct contradiction to the testimony of Jerry Jones, Plaintiff has simply allocated this amount of money to Hanh Williams as unauthorized compensation. (*See* Appendices XI, 4).

A review of the Variances attached as Attachment K to the Plaintiff's Forensic Accounting, established that if an amount could not be explained to the satisfaction of Attorney Roos, it was simply attributable to Williams as unauthorized compensation and included in the Plaintiff's accounting as to the "Trust

distributions" that Williams supposedly "received without appropriate authorization."

It is important because the amount of Plaintiff's attorney requested at the closing argument, was the exact amount the jury, during its forty (40) minute deliberation, placed in the blank, 1.1 million for the Trust, which is simply incorrect when understood in the context of the Variances on Attachment K, the testimony of Tom Chavanne, Jerry Jones, and Larry Porter. Plaintiff has only two (2) witnesses on this issue: Roos and newly hired Elizabeth Killough who took the place of Alice Frazier. Ms. Frazier did not testify. These two (2) assumptions: (a) Williams gets no compensation even if authorized; and (b) Hanh Williams must pay anything Roos decided was not explained to his satisfaction, are thin and do no comport with generally accepted accounting principles.

In addition, some assets were never transferred to the Trust by Mr. Houston. Rather, he kept those assets in his individual name and when the assets were liquidated, he received the funds. As shown by the testimony of Ms. Killough and Williams, all of the Franklin Templeton funds were deposited into Houston's personal checking account at Chase Bank. These amounts should not have been allocated to Williams as improper Trustee compensation as was done by Plaintiff's accountant and ultimately, the jury.

Attachment E to the report prepared by Alice Frazier, also sets forth amounts she allocated to Williams because she did not know where else to put

them. These amounts include payments of a Trustee fee as allowed by the Trust document and approved by Houston as well as payment of 50% of the Sampson El Paso Webster mineral revenue which the Trust Instrument provided would form a part of Williams' compensation as Trustee. Larry Porter properly allocated these amounts in his report and explained in his testimony why these amounts were valid payments to Williams under the terms of the Trust. Jerry Jones would have offered the same testimony. The payments from Sampson El Paso, as shown by Mr. Porter, were properly classified as Trustee compensation under the terms of the Trust. These amounts should not have been erroneously classified. Actually, these mineral interests belonged to Williams before the Trust. The agreement with Houston was Williams would do the work and she got half.

The jury erred in its finding that Williams received $1,101,512.37 improperly from the Trust. Williams did not receive $325,096.21 of this figure as those amounts were paid directly to Houston and not to the Trust. Houston, individually, then dealt with those funds. A large amount of the other $776,415.86 represents payments made by Sampson El Paso for working interest payments under the terms of a lease. Those amounts, as shown by Larry Porter, were proper Trustee compensation under the terms of the Trust.

D. Claims arising from the Trust preempted and should not have been presented to the jury.

The Dative Independent Executor alleged breaches of fiduciary duty by Williams both in her capacity as Trustee and in her capacity as Executrix. These alleged breaches are separate and distinct from each other. The claims against Williams as Trustee asserting breaches of fiduciary duty are governed by the two (2) and three (3) year preemptive periods set forth in La. R.S. 9:2234.

All claims against a beneficiary for acts, omissions or beaches of duty must be brought within two (2) years of the date a trustee renders an accounting for the period in which the alleged act occurred or within three (3) years of the date an accounting is rendered for the period in which the alleged act occurred. La. R.S. 9:2234(A). The evidence at the trial established that accountings were rendered to Houston, settlor and beneficiary of the Trust, on a regular basis by Tom Chavanne, the Trust's accountant. Chavanne has vast experience in trust accounting and was recognized by the court as an expert witness. Chavanne knew Houston personally. At trial, Chavanne presented the court with a listing of all the accounting transactions of the Trust from its inception through Houston's death.

This is a detailed transaction list of all the accounting entries for the Trust, for the list of the Trust for 2005 to 2008. The transactions are in order of accounts. Like on Page 1, you'll see OIB checking in the top left. As you go through this report, you'll see those

headers change. First, you'll see all the activity, moneys go into and out of the checking account, and as you progress down the chart of accounts, it would show you the detailed transaction for income accounts and expense accounts. (R. 4452).

Chavanne met with Houston and Williams in his capacity as the accountant for the Trust regularly.

Q. Now, in 2007, 2008 when you were doing the accounting work for the Trust and Mr. Houston, did you have occasion to visit with Mr. Houston?

A. Yes.

Q. At that point he was a client of you as an accountant?

A. Correct.

Q. Was he about himself; in other words, was he competent in your opinion to managed his affairs?

A. Oh, definitely.

Q. Did he come by the office where Ms. Hanh Williams was officing, and were you ultimately officed on Youree Drive on a regular basis?

A. Yes

Q. Mr. Chavanne, did you ever – were you ever present when Fred Houston and Hanh Williams discussed business about the Trust?

A. Yes.

Q. On occasion, were you actually there in the capacity as the accountant for the Trust?

A. Yes.

(R.4455)

During those meetings, the three (3) individuals reviewed the log of Trust activity maintained by Williams and went over all the transactions involving Trust assets. Mr. Chavanne explained that entries in the transaction register which reflect payments to Williams for cash to Houston in the way Houston directed. Williams also gave Houston receipts for Trust expenses which showed Trust expenditures. Houston kept those receipts and it is small wonder Williams could not reproduce them at trial. This represents a legally sufficient accounting.

Chavanne testified he met with Houston and reviewed the Trust transaction register and the Trust bank statement. Chavanne was available to answer any questions Houston had about the income and expenses of the Trust when they met.

The record also established that a schedule of Trust property was included in the original Trust document. (D-2). Houston was well aware of the property and that there were no changes.

Chavanne provided Houston a statement of revenues and expenses for the Trust on a monthly basis when they went over all expenses and checking

account data. This is a sufficient accounting under the law.

This testimony was supported by the testimony of Williams who testified she regularly went over all of the accounts with Houston, in detail, at least every two (2) weeks. (R. 4544).

A Trust tax return was prepared for each year. Williams also testified she, Chavanne and Houston went over all Trust finances and discussed the assets in the Trust.

Section 2088 of Title 9 of the Louisiana Revised Statues requires an annual accounting by a trustee that shows:

> in detail all receipts and disbursements of cash and all receipts and deliveries of other trust property during the year and shall set forth a list of all items of trust property at the end of the year.

Chavanne's testimony shows that an accounting was rendered to Houston on a monthly basis. Chavanne began performing his duties as accountant for the Trust in 2007. As he explained, at that time Chavanne obtained the necessary information from Williams and Houston to prepare an accounting from the inception of the Trust through the date he began doing the accounting and reviewed the source documents.

This information was presented to Houston. Those monthly meetings, along with Chavanne's preparation of a list of Estate assets which included Trust property,

as well as Trust tax returns were sufficient details of receipts and disbursements to satisfy the accounting requirements of the law. There is no legal requirement that the accounting be rendered in any specific format.

The evidence also showed that the Trust property did not change over the life of the Trust. Houston was aware of what property was in the Trust and, through the monthly meetings, was aware there was no change to the property.

A listing of the property in the Trust was attached to the Trust document. (D-2).

The Petition was not filed until October 31, 2011, more than three (3) years after the Trust accounting. Because the accountings given to Houston during his life and to Williams after Houston's death and the termination of the Trust were sufficient to satisfy La. R.S. 9:2088, all claims against Williams in her capacity as Trustee have preempted and should have been dismissed by the Court.

E. The intent of Fred Houston as established by the Will itself, the Trust documents, and the testimony of several lay witnesses with personal knowledge was clearly established; however, questions to witnesses with personal knowledge on the Testator's/Settlor's intent were not allowed at the trial clearly prejudicing Petitioner-Applicant.

During examination of Williams, she was asked to explain the working interests in mineral rights in

Webster Parish which was a significant part of Plaintiff's case. Rather than allow that rebuttal testimony to go forward, Plaintiff's attorney objected, and the court impermissibly commented that the witness was being unresponsive which in a fair reading of the transcript was not the case. The Petitioner was then asked questions concerning the Trust which the court did not allow although Williams was personally present before and after the Trust was created. These questions would establish the facts of how the Trust came into being.

> Q. All right. Was it clear to you that Mr. Houston wanted this trust to terminate if he died or if you died first?
>
> A. Oh, absolutely. He talked about it and he asked me to take care of him.
>
> MR. TABOR: Objection, Your Honor, I don't know that Ms. Williams can testify as to what Mr. Houston understood or didn't. Its either backdoor hearsay or her speculating as to Mr. Houston's intent. I don't think its proper.

(R. 4527-4528).

> Q. Now there was a point in time in which that amount of time was starting to cut into what you did to earn your living.
>
> A. Yes. I was not taking any more new clients because he pretty much consumed all of my time.
>
> Q. Did you discuss that with Fred Houston?

A. I discussed that with Fred and that is the reason he gave me additional compensation.

MR. TABOR: Objection, Your Honor.

COURT: Sustained.

(R. 4528)

Again, a lengthy argument as to why this was permissibly testimony and should have been allowed took place at sidebar.

When matters turned to questions about the Estate the same impediments were met:

Q. That's something you had been told?

A. He told me those are his two cats and he told me the story.

MR. TABOR: Objection, Your Honor.

COURT: Sustained.

Q. And would you sit down with Mr. Houston on a weekly or whatever, regular basis, and go over the amounts of money that you were out of pocket?

A. Yes. Fred come to the office at least three times a week, I have lunch with him often, probably at least, you know, probably three or four times per a week and we would go over everything because he want to get involved –

MR. TABOR: Objection, Your Honor. We're getting back into he wanted to,

> what Mr. Houston wanted. We're right back in that same area again, it's improper. It's hearsay and/or speculation.
>
> COURT: . . . Sustained.

(R. 4537).

What followed were again extensive sidebar conferences because the court was not allowing inquiry into the facts of the relationship between Williams and Houston which explained the course of dealing between the parties in regard to the Trust and the Will. These ruling impermissibly interpreted the hearsay nature of the testimony and the exception of La. C.E. art. 803(3). More importantly it interfered with the ability of the Petitioner to tell the true complete story to defend herself against an attorney, Roos, and a retained accountant who had no knowledge of what had actually happened. The jury was not about to hear this testimony which unfairly prejudiced Defendant.

The court continued to restrict the Petitioner's ability to respond to the allegations against her. A specific example is the South Lafourche matter which was a gift to Williams and used several times during the trial by Plaintiff to impugn a bad motive to her.

> Q. (By Mr. Pettiette) Okay. Why did he give it to you?
>
> MR. TABOR: Objection, Your Honor.
>
> THE COURT: Hold on. Now you can hold on.

> MR. TABOR: He's either backdooring hearsay or she's speculating, either or.
>
> MR. PETTIETTE: If she knows, why can't she answer that? . . . .
>
> THE COURT: I beg to differ. Sustained. That's total hearsay.

(R. 4541-4542)

The court continued to sustain objections which did not allow Williams to explain the South Lafourche transaction which was used by Plaintiff's attorney throughout the trial (before and after her testimony) as a bad act. Why could the Petitioner not respond to the allegation in a jury trial alleging a breach of fiduciary duty? This was unfair and there was no evidentiary basis for the exclusion of this testimony. This improperly restricting Williams testimony was continued on her redirect which was not immediately after her direct but four (4) days later because of the interruption due to the court holidays.

Before trial the Plaintiff argued that Williams should not be allowed any slack because she is a Vietnamese immigrant. Yet it was clear during the examination, both direct and cross, that English is not her first language. Consequently, the interruptions and ruling were unfair, frustrating and an impediment to Williams' ability to tell the jury what happened.

CONCLUSION

The Appellate Court's opinion did not address the linchpin of Petitioner's request: the attorney for Plaintiff cannot testify as a non-expert in a civil jury trial without some foundation such as personal knowledge. In this jury trial the Plaintiff's attorney was called as the main witness and also appeared to be court-sanctioned as he served as the court appointed Administrator, assuming that position years after the death of Testator. The fate of this Petitioner was sealed when the exchange of cordialities and familiarities with the trial judge took place while the attorney/witness was still at the witness stand level with the judge in front of some of the jurors. This deprivation of the fundamental right to a fair trial is obvious but underscored by the less than forty (40) minute jury deliberation resulting in a substantial award based solely on the numbers presented at closing by the Plaintiff attorney all while the jury supposedly navigated eleven (11) complicated Interrogatories. Certainly, no true deliberation occurred and Petitioner's due process woefully shattered. This scenario appears to present a case of first impression on this issue.

Equally compelling is the fact that Plaintiff called no witness who either knew Houston, the Testator/Settlor, or had any personal knowledge of the facts giving rise to the Will or the Trust. Petitioner did call friends of Houston, his accountant, his attorney, and the Petitioner herself.

The accounting should be scrutinized by this Court. It is respectfully submitted this issue has not gotten a fair review. The accounting method Plaintiff used by attributing any amount of money to the Petitioner that the Plaintiff could not resolve to his satisfaction does not comport with generally accepted accounting principles, as indicated by the multiple variances, to the accountant's report. However, the jury could not discern the true amount in dispute in what was likely a forty (40) minute exercise from selecting a foreperson and announcing a verdict. The convoluted accounting has never been squarely addressed and again amounts to a deprivation of due process with such a large award devastating to the individual Petitioner.

The intent of the Testator/Settlor as established by the witnesses who knew him was not fairly allowed into this trial through the testimony of witnesses with personal knowledge. Finally, the testimony of Tom Chavanne supplemented with the written exhibits clearly establish that a Trust accounting was rendered to the Beneficiary and the Trust claims preempted after three (3) years. There are few authoritative reported opinions interpreting La. R.S. 9:2088 and La R.S. 9:2234.

Respectfully submitted,

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