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## TRUSTS AND ESTATES

### Damages for Fraud in Probating a Will

By Robert M. Harper



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In *Castor v. Pulaski*, in what appears to be a case of first impression in New York, a Supreme Court Justice awarded damages against the attesting witnesses to a will's execution for the fraud they perpetrated in signing the will and attesting witness affidavits after the testator's death.<sup>1</sup>

The decision is noteworthy for a variety of reasons, not the least of which are the court's findings that the testator's distributee, individually, had standing to sue the witnesses; and that the distributee was entitled to compensatory damages, punitive damages, and an award of attorneys' fees.

In *Castor*, Stacey Castor ("Stacey") killed her second husband, the decedent, by poisoning him with anti-freeze.<sup>2</sup> Stacey did so after having critically injured her daughter, 20, from a prior marriage, which ended when her first husband died under suspicious circumstances. Notably, the daughter's injuries arose from Stacey's efforts to stage her daughter's suicide and blame the first husband's death on her, as evidenced by the suicide note that Stacey had "prepared" for her daughter.

However, that was not the full extent of Stacey's misconduct. Instead, in 2005, just two months after killing the decedent, she convinced two of her friends, Lynn and Paul Pulaski (collectively, the "Pulaskis"), to sign a will which was backdated to 2003; purportedly was executed by the decedent before his death; and benefitted Stacey. In addition to signing the will after the decedent's death, the Pulaskis signed attesting witness affidavits, in which they swore to the fact that the decedent executed the will in their presence.

Shortly thereafter, Stacey offered the will for probate in the Surrogate's Court, Onondaga County, and the plaintiff, the decedent's son from a prior marriage, contested the instrument's validity. Based upon the Pulaskis attesting witness affidavits, the plaintiff withdrew his probate objections and the Surrogate's Court admitted the propounded will to probate.

After the will was admitted to probate, the Onondaga County District Attorney's Office (the "DA") began investigating Stacey's role in the decedent's death. As

part of that investigation, the DA contacted the Pulaskis, who admitted that they "witnessed" the decedent's "execution" of the probated will after his death, and agreed to testify against Stacey at her murder trial in exchange for criminal immunity. Ultimately, Stacey was convicted of second-degree murder in connection with the decedent's death,

among other offenses, and sentenced to 47 years to life in prison.

At the conclusion of the criminal proceedings against Stacey, the plaintiff, individually, commenced an action against Stacey and the Pulaskis, seeking compensatory and punitive damages for fraud and conspiracy concerning the decedent's will. While Stacey defaulted, the Pulaskis argued that the plaintiff, individually, lacked standing to sue them, as he was not the fiduciary of the decedent's estate. In the alternative, the Pulaskis also posited that they should be absolved of any liability, since they were merely innocent pawns in their former friend Stacey's diabolical scheme to obtain the decedent's property.

Onondaga County Supreme Court Justice Anthony J. Paris rejected the Pulaskis' argument that the plaintiff lacked standing to sue them for the fraud they perpetrated concerning the decedent's will. Justice Paris reasoned that, under the "unique and novel special circumstances" of the case, the decedent's distributees and heirs of his estate, individually, could maintain a suit against the Pulaskis and did not have to rely on the fiduciary of the decedent's estate to pursue their claims.

After a bench trial, Justice Paris also ruled against the Pulaskis on the issue of whether they were liable to the plaintiff for fraud. As Justice Paris explained, the Pulaskis subjected the plaintiff and the Surrogate's Court to "needless and unwarranted proceedings, thereby detracting from the orderly administration of [the Surrogate's Court's] normal, proper and legitimate proceedings." Had the Pulaskis "acted with any sense of decency, [the plaintiff] would not have been caused to endure the magnitude of harm and damages he . . . endured and incurred."

Thus, the issue that remained was not

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