

COMMONWEALTH OF MASSACHUSETTS
The Trial Court
Probate and Family Court Department

Middlesex, ss

Docket No. 05 P 4316 AA1

In Re: Estate of Pasquale Caia

AMENDED DECREE

and

RATIONALE

(On: Petition for Probate of June 2, 2004 Will)

The "Partial Decree" of October 23, 2006, which, in part, dismissed the petition for probate of a purported will dated June 2, 2004 is hereby amended by adding thereto the terms set forth below.

Terms of Amended Decree

1. As the Court has found the purported will of June 2, 2004 to be a forgery, and since Sean Xiangjun Xu has acknowledged, *inter alia*, that said will was not allegedly signed "in a legal serious way", his attempts to have the will submitted to probate purporting a fraud both upon the Court and on the proponent of a later, valid will (which will has been admitted to probate). As a result, the Court is herein awarding the Estate of Pasquale Caia all of its counsel fees of \$ 265,431¹ incurred in having to defend against the petition to probate the alleged June 2, 2004 will.
2. The Court further finds and declares that the so-called Agreement of 11/15/04 (trial exhibit no. 11) is also null and void in that all of the signatures thereon (other than that of Sean Xiangjun Xu) are deemed forgeries.

¹, Said amount represents the amount of fees set forth in the "Supplemental Affidavit of J. Owen Todd, Esq. Costs" dated January 4, 2007 plus an additional \$9,450 representing a reasonable additional amount of time (18 hours) for the services of Attorneys Davison (at \$325 per hour) and Robbins (at \$200 per hour) in bringing the matter to conclusion

- 3 In keeping with the ultimate finding referenced in paragraph "2 " above, the Court hereby orders that Sean Xiangjun Xu, whom the Court finds to have been solely responsible for, and to have performed, all of the aforesaid forgeries, pay over to the estate, forthwith, the sum of \$238,859, which amount was removed by him from an account which contained monies belonging to Pasquale Caia, all without prejudice *either*
 - to the Estate to seek the return of other, additional, funds from Sean Xiangjun Xu, or,
 - to Sean Xiangjun Xu to seek payment from the Estate for unreimbursed expenses which he paid on behalf of Pasquale Caia or for verifiable services which he may have rendered to Pasquale Caia.
- 4 Sean Xiangjun Xu is, therefore, indebted to the estate in the amount of \$504,290 ² and a judgment in favor of the Estate of Pasquale Caia against Sean Xiangjun Xu shall issue in the amount of \$504,290.
- 5 Except as modified by the terms of this Amended Decree the terms of the "Partial Decree" dated October 23, 2006 remain in full force and effect.

Rationale

The Court was originally presented with two documents, each purporting to be the last will and testament of the late Pasquale Caia. Petitioner Sean Xiangjun Xu, MD (hereafter "Dr. Xu") sought to have a document dated June 2, 2004 admitted to probate as being the will of Pasquale Caia. Petitioner Robert Caia, one of the decedent's two surviving sons, filed a petition for probate of a document dated February 23, 2005 as being the last will and testament of Pasquale Caia. Dr. Xu, who was a neighbor of the decedent and a named legatee under the June 2, 2004 will, filed objections to the allowance of the February 23, 2005 will asserting lack of capacity on the part of the testator as well as undue influence on the part of Robert Caia. Robert Caia also filed objections to the June 2, 2004 will asserting undue influence on the part of Dr. Xu as well as an objection that the document had not been validly executed; in fact, Robert Caia alleged that the "will" of June 2, 2004 was, and all of the signatures thereon were,

² Said amount being the total owed to the Estate pursuant to the terms of paragraphs "1." and "3." of the within Amended Decree

fraudulent As Dr. Xu was the sole objector to the February 23, 2005 will, and as Robert Caia ultimately dropped all of his objections to the June 2, 2004 will except for those relating to the execution of the document, the case was set down for trial (following the denial of Robert Caia's motion for summary judgment and a pretrial conference) solely on the issue of " ...was the 2004 will...properly executed " (See "Temporary/Scheduling Orders" of September 28, 2006 and paragraph "3 a " of the "Orders After Hearing" dated August 10, 2006.) Should the purported will of June 2, 2004 be deemed, after trial, not to have been properly executed, then Dr Xu's objections to the allowance of the February 23, 2005 will would be dismissed as he would lack sufficient standing to object to thereto

On the morning of trial (October 30, 2006) on the Petition to Probate the June 2, 2004 "will" of the late Pasquale Caia, counsel for petitioner Sean Xiangjun Xu, MD moved to dismiss the said petition and to withdraw from representation of Dr Xu. The Court accepted counsel's request to dismiss the petition but the Court left open for subsequent determination the Objector's request for counsel fees (As previously noted the Objector to the June 2, 2004 will was Robert Caia, who was also the petitioner of the subsequent will dated February 23, 2005, which will was ultimately admitted to probate) Immediately following the Court's allowance of Xu's counsel's request to dismiss the petition to probate the June 2, 2004 will, the Court also allowed the motion of Dr. Xu's counsel to withdraw on behalf of Dr. Xu Whereupon Dr Xu proceeded *pro se* and he thereafter represented himself for the remainder of the case, through trial.

At trial on December 29, 2006 and January 2, 2007, the Court heard from eleven witnesses and nineteen exhibits were, ultimately, admitted into evidence with regard to the remaining issues following the dismissal of the Petition to Probate the alleged June 2, 2004 will. The Court heard evidence on and has entered rulings on, both the request of Robert Caia for counsel fees under both MGL C. 215, sec 45 and MGL Cpt 231, sec. 6f

This Court is aware of the fact that in making any findings in matters of this nature, it is required to apply only a civil standard of proof, i.e , that the existence of a fact or proposition is more likely than not. In the within action, however, the Court would have no compunction in applying the burden of proof applicable to criminal trials to the issues before it This Court finds, beyond a reasonable doubt, that Dr. Xu forged all of the signatures on the June 2, 2004 "will" and that he thereafter compounded his misconduct by forging the signatures of witnesses and the notary on affidavits presented to the Court during the course of pretrial activity Consequently, the Court has entered an award of counsel fees necessary to make the Estate of Pasquale Caia whole.

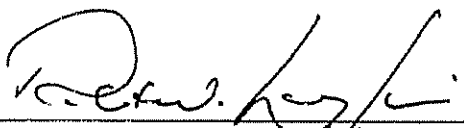
During the course of trial, the Court was also asked to rule upon, and test, the validity of a so-called "Agreement" of November 15, 2004 Again, the Court finds that Dr. Xu forged all of the signatures, other than his own, on said document, including the

signature of Francis Jenney, Esq., who was a long time friend of, and attorney for, the decedent. Mr. Jenney, who has been an attorney in Massachusetts for more than forty-five years, testified unequivocally, and very credibly, that he had never seen the document prior to the within litigation and that the signature on the document was most definitely not his.

The terms of the within Amended Decree do, however, permit Dr. Xu to petition the Estate for reimbursement of monies of his own which he may have expended for Pasquale Caia's benefit during his (Caia's) lifetime. He may also seek payment for any verifiable services which he performed and for which he had an expectation of being paid. Similarly, the Estate may also seek reimbursement from Dr. Xu of any other monies which, in the reasonable opinion of the Executor, may be due.

(The Court reserves the right to make more detailed findings of fact should circumstances so warrant.)

Date: January 10, 2007



Robert W. Langlois, J.
Middlesex Probate & Family Court