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N.Y. Appeals Court Revives Hearst Heir's \$20 Million Fraud Suit Against Spouse, Attorney

By Mark Fass

A \$20 million fraud and legal malpractice action initiated by John Randolph Hearst Jr. against his wife and their attorney has been reinstated by a New York state appellate court.

Mr. Hearst has accused his wife, Barbara, of taking advantage of his ill health by transferring more than \$20 million of his property into her name, leaving him access to only a relatively small sum and effectively disinheriting his daughter and grandchildren.

Mr. Hearst also claims the couple's attorney, Leonard Ackerman of Ackerman & O'Brien in East Hampton, aided and abetted the fraud.

The case had been dismissed in its entirety in 2007 by Supreme Court Justice Edward D. Burke of Suffolk County.

Last week, a unanimous panel of the Appellate Division, 2nd Department reinstated the heart of the suit, detailing numerous errors in the trial court's decisions.

The panel found, among other things, that Burke misstated the burden of proof for "undue influence" claims between spouses and that Mr. Hearst had in fact established prima facie cases of legal malpractice and aiding and abetting fraud against Ackerman.

Mr. Hearst's attorney, Sharon Stein, said, "This was a just decision because the court pointed out extensive, disputed issues of fact, and that's what will allow John Hearst to finally get his day in court and in front of a jury."

Ackerman forwarded a request for comment to his attorney, Harvey B. Besunder of Islandia, N.Y.

Besunder said the Appellate Division simply deemed it "too early in the litigation process to dismiss [the case]. We'll go through the discovery process and take it from there."

Mr. Hearst, the second oldest of newspaper

magnate William Randolph Hearst's 20 grandchildren, suffered a reportedly debilitating stroke in 1989, at the age of 55. Within a year, he married the woman now known as Barbara W. Hearst.

According to court records, at the time of their marriage Ms. Hearst lived in a rental house on a farm, had recently filed for bankruptcy and owed the Internal Revenue Service \$50,000.

In 2004, Ms. Hearst initiated divorce proceedings, which she subsequently withdrew, though Mr. Hearst then pursued his own counterclaim for divorce. That action was rejected in a decision by Manhattan Supreme Court Justice Laura Visitacion-Lewis and upheld by the Appellate Division, 1st Department. Mr. Hearst's motion for leave to appeal that ruling was rejected Tuesday by the Court of Appeals.

Shortly after the divorce proceedings were first filed, Mr. Hearst alleges he discovered that his wife, with the help of the couple's attorney, Ackerman, had transferred into her name more than \$20 million in property and investments. He was unable to resist the wrongful conduct, he claims, because of his poor health resulting from the 1989 stroke.

Mr. Hearst initiated the present suit, alleging fraud, conversion and legal malpractice, against Ms. Hearst, Ackerman and a trustee of Mr. Hearst's trust, Genta Hawkins Holmes.

In March 2007, Justice Burke converted the defendants' motions to dismiss that action to motions for summary judgment, which he then granted.

Now, the 2nd Department has reversed in *John Randolph Hearst Jr. v. Barbara Hearst*, 06-01959.

The panel's unsigned decision turned on the lower court's rulings on the burden of proof for "undue influence" claims, the standards for prima facie entitlement for such claims, whether

Ms. Hearst's actions were in her husband's best interests and whether Mr. Hearst established a prima facie case for legal malpractice and aiding and abetting of fraud.

As to the claims specifically against Ackerman and his firm, the panel wrote, "[T]he plaintiff alleges that Ackerman represented both Barbara and himself, and was thereby burdened by a conflict of interest, that Ackerman aided Barbara's misappropriation of his assets, and concealed these activities from him. Consequently, there are triable issues of fact with respect to the cause of action alleging legal malpractice ... as well as the cause of action alleging the aiding and abetting of fraud, insofar as asserted against the Ackerman defendants."

Justices Steven W. Fisher, Howard Miller, Edward D. Carni and Thomas A. Dickerson sat on the panel.

Brian T. Egan of Egan & Golden served as counsel for Mr. Hearst for the Suffolk County action. Egan said the decision shows that the 2nd Department believes that "certain conduct between spouses is out of bounds."

Linda U. Margolin of Bracken & Margolin in Islandia represented Ms. Hearst and Holmes.

Margolin said, "I had hoped the 2nd Department would sustain the determination below because we thought that the complaint was a lot of sound and fury without much substance."