

October 10, 2010

## T&E Litigation Update: *Michaud v. Forcier*

In *Michaud v. Forcier*, Case No. 09-P-392, 2010 Mass. App. LEXIS 1296 (Oct. 5, 2010), the Appeals Court affirmed a decision of the probate court reforming the schedule of beneficiaries of a nominee trust and ordering the repayment of funds withdrawn from a joint account.

The decedent, who had a daughter and two grandchildren, placed her real estate (about 28 acres) in the nominee trust, under the terms of which the decedent retained a life estate and her daughter and two grandchildren were given equal shares as remainder beneficiaries. After establishing the trust, however, the decedent conveyed nearly half of the real estate (13.56 acres) to her daughter for nominal consideration. In order to effectuate this conveyance, the daughter had hired a lawyer and arranged for the co-trustee of the trust other than the decedent to resign, thereby allowing the decedent to sign the deed as sole trustee. The deed falsely recited that all of the beneficiaries of the trust consented to the conveyance. In truth, the other beneficiaries did not consent. They were not even aware of the trust. The daughter was the only beneficiary who was aware of the trust, and she was the person who fabricated the recitation of consent on the deed.

Following the conveyance, the decedent stated on two separate occasions that she intended the conveyance to be in lieu of any inheritance to the daughter, and so the daughter was instructed to assist the decedent in amending her estate plan. She never did so.

When the decedent died in 2005, the daughter filed a complaint in equity requesting termination of the trust. The two grandchildren counterclaimed, seeking reformation of the schedule of beneficiaries of the trust and the recovery of funds from a joint account in the names of the decedent and the daughter. The daughter emptied the account shortly after the decedent's death.

The court found that the daughter stood in a fiduciary relationship with the decedent, who relied on the daughter, and that the daughter breached her fiduciary duty by arranging for the conveyance of the real estate without disclosing the trust or its terms to the other beneficiaries, all to the benefit of the daughter. As a result of the breach, the court exercised its equitable power to reform the schedule of beneficiaries of the trust to eliminate the daughter as a beneficiary. The court also found that the joint account in the names of the decedent and the daughter was for convenience only, and ordered the daughter to repay the funds that she had withdrawn.