June 29, 2010

T&E Litigation Update: *Hanselman v. Frank*

In *Hanselman v. Frank,* Case No. 09-P-1490, 2010 Mass. App. Unpub. LEXIS 715 (June 23, 2010), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed the grant of a preliminary injunction upon the motion by one beneficiary of an irrevocable trust, Hanselman, to enjoin the trustee from making distributions to another beneficiary, Edward, during the pendency of litigation concerning whether Edward had violated the forfeiture provision of the trust by petitioning for the removal of the trustee for failure to account.

In affirming the grant of the preliminary injunction, the Appeals Court reviewed (1) whether Hanselman had a likelihood of success on the merits, (2) whether Hanselman would be irreparably harmed if the injunction were not issued, and (3) whether a balancing of the harms favored Hanselman.

Regarding the first element, likelihood of success on the merits, Massachusetts has long recognized forfeiture clauses--also known as in terrorem or no-contest clauses--as valid and enforceable, and the Court held that Edward's petition to remove the trustee triggered the forfeiture clause of the trust.? The Court noted that Edward had not merely sought an accounting from the trustee.

Regarding the second element, irreparable harm, the Court explained that potential inability to collect damages has sufficed to entitle a plaintiff to a preliminary injunction that does no more than preserve the status quo.? Preserving the status quo was held to be warranted here because the evidence suggested that Edward would be unable to repay distributions if he were ultimately found to have violated the forfeiture provision.

As to the third element, balancing of the harms, the Court explained that the risk to a plaintiff of funds being dissipated by a potentially judgment-proof defendant during litigation has been found to outweigh the defendant's loss of use of the money pending a final decision.?