May 5, 2011

T&E Litigation Update: *Matteson v. Walsh*

In *Matteson v. Walsh*, Case No. 10-P-537, 2011 Mass. App. LEXIS 647 (May 2, 2011), the Appeals Court addressed whether a life tenant of real property had committed waste, and the appropriate remedy.

Dorothy Walsh (the "decedent") died in 1987. In her will, the decedent devised real property in Chatham consisting of a summer cottage and an unattached garage to her son Robert Walsh ("Walsh") as the life tenant, and thereafter, upon Walsh's death, to the heirs of Walsh and the decedent's other two children, Elizabeth Gay Matteson ("Matteson") and Catherine Baisly ("Baisly"). Walsh resided at the Chatham property, but he stopped paying taxes in or about 2004, resulting in the town's issuance of a notice of tax-taking, and he also stopped paying to maintain the property, causing it to fall into disrepair. Matteson paid some of the delinquent taxes and hired someone to repair the premises, which were described as being in "considerable distress." Eventually, however, Matteson filed suit against Walsh for waste.

The superior court found that Walsh had committed waste through his non-payment of taxes and by allowing the deterioration of the buildings, ordering Walsh to reimburse Matteson for the taxes and $53,000 in repair costs she paid. The superior court also divested Walsh of his life estate and ordered that he, Matteson and Baisly were to hold title to the property as tenants in common.

The Appeals Court affirmed in part, rejecting Walsh's argument that his failure to pay taxes did not result in waste because the property was neither seized nor sold. The Court reasoned that the only reason why the property was not seized and sold was that Matteson stepped in to pay the outstanding debt, and that the threat to the remainder interest was sufficient to constitute prejudice to the inheritance. "Permitting the real estate taxes assessed to the property to remain unpaid to the point that the taxing authority records a tax-taking amounts to waste." The Court also rejected Walsh's argument that his failure to maintain the property amounted to permissive waste for which he, as a life tenant, cannot be liable. The Court held that the notion of permissive waste applies to a tenant at will, and that a life tenant is under a higher duty to preserve the estate for the benefit of the remaindermen.

As for the appropriate relief, the Court held that the superior court had erred in granting Walsh a fee interest in common after having ordered divestment of his life estate. When Walsh was divested of his life estate, the remainder interests vested, and Walsh did not hold a remainder interest. If he had any heirs, their remainder interests might have vested, but he had none, and although he theoretically could have still produced an heir, the remainder interests are determined as of the date of recovery under the statute of waste, G.L. c. 242, 1.