May 17, 2010

T&E Litigation Update: *Harhay v. Starkey*

In *Harhay v. Starkey*, Case No. 08-CV-30229-MAP, 2010 U.S. Dist. LEXIS 45473 (May 10, 2010), a family dispute described by the United States District Court for the District of Massachusetts in Shakespearian terms, the Court addressed the "probate exception" to federal subject matter jurisdiction.

Plaintiffs alleged that the Defendants, as executrix and counsel for the estates of their mother and two aunts, swindled them of their family inheritance by misappropriating assets during the mother's lifetime with an allegedly forged power of attorney.? Plaintiffs brought claims against the Defendants for conversion, fraud, negligence and breach of fiduciary duty.

Defendants moved to dismiss the claims, arguing that the Court lacks subject matter jurisdiction pursuant to the so-called "probate exception."? The probate exception is a judge-made doctrine requiring a federal court to refrain from asserting jurisdiction where a federal suit is likely to interfere with probate proceedings.? As the Supreme Court recently made clear, however, the probate exception is limited to cases where the federal court is being asked to engage in "purely" probate matters such as the probate or annulment of a will and the administration of an estate, or the disposal of property that is in the custody of a probate court.

The Court held that the probate exception does not apply in this case because the probate exception cannot be used to dismiss widely recognized tort claims such as breach of fiduciary duty merely because the issues intertwine with claims proceeding in probate court.? Here, all of the claims sound in tort and seek damages against the Defendants themselves.? As the Court noted, these claims would not even be cognizable in probate court, which does not have jurisdiction to hear tort claims or award damages.

Defendants alternatively moved to dismiss the claims for lack of standing, arguing that the Plaintiffs are not fiduciaries of any estate and thus cannot sue for the benefit of an estate.? The Court rejected this argument because the Plaintiffs seek money damages for their own benefit.? Moreover, even if the Plaintiffs were seeking damages for the benefit of an estate, Massachusetts law favors actions by heirs, legatees and others with "an interest in enforcement" where the fiduciary of the estate is a defendant against whom specific wrongdoing has been alleged.