April 7, 2010

T&E Litigation Update: *Cascio v. D'Arcangelo*

In *Cascio v. D'Arcangelo*, Case No. 09-P-1039, 2010 Mass. App. Unpub. LEXIS 346 (Mar. 30, 2010), a decision issued pursuant to Rule 1:28, the Appeals Court enforced an agreement regarding the post-death distribution of property.

Parents Guiseppe and Donata had four daughters -- Bianca, Lidia, Ivana and Gelsomina. In an apparent effort to protect their home from a Medicaid lien should they require nursing home care, the parents executed a deed to their home to Bianca, and at the same time the parents and all four daughters executed an agreement which provided that Bianca would have a life estate in the property and that she would sell it and the net proceeds would be distributed equally among the four daughters upon the parents' deaths. The agreement further provided that it could not be amended except in writing by all of the parties.

Donata pre-deceased Guiseppe. After Donata's death, Guiseppe, Bianca and Gelsomina (without Lidia and Ivana, and obviously without Donata) purported to amend the agreement to provide that Bianca would receive 60% of the net proceeds of the sale of the property upon Guiseppe's death, that Gelsomina would receive 40%, and that Lidia and Ivana would receive nothing. Following Guiseppe's death, Lidia and Ivana sought to enforce the earlier agreement providing for equal distributions among all four daughters. The superior court granted their motion for summary judgment, and Bianca appealed.

The Appeals Court affirmed summary judgment for Lidia and Ivana, rejecting Bianca's argument that the earlier agreement was not supported by valid consideration because neither she nor Lidia or Ivana paid any money to the parents or incurred a debt on their behalf. The court held that Bianca's promise to take title to the property during the parents' lifetimes, and then to sell it after their deaths and distribute the proceeds in the prescribed manner, benefited the parents by allowing them to achieve their goal to be eligible for Medicaid funding for nursing home care. Therefore, the earlier agreement did not fail for lack of consideration.