March 5, 2012

T&E Litigation Update: *Howes v. Riordan*

In *Howes v. Riordan*, Case No. 11-P-596, 2012 Mass. App. Unpub. LEXIS 220 (Feb. 28, 2012), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed the allowance of a motion to strike an affidavit of objections.

The decedent executed a last will on February 26, 2008, leaving a tea cart to her daughter Judith and the residue of her estate to her sons John and James. The decedent died on June 12, 2010, following which James filed the will for probate and Judith filed an affidavit of objections. In response to the affidavit of objections, John and James filed a motion to strike or alternatively for summary judgment. In opposition, Judith's counsel filed an affidavit asserting that he could not adequately defend the summary judgment motion without additional discovery.

The probate court granted the motion to strike, and the Appeals Court affirmed, rejecting Judith's argument that it was procedurally improper for John and James to combine their motion to strike with a motion for summary judgment. The Appeals Court also rejected Judith's substantive arguments.

Regarding her claim of lack of testamentary capacity, the Court held that Judith failed to allege sufficient facts supporting her claim. Although the decedent was physically in decline, "Judith simply fails to set forth facts that connect her [the decedent's] physical decline to the elements of testamentary capacity. ... The affidavit is silent as to the [decedent's] communication skills or ability to converse coherently, her level of awareness of her estate, her level of awareness of her children and their relationship with her, her ability to respond appropriately to information, or other indicia of testamentary capacity."

Judith's undue influence claim was rejected for the same reason, i.e., she failed to allege sufficient facts raising a triable claim that the decedent's declining physical health caused her to be susceptible to undue influence.