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# T&E Litigation Update: *Bindman v. Parker*, *Shea v. Noble*, *MacLeod v. McManus*, *King v. Nazzaro*

In *Bindman v. Parker*, Case No. SJC-10878, 2011 Mass. LEXIS 151 (Mar. 18, 2011), the Supreme Judicial Court allowed the reformation of two qualified personal residence trusts (QPRTs) to conform with the tax-saving intent of the settlors, a husband and wife. Under the trust instruments, the settlors were to live in the trust property for the ten-year "income term," after which the property was to be held in trust for their sons. The settlors continued to live in the trust property after the income term and began paying rent to their sons. Because the settlors were also named as beneficiaries of the trusts, however, their goal of reducing their tax liability by paying rent to their sons was frustrated. This frustration was the result of a drafting error. The Court found that the mistake in drafting the trust instruments had been established by "full, clear, and decisive proof." This proof included an affidavit from the drafting attorney, who admitted his mistake, affidavits by the settlors regarding their intent, and proposed modifications by a guardian *ad litem* representing the interests of unborn and unascertained beneficiaries. In *Shea v. Noble*, Case No. 10-P-172, 2011 Mass. App. Unpub. LEXIS 313 (Mar. 14, 2011), a decision issued pursuant to Rule 1:28, the Appeals Court held that a certificate of deposit bank account in the decedent's name, which was payable on death ("P.O.D.") to the defendant, was not to be included and distributed as part of the decedent's estate. Although the defendant had agreed that the P.O.D. account should be included and distributed as part of the decedent's estate, the Court found that, based on the facts adduced at trial, the defendant's waiver of her right to the account was not knowing. Moreover, the defendant was not estopped from claiming the account because there had been no detrimental reliance on her prior, unknowing waiver. In *MacLeod v. McManus*, Case No. 10-P-554, 2011 Mass. App. Unpub. LEXIS 226 (Feb. 23, 2011), a decision issued pursuant to Rule 1:28, the plaintiff had executed an irrevocable trust, which he later sought to revoke on grounds of mistake. In the absence of incapacity, mistake, fraud or undue influence, an irrevocable trust generally cannot be amended without an express power of revocation reserved in the instrument. The Appeals Court affirmed the probate court's holding that there was no such mistake. The fact that the plaintiff may not have known the terms of the trust he executed does not qualify as a mistake that would warrant reformation or rescission. In *King v. Nazzaro*, Case No. 10-P-705, 2011 Mass. App. Unpub. LEXIS 238, a decision issued pursuant to Rule 1:28, the Appeals Court affirmed a decision of the probate court holding the trustees of a realty trust liable for breach of fiduciary duty. The trustees are two of five siblings who were all named as beneficiaries of the trust, which had been established by their parents. The trust held five parcels of land. Each of the siblings agreed that, in order to keep the property in the family, they would each get one parcel. When one of the siblings (Barbara) refused to sign an agreement indemnifying the trustees from liability, the trustees signed an amendment to the trust removing Barbara as a beneficiary. The two other non-trustee siblings were also removed as beneficiaries after they received their parcels, thereby leaving the trustees as the only beneficiaries. As a result, the removal of Barbara as a beneficiary, and the trustees' subsequent sale of the parcel that would have been distributed to Barbara, benefited the trustees personally. The Court found that the trustees had engaged in self-dealing, and awarded Barbara the value of her share of the trust, plus legal fees.