February 4, 2011

T&E Litigation Update: *Comeau v. Coache*

In *Comeau v. Coache*, Case No. 09-P-1984, 2010 Mass. App. Unpub. LEXIS 101 (Jan. 24, 2010), a decision issued pursuant to Rule 1:28, the Appeals Court reversed a judgment of the probate court terminating the plaintiff's life estate in the trust property.

Plaintiff was granted a life estate in a home in Ipswich held in the Comeau Family Trust. The relevant provision of the trust allows plaintiff to "continue to occupy the dwelling as his principal residence, provided that he pay all real estate taxes, insurance, maintenance and utilities for the premises." When plaintiff sought an order compelling the remaindermen to reimburse him for their proportional share of the cost of replacing certain windows, which he claimed to be a capital improvement, and for which he had already paid, the remaindermen sought to terminate plaintiff's life estate, arguing that the replacement of the windows constituted maintenance work for which plaintiff was solely responsible.

The probate court decided in favor of the remaindermen, finding that the window-replacement work constituted maintenance and terminating plaintiff's right to occupy the property. In reversing this decision, the Appeals Court held that, regardless of whether the replacement of the windows was a capital improvement or maintenance, plaintiff had in fact paid for the work, and his pattern of conduct over the years showed a continuing effort to preserve the integrity and value of the property. The Appeals Court also noted that although plaintiff's obligation to pay for maintenance work could be interpreted to be a condition subsequent, such conditions are not favored in the law. "[T]here is substantial doubt whether the trust document intended that [plaintiff] automatically forfeit his right to occupy the premises if he breached his duty to pay for maintenance."