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T&E Litigation Update: *Boyle v. Weiss* and *Cassell v. Christian Science Board of Directors*

In *Boyle v. Weiss*, Case No. SJC-10933, 2012 Mass. LEXIS 33 (Feb. 16, 2012), the Supreme Judicial Court answered the following certified question: "May the holder of a beneficial interest in a trust which holds title to real estate and attendant dwelling in which such beneficiary resides acquire an estate of homestead in said land and building under G.L. c. 188, 1" Confining its answer to the 2004 version of the homestead statute, the Court answered NO.

First, under the 2004 version, the beneficiary is not an "owner," as that term is defined in the statute, because she is not a sole owner, joint tenant, tenant by the entirety or tenant in common. Therefore, she holds no direct ownership interest in the property. Second, her beneficial interest in the trust holding title to the property does not indirectly endow her with an ownership interest. Rather, her beneficial interest, which gives her a right to a share of trust income, is a personal property interest. Third, the language in the statute pursuant to which an estate of homestead may be acquired by someone who rightfully possesses the property "by lease or otherwise" does not give the beneficiary, who is occupying the property as a tenant at will, the privilege of claiming a homestead exemption.

Finally, the Court rejected the beneficiary's argument that the 2010 version of the homestead statute, which expands the definition of "owner" to include holders of life estates and holders of beneficial interests, was a mere clarification of the 2004 version. Instead, the Court held that this expanded definition is a change in the law to which the beneficiary could not avail herself, because she filed her homestead declaration one year before the 2010 version went into effect.

In *Cassell v. Christian Science Board of Directors*, Case No. 11-P-453, 2012 Mass. App. Unpub. LEXIS 173 (Feb. 15, 2012), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed the probate court's dismissal for lack of subject matter jurisdiction.

Plaintiff was excommunicated from the First Church of Christ, Scientist. She filed suit in probate court against members of the church's board of directors, seeking reinstatement and an affirmative injunction that the board "abide by all terms and conditions of the Governing Documents, including the Deeds of Trust and Church Manual." Plaintiff argued that probate court was the proper forum for her complaint because Mary Baker Eddy founded the church as a trust, pursuant to a deed of trust, and thus that the board consists of trust fiduciaries.

The probate court disagreed, and the Appeals Court affirmed, holding that Mary Baker Eddy's deed of trust was for the purpose of conveying land, not to establish judicial policing of church membership. The Court also held that excommunication is a form of internal discipline covered by the "church autonomy doctrine," which provides that both congregational and hierarchical churches are entitled to autonomy over church disputes touching on matters of doctrine, canon law, policy, discipline and ministerial relationships, and that the First Amendment forbids courts from interfering with a church's internal governance or the excommunication of its members.