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T&E Litigation Update: *Coyne v. Nascimento*

In *Coyne v. Nascimento,* Case No. 10-P-12, 2010 Mass. App. Unpub. LEXIS 1251 (Nov. 19, 2010), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed summary judgment against the plaintiff on statute of limitations grounds.

In August 2003, the plaintiff brought a complaint in equity in probate court against the defendant, who was the decedent's attorney-in-fact, claiming that the defendant had breached her fiduciary duties by transferring certain securities and real estate to herself shortly before the decedent's death in 2002. Then, in October 2006, the plaintiff filed a separate action in superior court against the defendant, claiming that the defendant had tortiously interfered with the plaintiff's expectancy.

The Court held that the claim for tortious interference with expectancy was barred by the three-year limitations period pursuant to G.L. c. 260, 2A, because the superior court action was filed more than three years after the probate court action. As the complaint in equity in probate court established, the plaintiff had actual knowledge of the facts underlying the tort claim. Actual knowledge was required because the defendant's alleged interference with expectancy arose from her breach of fiduciary duty.

The Court also held that the claim was not tolled during the pendency of the probate court action under the doctrine of equitable tolling. The plaintiff could have simultaneously brought the superior court action and the probate court action and then requested a stay of the superior court action or an interdepartmental assignment or consolidation. "Probate proceedings do not delay the occurrence of the injury or the accrual of the claim; rather, probate proceedings operate to fix the extent of the injury. Until the end of probate, the precise value of a plaintiff's expectancy naturally remains uncertain. But our law rejects this uncertainty as a reason to toll the statute of limitations.