September 1, 2010

T&E Litigation Update: *Pritchard v. Attorney General*, *Monteith v. Michaels* and *Dumas v. Snow*

In *Pritchard v. Attorney General*, Case No. 09-P-1221, 2010 Mass. App. LEXIS 1144 (Aug. 27, 2010), the Appeals Court addressed the validity of a charitable bequest.? In her will, the decedent left real property to "that certain charitable institution known as the BOSTON CHAPTER OF HADASSAH, 20001 Beacon Street, Brighton, Massachusetts 02135."? The executor sought instructions from the probate court because he asserted that there is no separate legal identity known by that name.? The probate court held that, "there being no Boston Chapter of Hadassah, and the decedent's charitable intent being specific, the bequest fails."? The Appeals Court vacated this holding on the grounds that bequests to unincorporated charitable associations are valid and enforceable under Massachusetts law and remanded the case back to the probate court to determine whether the Boston Chapter of Hadassah is in fact an unincorporated charitable association and, if so, whether a trustee must be appointed in order to allow the chapter to take title to the property.? The Appeals Court also noted that the question of whether the decedent had a specific or general charitable intent need not be reached if her charitable bequest is not impossible or impractical to effect, which would turn on the question of whether the Boston Chapter of Hadassah is an unincorporated charitable association.

In *Monteith v. Michaels*, Case No. 09-P-1411, 2010 Mass. App. Unpub. LEXIS 984 (Aug. 25, 2010), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed a judgment of the probate court construing the terms of a will.? The will provides in relevant part as follows:? "To my wife...the land together with the six-apartment building therein...('the property'), with the income therefrom for and during her lifetime.? When she dies, I devise and bequeath said property to my brother..."? The probate court held that this language created a life estate for the wife, rather than an estate in fee simple, and that the brother's remainder interest vested at the time of the testator's death.? Therefore, even though the brother predeceased the wife, his remainder interest did not lapse upon his death.? "A will ordinarily speaks from the time of the death of the testator, and it is settled that remainders after a life estate are considered to vest upon the death of the testator, especially where the beneficiaries are children or relatives, unless provisions of the will manifest an intention that vesting should be postponed until the death of the life tenant."

In *Dumas v. Snow*, Case No. 10-10187-GAO, 2010 U.S. Dist. LEXIS 86292 (Aug. 23, 2010), the United States District Court for the District of Massachusetts held that it was not precluded from hearing an action seeking a declaratory judgment regarding the construction of a testamentary trust and damages against the trustee for breach of fiduciary duty.? The defendants moved to dismiss the complaint for lack of subject matter jurisdiction, arguing that the plaintiff's claims fall within the "probate exception" to the jurisdiction of federal courts or alternatively that the Court should exercise its discretion to abstain from adjudicating claims that it deems to be uniquely probate matters.?

Under the probate exception, federal courts are deemed to lack jurisdiction to "interfere with the probate proceedings or assume general jurisdiction or control of the property in the custody of the state court."? A federal court "may exercise its jurisdiction to adjudicate rights" in property in possession of a state court "where the final judgment does not undertake to interfere with the state court's possession save to the extent that the state court is bound by the judgment to recognize the right adjudicated by the federal court."? Here, the Court rejected the defendants' probate-exception argument, explaining that the plaintiff's claim for a declaration regarding her interest in the trust would not interfere with any property in the possession of a probate court and further that the claim for breach of fiduciary duty against the trustee would not interfere with the probate court's administration of the estate.? Regarding abstention, the Court held that there was no cause to abstain, because there was no pending state court action in which the same or similar issues were being presented.? The Court

noted that the defendants failed to cite any case in which a federal court abstained from exercising jurisdiction because a state court action *might* be filed.