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T&E Litigation Update: *Furman v. Gossels*

In *Furman v. Gossels*, Case No. 10-1603-BLS1, 2011 Mass. Super. LEXIS 84 (Super. Ct. May 24, 2011), a decision that was just recently reported, the Superior Court addressed a business dispute that turned on the nature of the rights held by a beneficiary of a trust.

Siblings Elaine, Jerome and Walter were the members of a limited liability company, with each owning a one-third interest. The operating agreement of the LLC provides that only descendants of the siblings' parents shall be members. The operating agreement also contains a restriction on the transfer of a membership interest, providing in part that a membership interest can be transferred only (1) to a descendant of the siblings' parents or (2) to a trust in which all of the beneficial interests are owned by another member or a descendant and the trustee of which is a member. If a membership interest is transferred to an impermissible transferee, then the operating agreement gives the LLC the right to purchase that interest at a discounted price.

When Walter died in 2010, his membership interest passed through his estate to a family trust. Under the terms of the trust, his widow Miriam disclaimed her interest in the LLC and declined to act as trustee. The result of these actions was that Walter's children, who (unlike Miriam) are descendants of the siblings' parents, became the beneficiaries of Walter's membership interest through the trust and Walter's daughter Rebecca became the trustee.

The question presented in the litigation was whether Rebecca holds an ownership interest in the LLC and thus is a member, fulfilling the requirement that a membership interest can be transferred only to a trust of which a member is the trustee.

Elaine and Jerome argued that the trust is an impermissible transferee of Walter's membership interest because Rebecca is not a member of the LLC. The Court disagreed, ruling that Rebecca and her siblings, as the beneficiaries of the trust, hold equitable interests in Walter's membership interest and thus are the "real owners." Accordingly, the trust is a permissible transferee because Rebecca, the trustee, is a member of the LLC.

The Court based its ruling on the following trust-law principles: "A trustee of a trust holds the legal title to trust property with the power to administer it for the benefit of the beneficiaries, in accordance with the terms of the trust instrument....A beneficiary, on the other hand, is the owner of the trust *res*, has an equitable interest in the trust property, and is considered the real owner."