



Trust & Estate Litigation

February 22, 2010

Case law relating to trusts and estates is constantly evolving. To keep you updated, this newsletter reports on new decisions of note. I hope you and your clients find it helpful.

Here's the latest from the Massachusetts courts:

Two recently reported decisions of the superior court bear mentioning briefly.

In *Hultberg v. Carey*, Docket No. 06-1137 (Nov. 30, 2009), the Worcester Superior Court addressed the question of when a deed can be reformed. According to the deed, the plaintiff transferred the property at issue from herself individually to herself and her late husband as tenants in common. The plaintiff argues that this deed was in error, and that she and her late husband were to hold the property either as joint tenants or tenants by the entirety, each with rights of survivorship.

The court explained that in order for a deed to be reformed because of a mistake, the mistake must have been mutual and must be proven by clear and convincing evidence. Here, the court held that the plaintiff failed to meet her burden of proving mutual mistake. Interestingly, despite the insufficient evidence of mutual mistake, the court stated in dicta that the plaintiff apparently never owned any interest in the property to convey to herself and her late husband because the property was held in a trust, and so the question of whether or not the deed could be reformed may be irrelevant for title purposes. The court was not asked to settle issues relating to title to the property, however, and thus the court limited its decision to denying the requested reformation.

In *Rutledge v. Chaprales*, Docket No. 09-2953, 2009 Mass. Super. LEXIS 367 (Dec. 2, 2009), the Middlesex Superior Court addressed a jurisdictional question. The plaintiff, in his capacity as personal representative of an estate, sought equitable relief in the form of a declaration that certain real property is property of the estate, an accounting of funds collected in connection with the property, and an order that all funds identified in the accounting be paid over to the estate. The defendants filed a motion to dismiss, arguing that the probate court has exclusive subject matter jurisdiction over the matter. The superior court denied the motion, holding that the superior court has concurrent subject matter jurisdiction with the probate court and the Supreme Judicial Court over matters of equity relative to the administration of estates of deceased persons pursuant to G. L. c. 215, § 6, and that the superior court also has subject matter jurisdiction to issue a declaratory judgment pursuant to G.L. c. 231A, § 1.

If you have a T&E litigation question or issue you'd like to discuss, I'd like to hear from you. Please e-mail or call me. Also, please feel free to forward this to others who might be interested.

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