
Trust & Estate Litigation

March 17, 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:

Three recently reported decisions -- two of the superior court -- are worth noting briefly:

In *Mannix v. Tighe*, Case No. MICV 2008-0690, 2009 Mass. Super. LEXIS 396 (Dec. 30, 2009), the Middlesex Superior Court addressed the enforceability of an oral amendment to the schedule of beneficial interests in a trust. The decedent and the two defendants were each trustees and beneficiaries of the trust. Prior to the decedent's death, the decedent had apparently "bilked" the defendants of hundreds of thousands of dollars. When the defendants confronted the decedent, he told them to keep his interest in the trust property. Unfortunately for the defendants, however, the schedule of beneficial interests was never amended in writing to reflect the elimination of the decedent's interest in the trust, as required by the terms of the trust. Therefore, the court held that the defendants had breached their fiduciary duties by denying the decedent's estate its interest in the trust. Given the circumstances, however, the court rejected the estate's argument that it was entitled to prejudgment interest on its damages from the date of the breach, and instead ruled that prejudgment interest did not start to accrue until the complaint was filed pursuant to G.L. c. 231, § 6B.

In *Hutchings v. City of Gardner*, Case No. 2009-2074, 2009 Mass. Super. LEXIS 381 (Jan. 4, 2010), the Worcester Superior Court held that a non-attorney trustee of a trust could not represent the trust pro se in litigation. Quoting the Supreme Judicial Court, the court explained, "[p]lainly the commencement and prosecution for another of legal proceedings in court, and advocacy for another of a cause before the court . . . are reserved exclusively for members of the bar."

In *Marmer v. Kaufman*, Case No. 09-P-669, 2010 Mass. App. Unpub. LEXIS 225 (Mar. 5, 2010), a decision issued pursuant to Rule 1:28, the Appeals Court affirmed summary judgment for the defendant administrator of the plaintiff's sister's estate. The plaintiff claimed that the administrator had reneged on an agreement to pay him funds and a portion of the assets of the estate. The court held that the agreement was unenforceable because it was not supported by valid consideration. In so holding, the court rejected the plaintiff's argument that estate tax savings resulting from the purported settlement constituted valid consideration, in part because the issue of a tax benefit was not raised until after the alleged promise the plaintiff sought to enforce. The court also rejected the plaintiff's argument that restoration of family harmony constituted valid consideration, because the plaintiff had no claim against the estate to surrender. In short, the plaintiff undertook to do nothing for the payments he anticipated receiving.

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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