

Probate and Fiduciary Litigation Newsletter

July 10, 2018

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Our newsletter has been down for construction for a bit, but we're back with the official announcement of the newest member of our Probate and Fiduciary Litigation team at Goulston – Tristan Foley. Since our last newsletter, there have been a handful of decisions of note, including the four summarized below

First, in **Calhoun v. Rawlins, No. 17-P-40, 2018 WL 3131023 (Mass. App. Ct. June 27, 2018)**, the Appeals Court held that creditors could access a spendthrift trust that was created for a beneficiary with cognitive impairments pursuant to a separation agreement with the beneficiary's ex-wife. As the Court explained, generally speaking, creditors cannot access a spendthrift trust that is set up as a gift to a trust beneficiary, and that the beneficiary does not control, but creditors can access a trust created by the beneficiary for his or her own benefit. The beneficiary of the trust at issue in this case suffered cognitive impairments after a car accident in 2001. In 2007, the trust was created in connection with the beneficiary's divorce pursuant to an agreement reached with his ex-wife by his guardian and legal counsel. The trust was funded mostly with the ex-wife's assets, and the trustees had complete discretion over the distribution of the assets to the beneficiary. In 2014, the beneficiary was killed in a second car accident, which also caused serious injury to the plaintiffs. They sued the beneficiary's estate, asserting that they should be able to access the trust assets to satisfy any judgment against the beneficiary's estate. The beneficiary's estate argued that the plaintiffs could not access trust assets because the spendthrift trust had been created by another party for the benefit of the beneficiary, and the trustees controlled trust assets, and therefore it was a spendthrift trust that has long been protected from creditors under Massachusetts law. The trial court agreed with the beneficiary's estate, ruling that the plaintiffs could only access the (relatively small) portion of the trust that was originally funded with the beneficiary's own assets, but could not reach the assets that were funded with the ex-wife's assets. The Appeals Court reversed this ruling, holding that because the trust was created by mutual agreement in order to satisfy the legal rights and obligations of the beneficiary and his ex-wife related to the dissolution of their marriage, it was not a spendthrift trust created by a third party as a gift, but rather it was a form of a self-settled trust funded with assets that were paid in consideration for the beneficiary's legal rights. Therefore, the Court held that the plaintiffs could potentially access all assets of the trust as creditors.

Second, in **Farber v. Sherman, 2018 Mass. App. Div 46 (March 15, 2018)**, a court-appointed Personal Representative of an estate was determined to have quasi-judicial immunity, which shielded her from the civil claims brought by one of the beneficiaries of the estate. The Personal Representative was appointed by the Court to administer an estate, which included a home that

was left in equal shares to the decedent's two children. There was a dispute about what to do with the home, and the siblings and the Personal Representative agreed that the siblings would bid for the home in a closed auction. The Plaintiff was the sibling that won the auction, and he sued the Personal Representative for Breach of Contract when he was not able to take possession of the home on the agreed date. The Appeals Court held that the Personal Representative had quasi-judicial immunity regarding this claim, and ordered the lower court to dismiss the claim.

Third, in **Flanagan v. Cerretani, No. 17-2799 BLS 1, 2018 WL 2672089 (Suffolk Superior Court May 17, 2018)**, the Court held that the Personal Representative did not have the power to demand the liquidation of a partnership in which the estate held shares. The Personal Representative and certain beneficiaries filed a Complaint for Instructions seeking an order from the court that would wind up a family-owned partnership in which the decedent owned fractional shares, and distribute the liquidated assets to the decedent's beneficiaries and other shareholders. Other family members, who also owned shares in the partnership, objected, contending that the decedent's estate planning documents specifically granted his shares in the partnership to the decedent's nephew, who wished to continue operating the business in partnership with the other owners. The court held that under Massachusetts partnership law, the Personal Representative did not have the right to demand liquidation of the partnership. The court further held that the decedent's trust unambiguously bequeathed the decedent's shares in the partnership to the nephew who wished to keep running the business, and ordered the shares transferred to the nephew.

Finally, in **Sansoucie v. Clinton, 93 Mass. App. Ct. 1112 (May 22, 2018)**, the Appeals Court affirmed a jury verdict of over \$1 million against the Personal Representative of an estate, who was also the son of the decedent, based upon the Personal Representative's interference with an expected gift and undue influence. The Personal Representative was made power of attorney near the end of the decedent's life, and he promptly changed the decedent's estate plan to cut-out the decedent's long-time girlfriend and direct assets to himself instead. The girlfriend sued, and the jury found in her favor based on evidence that the decedent had long expressed his desire to split his estate between the girlfriend and his son, the Personal Representative, and that the Personal Representative had exercised undue influence to change this plan.

If you have a probate litigation question or business concern, we invite you to reach out directly to any member of our [Probate & Fiduciary Litigation](#) group.