Probate and Fiduciary Litigation Newsletter November 30, 2016

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The Supreme Judicial Court recently issued its decision in *Degiacomo v. City of Quincy*, No. SJC-11940, 2016 WL 6683970, at *1 (Mass. Nov. 15, 2016), which is the latest chapter in a story that began with a trust established nearly 200 years ago by former President John Adams in 1822.

The current matter was brought in the wake of the Court's decision in *The Woodward Sch. For Girls, Inc. v. City Of Quincy*, 469 Mass. 151 (2014), where the Woodward School prevailed on claims for breach of fiduciary duty against Quincy in its capacity as trustee of the Adams Temple and School Fund ("Adams Fund"). Following the *Woodward* decision, the successor trustee of the Adams Fund filed a complaint against Quincy alleging that it violated its fiduciary duty to the Woodward School by failing to notify the school of its intent to lease trust property (the Adams Academy) in the 1970s and by leasing the property at a rental price below market. Although the lease was approved by decree of the Supreme Judicial Court in 1972, the Woodward School was not a party to the proceedings nor was it given notice of the proceedings. The successor trustee sought rescission of the lease and money damages.

A single justice concluded that the 1972 decree settled, as a matter of res judicata, that Quincy had not breached its fiduciary duty by entering into the challenged lease. On appeal, the successor trustee argued that preclusion could not apply where neither the school nor the trustee was a party to the prior proceeding, and where the school was not reasonably able to intervene because it did not receive notice of the prior proceeding. Quincy argued that preclusion was warranted because the Adams Fund is a public charitable trust and thus the only necessary party in the prior proceeding was the Attorney General, who has a duty to ensure the proper administration of charitable trusts.

In upholding the single justice's decision, the Court first held that the adjudication of Quincy's request for the 1972 decree did in fact determine that Quincy did not breach its fiduciary duty in entering into the lease. The Court ruled that to hold otherwise would eliminate the protection for trustees under the "long-established privilege of a trustee to seek directions or approval of a proposed decision from a court in equity."

The Court went on to analyze the successor trustee's argument that the Woodward School could only be precluded from bringing its current claims if the Attorney General was in privity with the school during the proceedings that resulted in the 1972 decree, and that he was not in privity because the school had a particular interest in the lease that was different from the general public's interest. Through its review of charitable trust law, including the role of the Attorney General to protect the public interest created by charitable trusts, the Court held that it had to "infer that the

Attorney General recognized his obligation to represent the public interests served by the charitable trust … and that [the Supreme Judicial Court] recognized its obligation to protect both the School and its students." On this reasoning, the Court concluded that the Attorney General "must be deemed to have adequately represented" the Woodward School's interest in the matter.

Finally, the Court held that because it could find no law or rule in effect at the time that required notice of the earlier proceeding be provided to the Woodward School, no due process violation resulted from the lack of notice, and despite not being a party to the prior proceeding, the Woodward School and the successor trustee are bound by the 1972 decree and precluded from asserting claims now that Quincy breached its fiduciary duty.

This advisory should not be construed as legal advice or legal opinion on any specific facts or circumstances. The contents are intended for general informational purposes only, and you are urged to consult your own lawyer concerning your situation and any specific legal questions you may have.