

Probate and Fiduciary Litigation Newsletter - October 1, 2018

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Our first newsletter of the fall summarizes four recent cases of note, including a Massachusetts Appeals Court victory for clients of Goulston & Storrs who successfully defeated an action seeking to remove them as trustees.

In ***Forbes Family Ranch, LLC v. William C. Forbes and Julia Forbes, as Co-Trustees of Hillside Street Trust*, 2018 WL 4354394, No. 17-P-704 (Mass. App. Ct. Sept. 13, 2018)**, a beneficiary sought the removal of two trustees of a Massachusetts Business Trust that holds cattle ranch land in Wyoming. Plaintiff's lawsuit alleged that the trustees had acted beyond their authority and breached their duties in carrying out a number of complicated transactions designed to place a conservation easement on family-owned land in return for a substantial payment, and to keep certain land within the family after the trust dissolves and the land is distributed. Goulston & Storrs represented the trustees in defending against the lawsuit.

The case was tried in the Norfolk County Probate and Family Court. After trial, the Court dismissed all claims, finding that the trustees had not breached their duties, finding that the transactions at issue had likely benefited the trust and the beneficiaries, and awarding fees and costs to the trustee. The Appeals Court affirmed the lower court's dismissal of the case based on, among other evidence, expert testimony presented concerning the value of the transferred land, and the determination that the trustees had acted fairly in carrying out the transactions at issue.

In ***Pacelli v. Pacelli*, 2018 WL 3614098, No. 17-P-498 (Mass. App. Ct. July 30, 2018)**, the Appeals Court held that an agreement among the beneficiaries of a nominee trust, which required unanimous consent among them to sell or partition the real estate held by the trust, was valid and enforceable. The trial court had ruled that the agreement violated the rule against perpetuities and, therefore, constituted an unreasonable restraint on alienation. The Appeals Court disagreed and held that because the specific provision of the agreement at issue that provided the beneficiaries approval rights over the transfer of the property did not extend to their heirs or assigns, and thus would expire upon the deaths of the beneficiaries, it was limited in time and did "not offend the rule against perpetuities."

In ***the Matter of Payson*, 2018 WL 4086978, No. 17-P-1425 (Mass. App. Ct. Aug. 28, 2018)**, the Appeals Court addressed the interpretation of the term "issue" in a will. The will directed that certain trust income was to be paid to the "**children**" of the testatrix's only daughter until they all attained the age of 21, at which point the trust was to be liquidated and distributed equally "to the **issue** of [the testatrix's] daughter." (Emphasis supplied.) Certain of the testatrix's great-grandchildren asserted that the separate use of "children" and "issue" meant that "issue"

must refer to the four grandchildren and seven great grandchildren, and therefore, the great grandchildren should be included in the distribution to the “issue” under the will.

A bank serving as trustee of the testamentary trust sought instructions from the Probate and Family Court, which ruled that “issue” referred to all eleven grandchildren and great grandchildren. The Appeals Court reversed, holding that when the will was drafted in 1960, the word “issue” referred to direct lineal descendants of the decedent, and that use of the term indicated an intent that the trust property be distributed consistent with the law of intestate succession. The Court went on to explain that under the law of intestate succession, because the four grandchildren survived their mother, they were entitled to take the trust property and the great-grandchildren would not be “allowed to compete” with their living parents.

Finally, in ***McNeff v. Derretani*, 2018 WL 4382980, No. 16-MISC-000327 (KFS) (Mass. Land Ct. Sept. 12, 2018)**, the Land Court ruled, after a two-day trial, that a deed purporting to convey real property from the decedent to one of his three children was a post-death forgery and therefore void.

Plaintiff in the case served as personal representative of her father’s estate and brought the lawsuit to challenge her brother’s claim that their father, prior to his death, had conveyed certain real property to the brother. Although the plaintiff and defendant had a good relationship prior to their father’s death, the defendant became upset upon learning that plaintiff’s spouse was named as a beneficiary in decedent’s will. Pursuant to the will, the property at issue was to pass in equal shares to plaintiff, her husband, a non-party sibling, and defendant.

After hearing testimony from the parties and other witnesses, the Court found that defendant had in fact forged the deed after his father’s death. The Court did not find defendant’s testimony to the contrary credible. Key to the Court’s decision was expert hand-writing evidence opining that the signature on the deed was not that of the decedent’s, the fact that the deed had been notarized by a long-term acquaintance of defendant only after another notary refused to sign it, and the substantial amount of time that it took defendant to record the deed and to disclose it to plaintiff.

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