Litigation Summary: Goodwill v. Kavanagh

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Our litigation group regularly monitors cases happening throughout the country for precedential matters or trending topics. When a case is of particular note to our client base, we summarize the important facts of the case for them to consider when making decisions. Below is a summary of a recent case detailed by our Real Estate Litigation group.

The Massachusetts Appeals Court recently issued a decision likely to pique the interest of property owners holding real property in nominee trusts. In *Goodwill Enterprises, Inc. v. Kavanagh*, the Court addressed whether the bankruptcy sale of a beneficiary's 50% interest in a nominee trust, which holds real property, may trigger a right of first refusal contained in a lease for the property. No. 18-P-245, 2019 WL 4072013 (Mass. App. Ct. Aug. 29, 2019).

In *Goodwill*, a nominee trust held title to real property leased to Goodwill. The lease provided Goodwill a right of first refusal in the event the "[p]roperty, or any part thereof" was sold. *Id*. at 1. The trust had two beneficiaries – Garland and Corbett – each with a 50% interest. In 2011, Corbett filed a voluntary Chapter 7 petition and his 50% interest in the trust became part of the bankruptcy estate. The Chapter 7 trustee sold Corbett's interest to the defendant, Kavanagh. Goodwill then brought suit seeking to enforce its right of first refusal. Kavanagh argued that Goodwill's right of first refusal was never triggered because Corbett possessed a 50% personal property interest in the trust, not a 50% interest in the real property held within the trust.

The Court observed that a nominee trust is an entity created for the purpose of holding legal title to property – it is a "bare title-holding instrument." *Id.* at 2. As a result, its trustees have no independent power, but act at the direction of the beneficiaries. Massachusetts courts have gone as far as to characterize nominee trustees as "agents for the convenience of [the beneficiaries]." *Id*. On that basis, the Court concluded that Corbett should be treated as the true owner of the property. Kavanagh argued that Corbett could not be considered the owner since he was only a 50% beneficiary and the terms of the trust required a majority vote to direct the trustee. The Court rejected this argument finding Corbett's interest akin to a tenancy in common: the two beneficiaries were the true owners and held the entire undivided interest.

The Court was also unpersuaded by Kavanagh's argument that that the bankruptcy sale was involuntary and therefore could not trigger the right of first refusal. As an initial matter, the sale was the result of a voluntary Chapter 7 petition, but even if it were not, the lease language provided no requirement that a sale be voluntary for the purpose of triggering Goodwill's right of first refusal. It was due to this language that the Court also struck down Kavanagh's argument that the right of first refusal could only be triggered when the landlord sells the property, not when the property is sold by a bankruptcy trustee.

In all, the *Goodwill* decision reiterates the very porous boundary between nominee trusts and property ownership. Due to the limited purpose of nominee trusts, Massachusetts courts are likely to characterize beneficiaries as the true property owners. Further, even where a beneficiary holds a partial interest that is subject to the rights of other beneficiaries, Massachusetts courts are more likely to invoke principles that will not permit beneficiaries to insulate themselves from the benefits, and the burdens, of property ownership.