

# Probate and Fiduciary Litigation Newsletter

## August 27, 2018

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Three recent trial court decisions address issues that may be of interest to estate planning and administration lawyers, as well as probate and fiduciary litigators: one case involved the authority of the Personal Representative of an estate to sell real property; another case concerned the statute of limitations in actions against a trustee; and a third case analyzed the jurisdiction of Massachusetts courts over matters relating to a trust in another state. They are summarized further below:

First, in ***282 Shore Drive Realty Trust v. Wilensky, No. 17 MISC 000545 (MDV), 2018 WL 1787352 (Mass. Land Ct. April 12, 2018)***, the Land Court held that a purchase and sale agreement (P&S), under which the Personal Representative of an estate had agreed to sell the estate's real property, was not enforceable until the Probate and Family Court had given its required approval of the sale. The Personal Representative of an estate signed the P&S to sell estate property to a buyer. The P&S included the caveat that the Personal Representative would need approval from the Probate and Family Court before he could actually execute the sale, and a hearing date was set to acquire the Court's approval. Then, before the Court date that was set to seek approval of the sale, another party offered significantly more for the property, and the Personal Representative entered into an agreement with the new buyer instead – informing the original buyer that it was his fiduciary duty to take the higher offer. The original buyer sued for specific performance of the first P&S. The Land Court denied specific performance, holding that the original P&S was not enforceable until the Personal Representative actually received approval from the Probate and Family Court, which had never occurred. Accordingly, the Personal Representative was free to proceed with the sale to the second buyer.

Second, in ***Erb v. Javaras, No. 1584-CV-0048-BLS2, 2018 WL 3431959 (Mass. Super. Ct. June 15, 2018)***, the Superior Court held that the statutes of limitations for fraud and chapter 93A claims against a former trustee of a trust begin to run from when the Plaintiff knew or should have known about the challenged transactions, and not from the date the alleged misconduct occurred. The Plaintiff, successor trustee of a trust established to hold life insurance policies, alleged that the former trustee and his insurance agents engaged in a churning scheme to buy and sell unneeded insurance products. Plaintiff sued the former trustee for fraud, unfair business practices under G.L. c. 93A, and related claims. The Defendants moved for summary judgment, claiming (among other things) that the statute of limitations had run regarding transactions at issue. The Court denied summary judgment, finding that the statute of limitations should run from when the Settlor and/or the current trustee discovered or reasonably should have discovered the allegedly fraudulent

transactions, not from when the transactions were actually executed. Accordingly, the Court denied the Defendants' Motion for Summary Judgment.

Finally, in ***Curran v. Berkshire Hills Bancorp, No. 1784-CV-03580-BLS2, 2018 WL 3431892 (Mass. Super. Ct. May 25, 2018)***, the Superior Court held that Massachusetts courts have jurisdiction over claims of breach of fiduciary duty and unfair business practices under G.L. c. 93A concerning the administration of a Vermont-based trust. Plaintiffs sued Berkshire Hills Bank asserting breach of fiduciary duty and G.L. 93A claims for the alleged mismanagement of a trust by failing to timely sell securities owned by the trust, which later lost significant value. The Bank moved to dismiss, arguing that the Court did not have jurisdiction because the trusts and their assets were located in Vermont, and that Massachusetts courts generally do not interfere in the administration of a foreign trust. The Court denied the Motion to Dismiss, holding that because the claims were for damages under a theory of breach of fiduciary duty and/or unfair business practices, the case did not actually interfere in the administration of the trust, and therefore a Massachusetts court could have jurisdiction.

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