

## T&E Litigation Newsletter - 10/30/14

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With the Supreme Judicial Court's issuance of its decisions in *O'Connell v. Houser, Jr. et al.*, 2014 Mass. LEXIS 841 (SJC-11698) (Oct. 28, 2014) and *Bank of America, N.A. v. Babcock et al.*, 2014 Mass. LEXIS 840 (SJC-11651) (October 28, 2014), Tuesday was an important day for trust reformation procedure in Massachusetts.

In *O'Connell*, as a result of what was found to be a drafting error, the Court ordered reformation of a family trust to avoid frustrating the intent of the donor to leave trust property for the benefit of future generations of her family in the "most efficient and tax-advantageous way" allowed under law. The facts of the case are unusual, but the real importance of this decision is that the Court used it as an opportunity to announce that it has adopted a new procedure for "Bosch" reformation cases. To quote from the decision: "On October 1, 2014, the court voted to adopt the 'Amended Report of the Supreme Judicial Court's Ad Hoc Committee on Bosch Litigation' and to accept the committee's recommendations contained in the report. Consequently, in the future, cases like this – which involve no novel or unsettled issue of Massachusetts law, require only the application of settled Massachusetts legal principles to a particular set of facts, and have no particular significance beyond the specific parties and the specific facts involved – should ordinarily be heard and decided in the Probate and Family Court. The report is available online on the court's web site and in the offices of the clerks of the county court and the full court."

In *Babcock*, the Court declined to declare that the trust at issue was drafted correctly to express the intent of the settlor (i.e., that his estate be eligible to obtain the full benefit of federal and state estate tax marital deductions). The Court also declined the alternative request for reformation that would eliminate any future doubt as to the language in question. The parties expressed concern that an amendment to the trust might be misconstrued in the future and cause confusion regarding to whom gifts could be made after the settlor's death. Despite their concerns, however, the parties, and the drafting attorney, maintained that the amendment was correctly drafted to satisfy the settlor's intent. In declining to enter a declaratory judgment, the Court noted that the "trustees are not in doubt as to their interpretation of the trust or how to effectuate it," and, unlike most successful reformation cases, there was "no proof of a mistake of any kind." The Court also expressed its understanding of the obvious benefit to the parties of obtaining a declaratory order as a precautionary measure, but held that a declaration or reformation to protect against someone misconstruing the trust in the future "is not something that justifies judicial involvement under the guise of *Bosch*."

This update was authored by [Mark Swirbalus](#) and [Marshall Senterfitt](#), attorneys in the firm's [Probate & Fiduciary Litigation](#) group. For questions or additional information on this topic, please

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