

## T&E Litigation Newsletter- 9/3/15

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Massachusetts courts have issued decisions on several topics of interest, including whether a revocable spendthrift trust may properly be included in a marital estate, what happens to assets left to a named beneficiary who cannot be identified, and whether *res judicata* bars a claim brought by the trustee of a charitable trust where the charitable beneficiary did not know about or participate in the prior related action (spoiler alert, the claim was held to be barred).

Last week the Appeals Court issued its anticipated ruling in the consolidated divorce matter of *Pfannenstiehl v. Pfannenstiehl*, Case Nos. 13-P-906, 13-686, and 13-P-1385, 2015 Mass. App. LEXIS 123 (August 27, 2015). The central issue before the expanded five-member panel concerned whether the husband's interest in a multi-million dollar irrevocable spendthrift trust established by his father should be included in the marital estate under G.L. c. 208, § 34. In determining that the husband's interest in the trust was properly included in the marital estate, the Appeals Court focused on the fact that the husband not only received significant distributions from the trust during the marriage, but also that the family's routine expenses and lifestyle were funded in large part from those distributions. It also was not lost on the Court that trust distributions to the husband, but not other beneficiaries, ceased at the exact time that divorce proceedings began, which the Court viewed as a thinly-veiled attempt to insulate the husband's interest in the trust from his soon-to-be ex-wife.

Ultimately the Court held that the husband's invocation of the spendthrift provision of the trust was "belie[d]" by the pre-divorce distributions and that under "well established" Massachusetts law, a trust with a spendthrift provision may be included in the marital estate where the trust plainly provides significant financial value to one of the divorcing spouses. The Court also found that the express language of the trust directing the trustee to distribute income and principal for the "comfortable support, health, maintenance, welfare and education" of the beneficiaries meant that the husband had a "present enforceable right to distributions." Accordingly, the trust was subject to an ascertainable standard that "supports the inclusion of this asset in the marital estate."

In *Ciampa v. Bank of Am.*, No. 14-P-1179, 2015 WL 4756835 (Aug. 13, 2015), the Appeals Court faced a rather curious challenge of how to allocate a sixty-six percent share of an IRA account left to a named beneficiary whose identity could not be ascertained. The decedent Priscilla Cotgageorge died intestate and left an IRA that named her husband (who predeceased her) as the sole beneficiary and also named two contingent beneficiaries, one of whom was her stepson who was to receive a thirty-four percent interest in the IRA account. The other contingent beneficiary, who was to receive a sixty-six percent interest, was listed as James Cotgageorge, Jr. (referred to in the decision as "James, Jr."). The confusion and the case arise from the fact that there is no known James Cotgageorge, Jr. in Priscilla's family. Upon the bank's request for instructions as to the

distribution of James, Jr.'s sixty-six percent interest, Priscilla's stepson and daughter each asserted that they were James, Jr. and that the misnomer was simply a scrivener's error that could be reformed for their respective benefit.

The Appeals Court agreed that the case turned on the application of trust law and that a scrivener's error had occurred. The Court rejected the arguments, however, that either the decedent's daughter or the decedent's stepson was the clearly intended beneficiary. Unable to determine who James Jr. was or is, the Court vacated the lower court decision awarding the sixty-six percent interest to the stepson and held that the share instead passed to the decedent's estate.

Last but not least, Justice Spina, presiding in the single justice session of the Supreme Judicial Court, recently issued an order in a case arising out of the much-discussed matter of *The Woodward Sch. For Girls, Inc. v. Quincy*, 469 Mass. 151 (2014).

The current matter, styled *DeGiacomo v. Quincy et al.*, No. SJ-20140049 (Order dated July 27, 2015), concerns claims brought by Attorney James R. DeGiacomo, as successor trustee of the Adams Temple and School Fund (the "Fund"), for breaches of fiduciary duty by the City of Quincy during its tenure as trustee of the Fund in connection with its 1972 below-market lease of a building known as the Adams Academy (a Fund asset) to the Quincy Historical Society for a term of 50 years. In response to cross-motions for summary judgment, Justice Spina granted summary judgment to the City and its co-defendant, the Quincy Historical Society, and denied partial summary judgment to the plaintiff.

In his Complaint, Attorney DeGiacomo asserts that although the City executed the 1972 lease with prior approval of the Supreme Judicial Court (which authorized the lease in an unpublished decree), the City's execution of the lease was nonetheless a breach of fiduciary duty because the City did not notify the Woodward School (as sole income beneficiary of the Fund) and did not name the school in the proceedings seeking approval of the lease. Justice Spina held that because the Woodward School is a charitable beneficiary, and because by law a charitable trust "must be indefinite or of a sufficiently large class to create a benefit for the community as a whole," only the Attorney General (who was named in the proceedings seeking approval of the lease) is a necessary party where the administration of a charitable trust is called into question. On this reasoning, Justice Spina ruled that the Woodward School was not entitled to notice of the lease or the related proceedings in 1972 and that to the extent the school had any interest in the proceedings, the Attorney General represented that interest by participating on behalf of the public at large. Accordingly, Justice Spina held that the "1972 decree settles as a matter of *res judicata* the issue of whether the City breached its duty of loyalty in executing the lease ... [i]t did not." As a result, Justice Spina granted summary judgment in favor of the City and the Society.