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T&E Litigation Newsletter- 7/13/16

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The first two weeks of July have brought us some warm weather and three new decisions worth noting:

First, in Bank of America, N.A. v. Commissioner of Revenue, Docket No. SJC-11995 (July 11, 2016), the Supreme Judicial Court answered the question of whether Bank of America, in its capacity as corporate trustee of a number of inter vivos trusts, qualified as an "inhabitant" of Massachusetts and was thus subject to fiduciary income tax in Massachusetts during the relevant tax year. Despite the undisputed facts that the bank was domiciled and had a principal place of business in North Carolina at all relevant times, the Court held that the bank was indeed an "inhabitant" of Massachusetts for purposes of the fiduciary income tax. The decision includes an in-depth analysis of the three governing statutes—G.L. c. 62, §§ 1, 10 & 14—and the bank's arguments under those statutes. The bottom line of the Court's analysis is that "a corporate trustee will qualify as an 'inhabitant' of the Commonwealth within the meaning and for the purposes of these statutes if it: (1) maintains an established place of business in the Commonwealth at which it abides, i.e., where it conducts its business in the aggregate for more than 183 days of the taxable year; and (2) conducts trust administration activities within the Commonwealth that include, in particular, material trust activities relating specifically to the trust or trusts whose tax liability is at issue."

Second, in Rice v. Santander Bank, N.A., Civil Action No. 16-10478-FDS, 2016 U.S. Dist. LEXIS 87397 (D. Mass. July 6, 2016), the plaintiff, individually and as the personal representative of his mother's estate, brought claims against Santander Bank to avoid foreclosure on a home that had been owned by his parents and was now owned by the plaintiff individually. The plaintiff's claims revolved around his arguments that his parents lacked the mental capacity in 2007 to execute the disputed home equity line of credit mortgage on the home, that the bank had obtained the mortgage through fraud, and that he himself did not learn of the mortgage and its default until recently. The Court dismissed the plaintiff's individual claims as being time-barred and otherwise defective, but did not similarly dismiss the claims he was pursuing as personal representative.

Regarding the timeliness of the plaintiff's claims as personal representative, the Court explained that under G.L. c. 260, § 7, if a person is "incapacitated by reason of mental illness" when a claim accrues, then the limitations period is tolled until the disability is removed. Here, because the plaintiff alleges that his mother's disability was never removed before her death, the controlling limitations periods are those applicable to claims brought on behalf of a deceased person. Specifically, pursuant to G.L. c. 260, § 10, there are three periods in which a claim can be brought on behalf of a deceased person: (1) during the period within which the deceased person herself might have brought the claim; (2) within two years after the personal representative's posting of his bond; and (3) within three years from the date on which the personal representative knew or should have known of the factual basis for the claim on behalf of the deceased person. Although the record was unclear as to why it had taken four years for the plaintiff to be appointed as personal representative, he nevertheless had two years from the date of his appointment to take action on behalf of his mother's estate. The Court reasoned that a claim" could not have been brought on behalf of her estate until some individual was appointed personal representative."

Third, in Sarro v. Ciancarelli, Docket No. 14-P-230, 2016 Mass. App. Unpub. LEXIS 688 (July 7, 2016), the Appeals Court was confronted with the question of whether a claim for intentional interference with expectancy of a legacy had been inappropriately inserted into a case at the last minute, and thus whether it should have been submitted to the jury. In answering the question, the Court laid out the elements of the claim, namely that "[t]he plaintiff must show that the defendant's interference acted continuously on the donor until the expectancy would have been realized." (Internal citation omitted.) The defendant, who was held liable for intentional interference, argued that the jury's verdict against her was improper because there was no evidence of continuous interference. Specifically, she argued that the plaintiff had the opportunity to discuss the decedent's estate plan with the decedent herself, and so the defendant's interference could not have been continuous. The Court rejected this argument as confused: "The element of continuous interference is concerned with the effect of the defendant's wrongdoing, not the conduct of the plaintiff."

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