

Review and Analysis of Selected 2021 Real Estate Cases

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NEXT?**



A VIRTUAL SERIES FROM YOUR UNDERWRITERS

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Conservation Commission of Norton v. Pesa

488 Mass. 325, 173 N.E.3d 333 (2021)

Wetlands Order of Conditions

Pesa Timeline

- 1979: Original Owner files notice of intent with ConComm for work on his property, which includes placing of fill for a parking lot; receives an Order of Conditions.
- 1984: ConComm sends letter asserting the fill work was not done in accordance with the Order of Conditions; requests sketch of fill locations; no response by Owner.
- 1996: Original Owner deeds property to First Subsequent Owner.
- 2014: First Subsequent Owner decides to sell the property to Second Owner; Certificate of Compliance requested; ConComm responds by letter to First Owner that fill work exceeded Order of Conditions and must be removed; discussions ensue between Second Owner and ConComm.
- Dec. 2014: Second Owner purchases property and records deed.
- 2015: Disagreements arise between Second Owner and ConComm as to need for corrective work to property.
- August 2015: ConComm issues Enforcement Order to Second Owner requiring property be returned to original condition; no response by Second Owner.
- June 2016: ConComm files suit in Superior Court for damages/injunctive relief.

M.G.L. c. 131, § 40

Any person who purchases, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this section... shall forthwith...restore such real estate to its condition prior to any such violation...

[However, the statute then limits the time period during which an enforcement action may be brought:]

...provided, however, that no action... shall be brought against such person unless...commenced within three years following the recording of the deed or the date of the death by which such real estate was acquired by such person.

Pesa Timeline

(condensed)

1979: Original Owner files notice of intent with ConComm for work on his property, which includes placing of fill for a parking lot; receives an Order of Conditions.

1979 – 1984: **Violations of Order of Conditions occur sometime during this time period.**

1996: Original Owner deeds property to First Subsequent Owner. **Superior Court rules that ConComm can only bring an enforcement action for three (3) years following recording of this first deed out after the violations – i.e., until 1999. Because Second Owner purchased in 2014, well after 1999, violations cannot be enforced against Second Owner.**

Dec. 2014: Second Owner purchases property and records deed.

August 2015: ConComm issues Enforcement Order to Second Owner requiring property be returned to original condition; no response by Second Owner.

M.G.L. c. 131, § 40

***Any person who purchases**, inherits or otherwise acquires real estate upon which work has been done in violation of the provisions of this section... shall forthwith...restore such real estate to its condition prior to any such violation...*

[The statute then, however, limits the time period during which an enforcement action may be brought:]

*...provided, however, that no action... shall be brought **against such person** unless...commenced within three years following the recording of the deed or the date of the death by which such real estate was acquired **by such person**.*

Pesa Timeline

(condensed)

1979: Original Owner files notice of intent with ConComm for work on his property, which includes placing of fill for a parking lot; receives an Order of Conditions.

1979 – 1984 **Violations of Order of Conditions occur sometime during this time period.**

1996: Original Owner deeds property to First Subsequent Owner.

Dec. 2014: Second Owner purchases property and records deed. **Supreme Judicial Court rules that regardless of when fill violations occurred, ConComm can bring enforcement action against Second Owner for three (3) years following recording of this deed – i.e., until December of 2017.**

Thereafter, ConComm can no longer enforce against Second Owner, BUT when property is someday sold to Third Owner, a new three (3) year enforcement period against Third Owner begins from the recording of Third Owner's Deed.

August 2015: ConComm issues Enforcement Order to Second Owner requiring property be returned to original condition; no response by Second Owner.

Guilfoil
v.
***Secretary of Executive Office of
Health and Human Services***

486 Mass. 788, 162 N.E.3d 627 (2021)

MassHealth – Nominee Trust

Countable Asset

130 CMR 520.003(A)(1) provides that “the total value of countable assets owned by or available to individuals applying for” MassHealth may not exceed \$2,000.

130 CMR 520.007(G) provides that all real estate owned by the individual with the exception of the principal place of residence is a countable asset.

Look-Back Rule

42 U.S. Code § 1396p(C)(1)(B)(i)

Penalty for transfers less than fair market value within 5 years of the application for Medicaid benefits.

In this case transfer to nominee trust was in 2001, and she applied for long-term benefits when she went to a nursing home in 2017.

In re: Mbazira

15 F.4th 106 (1st Cir. 2021)

Avoidance of Mortgage in Bankruptcy

COMMONWEALTH OF MASSACHUSETTS,

 County ss:

On this 25th day of July, before me, the undersigned notary public,
personally appeared

proved to me through satisfactory evidence of identification, which was/were James
to be the person(s) whose name(s) is/are signed on the preceding document, and acknowledged to me that
he/she/they signed it voluntarily for its stated purpose.

My Commission Expires:
(Seal)

[redacted]

[redacted]



Notary Public
Commonwealth of Massachusetts
My Commission Expires

[redacted]

11 U.S. Code § 1107

(a) Subject to any limitations on a trustee serving in a case under this chapter, and to such limitations or conditions as the court prescribes, a debtor in possession shall have all the rights...and powers...of a trustee serving in a case under this chapter.

11 U.S. Code § 544(a)(3)

(a) The trustee shall have...without regard to any knowledge of the trustee or of any creditor, the rights and powers of, or may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by...

(3) a bona fide purchaser of real property, other than fixtures, from the debtor, against whom applicable law permits such transfer to be perfected, that obtains the status of a bona fide purchaser and has perfected such transfer at the time of the commencement of the case, whether or not such a purchaser exists.

M.G.L. c. 131, § 40

No deed shall be recorded unless a certificate of its acknowledgment or of the proof of its due execution, made as hereinafter provided, is endorsed upon or annexed to it, and such certificate shall be recorded at length with the deed to which it relates...

First Circuit Court of Appeals:

“[The] argument that a mortgage accepted for registration “*should*” provide constructive notice is best saved for the state legislature.”

Ithaca Finance, LLC v. Leger

99 Mass.App.Ct. 368, 167 N.E.3d 874 (2021)

Tax Taking

M.G.L. c. 60, § 66

Upon the filing of such a petition the court shall forthwith cause to be made by one of its official examiners an examination of the title sufficient only to determine the persons who may be interested in the same, and shall upon the filing of the examiner's report notify all persons appearing to be interested, whether as equity owners, mortgagees, lienors, attaching creditors or otherwise, of the pendency of the petition, the notice to be sent to each by registered mail and return of receipt required, the addresses of respondents, so far as may be ascertained, being furnished by the petitioner.

M.G.L. c. 60, § 69A

No petition to vacate a decree of foreclosure entered under section sixty-nine and no proceeding at law or in equity for reversing or modifying such a decree shall be commenced by any person other than the petitioner except within one year after the final entry of the decree...

Matter of Estate of Kendall

486 Mass. 522, 159 N.E.3d 1023 (2020)

MassHealth – Late and Limited Probate Estates

M.G.L. c. 190B, § 3-108
(the “ultimate time limit” rule)

No informal probate or appointment proceeding or formal testacy or appointment proceeding...may be commenced more than 3 years after the decedent's death...

M.G.L c. 190B, § 3-108 (4)

(the ultimate time limit rule...with a “late and limited” exception)

No informal probate or appointment proceeding or formal testacy or appointment proceeding...may be commenced more than 3 years after the decedent's death...

*...**except** that...(4) an informal appointment or a formal testacy or appointment proceeding **may be commenced thereafter** if no proceedings relative to the succession or estate administration has occurred within the 3 year period after the decedent's death, **but** the personal representative shall have no right to possess estate assets...beyond that **necessary to confirm title thereto in the successors to the estate** and claims other than expenses of administration shall not be presented against the estate...*

M.G.L. c. 190B, § 3-108 (4)

(late and limited estates)

No informal probate or appointment proceeding or formal testacy or appointment proceeding...may be commenced more than 3 years after the decedent's death...

*...except that...(4) an informal appointment or a formal testacy or appointment proceeding may be commenced thereafter if no proceedings relative to the succession or estate administration has occurred within the 3 year period after the decedent's death, but the personal representative shall have no right to possess estate assets...beyond that necessary to confirm title thereto in the successors to the estate and **claims other than expenses of administration shall not be presented against the estate...***

Reported Question:

Whether the Estate...is required to pay a MassHealth claim more than three years after Ms. Kendall died, when G. L. c. 190B, § 3-108, of the Uniform Probate Code prohibits the Personal Representative from paying any claims.

SJC Answer:

Whether the Estate...is required to pay a MassHealth claim more than three years after Ms. Kendall died, when G. L. c. 190B, § 3-108, of the Uniform Probate Code prohibits the Personal Representative from paying any claims.

NO

Legislative Intent

- *There is no exception for MassHealth in § 3-108 (4), the provision addressing late and limited probate proceedings. This narrow provision creates an exception to the ultimate time limit against opening new probate proceedings, and it expressly bars creditor claims and prohibits the personal representative from paying any such claims. It allows the personal representative to possess estate assets only to the extent needed to confirm title to the successors.*
- *The omission of an explicit exception to the personal representative's limited powers in § 3-108 (4), therefore, indicates that the Legislature chose not to exempt MassHealth from the bar on creditor claims in late and limited probate proceedings.*

Trustees of Beechwood Village Condominium
v.
USAlliance Federal Credit Union

100 Mass.App.Ct. 192, 176 N.E.3d 656 (2021)

Condominium Phasing Rights

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