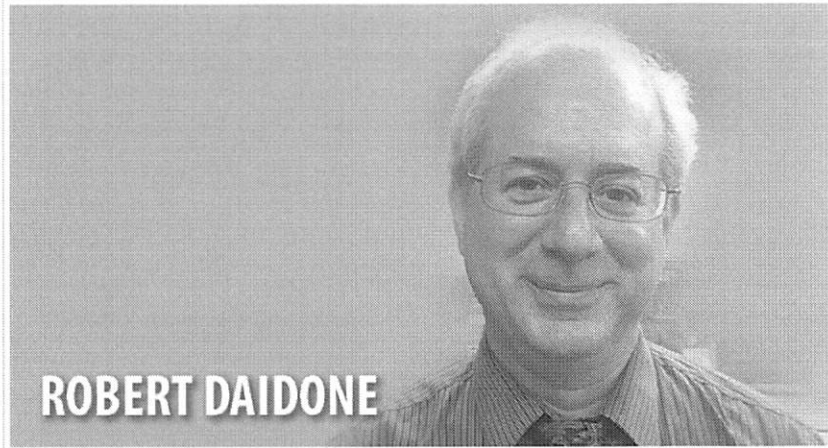




New Probate Code gives judgment creditor priority

By: Eric T. Berkman June 25, 2014



ROBERT DAIDONE

A secured judgment lien that a woman held on property in her late brother's estate took precedence over MassHealth's right to recoup Medicaid benefits it had provided for the decedent's nursing-home care, a Probate & Family Court judge has found.

MassHealth asserted that under G.L.c. 190B, §3-805, the "priority list" in the new Massachusetts Uniform Probate Code, the judgment lien fell within the "all

other claims" category while its own claim was higher on the list in the "debts due to division of medical assistance" category. As a result, MassHealth argued, it had a superior claim under the MUPC.

Judge Randy J. Kaplan disagreed.

"While MassHealth's assertion is accurate that the classification of claims under [the MUPC] does not specifically address secured creditors, it does not mean that a secured interest should be lumped in with the catch-all provision for 'all other claims,'" Kaplan wrote.

"Conversely, given the preferential statutory treatment of secured creditors in the rest of the MUPC, the 'Priority List' ... is not even implicated if a secured interest encumbers all available assets of an estate," Kaplan continued. "As a result, a secured interest ... has superior priority to any and all claims under [the MUPC] including in this case, the claim by MassHealth."

The nine-page decision is *In Re: Estate of O'Brien, Michael J.*, Lawyers Weekly No. 15-002-14. The full text of the ruling can be ordered by clicking here.

Early interpretation

Boston lawyers Robert E. Daidone and Earl L. Miller represented the judgment creditor. Daidone said the ruling is one of the first, if not *the* first, to interpret the priority-of-claims provision in the MUPC, which was enacted less than two years ago.

Meanwhile, Daidone said, MassHealth is a big collector and the dollars it has dealing in nursing-home-related Medicaid claims are significant.

"So it's good to have an opinion specifically interpreting the rights of a secured judgment creditor versus a Medicaid claim," he said.

According to Miller, the decision would have had "huge ramifications" had it gone the other way.

"I've been handling creditors' rights cases for more than 41 years, and it would have turned the thinking upside down," he said. "We credit the judge greatly for seeing how important it is to recognize that a secured creditor has priority over most other claims."

Timothy D. Sullivan, a probate and elder law attorney in Andover, said the decision addresses property law concepts more than probate concepts, because once the sheriff levied upon the real estate pursuant to the default judgment, the creditor's brother no longer had an interest to pass along to the probate estate.

"If MassHealth had succeeded in this case, it would rock the very foundations of our property law," said Sullivan, who was not involved in the case. "Once title has vested — as it had when the sheriff levied [on the property pursuant to the judgment lien] here — anything that subjects it to divestiture by a prior owner's creditors makes the concept of clean title to real estate less certain. Development and growth depend on the certainty of a clean title."

Matthew Karr, who practices probate and elder law at the Heritage Law Center in Woburn, said while practitioners are keenly aware of MassHealth's typical dominance in probate claim issues, secured creditors can now take comfort in knowing that their claims will be honored regardless of a debtor's future health needs.

At the same time, he said, the case creates a double-edged sword with planning opportunities on one side and potential abuse of the system on the other.

"Family members and joint owners [of property] may have legitimate claims against each other that should be given priority over the unforeseen health issues and ensuing medical bills that the MassHealth safety net is designed to provide for," Karr said.

But on the other hand, he said, debts between related parties may not always result from arm's-length transactions, and someone seeking to avoid a Medicaid lien on the horizon conceivably could manufacture such claims so as to "keep the money in the family."

"MassHealth will likely give close scrutiny to [such] claims going forward in light of this case," he said.

MassHealth was represented by Michael Somers and Ingrid C. Schroffner, assistant general counsels at the Executive Office of Health and Human Services. MassHealth declined to comment.

Competing claims

Maureen Maestranzi, the secured creditor in the case, and her brother Michael O'Brien co-owned real property in Manchester as tenants in common.

In December 2002, Maestranzi sued her brother in Superior Court alleging that, from 1977 to 2002, he withheld from her more than \$276,000 in rental payments that the property had generated.

Around the time Maestranzi filed her complaint, O'Brien suffered a stroke and was recuperating at Shaughnessy-Kaplan Rehabilitation Hospital, a long-term care facility in Salem.

O'Brien, who was served with the complaint while in the hospital, never responded. Accordingly, on Feb. 21, 2003, Maestranzi obtained a \$283,000 default judgment for the improper taking of rents.

On March 24, Maestranzi obtained an execution and began the process of levying against the property. Two days later she ordered a sheriff to suspend the levy.

Not quite six years later, on Jan. 26, 2009, she carried forth the levy pursuant to state law, recording the letter carrying forward the levy of execution in the Essex County Registry of Deeds.

O'Brien died on Dec. 24, 2011, and his estate was opened the following July. At that point, MassHealth filed a \$500,000 claim for Medicaid benefits it had provided O'Brien from the time of his stroke until his death.

On Oct. 31, 2012, Maestranzi filed a notice of claims in the estate, including one that provided notice of her default judgment and seizure/levy of the property with suspended sheriff's sale, with a reservation of the right to pursue any deficiency after a sheriff's sale if any part of the judgment remained unsatisfied.

By that point, factoring in accrued interest from the time of the default judgment, Maestranzi's claim totaled more than \$800,000.

That same day — three months before the estate filed for insolvency — Maestranzi notified the Probate Court of her intention to pursue her security interest.

She noticed a sale of the property for Sept. 26, 2013, but the Probate Court temporarily enjoined the sale pending resolution of motions for summary judgment by MassHealth and Maestranzi over whether she had the right to sell the property to satisfy her default judgment and whether her secured claim took precedence over MassHealth's unsecured priority claim.

Priority list

Kaplan rejected MassHealth's argument that Maestranzi had no power under the levy statute, G.L.c. 236, §1, to seize her brother's tenant-in-common share of their real estate and have the property sold to satisfy the judgment.

Specifically, she rejected the argument that Maestranzi's suspension of the levy did not allow for the transfer of title from debtor to judgment creditor.

"If done properly ... a suspension of a levy ... protects the judgment creditor's rights to go forward with a sale," said Kaplan, noting that Maestranzi had complied with all statutory requirements in seeking suspension of the levy and that she carried it forward within the statutory six-year period.

Kaplan also found that Maestranzi, as a secured judgment creditor, had a superior claim to that of MassHealth as an unsecured priority creditor.

"Massachusetts law is clear that a secured creditor to an estate has priority over an unsecured creditor," she said. "The MUPC and the probate law that preceded it have allowed special permission for secured creditors to proceed to enforce its security interest before and generally treat secured creditors preferably to other claimants."

In addition to specific provisions in the MUPC that underscore the superiority of a secured claim, Kaplan noted that according to Massachusetts case law under the prior probate law, an estate has an interest in any surplus funds only after the security is applied, unless the creditor waives that security.

"Additionally, Massachusetts case law has held that a creditor with a secured interest, such as a pledge or mortgage, has the option to pursue the secured interest and proceed on a claim for the balance against the insolvent estate, or relinquishing the security on the claim as a whole against the insolvent estate," the judge said. "The case law reflects the MUPC's preferential treatment towards the rights and remedies available to secured creditors in satisfying their claims as against an insolvent estate."

Kaplan further observed that in other states that have adopted the Uniform Probate Code, a secured creditor can liquidate secured assets without permission from the Probate Court, while distinguishing cases from other jurisdictions that MassHealth cited to support the notion that certain unsecured expenses can indeed have priority over secured claims.

Because Maestranzi had a levied and suspended execution on a one-half undivided interest in the property, the priority list was not even implicated, the judge continued.

"Therefore, Ms. Maestranzi has the ability to seek a sale of the Property encumbered by her judgment lien and has priority over the claims of MassHealth and other general creditors," Kaplan said, granting summary judgment for Maestranzi.

CASE: *In Re: Estate of O'Brien, Michael J.*, Lawyers Weekly No. 15-002-14

COURT: Probate & Family Court

ISSUE: Did a secured judgment lien that a woman held against property in her late brother's estate take priority over MassHealth's right to recoup Medicaid benefits it had provided to pay for the decedent's care in a nursing home?

DECISION: Yes

RELATED JUDICIAL PROFILES

KAPLAN, RANDY JILL

LAWYERS WEEKLY NO. 15-002-14

Massachusetts Lawyers Weekly

Wills and trusts – Priority – Secured claim – MassHealth

ORDERING FULL TEXT OPINIONS

To search the marketplace for this full text opinion, click the Lawyers Weekly Number below.

15-002-14

Please Note: Supreme Judicial Court and published Appeals Court opinions are not available for purchase, but can be accessed online by clicking on the full-text opinion link under “related articles.”

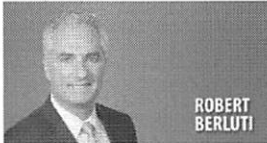
For information on ordering full text opinions, click here.

Issue: JUNE 30 2014 ISSUE

YOU MIGHT ALSO LIKE



Probation revoked over drug relapse
⌚ July 16, 2018



Future commissions can't be trebled under Wage Act
⌚ July 12, 2018



Special master tells class counsel to clean up their act
⌚ July 12, 2018

Copyright © 2018 Massachusetts Lawyers Weekly

10 Milk Street, Suite 1000,

Boston, MA 02108

(617) 451-7300

BRIDGETOWER MEDIA