

# THE FPT NEWS

“. . . useful information for clients and prospective clients.”

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Attorneys at Law

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## CHANCERY ACTIONS

### *An Update*

In the Spring 2009 edition of this newsletter, we wrote about cases that can be brought in the Chancery Division of the Superior Court of New Jersey. In general, cases that are primarily about money damages are usually brought in the Law Division; cases that are primarily about something besides money are usually brought in Chancery. These may include claims for an injunction (a Court order directing someone to do something or to refrain from doing something), a declaration about the rights of the parties, or cases involving the dissolution of companies. We have handled several interesting cases in Chancery this year that demonstrate the variety of claims that can be addressed.

#### **Protecting an Exploited Elder Relative**

We represented a group of extended family members who believed that their elderly relative (call him “Julius”) was being exploited by his (slightly) younger brother (call him “Nathan”) who lived in Julius’ house. Although our clients believed Nathan was taking money from Julius improperly, they were more concerned that Nathan was keeping them from visiting Julius, isolating him and turning him against them. They accused Nathan of hiding Julius’ cell

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## TIME IS RUNNING OUT!

### *Gift and Estate Tax Plans Before 2013*

The federal estate, gift, income and generation skipping transfer (GST) tax laws that apply in 2012 are very favorable to taxpayers, making this an exceptional year in which to do your estate planning. These tax laws are set to become drastically unfavorable starting January 1, 2013. That means that taxpayers have just a few more months to take advantage of the certainty provided by today’s tax laws and plan in a way that can save in taxes.

Now, the federal estate tax exemption and the lifetime gift exclusion is \$5,120,000 (\$10,240,000 for married taxpayers). This means that you can die with assets up to \$5,120,000 or can give away that much in assets this year without incurring a tax liability, assuming there are no prior gifts. The tax rate for estate assets or gifts in excess of this amount is 35%. The federal estate tax exemption and lifetime gift exclusion is slated to be reduced to just \$1,000,000 in 2013, with tax rates ranging from 40%-55%.

In order to take advantage of the current tax system without actually dying in 2012, you can utilize some wonderful gifting opportunities to reduce future estate tax liabilities. These opportunities are available only for the rest of 2012 and can help you transfer huge amounts of your wealth tax free to your children and other beneficiaries. With proper planning through the use of trusts, family limited partnerships, insurance and other vehicles, your gifts can be leveraged so that the amount transferred could be well

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## CHANCERY ACTIONS: *An Update* (continued from page 1)

phone, refusing to cooperate in making transportation arrangements and permitting visits, and trying to convince Julius that they wanted him dead. They also complained that Nathan would undermine any arrangements for them to get together with Julius, take Julius out of the house when he knew they were coming, and make them uncomfortable if they managed to get there when Julius was home. We filed a lawsuit in Chancery to put a stop to this abusive behavior, as well as to Nathan's improper use of Julius' money.

All parties agreed to mediate with a court-appointed neutral third party, an attorney with experience in family disputes. Ultimately, after a number of mediation sessions, the parties agreed to settle the dispute. The settlement laid out guidelines for making Julius available to our clients, and also made one of our clients a co-trustee of Julius' funds along with Nathan, to ensure Julius would not be exploited financially.

### **Rights in a Commercial Property Transaction**

A second Chancery case involved a deal to redevelop a valuable commercial property. Our clients lent money to the owner and received a 99-year ground lease on the property. The ground lease permitted our clients to build a new shopping center

and required them to pay rent to the owner based on the actual amount of retail space approved by the town. The owner tried to renege on the deal and obstruct the approvals and redevelopment. We obtained a judgment in Chancery enjoining the owner from further interference with the redevelopment effort and awarding compensatory and punitive damages for the costs of the delays intentionally caused by the owner.

### **Breach of a Matrimonial Property Settlement**

A third Chancery case involved the intentional breach of a divorce decree by an ex-husband who ignored a requirement to have a life insurance policy in favor of his ex-wife to secure his support obligations. The policy was to be assumed by his ex-wife when the support obligations ended. When the date arrived, more than twenty years later, the ex-wife, our client, discovered that the policy was not in effect and could not be replaced at a feasible price. We brought the case to the Chancery Court and obtained an order requiring the husband to sell his condo to pay damages to the ex-wife, who could not otherwise be made whole for the non-existence of the valuable insurance policy she was entitled to assume.

### **Business Breakups**

A fourth category of Chancery cases drawing our attention has been the "business divorce" typically involving a closely held company (e.g., fewer than 25 shareholders). In one case, the company president (and majority shareholder) was pressuring the minority shareholders to pay him far more than the Shareholder Agreement required on his retirement. In another case, the majority shareholder demoted a minority shareholder's employment in the company and refused to share financial information about the company. We filed actions claiming oppression of minority shareholders, breach of contract, and violation of other rights. Yet in another case, we are advising the majority shareholders regarding their rights against a minority shareholder who is disrupting the business.

### **Conclusion**

Even though some of these cases involved claims for money damages, they were primarily about fairness and protecting the rights of the parties. Attorneys experienced in Chancery lawsuits can advise you about whether a Chancery action can protect your rights and achieve fairness. - AEA

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## ACCESS TO U.S. COURTS ON AN EMERGENCY BASIS FOR IMPORT - EXPORT DISPUTES

*Continued from previous column*

As technology and transportation logistics improve, so will international commerce through import and export transactions involving the United States. To address this prospect, clients involved in international trade should become knowledgeable about judicial remedies available to them on an emergency basis.

When exporting to the United States or importing from the United States, foreign litigants can address grievances before the Federal District Court or the United States Court of International Trade. Both Courts are very experienced in handling disputes regarding security, payment, terms of payment and delivery of a shipment of goods.

Most seeking judicial relief file a complaint in the Federal Court where the goods are located, which is often the State where the goods entered the United States or from where they are about to be exported. The Court can grant various remedies.

Pre-Judgment Writs of Attachment are available from the Court and serve to stop goods, collateral, or funds from leaving the Court's jurisdiction prior to the adjudication of the claim. To obtain a pre-judgment writ of attachment generally, a party must show, (1) there is a probability that final judgment will be rendered in favor of the plaintiff; (2) there are statutory grounds for issuance of the writ (i.e. the defendant is not a resident of the state and a summons cannot be served upon him in the state); and (3) there is real or personal property of the defendant at a specific location within the state which is subject to attachment. The laws of the state in which a respective District Court sits govern the availability of attachment as a remedy.

Federal Courts can also grant injunctive relief under the Federal Rules of Civil Procedure via a temporary restraining order or "TRO." A TRO is designed to prevent a party from undertaking an action that would harm another party. For a TRO to be issued, a party must show that, "immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition."

Writs of Mandamus to compel a government officer to fulfill a duty imposed on him/her may also be brought before these courts. If an importer's

goods have been seized by the Government, a Federal Court has the power to review the seizure and subsequent forfeiture actions.

It is important to note that a party can only bring an action in court for review of a government seizure after the party has exhausted all of the administrative remedies available regarding the seized goods. In *Miss America Organization v. Mattel, Inc.*, plastic toy dolls owned by the Miss America Organization were seized by the United States Customs Service on the grounds that the plastic toy dolls infringed on Mattel's trademark of Barbie dolls. A review of the Customs' seizure of goods was denied because the Miss America Organization had not exhausted all administrative remedies available under the applicable code, including the filing of a petition for relief from Customs' initial determination of forfeiture.

Parties can also use the United States Court of International Trade. The Court is located in the City of New York and has the ability to hold teleconference-based proceedings with parties around the world. The Court of International Trade can also provide the same remedies as a District Court, including injunctions and Writs of Mandamus. Likewise, when goods are excluded from importation into the United States, the Court of International Trade has jurisdiction over exclusions, so long as an exclusion has taken place and not a seizure. If goods are seized by a U.S. Government agency, the aggrieved party can only challenge that determination in District Court.

Most practitioners agree that it is advantageous to file an application in the Court of International Trade since it has expert knowledge of international trade issues and has quick turnaround times. The Court of International Trade provides preferential determinations of certain actions as they are understood to be time sensitive, which is important for perishable items.

Understanding the remedies available as well as the correct court to file for relief can make a difference between a successful resolution of an import/export dispute to avoid significant financial expenses involved in rerouting goods or returning them to their country of origin. - *ALP & ACT*

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## CASE REPORT: *State v. Lenihan*

Not wearing a seatbelt could send you to jail says the New Jersey Appellate Division in *State v. Lenihan*.<sup>1</sup> Lenihan, age 18, and a 16 year old passenger were not wearing their seatbelts when Lenihan crashed her car into a highway guardrail. Lenihan was seriously injured and her passenger was killed. Blood tests revealed that Lenihan probably had been inhaling or “huffing” aerosol dust remover and carpet deodorizer to get high before the accident. Cans of these common household products were found in the car.

In addition to vehicular homicide, Lenihan was charged under N.J.S.A. 2C:40-18 for recklessly causing another’s death. This statute provides that one who “knowingly violates a law intended to protect the public health and safety”, acts recklessly, and injures another person is guilty of a crime. The appellate court agreed that the seatbelt law was a law intended to protect the public health and safety and this qualifies as a predicate to imposing criminal penalties under N.J.S.A 2C: 40-18. The impact of this decision is to criminalize reckless driving because there are dozens if not hundreds of “seatbelt-like” laws. You only need a small amount of imagination if you are a prosecutor. -ACT

## Running Out of Time *(continued from page 1)*

in excess of the federal exclusion amount. The savings are there now, but you must ask quickly.

In order to get started with your planning, please call us so that we can work with you to accomplish your goals. Remember, time is running out.. - HS

## RANDOM THOUGHTS: Social Media

The functioning of the law in the “brave new world” of social media can only be described as “unsettled.” Employers, lawyers, municipal governments, legislators, prosecutors, and judges have been struggling with how to apply existing law and how to write new law applicable to social media experiences, in particular with regard to the workplace. So far, the results are literally all over the place

In response to media reports a law forbidding employers from demanding from employees and prospective employees passwords to social media sites like Facebook is advancing in the New Jersey Legislature. One bill already passed the Assembly and its companion just sailed through the State Senate’s Labor Committee and has the full backing of Senate President Steve Sweeney. A similar bill would prohibit New Jersey colleges and universities from demanding passwords from their students.

In the meantime, application of existing law and regulations is surprising some. Last year, a woman was prosecuted under the New Jersey Identity Theft statute for starting a Facebook page under the name of her former boyfriend, a police officer, in an apparent attempt to discredit him in various ways including professionally. The case was never tried as the woman eventually entered the Pre-Trial Intervention Program – after she spent 18 months in jail prior to the final disposition.

Similarly, a lawyer is in trouble with the Attorney Ethics Committee after directing a staff member to “friend” someone suing his client for the purpose of discovering information outside the normal discovery mechanisms set forth in the Rules of Court.

The bottom line for social media users can only be, user beware. - ACT

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