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**YOUNG WOMEN'S CHRISTIAN ASSOCIATION OF BOSTON, INC. vs. YOUNG WOMEN'S
CHRISTIAN ASSOCIATION OF PHILADELPHIA, INC.¹**

¹ Doing business under the fictitious name of Avis Chase Women's Association of Philadelphia. The nonprofit organizations/public charities division of the Attorney General of Massachusetts and the Pennsylvania Office of the Attorney General were named as interested parties.

15-P-1594.

APPEALS COURT OF MASSACHUSETTS

90 Mass. App. Ct. 1119; 2016 Mass. App. Unpub. LEXIS 1176

December 8, 2016, Entered

NOTICE: SUMMARY DECISIONS ISSUED BY THE APPEALS COURT PURSUANT TO ITS *RULE 1:28*, AS AMENDED BY 73 MASS. APP. CT. 1001 (2009), ARE PRIMARILY DIRECTED TO THE PARTIES AND, THEREFORE, MAY NOT FULLY ADDRESS THE FACTS OF THE CASE OR THE PANEL'S DECISIONAL RATIONALE. MOREOVER, SUCH DECISIONS ARE NOT CIRCULATED TO THE ENTIRE COURT AND, THEREFORE, REPRESENT ONLY THE VIEWS OF THE PANEL THAT DECIDED THE CASE. A SUMMARY DECISION PURSUANT TO *RULE 1:28* ISSUED AFTER FEBRUARY 25, 2008, MAY BE CITED FOR ITS PERSUASIVE VALUE BUT, BECAUSE OF THE LIMITATIONS NOTED ABOVE, NOT AS BINDING PRECEDENT. SEE *CHACE V. CURRAN*, 71 MASS. APP. CT. 258, 260 N.4, 881 N.E.2d 792 (2008).

PUBLISHED IN TABLE FORMAT IN THE MASSACHUSETTS APPEALS COURT REPORTS.

JUDGES: Cypher, Grainger & Carhart, JJ.

OPINION

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

Avis Augusta Morton Chase, a Pennsylvania citizen, died on October 19, 1953. Her will provided for a testamentary trust to be established after the death of all the annuitants named in the will. Accordingly, in August of 1994, an account of the trust was approved by the Orphan's Court in Philadelphia. Certain real property located on Water Street in Chatham (the Chase cottages or property) were bequeathed to the defendant:

"TWENTY-FOURTH: . . . (c) To pay, assign, transfer and convey, after the death of the last annuitant, all my aforesaid residuary estate, absolutely and in fee simple, to the Young Women's Christian Association of Philadelphia, Pennsylvania, IN TRUST, nevertheless, for the uses, purposes and trusts aforesaid, or in the event that the Young Women's Christian Association of Philadelphia will not or for

any reason cannot accept this gift, then to the Young Women's Christian Association of Boston, Massachusetts, for the uses, purposes and trusts aforesaid."²

2 The will defines the "uses, purposes and trusts" relating to the Chase cottages as follows: "to maintain, use and operate said properties as a place which is available for the benefit, rest and recreation of white Protestant women from Philadelphia, Pennsylvania, and its vicinity, who are members of the Young Women's Christian Association of Philadelphia, Pennsylvania."

In 2012 the plaintiff filed a complaint in equity in the Probate and Family Court asserting a right to ownership of the Chase cottages. The various competing claims, theories, defenses and counterclaims asserted by the parties are set forth in the judge's pretrial orders of March 22, 2013 and September 26, 2014 and the judgment of January 7, 2015, from which both sides have appealed. As we dispose of this matter on the clear language of the trust indenture, we do not recite these particulars. The factual background, in any event largely undisputed, is not germane to our conclusion.

The gist of the plaintiff's case was that the defendant had failed to satisfy the conditions of the bequest both by failing to remain affiliated with the Young Women's Christian Association and by failing to provide the Chase cottages to its members for their "benefit, rest and recreation" as required by the indenture. Accordingly the plaintiff asserted that ownership of the Chase cottages should be transferred to it because the defendant could not, or did not, "accept this gift . . . for the uses, purposes and trusts" specified in the bequest.

The record clearly demonstrates that the defendant took title to the Chase cottages "absolutely and in fee

simple" according to the terms of the bequest and pursuant to the decree of the Philadelphia Orphan's Court issued in August of 1994.³ In sum, the property is held in fee simple. There is no formal trust in existence and the plaintiff has no standing to claim a status as the proposed beneficiary of an implied or resulting trust. There is no estate in probate over which the Probate and Family Court can exercise jurisdiction.⁴ The amended complaint should have been dismissed in its entirety.

3 In February of 1999 the Probate and Family Court issued a judgment, in effect confirmatory, that distribution of the Chase cottages to the defendant "shall be outright in fee simple and not held in a formal trust," but also that the deed contain a "restriction that the real estate is to be held 'in trust for the uses and purposes of the continuing trust under Article Twenty-Fourth of the Will of Avis A. M. Chase.'" The contradictory language and confusion contained in this judgment cannot change the fact that the will in question had been probated in Pennsylvania according to its terms five years previously.

4 Our decision makes it unnecessary to address the related claims that the Land Court has exclusive jurisdiction to adjudicate this dispute over title to registered land or that the Attorney General of Pennsylvania is the only party with standing to challenge the use of the property.

Judgment reversed.

A new judgment shall enter dismissing the amended complaint.

By the Court (Cypher, Grainger & Carhart, JJ.⁵),

5 The panelists are listed in order of seniority.

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