Private Client ~ October 2021

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**Building Your Own Home? You Need Professional Tax Advice**

So-called DIY builders who 'construct' their own homes can reclaim VAT incurred in doing so. As one case showed, however, there is a very great difference between the ordinary English usage of that word and its meaning in VAT legislation.

The case concerned a couple who bought a derelict farmhouse. It had holes in the roof, its front wall was bowed and water was running out of the door. They carried out extensive building works that left only the building's two gable ends standing but succeeded in transforming it into a comfortable home. Their request for DIY builders' relief was, however, rejected by HM Revenue and Customs.

Ruling on their challenge to that decision, the First-tier Tribunal (FTT) noted that, as a matter of ordinary English, the project clearly resulted in the 'construction' of a dwelling. The Value Added Tax Act 1994, however, specifically provides that conversion, reconstruction or alteration of an existing building do not amount to works of construction.

The Act also states that a building only ceases to be an existing building when it is demolished completely to the ground or where the part remaining above ground consists of no more than a single façade, the retention of which is a condition or requirement of the relevant planning permission.

The couple's case did not fall within either of those categories in that they did not demolish the entire building – they did not have planning permission to do so – and the gable ends could not be viewed as a single façade.

DIY builders' relief is also available where non-residential buildings are converted for residential use. However, the couple could not benefit from that provision in that the farmhouse was clearly designed as a dwelling and had been used as such fewer than 10 years prior to the commencement of the building works.

In rejecting the couple's appeal, the FTT acknowledged that there are some oddities in the conditions that must be satisfied in order to take advantage of the DIY builders' scheme, particularly when viewed in the context of the planning regime. However, it was not its task to reason why and there was no way the legislation could be interpreted in a way that permitted the couple's case to succeed.

For expert advice and guidance on the complexities of VAT law, contact our specialist team.

**Partner Note**

Hackett v The Commissioners for Her Majesty's Revenue and Customs [2021] UKFTT 317 (TC)

**Divorced Abroad? You Can Still Get a Fair Financial Deal in England**

It may come as a surprise but, even if you have been divorced abroad, there is a great deal that an English family lawyer can do to ensure you receive a fair financial deal. In one case, the High Court came to the aid of a woman whose marriage to an affluent Chinese businessman ended acrimoniously.

The couple enjoyed an opulent lifestyle during their marriage, which lasted for about two years. Following their separation, he for some months provided her with apparently generous financial support. However, all that changed when he abruptly closed their joint account, which held about £1.4 million. Suffering from a number of health problems, she had since run up about £600,000 in debts.

She petitioned for divorce in England, asserting unreasonable behaviour on his part. However, he succeeded in divorcing her first in China. As a result, the English courts had no power to hear either her petition or her application for financial relief under the Matrimonial Causes Act 1973. Both were dismissed.

That, however, did not prevent her from taking action under the Matrimonial and Family Proceedings Act 1984. Even in the event of an overseas divorce, the Act enables those who are domiciled or habitually resident in England, or who had their matrimonial home in this country, to seek financial relief against their former spouses in an English court.

The husband, who lived in China, argued that the dispute should be dealt with there and that the English courts had no right to intervene. The wife, however, lived in this country and the Court found following a preliminary hearing that she had at least an arguable case that the couple's primary base was in England during the marriage.

Criticising the husband's litigation conduct, the Court noted that he had failed to engage meaningfully in the proceedings. His disclosure of his assets was wholly inadequate and he had taken steps to strip the UK arm of his business of all its assets. He had cut the wife off financially and had made no offers to compromise.

The wife, who was sacked from her senior role in the husband's business after their separation, had been awarded £103,000 in damages by an English Employment Tribunal. However, no part of that sum had been paid to her.

The husband was ordered to make interim financial provision for the wife of £200,000 a year, pending a final resolution of her claim. He was also ordered to pay substantial sums to cover her past and future legal costs of the proceedings.

If you are divorcing, a number of issues may arise on which sound legal advice is essential. We can ensure you are expertly advised and represented.

**Partner Note**

J v J [2021] EWFC 78

**Justice and Common Sense Trump Finality in Asbestos Widow's Case**

If judges' decisions were treated as anything other than final, there would be no end to litigation. However, as a Court of Appeal ruling in an asbestos case showed, there are rare occasions when a fundamental change in circumstances demands that a case be reopened.

The case concerned a happily married couple who acted on a permanent basis as foster carers for two troubled children. It was agreed between them that the wife, a specialist nurse, would continue to work as the family's main breadwinner whilst the husband would remain at home as the children's primary carer. The couple's long-term aim was to adopt the children and bring them up to adulthood.

Their plans were derailed, however, when the husband, who had been exposed to asbestos whilst working as a general labourer in the 1990s, died from asbestos-related lung cancer at the age of 55. Following a trial, his employer at the time was ordered to pay his widow £928,827 in damages. Of that total, £666,781 was to compensate for the loss to the family of his domestic, household and childcare services.

In challenging that outcome, the employer presented fresh evidence that the children were no longer in the widow's care. Although she hoped that they would be returned to her, with additional support from a local authority, she had not seen them for more than a year and had no knowledge of their whereabouts.

Ruling on the matter, the Court acknowledged the general principle that there must be finality in litigation, save in very exceptional cases. The fresh evidence was, however, directly relevant to the widow's loss of dependency claim and to ignore it would be an affront to common sense or a sense of justice. The case was remitted to the trial judge for the value of the widow's claim to be reassessed.

If employers fail to take appropriate measures to prevent exposure to substances that can damage the health of employees, they can be liable to pay compensation for the resulting illnesses. If you or someone you know has suffered ill health as a result of exposure to harmful substances in the workplace, contact <<CONTACT DETAILS>> for advice.

**Partner Note**

Steve Hill Ltd v Witham [2021] EWCA Civ 1312

**Lending Money to Friends? Don't Act Without Professional Advice**

The emotional element involved in lending money to friends and loved ones makes it all the more necessary to first seek independent professional advice. A case on point concerned a businessman who lent a small fortune to a close friend but had to launch High Court proceedings to get part of his money back.

Over some years, the businessman lent substantial sums to his friend, who had encountered financial difficulties. A loan agreement was eventually signed by which the friend agreed that a consolidated debt of £705,000 should be secured by way of a second charge against a residential property he owned.

The debt was repayable on demand and subject to interest at a rate of 1.5 per cent a month. The property was later sold and, after a mortgage debt to a bank was repaid, the net proceeds, which came to £426,608, were paid into court. The businessman claimed entitlement to that sum, plus accrued interest.

In resisting the claim, the friend asserted, amongst other things, that he had been tricked into signing the agreement. He claimed that he had only been given the final page of the agreement to sign and that he had been massively naïve in executing a commercial document without first carefully checking its contents.

Rejecting those contentions, however, the Court found that he had the opportunity to view the agreement and other documents before signing them in the presence of a solicitor. Copies of the documents were later emailed to him and they accurately represented the accord that the two men had reached. The friend was thus bound by the agreement and the charge over his property.

The Court was not in a position to calculate the precise sum owed by the friend but was satisfied that it exceeded the amount of the net proceeds of sale and accrued interest. It therefore ordered the money in court to be paid out to the businessman.

Always seek professional advice before entering into financial agreements with friends and family. Our lawyers are experienced in dealing with these situations. Contact us for advice.

**Partner Note**

Fraine v Foy [2021] EWHC 2302 (Ch)

**Property Dispute Looming? Now is the Moment to Seek Professional Advice**

A word out of place can lead to the sacrifice of valuable legal rights and that is why it is vital to seek professional advice the moment a potential dispute looms on the horizon. The point was made by the case of a couple who faced a challenge to their ownership of two plots of land adjoining their home.

The couple bought the land on which they built their home in 1993. Although they did not formally own the adjoining plots, they treated them as their own, using them as their drive and as part of their garden. In 2018, the registered owner of the plots asserted that the couple had encroached onto them unlawfully.

After a hearing, the First-tier Tribunal (FTT) found that the couple were entitled to be registered as the plots' legal owners. It did so on the basis that they had established so-called squatters' rights over the plots, having enjoyed unhindered possession of them, as of right, for more than 10 years.

The FTT found that they genuinely believed that the plots formed part of the land they had purchased in 1993. On the basis of that belief, they had acted to their detriment in spending substantial sums of money on incorporating the plots into their property.

Challenging that outcome, the registered owner pointed to prior email and telephone correspondence in which offers and counter-offers were made with a view to the couple purchasing the plots. The correspondence was said to indicate that the couple held no genuine belief that they owned the plots.

Dismissing the appeal, however, the Upper Tribunal found that the correspondence benefited from litigation privilege and had thus rightly been excluded from evidence by the FTT. Given the accusation of encroachment that the registered owner had made, the correspondence was redolent with controversy and the potential for subsequent litigation was by then already obvious.

For advice and guidance on any legal matters surrounding property disputes, please contact <<CONTACT DETAILS>>.

**Partner Note**

Windmill Holdings SPV Ltd v Adams and Another [2021] UKUT 228 (LC)

**Read This If Your Child Has Been Taken Abroad Without Your Consent**

If your right to play a full part in your child's life has been undermined by his or her wrongful removal from England, a specialist family lawyer can help you achieve a reunion. A case on point concerned a baby girl who, without her father's consent, was sent to live in India by her mother.

Following the end of the couple's tempestuous relationship, the mother flew to India with their seven-month-old daughter, leaving her in the care of her grandparents. The mother returned to England and the child had since remained in India for over two years. The father launched proceedings with a view to enforcing the girl's return to England.

The case was complicated by the fact that India is not a signatory to the Hague Convention, the international treaty that aims to tackle cross-border child abduction. Although both parents had leave to remain in the UK, neither they nor their daughter were British citizens. In those circumstances, the question of whether the High Court had the power to intervene in the dispute hinged on whether the girl was habitually resident in the UK when her father made his application.

Ruling that she was, the Court noted that both parents were living in England when she was born and had continued to do so. Each had strong and settled roots in this country. The mother, who had not lived in India for many years, had continued to take long-distance responsibility for her daughter's care, making important decisions concerning her upbringing.

The father had no meaningful connections to India and the mother had intended the child's placement with her grandparents to be temporary, whilst she furthered her career in England. Having reached the age of three in India, the girl had spent most of her life there. However, there was no evidence that she had been integrated into Indian society and England remained her true focus point of stability in social, family and territorial terms. Her removal from this country was plainly wrongful and without the father's consent.

Given his daughter's continued habitual residence in this country, the father's lengthy delay in taking legal action was not fatal to his claim. The Court's ruling paved the way for him to seek orders making his daughter a ward of court and requiring the mother to arrange her return to England. In deciding whether those orders should be made, the Court would focus on the child's welfare at a further hearing.

Our family law experts are experienced in dealing with sensitive cases like this. Contact us for advice.

**Partner Note**

MZ v RZ [2021] EWHC 2490 (Fam)

**Rural Vicar Succeeds in Establishing Easement Over Neighbours' Drive**

Rights to make use of other people's land – known as easements – often do not appear on title deeds and, for that reason, can easily catch property buyers unawares. In a case on point, a vicar asserted his own and others' right to use a couple's drive as an access route to a rural church.

The couple bought their home, which was formerly the church school, in 2015. The property had been sold off to the couple's predecessors by the village's then vicar and churchwardens in 2012. The property's title deeds made no reference to the unregistered easement and its existence would not have been apparent to the couple on reasonably careful inspection.

The current vicar argued that there was an established easement that permitted him and others to make vehicular use of the couple's drive for church purposes. Clergy, undertakers and families placing flowers on graves were, amongst others, said to have used the drive for more than 20 years prior to the 2012 sale. Despite the couple's objections, the vicar's arguments prevailed before the First-tier Tribunal (FTT), which directed that the easement be formally registered.

Dismissing the couple's challenge to that outcome, the Upper Tribunal rejected an argument that the drive's occasional use for church purposes over the years was insufficient to give rise to an easement. The FTT was entitled to find that the drive's use in connection with the church, whilst never frequent, was a matter of routine during the relevant period. The easement having been established before they bought their home, the couple's appeal was doomed to fail.

To avoid falling victim to circumstances such as these, it is vital to seek expert legal advice when purchasing a property. Our specialist lawyers can assist you.

**Partner Note**

Hughes v Incumbent of the Benefice of Frampton-on-Severn, Arlingham, Saul, Fretherne and Framilode [2021] UKUT 184 (LC)

**Trouble With the Bank? The Balance of Power is Not All One Way**

Faced with bankruptcy proceedings brought by large financial institutions, individuals may be forgiven for feeling at something of a disadvantage. As one case showed, however, judges are not impressed by size and the balance of power in such cases is much more even that one might think.

A bank lodged a bankruptcy petition against a man on the basis that he had failed to satisfy a statutory demand for almost £1.2 million. The debt was said to have arisen from loan facilities advanced to him and from a personal guarantee and indemnity he had signed. However, he denied owing the bank a penny.

He asserted that payments under the loan facilities were extended not to him, but to his parents in respect of their business. He denied that he had any involvement or interest in that business. Challenging the validity of the guarantee and indemnity, he said that he had signed it at his father's request and that he received no independent legal advice before doing so.

Dismissing the petition, the court found that the entirety of the debt was disputed on substantial grounds. A number of flaws in the bank's case meant that it had failed to prove the debt in clear and unequivocal terms. Amongst other things, a facility letter that formed a central plank of the bank's case was unsigned and therefore effectively worthless.

If you are embroiled in a dispute with a financial institution, we can ensure you are expertly advised and represented.

**Partner Note**

Ulster Bank Ltd v McLaughlin [2021] NIMaster 6

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