Tax, Trust and Probate ~ November 2021

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**Bankrupts are Entitled to Expect that Their Assets Will Be Sold for Fair Value**

In return for a discharge from debt and the promise of a fresh start, bankrupts must accept that anything they own may be sold and the proceeds paid to their creditors. As a High Court ruling underlined, however, they are entitled to expect that their assets will not be realised for less than their fair value.

The case concerned a man who, when he was declared bankrupt, held a plot of land in his sole name. Pursuant to a declaration of trust, however, he and his parents each owned one-third beneficial interests in the plot. Some years after his discharge from bankruptcy, the Official Receiver (OR) formed the view that the plot remained part of his estate in bankruptcy.

Acting as his trustee in bankruptcy, the OR sold the plot for £20,000. Neither the man nor his parents were notified that the OR had been approached by a purchaser, nor were inquiries made of them regarding the land's value or its proposed sale. Five years later, the purchaser sold the plot for £175,000.

The man asserted that the plot was worth £325,000 when the OR sold it. He contended that she had acted negligently in selling it for a fraction of its fair value and lodged a claim for compensation against her under Section 304 of the Insolvency Act 1986. Following a hearing before a district judge, however, he was refused permission to proceed with his claim.

Upholding his challenge to that outcome, the Court noted that, as he held the plot as a trustee, only his one-third beneficial share in it passed to his trustee in bankruptcy. The OR therefore had no power or authority to sell legal title to the plot. Having intermeddled with trust property, she was liable in principle to reconstitute the trust by replacing the plot or its value so as to put the trust back into the position it would have been in had the plot not been wrongfully sold.

The Court noted that, on the face of it, something had gone wrong. The OR had failed to appreciate that she had the man's bankruptcy file in her possession. The file contained documents which showed that legal title to the plot was not vested in her, that a two-thirds beneficial interest in it belonged to the man's parents and that she could not sell it without a court order.

Granting the man permission to proceed with his claim, the Court found that he had a reasonably meritorious case in respect of his one-third interest in the plot. However, it would be open to the OR to argue, amongst other things, that she had acted honestly and reasonably and that the breach of trust ought fairly to be excused.

For advice on any legal matters relating to trusts and trustees, contact us.

**Partner Note**

Walker v The Official Receiver [2021] EWHC 2868 (Ch)

**Deduction of Accommodation Costs from Income Tax – Guideline Ruling**

You are only able to deduct accommodation and other expenses from your Income Tax liabilities if they have been wholly, exclusively and necessarily incurred in the performance of the duties of your employment. That is a very high hurdle but, as a tax tribunal ruling showed, it is not insurmountable.

With a view to qualifying as a maxillofacial surgeon, a dentist entered into a training contract at a London hospital which was a centre of excellence in the field. He rented a flat close to the hospital and spent almost £40,000 on accommodation over a four-year period. He sought to deduct that sum for Income Tax purposes but HM Revenue and Customs (HMRC) disputed his entitlement to do so.

Frequently on call, he asserted that he was required to live within 30 minutes' travel time from the hospital. As a doctor licensed by the General Medical Council, he was required to put his patients' interests before those of his wife and children, who had continued to reside at the family home in Southampton. The modest flat was not in an area where he would otherwise have chosen to live. As a mature professional, it was not reasonable to expect him to live in hospital accommodation generally used by undergraduates.

HMRC argued that the 'wholly, exclusively and necessarily' test enshrined in Section 336 of the Income Tax (Earnings and Pensions) Act 2003 was not satisfied. His employment contract did not require him to rent a home close to the hospital. He did not work from home and, in giving him a roof over his head, the flat provided him with a considerable personal benefit unconnected to his duties.

Ruling on the matter, the First-tier Tribunal (FTT) accepted that his accommodation costs arose from his obligations as the hospital's employee. He had to live close to the hospital in order to perform his on-call duties. Many of his patients had suffered severe traumatic head injuries and required emergency treatment. When he was formally on call or in attendance at the hospital, he did not derive any personal benefit from the flat.

The FTT ruled, however, that his use of the accommodation for the performance of his employment duties was restricted to periods when he was both on call and giving advice whilst present in the flat. Only a proportion of his accommodation costs therefore satisfied all three limbs of the deductibility test. The FTT expressed the hope that the relevant proportion would be agreed in the light of its ruling.

Our Income Tax law experts can assist you if you are embroiled in a dispute with the authorities. Contact us for advice.

**Partner Note**

Kunjur v The Commissioners for Her Majesty's Revenue and Customs [2021] UKFTT 362 (TC)

**Determined DIY Builders Score Important Victory Over HMRC**

You may understandably feel overawed by the might of the tax authorities but, with the law on your side, the balance of power is far more even than you might think. In a case on point, a couple struck an important blow for the cohort of determined people who set about building their own homes.

The couple demolished a wooden bungalow on their land and embarked on an epic project to construct a new home for themselves. They lived in a caravan whilst the work was ongoing. Although the man, a jobbing builder, had for five years devoted his weekends and holidays to working on the project, it remained incomplete.

They availed themselves of the DIY Builder Scheme, which enables those who build their own homes to reclaim VAT on construction materials, and HM Revenue and Customs (HMRC) duly repaid them £5,182. However, when they made a further claim under the scheme, it was roundly rejected.

HMRC asserted that, on a true interpretation of Section 35 of the Value Added Tax Act 1994, DIY builders can only make a single claim for repayment of VAT in respect of any one building. They contended that such claims can only be made in a three-month window following a building's completion. According to HMRC, the earlier VAT repayment should not have been made as the couple's home was incomplete.

In challenging HMRC's stance, the couple pointed out that self-build projects often take years. Most self-builders only ever build one house and would be discouraged from doing so if they were barred from making periodical reclaims of VAT whilst works are in progress. It cannot have been Parliament's intention to expose self-builders to the hardship of only being able to make one repayment claim, post completion.

Upholding the couple's appeal, the First-tier Tribunal (FTT) fundamentally disagreed with HMRC's interpretation of Section 35. On a proper reading of the provision, it did permit more than one repayment claim to be made under the scheme. There was also no statutory requirement that evidence of a building's completion must be provided before a repayment claim can be accepted.

Insofar as the Value Added Tax Regulations 1995 were incompatible with the FTT's interpretation of the statutory provisions, they were unlawful, having been made in excess of power. The FTT concluded that the Regulations went entirely too far in restricting self-builders to making a single repayment claim only after a building is completed. The three-month post-completion deadline represented not a window, but an outer limit during which valid repayment claims can be made.

It is important to source specialist legal advice if a dispute with HMRC arises. Our expert team can assist.

**Partner Note**

Ellis and Another v The Commissioners for Her Majesty's Revenue and Customs [2021] UKFTT 343 (TC)

**High Court Aids Widow Left in Precarious Position by Husband's Death**

If someone on whom you depended for support has died without making reasonable financial provision for you, you should consult a solicitor without delay. In a case on point, the High Court came to the aid of a widow who was left largely reliant on benefits following her husband's death.

Prior to his death, the husband made a will bequeathing the whole of his estate to his widow. Their matrimonial home was, however, owned equally by the husband and one of his brothers as joint tenants. When the husband died, his interest in the property fell outside his estate and passed to his brother automatically under the principle of survivorship. As a result, the brother became the property's sole owner and no part of it passed to the widow.

The widow and her child remained living in the property, but their position was precarious. Although she had inherited a modest investment property from her husband, it was subject to a substantial mortgage and she needed the rental income it generated to cover its costs. She testified that she had few other resources and was otherwise dependent on benefits.

After she launched proceedings under the Inheritance (Provision for Family and Dependants) Act 1975, the Court found that the husband had failed to make reasonable provision for her as his financial dependant. The most obvious and primary claim on his estate was to provide for his wife and child and, in particular, to ensure that they had a home to live in.

The Court directed that the husband's half share of the matrimonial home should revert to his estate to the extent necessary to yield a cash sum of £80,000 that would be paid to his widow. That would be sufficient to discharge the mortgage on the investment property, leaving it free for occupation by the widow and her child.

If she was unable to take on paid work, the widow's dependence on benefits was likely to continue. However, the Court noted that its order would improve her position in rendering her the unencumbered owner of the investment property. The Court hoped that its ruling would alleviate friction between the widow and members of the husband's family.

We can advise you on any matters relating to inheritance law. Contact us for advice.

**Partner Note**

Beg v Beg and Others [2021] EWHC 2598 (Ch)

**Inheritance and the Impact of Intestacy on Stepchildren – Guideline Ruling**

In an era of increasingly fluid family relationships, many children are brought up by step-parents – but what is the consequence of that social change in terms of inheritance? The High Court addressed that issue in a guideline ruling.

The case concerned a stepson who, from a young age, was brought up by his stepfather, who had no children of his own. After his mother and stepfather divorced, he continued to live with the latter. When the stepfather died without making a will, his estate passed automatically to his cousins. The stepson received nothing because he was not his stepfather's biological child.

On the basis that he was financially dependent on his stepfather, the man launched proceedings under the Inheritance (Provision for Family and Dependants) Act 1975, seeking reasonable provision from his estate. There was no dispute that he fell within the ambit of the Act in that his stepfather treated him as a member of his family.

The stepson contended that he was in substantial debt and struggling financially, in part due to the COVID-19 pandemic. He was very close to his stepfather and his financial dependency on him had continued beyond his childhood. He claimed that his stepfather had assured him prior to his death that he had executed a will in which he would be provided for.

Ruling on the matter, the Court noted that, following the divorce, the stepfather had been granted custody of his stepson. He was formally responsible for providing the stepson with a home and support until he reached the age of 21. When the stepson turned 18, he changed his surname by deed poll to that of his stepfather.

One could only speculate as to why no will was found after the stepfather's death, but the Court was satisfied that the rules relating to intestacy had operated in a manner that denied the stepson reasonable provision from the estate. Proceeding on the basis that the estate was worth £195,000, the Court ordered that the stepson should receive £55,000 of that sum.

A professionally drafted will can help to prevent contentious situations like this from happening. For advice on making sure your estate will be dealt with fairly and efficiently, contact us.

**Partner Note**

Higgins v Morgan and Others [2021] EWHC 2846 (Ch)

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