Tax, Trust and Probate ~ March 2023

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**Businessman's 'Hopeless Disorganisation' Triggers Bitter Inheritance Dispute**

Business owners who carelessly intermingle corporate funds with their own money positively invite confusion – and dispute between their loved ones – after they are gone. In a case on point, a property investor's hopeless disorganisation when it came to paperwork had precisely that malign effect.

When the man died, he bequeathed the controlling interest in his company to the two children of his first marriage. Acting via the company, the children later took action against his widow. They contended that she held the legal title to a number of properties on trust for the company in that they had been purchased with corporate funds. For her part, the widow asserted that she was the sole legal and beneficial owner of all the properties.

Ruling on the matter, the High Court noted that the man had funded the property purchases from two bank accounts. Although the company was referred to in the title of one of those accounts, he used it however he wanted to fund his day-to-day outgoings. The other account was held solely in his name, with no reference to the company, but he again used it freely for both company and personal purposes.

Although the evidence was not all one way, the Court rejected the company's claim. It was satisfied on the evidence that the contents of both accounts represented the man's personal funds. A claim in respect of £130,000 that the widow withdrew from another of the man's accounts shortly before his death was also dismissed.

The Court noted that its ruling was bound to come as a great disappointment to the children, who might feel that it was not the outcome their father would have wished for. If that were the case, however, it was a consequence of his hopeless failure, over many years, to organise and document his business finances and transactions with greater rigour.

For advice regarding inheritance law, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Provincial Equity Finance Ltd v Dines [2023] EWHC 103 (Ch)*

**Domicile – Tax Tribunal Delves Back into a Century of Family History**

Discerning where an individual is domiciled for tax purposes can involve delving far back into his or her family history. In a case on point, a tax tribunal's inquiries began with the birth of a wealthy businessman's father in Austria at the end of the First World War and his subsequent flight from Nazi oppression to England.

In challenging tax assessments in respect of a four-year period, the businessman asserted that he was domiciled in England for none of those years. In determining his appeal, the First-tier Tribunal (FTT) was required to consider not only his own domicile but that of his parents.

His father's domicile of origin was in Austria, where he was born in 1918. He came to England in 1938, having escaped the Nazi persecution of Jews, and served in the British Army. His future wife was born in Ireland and, after they met and married in London in 1954, they established a business and had three children together.

It was the businessman's case that his father was domiciled in Austria throughout his life – he died suddenly, aged 50, in 1968 – and never acquired a domicile of choice in England. As his father's dependant, he was himself born with an Austrian domicile and that continued to be the position after he reached adulthood. His mother, too, had never chosen to abandon her domicile of origin, Ireland.

Ruling on the matter, the FTT found that his father turned his back on Austria when he fled to England, renouncing any connection with the land of his birth. He became deeply settled in London and, having made up his mind to live permanently and indefinitely in England, he acquired a domicile of choice here. Although his mother may have expressed an intention to return to Ireland, any such plan was vague in nature and she too had acquired a domicile of choice in England.

The businessman described himself as a global person who owned property abroad and spent most of his time outside England. In dismissing his appeal, however, the FTT noted that he was born and brought up, and had established a thriving business, in this country. He had never had any ties or attachments to Austria or Ireland and there was compelling evidence that he had, at the relevant time, intended to make his permanent home in England and to end his days here.

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

**Partner Note**

*Coller v The Commissioners for Her Majesty's Revenue and Customs [2023] UKFTT 212 (TC)*

**High Court Comes to Aid of Widow Left Almost Penniless by Husband's Will**

Failing to make reasonable provision for your dependants in your will is to positively invite discord between your loved ones after you are gone. That was certainly so in the case of a man who bequeathed not a penny to his elderly widow.

The man wanted his fortune – which was estimated to be worth up to £1.99 million – to pass solely down the male line. By his will, he divided his estate equally between his two sons. He made no provision at all for his four daughters or his widow, to whom he had been married for about 66 years.

Following his death, his widow, aged 83 and in failing health, moved out of the family home after one of the sons, with whom she had a very strained relationship, moved in. She lived with one of the daughters but had very few assets of her own. Her income consisted of under £12,000 a year in state benefits.

After she launched proceedings under the Inheritance (Provision for Family and Dependants) Act 1975, the High Court noted that it was a clear-cut case of a will failing to make reasonable provision for a financial dependant. All the husband's wealth had been accumulated during a very long marriage to which his wife had made a full and equal contribution.

Although she had worked for years in the family business, she had no direct stake in it and received no salary. She was financially dependent on her husband, who took charge of money matters and met all the family outgoings. Had the marriage ended in divorce, she would have been entitled to half his assets; yet, by the terms of his will, she was left with next to nothing.

In effectively rewriting the will, the Court ordered that the widow should have half of her husband's estate. Such an inheritance would be sufficient comfortably to meet her reasonable capital and income needs and would enable her to purchase a modest home close to her daughter.

For advice on making sure your estate will be dealt with fairly and efficiently, contact us.

**Partner Note**

*Kaur v Singh and Others [2023] EWHC 304 (Fam)*

**Pensioner with 'Mild Cognitive Impairment' Capable of Making a Valid Will**

To make a valid will, you need a certain level of mental capacity. However, as a High Court ruling showed, a flawless memory is not required and those suffering from mild cognitive impairment may not be disqualified from expressing their wishes.

The case concerned a woman who was suffering from advanced vascular dementia when she died at the age of 90. She had, six years previously, made a will by which she left her entire estate to her son and only child.

He died before her, however, so that, under the terms of the will, her estate passed to one of her nephews and his wife. The will was the source of much antipathy within the family and one of the woman's nieces mounted a challenge to its validity on the basis that she lacked the mental capacity required to make it.

Ruling on the matter, the Court noted that the capacity to make a valid will depends on the potential to understand and is not to be equated with a test of memory. The legal test for capacity is not pitched so high as to prevent the elderly and others with imperfect memories from making a will.

The first indication that the woman was having mental health difficulties occurred about four months before she made the will. She was visited at home by a mental health nurse who noted her sadness that so many old friends had passed away. Such a lament, the Court noted, was not unusual for elderly people.

In his report, the nurse described her as a pleasant and sociable lady who stated that she had not left her home for over a year. Her short-term memory was impaired, she was disorientated as to time and she had occasional episodes of confusion. Overall, the nurse's opinion was that she was suffering from mild cognitive impairment.

Upholding the will's validity, the Court noted that it was rational on its face. Drafted by an experienced lawyer, its terms were simple and readily understandable. In the light of medical records, the likelihood was that she was still in the early stages of mental decline when she signed the document. She recollected the extent of her property, which largely consisted of her home, and was able to understand the nature of the will and its effect.

Contact us for expert advice on any matters relating to will disputes.

**Partner Note**

*Boult v Rees [2023] EWHC 147 (Ch)*

**Stamp Duty Land Tax Test Case Focuses on London Garden Square**

Flat tenants often enjoy a right to use communal gardens – but what effect do such arrangements have in terms of liability to Stamp Duty Land Tax (SDLT)? In an important test case, a tax tribunal pondered that issue in the context of one of London's famously exclusive garden squares.

Two sisters purchased the long lease of a flat in Onslow Gardens, South Kensington. The lease conferred on them a right – or, in legal terms, an easement – to make use of the square's communal gardens. On acquiring the flat, they paid SDLT on the basis that the property was wholly residential.

However, they subsequently asserted that this was a misclassification and sought a rebate in excess of £85,000. They contended that their acquisition included non-residential property – the gardens easement – and that SDLT was therefore payable at a reduced rate. HM Revenue and Customs, however, took a contrary view and refused to grant a refund.

Challenging that decision, the sisters argued that, because the gardens are used in common with other occupants of the square, they are not residential in nature. The gardens, they pointed out, do not belong to them exclusively. They do not confer a benefit solely on them, nor are they exclusively under their control. They asserted that the acquisition of the flat together with an easement over non-residential land took the acquisition outside the statutory definition of residential property.

Ruling on the matter, the First-tier Tribunal (FTT) accepted that the gardens – which do not adjoin the flat – do not form part of the property's garden or grounds. It found, however, that the main subject matter of the land transaction was the flat alone. The easement is appurtenant to the leasehold interest in the flat. Both having been acquired at the same time, the easement formed an inseparable part of, and was subsumed within, the overall transaction.

The FTT noted that the gardens easement renders the flat a more attractive and convenient property. Passing from tenant to tenant each time the flat changes hands, it is conferred by the lease and exists for the benefit of the flat, rather than individual tenants. It has no independent existence other than by reference to the lease and enables tenants to exercise an individual right to use a communal facility. Dismissing the appeal, the FTT found that the sisters were liable to SDLT on the basis that the property they acquired was wholly residential.

It is vital to seek expert legal advice before entering into tax tribunal proceedings. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Sexton and Another v The Commissioners for Her Majesty's Revenue and Customs [2023] UKFTT 73 (TC)*

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