Private Client ~ June 2023

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Breaking the Deadlock of Competing Divorce Petitions at Home and Abroad

Do Stellar Financial Contributions Displace the Equality Principle in Divorce?

Even Acts of Generosity Should Be Properly Documented – Cautionary Tale

Inheritance Dispute Focuses on Successful Family Catering Business

Is Your Landlord Harassing You? You Don't Have to Just Grin and Bear It

Making a Will? You Mustn't Forget Your Family and Financial Dependants

Mother Not Responsible for Toddler's Shocking Injuries – Family Court Ruling

Moving in Together? Do You Understand the Legal Ins and Outs?

**Breaking the Deadlock of Competing Divorce Petitions at Home and Abroad**

When married British couples separate whilst living overseas, it is quite common for competing divorce petitions to be issued both in England and abroad. A High Court ruling provided a useful illustration of the judicial approach to jurisdictional issues that often arise in such cases.

A couple, both British citizens, moved to Dubai about two and a half years before the breakdown of their long marriage. The wife petitioned for divorce in this country and the husband shortly afterwards launched divorce proceedings in Dubai. The wife was, in England, granted a conditional order of divorce.

The following month, the husband was granted a divorce order by a Dubai court. In challenging the jurisdiction of the English courts to entertain the wife's petition, he contended that matters had already been concluded in Dubai and that further proceedings in England would serve no purpose.

Ruling on the matter, the Court noted that both husband and wife were still resident in Dubai. It was, however, satisfied that the wife had throughout remained domiciled in England, within the meaning of the Domicile and Matrimonial Proceedings Act 1973. She had retained property and bank accounts in this country and had expressed an intention to return here to live.

Given that all or most of the couple's property remained in England, the Dubai court was not in a position to determine the financial outcome of the divorce, a process on which the English courts had already embarked. The wife had to date been unable to participate in the proceedings in Dubai, where at least one hearing had been conducted in Arabic, a language neither of them spoke. The English proceedings had been lodged first in time and could be conducted remotely.

The Court acknowledged that the husband may not have known that proceedings in England were on foot when he issued competing proceedings in Dubai. On balance, however, it concluded that England was the most convenient and appropriate forum in which the divorce proceedings, together with the wife's application for financial relief, should be conducted. The Court granted the wife a final order ending the marriage.

We can advise you on all aspects of divorce law. Contact **<<CONTACT DETAILS>>**.

**Partner Note**

*AR v BR [2023] EWFC 76*

**Do Stellar Financial Contributions Displace the Equality Principle in Divorce?**

In the event of divorce, successful businesspeople are wont to argue that their stellar financial contributions should be reflected in an unequal division of assets. As a High Court ruling showed, however, such contentions very rarely succeed in displacing the general rule that marital wealth should be split down the middle.

The case concerned a businessman who was a board member and driving force of a company that had been sold for £400 million a few years after he separated from his wife. He received about £250 million of that sum. The wife's principal role during the marriage was as homemaker and carer for their children.

After the wife petitioned for divorce, the husband proposed that she should receive a lump sum of £83.3 million, or roughly 30 per cent of their overall assets, which were valued at more than £280 million. He contended that his special contribution to the family finances justified a departure from equality. She, however, criticised that argument as inherently discriminatory and sought a full half share.

Ruling in the wife's favour, the Court found that the equality principle prevailed. The husband was a very good businessman who had done very well indeed. However, his contribution was not so wholly exceptional as to demand, in fairness, that he should receive the lion's share of the available assets. His achievement was enormous but did not involve making billions of pounds.

In obtaining such a high price for the company there were elements of windfall and being in the right place at the right time. The company had at one point almost failed and the wife had shared in his business risks and worries. Her childcare responsibilities were particularly onerous given his long absences on business. His argument that most of the value realised on the company's sale was attributable to his post-separation endeavours also fell on fallow ground.

If you are divorcing, a number of issues may arise on which sound legal advice is essential. We can talk you through alternative dispute resolution options, to help mitigate the need for expensive and drawn-out court proceedings.

**Partner Note**

*DR v UG [2023] EWFC 68*

**Even Acts of Generosity Should Be Properly Documented – Cautionary Tale**

Even acts of generosity can lead to litigation if the basis for them is not professionally documented. That was sadly so in the case of a businessman who stepped forward to rescue close family friends from the threat of homelessness.

A couple with five children found themselves in dire financial circumstances. After the man was made bankrupt, an enforced sale of the family home was threatened. Their repeated attempts to obtain loan finance were rejected. The businessman came to their rescue by himself raising a £205,000 mortgage against the property.

Pursuant to an informal agreement between them, the property was transferred into the businessman's name and the mortgage advance was paid to the couple, who used it satisfy their creditors and stave off possession proceedings. The couple thereafter met the mortgage repayments and continued to live in the property.

About eight years later, they sought to buy back their home from the businessman for the unchanged sum of £205,000. In resisting their request, however, he asserted that it had been agreed at the time that their entitlement to repurchase the property from him at that price would lapse two or three years after the transaction.

Ruling on the matter, the High Court noted that all involved had acted in great haste to face down the imminent financial peril that the couple faced. The businessman generously found a solution that could be implemented speedily and that secured the couple's ability to carry on living in their family home.

In nevertheless upholding the couple's case, the Court found on the evidence that the buyback agreement was open-ended and not time limited. Whilst that would be a very surprising outcome in a commercial context, it reflected the imminence of the possession proceedings and the close and affectionate relationship that the couple and the businessman had enjoyed at the relevant time.

It would, the Court found, be unconscionable for the businessman to go back on his assurance that the couple could, at any time, buy back their home from him for £205,000. They had relied on that assurance to their detriment. The ruling opened the way for the couple to repurchase their home from him at that price, plus any costs associated with discharging the mortgage and transferring title to the property.

It is vital to seek legal advice before entering into any kind of financial agreement, even with close friends. Contact us for expert guidance.

**Partner Note**

*Rojob and Another v Deb [2022] EWHC 1572 (Ch)*

**Inheritance Dispute Focuses on Successful Family Catering Business**

When making your will, the general rule is that you are free to leave your assets to whomsoever you wish. However, as a High Court case concerning ownership of a thriving family business showed, such testamentary freedom may be restricted by agreements reached, or promises made, during your lifetime.

During their marriage, a man and woman established a successful catering company in which they were equal shareholders. Following their divorce, they signed a deed by which they agreed that any shares in the company that they continued to hold when they died would pass to their two children.

The man did not comply with that agreement. Less than a year after entering into the deed, he made a new will bequeathing his shares in the company to his second wife. After he died suddenly, aged 66, his first wife and her children launched proceedings with a view to enforcing the deed so that, regardless of the terms of his will, his shareholding would pass to the children.

In upholding the claim, the Court found that, when the man signed the deed, he freely accepted his obligation to leave his shares to the children. The document was in plain terms and would have caused him no confusion as to its effect. His widow's arguments that the deed had been superseded or revoked by a subsequent agreement were rejected.

We can advise you on all aspects of inheritance law. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Colicci and Others v Grinberg and Another [2023] EWHC 1177 (Ch)*

**Is Your Landlord Harassing You? You Don't Have to Just Grin and Bear It**

Tenants have a right peacefully to enjoy their homes, free from harassment by their landlords. A judge succinctly made that point in awarding substantial compensation to a couple whose landlord was anxious to see the back of them so he could refurbish and sell their home with vacant possession.

The couple were tenants of a studio flat within a house in multiple occupation. Their landlord wished to convert the property back into a single dwelling and market it without any residents in situ. All the property's other occupants had moved on, but the couple for a long time steadfastly declined to leave. Following their eventual departure, they launched proceedings.

Ruling on the matter, the judge found that the landlord was prepared to use whatever means were at his disposal to secure their departure. He conducted a campaign to make their lives uncomfortable enough to drive them from their flat. Amongst other things, he cut off their internet service, switched off their gas boiler and installed CCTV in the property for no good reason. He made vile and malicious allegations against them and regularly reported them to the police, who unsurprisingly took no action.

He and others made frequent, unnecessary visits to the flat, gaining unwarranted entry, often without notice. There was no desistence from such conduct, even after he was told that the couple were expecting their first child. When they still did not move out, he took matters into his own hands and decided to eject them himself.

He or his agents changed the locks whilst the couple were out and dumped some of their belongings outside. Having nowhere else to go, they regained access and tried to continue living in the flat, placing cardboard on the floor in lieu of a bed. Only after they were offered temporary council accommodation did they finally move out.

The court found that the landlord's reprehensible conduct was designed to oust the couple by unlawful means by doing whatever was necessary, however improper, to secure that end. It constituted harassment and trespass to both property and goods. He repudiated the lease and breached the couple's right to quiet enjoyment of their home. He delayed performance of his legal obligation to protect their deposit.

The landlord was ordered to pay the couple more than £45,000, including £25,000 for the anxiety they endured and £10,000 in aggravated and exemplary damages. Such an award was, the court found, amply justified.

If you have been subjected to harassment by your landlord, contact our expert team to establish whether you can pursue compensatory legal action.

**Partner Note**

*Tahir v Aghri and Another [2023] EW Misc 2 (CC)*

**Making a Will? You Mustn't Forget Your Family and Financial Dependants**

When making your will, you may, for one reason or another, choose to distribute your estate unevenly between your loved ones. However, as a High Court ruling showed, you are under an overriding duty to make reasonable provision for members of your family and anyone else who depends upon you financially.

By his will, a man bequeathed £10,000 to each of his three adult children. He left the remainder of his estate, which was worth about £475,000 in total, to his daughter. His two sons subsequently launched proceedings under the Inheritance (Provision for Family and Dependants) Act 1975 on the basis that the will did not provide for their reasonable needs. They valued their claims against the estate, in total, at more than £250,000.

Ruling on the matter, the Court noted that the man had evidently decided to leave the lion's share of his estate to his daughter because he regarded his sons as not having behaved well. He was only deterred from cutting his sons out of his will altogether by a solicitor's sensible advice.

Rejecting the younger son's claim, the Court noted that he owned his family home and two other properties, with combined equity in the region of £240,000, together with his own profitable business. His income was relatively modest but was sufficient to meet his reasonable needs both now and in the foreseeable future. The gift of £10,000 was sufficient to make reasonable provision for him.

The older son was in a very different position in that he was chronically disabled and dependent on others' help for many day-to-day tasks. In receipt of benefits, he lived with a friend in her housing association property. From the fact that he had sufficient spare cash to spend on gambling, the Court inferred that he had more than enough money to meet his current, modest needs. On the other hand, his condition was likely to deteriorate in the future, resulting in an increasing need for care.

In awarding the older son an additional £25,000 from the estate, the Court found that it was unreasonable for his particular needs relating to his disabilities not to have been recognised in the will. The money would be placed in trust to cover his care costs. Any sum remaining in the trust fund on his death would revert to his sister.

For advice on inheritance disputes, contact our expert team.

**Partner Note**

*Larsen and Another v Annan [2023] EWHC 662 (Ch)*

**Mother Not Responsible for Toddler's Shocking Injuries – Family Court Ruling**

It is every parent's worst nightmare to be accused of injuring their child. However, as a Family Court ruling showed, such allegations are subject to intense judicial scrutiny, which in some cases results in complete exoneration.

An autistic toddler was taken to hospital with severe multiple bruises to her face and back, together with scratches and blood spots on her eyeballs. Concerns were raised that the injuries were non-accidental and, at a local authority's behest, emergency protection and interim care orders were made. She was removed from her mother's care and sent to live with her great-grandparents.

At a fact-finding hearing, the mother described the girl as a baby in a toddler's body. Although a very loving child, she was hyperactive and quite angry at times. Showing no fear, she tended to bite and scratch herself and throw herself around. She often banged her head, pulled out her hair and poked herself in the eye.

Having viewed shocking photographs of the child's injuries, the Court noted that its initial view was that someone must have caused them. After hearing evidence from family members, social workers and medical experts, however, it noted that life is sometimes stranger than fiction. The Court concluded that it was an exceptionally rare case in which all of the child's injuries were self-inflicted.

The Court acknowledged that the proceedings and separation from her daughter had been a nightmare experience for the mother. However, the child's injuries demanded an investigation and the local authority had acted entirely properly. The Court paid tribute to the great-grandparents, who, by giving the girl a home, had saved her from being taken into care.

We can advise you on all aspects of family law. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Kent County Council v C and Others [2021] EWFC 122*

**Moving in Together? Do You Understand the Legal Ins and Outs?**

Couples who move in together commonly believe that their shares in the property will reflect their respective financial contributions to the purchase price or mortgage. As a High Court ruling made plain, however, such assumptions are often mistaken in that they take no account of the critical distinction between moral and legal obligations.

A man moved into his partner's council-owned property. She was the property's sole tenant and subsequently took out a mortgage so that she could exercise her right to buy it. Both the mortgage and legal title to the property were in her name alone. After the man sold his own home and received an insurance payout, he used more than £40,000 of his own money to pay off the mortgage.

He moved out after the relationship broke down and later launched proceedings. He contended that she held on express or constructive trust for his benefit a proportion of the property that reflected the extent of his financial contribution. His claim was, however, rejected by a judge, who found that the money was a gift and that any promise of repayment was no more than a moral obligation.

Ruling on the man's challenge to that outcome, the Court found that the judge had erred in declining, on procedural grounds, to consider his alternative case that the money was advanced as a loan. However, given the judge's unassailable finding that it was a gift, that failure made no difference to the result of the case. To the extent that there had been a procedural irregularity, the man had suffered no injustice.

There was no evidence of any agreement or arrangement between the couple that the man would be entitled to a share in the property in return for paying off the mortgage. There was no record or written document to that effect and, whether or not the woman felt morally obliged to repay his contribution, there was no fault in the judge's conclusion that there was no common intention to confer on him a legal right to such a share.

Situations such as this can be avoided, with the right legal advisors in place. Contact us for expert guidance.

**Partner Note**

*Thomas v Porter [2023] EWHC 983 (KB)*

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