Tax, Trust and Probate ~ June 2023

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**Chopping and Changing Your Will Can Be a Recipe for Inheritance Disputes**

Making numerous wills in old age, chopping and changing their terms, can sadly be a recipe for dispute between your loved ones after you are gone. As a High Court ruling showed, however, even wills that are obviously unfair or harsh in their effect are likely to be considered valid if they are rational on their face.

The case concerned a man who was diagnosed with dementia more than 10 years prior to his death, aged 91. In the course of a single decade before his demise, he made six wills, with members of his family shifting in and out of inheritance. By his final will – which he signed at the height of the COVID-19 pandemic, three months before he died – he disinherited one of his three children and the daughter of his long-term partner, who had for years provided him with support.

Discord having arisen within the family in the wake of his death, the executors of his estate sought a judicial declaration as to the validity of his various wills. The principal question for the Court to resolve was whether, in the light of his dementia, he had the mental capacity required to make the final will.

The Court observed that his various testamentary dispositions did not reflect well on him. His disinheritance of his partner's daughter within weeks of her mother's death was frankly callous. By a series of three wills, he first disinherited, then re-inherited one of his children, before finally disinheriting him again.

In admitting the final will to probate, however, the Court noted that it did not follow from his harsh decision-making that he was incapable of making a valid will. The document, although unfair in its effect, was rational on its face and the product of considered choices on his part. He had plenty of practice in making wills and there was simply no evidence of any mental disorder or delusion affecting his decision-making.

Due to the pandemic, the witnesses to the will had to view him signing the document through the windows of a car in which he was seated at the time. Despite such difficulties, however, the Court found that the will, which was professionally drafted, had been validly executed.

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

**Partner Note**

*Baker and Another v Hewston [2023] EWHC 1145 (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.

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

**Partner Note**

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

**Is Posting on Social Media 'Work'? Guideline Furlough Ruling**

Making posts on social media for marketing purposes may not yield an immediate financial reward, but it is nevertheless 'work'. A tax tribunal made that point in finding that a company director who made sporadic, work-related Facebook posts during the COVID-19 pandemic was not entitled to benefit from the furlough scheme.

The woman ran a small family company that provided, amongst other things, after-school clubs and parent and baby groups. The company's revenue collapsed to zero at the outset of the first lockdown. She was purportedly placed on furlough and the company obtained over £9,000 in government support payments under the Coronavirus Job Retention Scheme.

Whilst the company was in full swing, she and her fellow director spent up to 15 hours a week communicating with clients via social media. That activity reduced dramatically post-lockdown, but she continued to make the occasional post on Facebook with a view to getting back to business in due course.

HM Revenue and Customs (HMRC) subsequently demanded repayment of every penny that the company had received under the furlough scheme, plus tax. It took the view that, when she made the posts, the director was working. She had not ceased all work for the company for the required minimum of 21 days and thus did not qualify as a furloughed employee.

Challenging that decision, she argued that 'work' entails the provision of a personal service for reward, in the form of money or other benefit. The company received no income during lockdown and neither she nor it garnered any reward from making the posts. The number of posts had declined from a flood to a trickle and she asserted that HMRC's disproportionate approach would cause both her and the company considerable financial hardship.

Ruling on the matter, the First-tier Tribunal (FTT) noted that her conduct in making the posts was entirely understandable. What business would not have wished to maintain its reputation during lockdown so that, once the situation returned to normal, it could resume generating income? She took the sensible and prudent course of ensuring that the company was fully ready to re-enter the market.

Dismissing her appeal, however, the FTT noted that the sole issue was whether she was working when she made the posts and questions of proportionality did not arise. In the context of the furlough scheme, it ruled that work is comprised in any activity undertaken by an employee with a view to either directly or indirectly generating income for an employer – either immediately or in the future – or to enhancing its goodwill, brand value or reputation. The vast majority of her posts fell into that category and furlough was therefore unavailable.

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

**Partner Note**

*Glo-Ball Group Ltd v The Commissioners for His Majesty's Revenue and Customs [2023] UKFTT 435 (TC)*

**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)*

**Religious Leader's Employment Contract 'Was Illegally Performed'**

Those who seek the protection of the law with metaphorical dirty hands are likely to receive short shrift. An Employment Tribunal (ET) powerfully made that point in the case of a religious leader who had engaged in tax evasion.

The man launched proceedings after his engagement as a temple's head priest was terminated. Following a hearing, the ET found that he was an employee and that his dismissal was unfair. His complaints that he had not received the National Minimum Wage or holiday pay to which he was entitled were also upheld.

The ET found, however, that he and the employer had agreed at the outset that he would be treated as self-employed. That was a mischaracterisation of their true relationship. He either knew or ought to have known that he was, in truth, an employee.

The ET was satisfied that he knew from the start that the employer would not be deducting Income Tax or National Insurance Contributions (NICs) from his pay via the PAYE system. Over a period of three years, he took no steps himself to declare his income from his work at the temple to HM Revenue and Customs (HMRC). His failure to pay tax and NICs on that income was neither careless nor inadvertent, but deliberate and seriously wrong.

The employer turned a blind eye and its failure to take steps to ensure that he was declaring his income to HMRC, in circumstances where it knew that it was not doing so, was at best reckless and seriously wrong. However, the man was, if anything, more at fault in that he knew for a fact that no tax or NICs were being paid on his income, either by the employer or by him. His conduct was extremely serious and amounted to tax evasion.

Although there was no suggestion that his employment contract was itself illegal, the ET found that it was performed in an illegal manner. On that basis, the entirety of his claim was dismissed. Given that his complaints were otherwise meritorious, the ET recognised that this was a severe sanction.

However, when his receipt of voluntary donations from his congregation was taken into account, the sums in unpaid tax and NICs were very substantial and were likely to far exceed any compensation he might have been awarded. There was thus a real risk of him being unjustly enriched were he to succeed in his claim. Given the central public importance of upholding the integrity of the tax and justice systems, the outcome of the case was, the ET ruled, proportionate.

**Partner Note**

*Singh v Singh Sabha London East [2023] UKET 3206267/2021*

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