Private Client ~ October 2023

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**Divorce – This is Why a Clean Break is Usually the Preferred Outcome**

Most divorcees would, wherever possible, prefer to achieve a clean financial break so that they can regain their independence and move on with their lives. A High Court ruling provided a powerful illustration of why that is a sensible choice.

The case concerned a former couple in their 60s who had been divorced for almost a decade. Assets worth about £1.8 million had been divided between them by a judge, but a clean break was not achieved in that the husband was required to pay the wife spousal maintenance of £17,500 a year without limit of time.

Their circumstances had since changed substantially: the husband had retired from his well-paid job in finance and contended that the time had come to discontinue the maintenance payments. The wife, who said that she was having difficulty making ends meet, argued that they should, on the contrary, be varied upwards or capitalised into a lump sum that could be used to boost her income.

Ruling on the matter, the Court noted that, when his pension was taken into account, the husband had emerged from the divorce with more than 60 per cent of the marital assets. He had, however, been generous in voluntarily increasing the maintenance payments in line with inflation. He had also paid their three children's school fees in full although the judge's order only obliged him to pay half.

The wife, who was some years younger than he was, had chosen to take on limited paid work since the divorce but still had some earning capacity. Her existing resources were sufficient to provide her with an income of about £25,000 a year. That was, however, less than half the husband's pension income.

The Court concluded that the wife required an income of £50,000 a year to meet her reasonable needs. To achieve that goal, the husband was ordered to pay her a lump sum of £314,500. On payment of that sum, a clean break would finally be achieved in that his obligation to pay spousal maintenance would cease. That seemed to the Court a perfectly fair and sensible means of resolving the matter.

It was, the Court observed, a matter of surprise and sadness that two such sensible and pleasant people had proved unable to compromise their differences, instead feeling the need to incur legal costs of over £227,000 in fighting each other. It was to be hoped that the imposition of a clean break would bring their disputes to an end.

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**

*WK v GC [2023] EWFC 151*

**False Claim to Be a Cash Buyer Ruled Fraudulent in Ground-Breaking Case**

In coming to the aid of a frail and elderly householder, the High Court has ruled in a landmark case that she was on the receiving end of a fraudulent misrepresentation when a would-be purchaser of her home was falsely described to her as a cash buyer.

A copy of a contract before the Court indicated that the woman, aged in her 80s, had signed a contract agreeing to the sale of her home for £840,000. Following a purported exchange of contracts, the purchaser, an investment company, launched proceedings against her, seeking an order requiring her to complete the transaction.

In rejecting the company's claim, the Court found that a director of the company had represented to her, via an estate agent, that it was a cash buyer. The natural and ordinary meaning of that phrase is, the Court noted, a purchaser who intends or expects to buy a property without the assistance of a secured loan or finance.

The representation was not true when it was made in that the company's intention throughout was to obtain a mortgage or some other form of secured finance. There was no evidence that it was in a financial position to complete the purchase in cash. In finding that the representation was fraudulent, the Court concluded that the company knew it was not in fact a cash buyer.

The Court also upheld the woman's case that, due to non-compliance with Section 2 of the Law of Property (Miscellaneous Provisions) Act 1989, there was in fact no valid exchange of contracts. It found that a conveyancer acting for the company did not hold a duly signed contract at the time of the purported exchange.

For advice on any aspect of contractual law relating to residential property, contact our expert team.

**Partner Note**

*Shill Properties Ltd v Bunch [2023] EWHC 2135 (Ch)*

**Family Judge Treads the Blurred Boundary Between Life and Death**

The ability of modern medical technology to keep patients' hearts beating and their lungs ventilating has led to a blurring of the boundary between life and death. As a High Court ruling showed, it sometimes falls to family judges to make the desperately hard decision as to when that line has been crossed.

The case concerned a young man who fell to the ground after being assaulted in a pub garden, sustaining a catastrophic brain injury. He was admitted to hospital in a deep coma and, following weeks of observation and a battery of tests, doctors detected no signs of brain stem function. His death was formally diagnosed.

Members of his family were, however, unable to accept the results of the tests. They contended that he was moving in a manner indicating that he was not in fact brain stem dead. They said, amongst other things, that he showed signs of being able to breathe independently, that goosebumps appeared on his skin and that, on receiving a verbal request, he was able to squeeze their fingers.

Given that impasse, the NHS trust caring for him launched proceedings, seeking a judicial determination that he had died and that it would be lawful to cease all forms of treatment, including mechanical ventilation. Both ethically and legally, the trust argued that no purpose would be served by continuing such treatment.

Ruling on the matter, the Court noted that the increasingly blurred boundary between life and death can be delineated by reference to philosophy, ethics and the tenets of the world's great religions. The Court's task, however, was to consider on the evidence whether that boundary had been crossed for the purposes of the law.

The trust did not, in broad terms, dispute the family's description of his movements and, in the light of video footage of him in hospital, the Court had no difficulty at all in seeing why his family had taken such movements as being indicative that his brain stem remained alive. Very sadly, however, the videos did not demonstrate that the results of brain stem testing were wrong.

Upholding the trust's application, the Court found that the movements his loved ones had detected were well-recognised base reflexes that can survive brain stem death. Although the flattering voice of hope had convinced them that he was not dead, the Court was, with very great sadness, satisfied that the extensive tests undertaken demonstrated that he was. The Court recognised what a tragedy that was for his family and friends and expressed its profound sympathy.

Sensitive cases such as this require experienced advisors. Our expert lawyers can assist.

**Partner Note**

*St George's University Hospitals NHS Foundation Trust v Casey and Others [2023] EWHC 2244 (Fam)*

**Financial Aspects of Divorce – Play with a Straight Bat or Pay the Price**

When it comes to the financial fall-out from divorce, there will sadly always be those who do not play with a straight bat and think that they are clever enough to pull the wool over a judge's eyes. A High Court ruling showed how wrong they almost invariably are.

The case concerned a middle-aged former couple whose marriage lasted 15 years. In financial proceedings following their divorce, a judge considered that the husband was an unreliable witness, harbouring controlled anger towards the wife. He made trenchant findings about the husband's conduct of the litigation, his failure to fully disclose his assets and his general dishonesty.

The judge found that, as a successful finance professional, the husband was capable of earning in the region of £150,000 to £180,000 a year. That compared to the wife's earnings of £40,000 a year. It was difficult to detect any real reduction in his standard of living since their separation and the judge refused to accept that his livelihood had disappeared or significantly diminished.

The judge found that he had deliberately reduced his earnings as they appeared on paper and drawn down on his capital investments in his businesses with the intention of defeating the wife's claim. She was wholly financially dependent on him prior to their separation, yet he paid her no maintenance and terminated her access to funds. To her credit, she had since retrained and found paid employment.

The net marital assets were valued by the judge at £339,000. Of that sum, the wife was awarded £211,000 – or 62 per cent – on a clean break basis so that she could purchase a suitable property to live in. Her share of the assets was liquid, whereas the husband's 38 per cent share was less easily realisable.

Ruling on the husband's appeal against that outcome, the Court took the view that he had only himself to blame and had no entitlement to complain. His deficient disclosure and manipulative litigation conduct inevitably exposed him to the sort of findings and evaluation undertaken by the judge. The Court made certain amendments to the judge's order, but otherwise dismissed the appeal.

If you are dealing with divorce proceedings, we can ensure you are expertly advised and represented.

**Partner Note**

*Ditchfield v Ditchfield [2023] EWHC 2303 (Fam)*

**Property – Not Every One-Sided Bargain is a Product of Undue Influence**

Where a transaction appears to be very one-sided or manifestly more advantageous to one side or the other, judicial eyebrows are likely to be raised. However, as a High Court ruling showed, such an imbalance does not necessarily mean that a bargain should be set aside on grounds that it is unconscionable or the product of undue influence.

A householder was anxious to pay off a £41,000 debt to a local authority which was secured by way of a charge – effectively a mortgage – over his property. To that end, he transferred ownership of the property to a woman who discharged the debt. Free of the charge, the property was at the time worth at least £300,000.

After he launched proceedings, a judge noted that the one-sided transaction was very much to his disadvantage. There was, however, no allegation of misconduct on the woman's part and his initial claims that she had acted fraudulently or overtly pressured him into executing the transfer were not pursued.

In nevertheless setting aside the transaction, the judge found on the evidence that there was a presumption that undue influence had been brought to bear upon him. The transaction was clearly one that called for an explanation. Noting that he was in poor health and desperate for money at the time, the judge found that the woman had exploited or taken advantage of his vulnerability.

Upholding her appeal against that outcome, the Court well understood that a judge, when faced with a badly one-sided transaction, might be tempted to set it aside. The householder had, however, failed to establish on the evidence that she was aware that he had recently suffered a second heart attack or that she held a position of ascendency, dependency or influence over him.

In finding that a presumption of undue influence did not arise, the Court noted that it was he who had proposed the transaction. It was not alleged that she had manipulated him into doing so. The bargain, although imbalanced in terms of advantage, was not rendered unconscionable by any conduct on her part. It had not been shown that, in accepting his proposal, she had sought to influence his exercise of free will in any way, whether directly or indirectly.

It is vital to seek expert advice before transferring ownership of a property. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Azam v Molazam [2023] EWHC 2202 (Ch)*

**Sometimes Parental Love is Not Enough – Court Sanctions Boy's Adoption**

Parents may be worthy of praise and deeply love their children, but it sadly does not always follow that they are able to provide them with a stable home. The High Court made that point in sanctioning a little boy's placement for adoption.

Due to concerns that he was not receiving a good enough standard of parenting, a local authority placed him in temporary foster care and sought care and placement orders. His parents, although separated, staunchly resisted plans for his adoption, arguing that his mother was able to look after him. His paternal grandmother was willing to step in as primary carer if the mother proved unable to cope.

Ruling on the matter, the Court had no doubt that all three adults, along with other family members, held the boy very dear to their hearts and wanted the best for him. They were entirely genuine in their motivations and their desire to keep him within their family. The polite and courteous way in which they conducted themselves during the proceedings was highly impressive.

The Court noted the high likelihood that adoption would in due course lead to the complete severance of the boy's relationship with his parents and wider family. He was currently benefiting from those relationships via contact sessions and ending them would be detrimental to him. There was a risk that he would be left with an embedded sense of loss.

The mother, however, bore the emotional scars of her troubled childhood. She had a history of cannabis abuse and a mental health expert's report indicated that she had unstable and sensation-seeking personality traits. Her feelings of loneliness and distress gave rise to professional concerns that she might prioritise a relationship with a partner over her own welfare and that of her child.

The father also had a history of psychiatric and substance abuse issues and frankly accepted that he was not currently well placed to care for the boy. The paternal grandmother's property was in a poor condition. Her advancing years and other factors cast doubt on whether she would be able to provide the boy with a safe and appropriate home in which he could thrive throughout his childhood.

The mother was making progress in tackling her problems, but the Court found that it would be far too risky to place the burden of primary care on her at a relatively early stage in her therapeutic journey. Her plea that the case should be adjourned to enable a further assessment of her parenting abilities was rejected.

Granting the council the orders sought, the Court found that the boy, whose welfare was paramount, could not wait to be placed in the security of a permanent home. Options short of adoption simply could not meet his needs within an appropriate timescale. Given the commitment and love that his family had shown him, the Court urged that consideration be given to some form of open adoption in which a level of contact between them might be maintained.

We can assist you with any family law matter, including adoption. Contact us for advice.

**Partner Note**

*A London Borough v The Mother and Others [2023] EWFC 146*

**Stamp Duty – When is a House So Derelict That it Ceases to Be a Dwelling?**

What state of dereliction does a house have to reach before it can be viewed as not suitable for use as a dwelling for the purposes of Stamp Duty Land Tax (SDLT)? A tax tribunal gave guidance on that issue in a case of importance to the legion of property developers engaged in domestic property renovations.

A house that had been empty for some time following the death of its owner was purchased by a company with a view to refurbishing it for resale. The company asserted that it was in such poor condition that it was not suitable for use as a dwelling, within the meaning of the Finance Act 2003.

On that basis, it argued that SDLT was payable at the lower, non-residential rate and applied for a £12,350 tax rebate. After HM Revenue and Customs refused the application, the company appealed.

Ruling on the matter, the First-tier Tribunal (FTT) noted that the ceiling of the house's kitchen had partially collapsed, apparently due to a leaking water pipe. Rotten joists meant that parts of the property could not be safely accessed. Dangerous wiring had to be entirely replaced, together with the obsolete heating system.

On the other hand, the rotten joists had been swiftly replaced at relatively low cost, the stairs remained usable and the damage affected less than half of the property's overall floor area. The building, including the roof, at all times remained fundamentally sound and no part of it required demolition.

The FTT acknowledged that there are cases in which a property may be so derelict as to render it unsuitable for use as a dwelling for SDLT purposes. Asbestos may, for example, be extensively present or there may be structural defects, or missing elements of essential fabric, that render a property uninhabitable.

Dismissing the appeal, however, the FTT emphasised that such cases are relatively few and far between. The critical question is not whether a property is immediately habitable or ready for occupation, but whether it is suitable for residential use. The house in question, whilst parts of it were in a state of disrepair, contained all the required facilities for living. On the evidence, the company had not taken a non-residential building and made it into a dwelling.

For expert guidance relating to tax disputes, contact **<<CONTACT DETAILS>>**.

**Partner Note**

*Henderson Acquisitions Ltd v The Commissioners for His Majesty's Revenue and Customs [2023] UKFTT 739 (TC)*

**This is Why You Should Store Your Will Securely in a Law Firm's Vault**

Law firms focused on ensuring their clients' peace of mind generally provide secure storage facilities for their important documents. A High Court inheritance dispute triggered by a landowner's missing will underlined the risks of keeping such documents at home where they can all too easily be mislaid.

Less than five years before his premature death from a brain tumour, the landowner signed a professionally drafted will by which he left the bulk of his estate to a close friend. Something of a hoarder, he chose to keep the original document at his home, where his filing arrangements were chaotic. Despite a careful search following his death, only a copy of the will could be found. The friend subsequently launched proceedings with a view to having the copy admitted to probate.

The landowner's sister resisted the claim, contending that he had intentionally destroyed the original will, thereby revoking it. Given that he had custody of the document when he died, there was a legal presumption that he had done just that. On the basis that he had no valid will in place when he died, she argued that she should inherit the entirety of his estate as his next of kin.

Upholding the friend's claim, however, the Court noted that there was no dispute that the landowner had the mental capacity required to make the will, which was validly executed. There was no evidence about what he might have done with the original will, which had not been located amidst the general documentary mess he left behind him.

In giving little weight to the presumption that he had destroyed the missing will, the Court noted that he had been estranged from his sister for some years prior to his death. He specifically stated in the will that he was making no provision for her because he disapproved of the way she had treated him. There was no evidence of a rapprochement between them before he died.

His friend helped care for him during his final illness and their close bond persisted until the end. The Court found that he had a continuing intention to make his friend his principal heir. He made that intention plain to his friend and others and there was no evidence of any weight that he subsequently changed his mind. Overall, the evidence that he had not intentionally destroyed the original will was overwhelming.

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

**Partner Note**

*Jones v Tracey and Others [2023] EWHC 2256 (Ch)*

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