Tax, Trust and Probate ~ October 2023

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**Another Sad Tale of a Farmer's Disinherited Children – High Court Ruling**

The tale of a devoted son labouring for years on a family farm only to be cut out of his father's will is so often told as to be almost a cliché. However, as a High Court ruling showed, such stories are often reflected in the sad and recurring reality of agricultural inheritance disputes.

When he died, a father was the beneficial owner of a 20 per cent stake in his family farm. He also held a 25 per cent share of a company that ran a market gardening business on the land. By his will, he bequeathed everything he owned, save for a £20,000 legacy to his partner, to his middle son. The other two sons received nothing.

Since his death, the land – which had residential development potential – and the business's assets had been sold for a seven-figure sum. That greatly raised the stakes in that the value of his estate was thereby increased to about £1.7 million. The two disinherited sons launched proceedings.

Ruling on the matter, the Court found that all three brothers had started working on the farm at a very early age. Although the disinherited sons had left home for a while after leaving school, they each returned to devote themselves to the family farming business. The three of them worked long and arduous hours, for relatively low pay, and profits from the farm were largely ploughed back into the business.

The Court found that their father and their mother, who predeceased him, had reassured them on numerous occasions that they would in due course all be treated equally. The couple wanted to keep everything within the family and, although informally made, their assurances went beyond mere expressions of intent and were binding.

The disinherited brothers had relied upon their parents' assurances. Notwithstanding that they had shared handsomely in the profits from the assets and land sale, that reliance was to their detriment. Overall, their father's decision to renege on the assurances of equality when making his will was unconscionable.

In effectively rewriting the will, the Court ruled that the proceeds of the sale of the father's land and business assets should be divided equally between the three brothers. His personal, non-business assets – worth about £233,000 – would, however, be inherited by the middle brother alone.

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

**Partner Note**

*Winter and Another v Winter and Another [2023] EWHC 2393 (Ch)*

**Businessman Reaps Whirlwind After Years of Inattention to His Tax Affairs**

Those whose tax affairs are allowed to fall into disarray must live in permanent fear that HM Revenue and Customs (HMRC) will in due course descend upon them. Such anxiety proved well justified in the case of a businessman who was on the receiving end of seven-figure back-tax assessments.

Following an investigation of his finances, the man received four VAT assessments and 20 Income Tax and Capital Gains Tax assessments, together with various late payment penalties. The earliest assessments related to the tax year ending in 1993. After HMRC launched proceedings, he missed the deadline for filing a defence and a default judgment was entered against him for over £2.5 million.

HMRC subsequently obtained final charging orders over various properties he owned, including his home, and sought an order for their sale so that the proceeds could be used to discharge the judgment debt. Although he had made some payments following the sale of properties, the debt still stood at over £1.3 million and, with interest, was continuing to increase.

Arguing that the default judgment should be set aside, the man contended, amongst other things, that the tax assessments were overblown and that it would be a breach of his human rights were he prevented from defending HMRC's claim. He said that he never intended to default on his tax obligations but had received poor advice which he did not question for many years.

In explaining his inattention to his tax affairs, he said that he had for several years devoted himself to caring for his wife, whose death from cancer had caused him considerable distress. More recently, he had been in poor health himself, having suffered a stroke and undergone surgery for prostate cancer.

In granting HMRC's application, however, the High Court found that he had no real prospect of successfully defending the claim. Given that his remaining portfolio of properties was estimated to be worth £3.25 million, HMRC had indicated that it would only sell properties to the extent necessary to recover the debt. His family home was for the time being excluded from the order for sale.

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

**Partner Note**

*HM Revenue and Customs Commissioners v Walsh [2023] EWHC 2213 (Ch)*

**Purchasing Property Via an Offshore Company May Muddy the Legal Waters**

Purchasing a residential property under the aegis of an offshore company may have its advantages, but it can also give rise to dispute as to the identity of its beneficial owner. The High Court was presented with just such an issue in the context of an insolvency case.

The case concerned a property that was acquired by a Liberian company to serve as a couple's matrimonial home. More than a decade after the purchase, the husband executed a deed by which he made declarations of trust to the effect that his wife had, since the date of its incorporation, been the company's – and thus the property's – sole beneficial owner.

Some years later, after a judgment for about $18 million had been obtained against him, the husband was declared bankrupt on his own petition. The judgment creditor and the husband's trustees in bankruptcy subsequently launched enforcement proceedings under Section 423 of the Insolvency Act 1986.

The claimants asserted that the deed amounted to a gift of the husband's interest in the company to the wife and had been entered into for the purpose of putting an asset – ultimately the property – beyond the reach of his creditors. For her part, the wife contended that the purpose of the deed was to create clear lines of demarcation between her assets and those of her husband.

Dismissing the claim, the Court noted that all the money used to set up the company and acquire the property had been provided by the wife's father. His purpose in doing so was to provide her with financial independence from her husband. From the date of its establishment, any interest that the husband may have had in the company was held on trust for his wife.

Howsoever shares in the company might be distributed, it was the father's intention that the wife alone should be its beneficial owner. That intention was known to, and acknowledged by, the couple at the time of the company's acquisition. The deed accurately reflected that position and had not been entered into with a view to undermining the position of past or future creditors. The husband had, during the course of the proceedings, been discharged from bankruptcy.

It is vital to seek expert advice before considering financial arrangements such as the one entered into in this case. Contact **<<CONTACT DETAILS>>** for guidance.

**Partner Note**

*Lemos v Church Bay Trust Company Ltd and Others [2023] EWHC 2384 (Ch)*

**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)*

**In Brief**

**Digital Legacy Scorecard Launched to Help Families Protect Digital Estates**

The Society of Trust and Estate Practitioners (STEP) has announced the launch of its Digital Legacy Scorecard, designed to help millions of people in the UK protect the digital assets and memories of their loved ones.

According to STEP, estate planning practitioners are subject to increasing demand for advice from bereaved family members who find themselves locked out of or unable to close the digital accounts of their loved ones. This can lead to the loss of precious memories and a heightened risk of identity theft.

To address the situation, STEP is urging cloud service providers to improve their legacy settings and provide more support so that people can better plan and protect their digital estates. Its new Digital Legacy Scorecard rates the legacy settings for ten major cloud service providers, including Apple, Instagram and Google.

The basic requirements rated by STEP's Digital Legacy Scorecard include:

* having clear and publicly displayed criteria for determining what events trigger an account to be deemed inactive;
* making provision for account holders to pre-determine options that allow access for a designated recipient or a fiduciary in the event of death or incapacity;
* the amount of information and publicity present in the platform to promote user awareness of this type of planning feature.

The full ratings and further details about the Scorecard can be found at https://www.step.org/digital-legacy-scorecard

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