

RSPCA Wins Will Dispute in Court of Appeal

The dangers of loose wording in a will were made clear in December when the Court of Appeal ruled in a high-profile case involving the RSPCA.

The animal charity had lodged an appeal against a High Court ruling in which the judge had awarded 'indemnity costs' to the other party and criticised the charity for bringing the case.

The dispute arose over the Inheritance Tax (IHT) arrangements of an estate. The deceased's will bequeathed a legacy of 'the maximum...without IHT becoming payable' to be shared between his brother and two lifelong friends. He also left his house to the friends. He nominated the charity as the 'residuary beneficiary' of his estate, so the RSPCA stands to receive the value of the estate after the bequests to the man's brother and friends. The problem arose because the man's will stipulated that all IHT was to be paid 'out of the residue' of the estate.

The dispute, in essence, was over whether the will meant that the bequests should add up to the total IHT free amount plus the house, in which case the RSPCA would be left with a legacy of £483,000 with IHT to pay of £113,000, or whether,

as the RSPCA contended, it meant that the man's estate should not pay IHT, so the gift of the house was part of the IHT nil rate band.

The Court of Appeal supported the RSPCA's contentions and reversed the ruling of the lower court.

The publicity the case has attracted makes it clear the extent to which charities will go – especially when their income is falling – to contest wills if they think there is scope to do so and potential benefit to be gained.

We can advise you to ensure that the wording of any bequests made in your will is clear and unequivocal.



Where There Are Assets, There Can Be Trouble

An argument over an estate worth more than £4 million has caused a family rift which looks set to run and run.

The case concerned the assets of a Greek Cypriot woman, who died leaving her and her late husband's estate largely to their daughter. The High Court heard evidence from the woman's son that she was 'under the control' of the daughter. The son applied to the Court for the woman's will, created in the three-month period between her husband's death in 2008 and her

own, to be rejected in favour of a will she had made in 1986. The son claimed that his mother had no knowledge of the contents of the new will.

The claim was rejected by the Court because it found no evidence of 'undue influence'. An appeal is likely, however.

If you wish to change your will, we can apprise you of steps you can take to minimise the risk of it being challenged.

Ombudsman or Court, Not Both

A recent case has confirmed the position that if a complainant accepts recompense ordered by the Financial Ombudsman Service (FOS), further recompense will not be available by way of court proceedings.

Although the FOS is free, the Ombudsman can only award compensation up to £100,000, so its use may be inappropriate for larger claims.

If you have suffered as a result of negligent financial advice, contact us for information and assistance.

Former Partner Not Entitled to Share of Property

A woman has failed in a £680,000 High Court bid for half the proceeds of the sale of a business she helped to run, following the breakdown of a partnership. The claimant valued the business at £1.36 million and claimed 50 per cent of that valuation.

Her former partner, Trevor Miller, was the owner of The Old Rectory in Sprotborough, Doncaster, a building of historic interest and the childhood home of World War II fighter pilot Sir Douglas Bader.

In 2004, a relationship developed between Mr Miller and the claimant, Jan Hopton. The couple decided later that year to renovate the property, which had fallen into disrepair, and to run it as a guest house. Ms Hopton was able to dedicate much of her own time to planning and designing the new look and to organising the renovation works. She offered to put some capital into the project but, in the event, the works were paid for entirely by Mr Miller, at an estimated cost of £120,000.

The guest house duly opened for business in April 2005 and achieved considerable publicity due to the efforts of Ms Hopton. Shortly afterwards, the business was awarded a Diamond Rating by the Tourist Board.

Although both parties agreed that there was a business partnership in operation, no written agreement was ever made. A draft document had been discussed with their respective solicitors but never signed. In August 2005, there was an argument over the draft agreement and the couple came to blows. The police were called and Ms Hopton left. Mr Miller continued the business thereafter without her.

In October 2008, Mr Miller sold the property for £800,000 inclusive of fixtures and fittings, and annual accounts were presented to that date. Ms Hopton considered that these accounts underestimated the profits, which she estimated at £235,352 based on 80 per cent occupancy of 4 rooms and 100 per cent occupancy of the conference room. Ms Hopton also valued the 'goodwill' of the business at £500,000. In the opinion of the High Court Judge, her estimates were 'quite simply wholly unrealistic'.



It was determined that the partnership had begun at the opening of the business in April 2005 and was terminated shortly after Ms Hopton had left the premises, by the end of September 2005. Their respective solicitors had agreed to final accounts being drawn up to this date.

The goodwill was estimated by the judge at £20,000, based on a simple multiple of the annual profits and not taking account of the improvements to the property. Given that Mr Miller had funded the improvements and there was no evidence that the property had been transferred to the partnership, the property remained his alone.

When the goodwill was added to the assets declared in the accounts, this brought the total asset value of the business to £29,682. Ms Hopton was awarded £20,000, based on a 20 per cent share of the post-dissolution profits for the period until the business was sold, plus a share of the asset value, in proportion to her estimated input to the business.

This case provides a clear example of why prospective business partners should make no financial or other commitment before a proper written partnership agreement is in place. Contrary to popular belief, such agreements are especially important in a 'family' context as dissolutions of business relationships in such circumstances tend to be more highly emotionally charged than those formed at arm's length.

Divorced Husband Ordered to Pay Up After Hidden Share Deal

The Court of Appeal has ordered a divorced husband to pay an additional £481,000 in ancillary relief to his former wife, five years after the original divorce was settled, because he hid information about a profitable share deal.

In April 2005, the couple reached an agreed settlement on a 'clean break' basis, whereby their assets were to be divided equally, with an additional payment of £200,000 from the husband to the wife. This payment was intended to account for the likely higher earnings of the husband compared with the wife.

Shortly before the divorce, the husband had become a director of a start-up company in the then burgeoning sub-prime loan market. As part of the divorce settlement process, he provided evidence that his salary would reduce and that he would not be a shareholder in the new company nor have share options.

It was later revealed, however, that the information he provided was untrue. He did indeed subscribe to shares in the company, at par value of £200,000, taking out a loan to fund the subscription. In November 2006, he sold around half of his shares at a net profit of £1,268,000, the remainder being sold for £2 in January 2008, following the collapse of the sub-prime market. He was made redundant later that year.

In March 2010, a court found that the material non-disclosure by the husband had invalidated the 2005 agreement. Rather than set aside the whole award, however, the judge decided to vary it by ordering that a further £481,000 be paid to the wife. The husband appealed against the decision.



In the view of the Court of Appeal, 'the husband had been guilty of deliberate, substantial and protracted non-disclosure'. Even after the shares had been sold, the husband, through his solicitors, first claimed that these were valueless and then, after admitting that he had sold a proportion of the shares at a profit, claimed that 40 per cent Capital Gains Tax had been paid when, in reality, only 12 per cent had been paid by virtue of 'taper relief'.

As a result, when arguments were put forward by his counsel that the entire 2005 order should be set aside, the Court decided against such action, on the basis that, if he had lied in statements to the earlier hearings, nothing he submitted to a future hearing could be accepted without lengthy and costly examination. The Court held that, given the clear valuation of the previously undisclosed share deal, simply to make an additional award was the best solution. The appeal was duly dismissed.

This case underlines the importance of making sure that information provided is truthful and complete when it comes to financial disclosure in divorce proceedings.

Father Who Fails to Pay Faces Prison



Persistent failure to pay maintenance payments ordered by the court can lead to substantial penalties, as a father discovered recently.

After a history of failing to meet his obligations, the court ordered that a suspended committal order be served on the man, so that he would make good the considerable arrears of maintenance that had built up. He failed to pay the amount outstanding and appealed against the order.

The court ordered him to file documents to substantiate his case by a given date. He failed to do so and did not appear before the court, offering the excuse that he was looking for employment.

The court regarded the appeal as lacking merit and confirmed the order. The man will therefore go to prison if he does not comply with it.

Dispute Between Neighbours to Go to Supreme Court

A long-running boundary dispute is on course for a hearing in the highest court in the land, despite the legal costs of the case having already greatly exceeded the value of the land under dispute.

Ian and Diane Pennock had built a stone wall with steps leading down to the water on the south side of a stream between what they considered to be their property and that of their neighbour, Gillian Hodgson. Mr and Mrs Pennock believed that the stream formed the boundary between their land and that of Ms Hodgson, who lived to the north of them. Both areas had originally belonged to the same owner. Ms Hodgson maintained that a fence which had stood to the south of the stream in 1993, when the land to the north was conveyed to her, represented the boundary. This would mean that the land on which the wall was built, as well as the stream to the north of it, belonged to her. She demanded that the steps be blocked up.

When the case was heard in Newcastle upon Tyne County Court, the judge held that the governing conveyance, on which the Pennocks had attempted to rely, was unclear and that Ms Hodgson's view of where the boundary lay was the correct one. This decision was unanimously upheld by the Court of Appeal. In the opinion of Lord Justice Mummery, the judge in the lower court had not acted subjectively and,

given the lack of clarity of the governing conveyance, was entitled to consider 'extrinsic evidence' (i.e. the physical features of the land concerned). Although the judgment was highly critical of the parties' inability to resolve the dispute without resorting to court proceedings, Mr and Mrs Pennock have been granted leave to appeal.



This case serves as a salutary example to anyone tempted to litigate against their neighbours on a 'point of principle' rather than undertaking sensible negotiation. The entrenched positions taken by the two sides in this case will undoubtedly lead to a severe financial blow for one, if not both, of the parties involved.

If you are in dispute with a neighbour, or can foresee a dispute arising, we can help you try to resolve your problems without resorting to litigation.



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