



First Pre-Nup Victory

Less than a year after the Privy Council commented that Parliament would have to provide the authority for pre-nuptial agreements to have legal effect in the UK, a Court of Appeal decision has seemingly turned the law on its head.

The Court ruled that the French husband of a German heiress should receive only about £1 million from her estimated £100 million fortune after their divorce.

This is because he had signed a 'pre-nup' to waive any rights to her wealth should they divorce.

He will also have approximately £700,000 in debts paid off and will have a house provided until the couple's daughter reaches 22.

The lower court had awarded him £5.6 million. The case was brought in the UK, which has traditionally regarded pre-nuptial agreements as unenforceable. However, they are enforceable in both France and Germany.

The couple married in 1998. The marriage broke down when

the husband left his job as an investment banker to become a university researcher.

In Court, Lord Justice Thorpe ruled that such agreements should be given 'due weight' because it was increasingly unrealistic to ignore them.

This case is a powerful indicator. As a result, the courts will now give weight to pre-nups in appropriate circumstances. However, an appeal is likely. It is too early to say to what extent this decision alters the law relating to pre-nups in the UK.

If you are getting married or forming a civil partnership and are worried

about the preservation of family wealth, in the unfortunate event of a divorce, a pre-nup can be a valuable tool.

There are a number of steps which should be taken to ensure the agreement is maximally persuasive to the court.

We can advise on pre-nuptial and post-nuptial agreements and all aspects of wealth preservation planning.

For more information on this or any other information relating to Family Law, contact Anna Baptist on 01992 300333.



Making Retention of Title Work

Prior to the recession, Retention of Title (RoT) clauses probably received less attention than they should have from many businesses. However, RoT is now back in the spotlight.

An effective RoT clause will normally allow you to recover the goods you have supplied (assuming they are identifiable and have not been incorporated within other goods) if they are not paid for.

If you are worried about the ability of your customers to pay for the goods you supply, here is a short guide to making RoT clauses operate effectively:

1. Make sure it is clear in your terms of trade that title in the goods you sell does not pass to the buyer until they are paid

for and that your customer is aware that this is the case;

2. Make sure all goods are signed for and confirmed as being in good condition on arrival;

3. Make sure separate deliveries of goods are identifiable if possible – this will help if some goods are paid for and others of the same type are not. Use of an 'all monies' clause (in which title to goods only passes when the account is fully paid) may be of assistance; and

4. Make sure that any issues regarding quality are dealt with promptly and are fully documented, so the fact that there are no outstanding issues relating to the goods supplied is well evidenced.

If any of your customers are starting to become 'difficult payers', take advice before the situation becomes critical.

For more information contact Richard Gvero on 01992 300333.



'An extremely efficient, professional yet friendly team, who are able to communicate without making one feel silly and ignorant.'

Tenancy Deposit Protection Schemes – Landlords Beware

If you are a landlord, it is vital that you are aware of the requirement, introduced in April 2007, that all deposits (for rent up to £25,000 per annum) taken by landlords and letting agents for Assured Shorthold Tenancies in England and Wales must be protected by a tenancy deposit protection scheme.

There are two types of tenancy deposit protection schemes available for landlords and letting agents. These are insurance-based schemes and custodial schemes.

All schemes provide a free dispute resolution service.

Landlords must be a member of one of the schemes currently in existence. Within 14 days of receiving the deposit, the landlord must provide the tenant with details of how the deposit is being protected including:

- the contact details of the tenancy deposit scheme;
- the landlord's or agent's contact details;
- how to apply for the release of the deposit;
- information explaining the purpose of the deposit; and
- what to do if there is a dispute about the deposit.

If a landlord or letting agent does not protect a tenant's deposit, they will normally have to pay them

three times the deposit sum in compensation.

The new rules were introduced to counteract the actions of rogue landlords who unfairly withheld deposits at the end of a tenancy.

Figures produced by mydeposits.co.uk show that since their introduction, 94 per cent of tenants in London who have appealed against a landlord's decision to keep their deposit after the tenancy has ended have won back a share of their deposit.

The requirement to belong to a tenancy deposit scheme operates to the benefit of both landlords and tenants. From the landlord's perspective, where damage is done to their property, the scheme allows the appropriate amount to be deducted from the tenant's deposit as compensation. It is important,

however, to make sure that an inventory is carried out at the beginning of the tenancy and once the tenancy is concluded, otherwise there is no proof of the damage claimed and the adjudicator is likely to find in favour of the tenant.

From the tenant's perspective, the scheme protects them against the actions of unscrupulous landlords by making sure that part or all of their deposit is returned to them, depending on the circumstances.

Landlords are advised to take care to ascertain that the tenancy deposit scheme they use is a bona fide scheme. For further details on the types of scheme and those available, see: www.direct.gov.uk/en/TenancyDeposit/DG_066391.

For more information contact Chris Pease on 01992 300333.



Additional Payment Caught for CGT

When a company is being taken over, there are many ways to structure the transaction. A recent case shows how important it can be to make sure that such transactions are correctly structured for tax purposes. It involved a company director, who sold his shares for cash to the buyer of the company. In addition to the money for the shares, the purchase agreement provided that the company would make a further payment as directed by him. The further payment was made to a third party, who paid it into a pension scheme for the director.

Although the facts were complex, the issue revolved around whether or not the payment into

the pension scheme was part of the consideration for his shares for Capital Gains Tax (CGT) purposes. HM Revenue and Customs (HMRC) argued that it was, whilst the director argued that it was not. In court, HMRC's argument prevailed.

Says Richard Taylor, "Had the payment into the pension scheme been made before the agreement was made for the sale of the shares, it would not have constituted consideration for the shares for CGT purposes. Company share sale agreements are often complex and there are many potential pitfalls. We can advise on all aspects of company purchases and sales."

Buying from an Administrator – Pitfalls

With businesses becoming insolvent in large numbers, opportunities abound to acquire assets from their administrators. However, the low prices sought for the assets are due, at least in part, to the additional risk to the purchaser. Here are some of the main issues to be aware of when buying property from an administrator:

- Vacant possession of a property will not normally be guaranteed and the cost of clearance of items left in the building should be borne in mind;
- No guarantees or warranties regarding the property will be given – undertaking proper

due diligence to reduce risks is advisable;

- There may be items that appear to be a part of the property being sold which do not in fact belong to the insolvent business; and
- The administrator acts only as agent for the insolvent company and will accept no liability for errors or omissions.

Buying a property from an administrator is a risky business. We can help you to control the legal risks.

For more details contact Richard Taylor on 01992 300333.

'Email communication was very helpful and a fast method of communicating and transferring documents.'

What Happens if I Don't Make a Will?

If someone dies without making a valid will, they are said to have died intestate. Should this situation arise, the estate and possessions of the deceased person will be divided according to rules set out in the Administration of Estates Act 1925.

It is important that you do not assume that because you are married or in a civil partnership your spouse or civil partner will automatically inherit all your property even if you have not made a will.

As of 1 February 2009, the basic rule is that if you die intestate, your spouse or civil partner will receive your chattels and the first £250,000 of the estate if there are children and the first £450,000 if there are none.

Where the estate is worth more than the statutory legacy, the position becomes more complicated. If you have children, your spouse or civil partner will receive £250,000 and a life interest in half of the remainder of the estate. On his or her death, this passes to your children. Your children receive the other half of the remainder of the estate when they reach 18 or when they marry.

If you do not have children, your spouse or civil partner will receive £450,000 plus half the balance of the remainder of the estate. The remaining half of the balance goes to other family members in a strict order of legal precedence.

It is important to be aware that the intestacy rules do not recognise a

deceased person's step-children, only their natural, adopted or illegitimate children.

Although the rules afford some protection to married couples and civil partners, it is recommended that you both have a will in order to ensure that your wishes are carried out. Remember, marriage or civil partnership automatically invalidates any existing will.

Entitlement under the intestacy rules only applies to couples who are married or in a civil partnership. Couples who are co-habiting have no protection. If you are cohabiting with your partner and wish for them to benefit financially upon your death, it is essential to make a will to this effect. Otherwise, your

estate will pass to your relatives or, where there are none, to the Crown – unless your partner can make a claim for financial provision to be made on the ground that they were financially dependent on you.

Whatever your situation, the making of a will not only ensures that your wishes are complied with, but it can also help to minimise the tax burden when you die. In addition, it is normally possible to administer a testate estate more quickly than one that is intestate.

Contact Graham Field or Richard Horwood on 01992 300333 if you would like to discuss making or changing a will.

Redundancy Dismissal and Age Discrimination

A recent case (Killa v Electronic Motions Systems Ltd.) illustrates the danger when making redundancy dismissals of failing to use objective criteria or a proper selection process to determine which employees are to go, and of not offering employees suitable alternative work where this is available.

59-year-old Mr Killa was employed by Electronic Motions Systems Ltd. as an electronic engineer. He was selected for redundancy without a proper selection process based on objective criteria being applied.

At the end of the first redundancy consultation meeting, he was dismissed with immediate effect and asked to leave the company's premises. He was not allowed to return to work. Although suitable alternative work was available, this was not offered to Mr Killa.

Mr Killa brought a claim of unfair dismissal and age discrimination. The Employment Tribunal (ET)

found that his dismissal was unfair, both procedurally and substantively, and, as his employer could not explain the reasons for its actions, his selection for redundancy dismissal amounted to age discrimination.

The ET found that Mr Killa had done all he could to mitigate his loss by trying to find a new job, including training as an electrician to make it easier to find work.

The ET observed that 'it is not, unfortunately, the case that someone aged 59, 60 or over competes on a level playing field with younger people. The reality is

that age discrimination exists and is likely to be highly influential in limiting his opportunities'. Mr Killa was awarded compensation of £90,361, including loss of earnings, loss of benefits and damages for injury to feelings on account of the manner in which he was dismissed.

Says Richard Gvero, "When selecting workers for redundancy, objective criteria must be used and it is advisable to agree the basis for selection with employee representatives. Written records of the process should be kept.

Selecting older workers in the absence of any objective

justification for so doing is a risky strategy."

For more information you can contact Richard Gvero on 01992 300333.





Will Stands Despite Family Challenge

It is often the case that families consider they are entitled to inherit the estate of a relative, but in most cases people are free to distribute their assets as they see fit.

In a recent court case in Bristol, the niece and nephew of an elderly man claimed that his will – which left the bulk of his estate to two brothers, with whom he had been friends for years, and the rest of his estate to charity – was a forgery.

The man had suffered a stroke in 2001 and was visited regularly by the brothers until he died of natural causes in 2007, aged 90. The court heard evidence that he had not seen his niece or nephew for many years, but the brothers were frequent visitors. The man's accountant testified that she had been told that he intended to give his estate to the brothers and both the witnesses to his will testified that

he had asked them to witness his signature.

Faced with such solid evidence, the court concluded that the will was valid and rejected the claim of the niece and nephew.

Says Richard Horwood, "Had the man used a firm of solicitors to make the new will and arranged for a copy to be retained by them, the case would almost certainly never have come to court in the first place. In this case, the winding-up of the estate was delayed for a long time by the challenge to the will. We can help make sure that your estate is administered efficiently and without unnecessary delay."

New Leases for Tolerated Trespassers

Following a change in the law, a tenant can no longer have the status of a 'tolerated trespasser'.

Under the old regime, a tenant who had defaulted on their rent could, by paying the rent after a possession order had been made, become a tolerated trespasser, if the landlord did not seek to enforce the possession order and continued to allow the tenant to occupy the property, paying the rent due.

Under the Act, existing tolerated trespassers will become tenants once again provided:

- the home is the individual's only or principal home throughout the termination period;

- the former landlord is entitled to re-let the property; and
- the former landlord has not entered into a new tenancy in respect of the property.

Tenants who have previously been tolerated trespassers will probably be offered a new lease by their landlord and should consider its terms and take advice if necessary

Contact Chris Pease for further advice on 01992 300333.



Longmores - Event

Seminar: 'Keep it in the Family'

On Friday 13th November 2009 at 11.30 am we are holding a FREE Seminar in our Conference Room at 24 Castle Street, Hertford, followed by a buffet lunch.

The Seminar is aimed at anyone concerned about their retirement years suggesting ways in which assets might be protected from Inheritance Tax and nursing home fees.

We would be delighted to see you; simply telephone Nicole Windross on 01992 300333 or email her on nicole@longmores-solicitors.co.uk with our details and she will send you an invitation.

Contact Us

Tel 01992 300333
Email advice@longmores-solicitors.co.uk
Address 24 Castle Street, Hertford SG14 1HP



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