LONGMORES
solicitors

Newsletter - Early Summer 08

McCartney Split – Implications for Divorcing Couples

The much-publicised divorce of Paul McCartney and Heather Mills has led to a settlement in favour of Ms Mills of £24.3 million. Press speculation was rife that she might be awarded anything up to £60 million from Sir Paul's fortune, which is estimated to be £400 million – the figure presented by his side in the proceedings and accepted by the court. Ms Mills, who represented herself, claims that he is worth £800 million.

What is significant about the judgment is that the award is based only on the needs of Ms Mills and the couple's daughter. The implication of this is that the judge clearly considered that Ms Mills had added nothing of significance to the wealth of the McCartney household during their four years of marriage.

The decision contrasts with the July 2007 divorce of insurance magnate John Charman and his wife Beverley, who received £48 million from Mr Charman's £130 million-plus fortune.

"The difference between the cases in legal terms is that Mrs Charman was considered to have made a much greater 'special contribution' to the couple's 28-year marriage and to the acquisition of marital assets during that time than Ms Mills had made during her four-year marriage to the former Beatle," says Anna Baptist.

The McCartney settlement follows a recent case in which a thrice-divorced woman, who on marrying for the fourth time had signed a pre-nuptial agreement to the effect that in the event of divorce neither she nor her husband would make any financial claim against the other, withdrew her claim for a share of her ex-husband's fortune when the couple divorced, after the judge issued a preliminary ruling that the pre-nuptial agreement would be of material importance to the case.

It appears the courts are looking much more closely not only at the stated intentions of people going into a marriage but also at their relative contributions to the wealth created during the marriage. This does not mean that 'stay at home' spouses will necessarily receive a small settlement. If they can demonstrate that they provided the environment and support which enabled or assisted the 'go getter' to amass wealth, then there is every chance of them being awarded a significant proportion of the marital assets, particularly if the marriage has lasted several years.

The other factor the court will consider is the wealth brought into the marriage by each party. By and large, the 'non-marital assets' are divided in the proportion in which each spouse or civil partner introduced them.

For advice on divorce contact Anna Baptist on 01992 300333

E-Conveyancing on the Way

Plans to update the conveyancing process in England and Wales have been ongoing since 1998, when preliminary proposals were set out in a report, compiled by the Law Commission and the Land Registry, entitled Land Registration for the Twenty-First Century.

Consultation on how best to go about re-engineering the system has been extensive.

The aim is to develop an electronic system of conveyancing that makes buying and selling easier for all those involved in the process.

The Land Registry's e-conveyancing project, developed by IBM, is expected to go live some time this summer following the introduction of a public key infrastructure (PKI) system that uses cryptography to guarantee the authenticity of property transaction documents. The system is designed to allow authorised users to exchange information quickly, securely and reliably with each other and with the Land Registry. Documents will be encrypted and signed with a digital certificate. Documents will only be able to be produced or read by those in possession of a cryptographic token, username and password. Once up and running, the system should allow property and mortgage registrations to be completed instantly, funds to be transferred immediately, securely and reliably and it will enable accurate and up-to-date information on the progress of all linked conveyancing transactions to be accessed online.

For further information on the e-conveyancing system, see http://www.landregistry.gov.uk/e-conveyancing/.

For more information contact Liz Gallop on 01992 300333.

"I want to congratulate you and the team on achieveing a fantastic result in court. I had a huge sense of relief after the hearing and feel that my life is restarting after being on hold for so long" - Quote from a family Client

Who Doesn't Need a HIP?

Home Information Packs (HIPs) are now required for most residential properties put on the market, but the list of exceptions to the rule – properties that can be marketed without a HIP – is significant.

The most important exception to the rule is that no HIP is required where a property has remained on the market since before the date on which HIPs were introduced for that type of property. These dates are:

- 1 August 2007 – sales of homes with four or more bedrooms;
- 10 September 2007 – sales of homes with three or more bedrooms; and
- 14 December 2007 – sales of homes with one or two bedrooms.

The other main exceptions to the requirement for a HIP are as follows:

- residential properties not available for sale with vacant possession (in some circumstances);
- seasonal and holiday accommodation (where there is a planning restriction prohibiting continuous occupancy);
- where the residential property being marketed is ancillary to one or more other buildings or areas of land used for non-residential purposes.

This example would include farm houses on working farms or shops with residential accommodation where the premises are sold as a single unit;

We can help you ensure your property sale or purchase runs as smoothly as possible. For more information contact Chris Pease on 01992 300333.

Tenant Beware

When there are problems relating to defects in premises that are let, the tenant will normally try to obtain redress through the repairing covenant. However, if that does not look like the best way forward, it is sometimes possible to bring an action for nuisance against a landlord who fails to take action.

In a recent case, a tenant took action against his landlord for nuisance relating to the ingress of water into his flat, alleging that this interfered with the 'enjoyment of the property'. However, the problem had existed before he leased the flat, and this was the tenant's undoing. The court held that the landlord could not be liable in nuisance for damage that predated the grant of the lease. The moral for prospective tenants is 'tenant beware'.

Directors – Be Careful What You Sign!

The Court of Appeal recently handed down a decision which should convince directors to take great care when they sign contractual documents on behalf of their companies…

Because if the contract contains a misrepresentation, they can in some circumstances be held personally liable for it by the courts. The fact that the contract may not benefit the director is not a defence.

In the case in point, a company entered into a contract to pay for goods it then received. A director of the company signed the contract knowing that the company was insolvent and would be unable to pay for the goods.

The Court of Appeal ruled that the director had made an implied misrepresentation to the supplier. Since he knew the goods would not be paid for, the Court found him personally liable for the sum owed, on account of his deceit.

The message for directors is to be careful what you sign. 'Limited liability' may not be limited if the court decides that the director knew that the company could not meet its obligations. This could apply in a variety of instances, for example where the company enters into a long-term agreement such as a lease of new premises.

Says Richard Taylor, "The Companies Act 2006 places a statutory burden on directors to adhere to certain standards and consider specifically the effects of their decisions in various ways. A part-time, non-executive or even 'shadow' director (one who has no official position in the company but whose decisions are normally followed) can be in the firing line when things go wrong just as surely as can the full-time working directors."

For more information contact Richard Taylor on 01992 300333.

I want to say a genuine "thank you" for all the time, effort and energy that you have put into this endeavour and to provide us with help and advice in pretty unusual and trying circumstances- Quote from an employment client

Government Abandons Plans to Protect Cohabitees

The Government has announced that it does not, for the time being at any rate, intend to proceed with reforms to the law that would have given cohabiting partners similar rights to married couples or civil partners on the breakdown of their relationship.

This unexpected announcement was made by Justice Minister Bridget Prentice and is all the more surprising given the inconsistency of rulings made by the courts in this problematic area.

The Law Commission had spent two years working on proposals to give protection to couples who live together. If introduced, these would have set out the respective rights of cohabitees as regards the financial arrangements on the termination of a relationship.

The number of people who are living together in a relationship but who are neither married nor civil partners continues to rise. Many of these people are probably completely unaware that they have few rights in the event of a break-up of their relationship and that such rights as they do have centre around any children of the relationship.

"The problem stems from the fact that, contrary to popular belief, in law there is no such thing as a 'common law spouse'," says Anna Baptist

"Couples who live together do not acquire legal rights and there are no set rules for how their assets should be divided if they split up. With over 2.5 million people currently living together informally, the courts are seeing a flood of disputes about who owns what when such relationships end."

One common problem is where partners have lived together for a long time but the property they share continues to be held in the name of only one of the couple. If the couple then split up, this may give rise to a claim that the property should belong to both parties. The issues involved are often complex and such disputes can be very expensive to resolve in court. In some cases, people who have made a very substantial contribution to the financing and improvement of a shared home have been left with little or nothing for their efforts.

The review of the law in this area was intended to create more certainty in such cases, but the Government has chosen instead to wait to see what are the effects of planned reforms to the law in Scotland before any changes are made to the law in England and Wales.

"Meanwhile, the position of cohabitees is best protected by having a formal written agreement, which should be made with the benefit of independent legal advice on both sides," says Anna Baptist.

For more information on this issue contact Anna Baptist on 01992 300333.

Database Actions are Back!

Actions for breaches of database rights are not common in the UK.

This is the result of a 2004 decision of the European Court of Justice (ECJ), which narrowed the perceived legal protection offered by the European Database Directive. The Directive protects owners of databases from unauthorised 'extraction or re-utilisation' of the data. Interestingly, this right also covers data placed in the public domain by the owner – so copying a database which is made available for public use by its owner would be a breach of database right.

However, the restriction to the right rests in the ECJ's ruling that for protection to be given, the database owner must have substantially invested in the 'obtaining, verification and presentation' of the contents, not merely in the creation of the content of the database itself. It is this stipulation which has led to many unauthorised uses of database information not having legal consequences for the perpetrators.

Recently, however, a claim for breach of the Database Directive was successful in a different context. It involved employees of a furnishing fabric company, who left to form a new company and took with them database information concerning the customers of their old company. Their ex-employers sued them for breach of confidentiality and breach of database rights.

The claim for breach of confidentiality failed, as the information taken (names, addresses, sales etc.) was in the public domain or it was built up as part of the skills and expertise expected of an employee – which could not therefore be restricted by the employers.

However, the High Court agreed that the ex-employees had breached the company's database rights by removing the information. Furthermore, they had breached their fiduciary duty to their employers by their subsequent use of the information.

"Businesses often face problems when employees leave and set up in business in competition with them," says Richard Gvero. "The first defence against this is an appropriately-worded service agreement which includes an enforceable restraint of trade clause. However, it will be gratifying for businesses to know that there appears to be a further remedy against ex-employees who remove confidential business information held in a database and use it for their own purposes."

LONGMORES
solicitors

Powers of Attorney Our Department for the Older Client

This year there will be more pensioners than children for the first time and, sadly, one of the main causes of illness in later years is dementia.

How can we protect ourselves during our lifetime? How can we ensure that those close to us can help us when we are no longer able to look after ourselves?

There are three ways we can give authority to someone we trust to help us look after our finances. The first is by authorising someone to be our appointee to deal with our bank account and benefits through Social Services. The second is to make a General Power of Attorney, authorising someone to look after our financial affairs.

Both of these work very well, but if in later life we no longer have the ability to make decisions for ourselves, then both those appointments will fail.

The third document we can make, a Lasting Power of Attorney, will last us our lifetime, no matter what the circumstances.

Under a Lasting Power of Attorney, we can choose to delegate decisions affecting our care and personal welfare as well as decisions concerning our property and financial matters. These are two very different areas so there are two types of Lasting Powers of Attorney.

At Longmores we have a specialist department catering exclusively for older Clients dealing with, not only Powers of Attorney, but also care home fees, funding, benefits, continuing care and tax issues. We can even look after your finances on your behalf.

If you would like to know more about Lasting Powers of Attorney, please call me, Nichole Giddings, on 01992-300333 or ask someone to call me on your behalf.

Longmores News

Longmores appoints a new Partner

Longmores are pleased to announce the appointment of a new Partner within the Firm. Richard Horwood became a partner in January 2008, having been with the firm since 2001. A law graduate of the University of Liverpool, he trained with another Hertfordshire-based firm before moving to Longmores to work in the Private Client Practice Area.

He specialises in Wills, Inheritance Tax Planning and Powers of Attorney.

Contact Us

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