



Farming Matters

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Disputed Estates

In a recent high-profile case, *Gill v Woodall & Others* (also known as *Gill v RSPCA*), Dr Gill successfully challenged her Mother's Will, which left the entire estate to the RSPCA. The Will was ruled invalid on the grounds of undue influence, as it was held that she had been coerced by her husband into making a Will that she did not want to make.

In addition, Dr Gill made a claim of the family farm on the grounds that she expected to inherit it because her Mother had promised it to her and she had relied on that promise to her detriment. This claim would have been successful, save for the fact that the Will was ruled invalid.

There have been many reported cases involving disputes over farms, perhaps

because it is often a family run business and the second generation is involved with a view to ultimately taking over. In these circumstances, there is often scope for a claim that promises made during a person's lifetime should be enforceable on their death, if the recipient of the promise relied on the assurances to their detriment. However, another reason why wrangles over estates often include farms is likely to be because of their high value, making it all the more important that suitable advice is taken.

Claims can be brought against an estate by disgruntled family members whether the deceased died with or without a Will. Clearly, a Will is a step in the right direction to avoiding post-death disputes but care must be taken when drafting Wills, to ensure that the particular circumstances are

taken into account and the client receives suitable advice to avoid lengthy and costly litigation at a later date.

In summary, some of the most common grounds for challenging a Will are:

- Lack of mental capacity to execute the Will
- Undue influence, coercing the person into making a Will that they did not want to make
- Lack of knowledge and approval of the Will's terms.

There are also grounds for claiming against a deceased's estate, whether or not they had a valid Will. For example:

- If the deceased had made certain promises regarding the distribution of their estate during their lifetime then it may be possible to enforce those promises, in certain circumstances
- A claim could be brought under The Inheritance (Provision for Family and Dependents) Act 1975, which enables the courts to order financial provision out of a deceased's estate for his or her family and dependants.

While it is clear that just drafting a Will may not necessarily be enough to ensure that the testator's wishes are carried out, if proper advice is taken when the Will is drawn up, then the likelihood of a potential claim being successful can at least be minimised.

If you have any queries relating to disputed estates and Wills we would be



more than happy to discuss these with you. In the first instance please contact Emma Barker, a Solicitor in our Private

Client team, on 0161 836 8800 or emma.barker@brabnerscs.com



The Coalition and Farming – What Lies Ahead?

Rupert Jackson, Partner and Head of Agriculture, examines how the recent Budget will impact on the farming industry.

We have now had the first budget of the new coalition government and the many surprises and some expectations were confirmed – here is a summary of these and how they might affect you:

VAT – no surprises here. Whilst we all enjoyed (although not quite sure what benefit was actually seen by some) a reduced rate for 12 months last year to 15% this has now been increased to 20% with effect from 4 January 2011. Whilst this will raise valuable revenue for the government, it will have a drastic effect on the average working consumer and cash flows for businesses. It may also have a positive effect on the economy prior to 4 January 2011 due to a spending increase to beat the VAT increase. Surprisingly, this has previously been considered the most favourable option for businesses – time will tell.

Personal Allowance – as from 20 April 2011 personal allowance is to be increased by £1,000 meaning 23 million basic tax rate payers will gain up to £170 per year and 880,000 people will pay no income tax at all.

National Insurance – an increase recorded here where employers will start to pay national insurance on £21 per week above inflation on the existing levels which is welcome news to businesses which hopefully will help the business community.

CGT – an increase to 28% for higher rate tax payers. We lost the indexation and taper relief in 2008 and this budget has

closed the combined 18% tax levels previously enjoyed back to a higher rate of 28%, a figure effective from 22 June 2010. A tax on the higher rate taxpayers whilst protecting the basic rate taxpayers.

IHT – whereas the Conservatives gave up their proposals to increase the inheritance tax threshold to £1 million, as part of the coalition negotiation in contrast to the Lib-Dems alternative wealth tax on high value properties, the coalition government has announced that there will be no changes in IHT thresholds.

Of the other main changes, **state benefits** – whilst some benefits will rise in line with the consumer prices index (and not the usually higher retail price index) child benefit will be frozen for the next three years and a variety of other welfare benefits will be cut over the coming months.

These are all taxes that will affect individuals one way or another and as David Cameron recently said, this Budget will affect the way everyone lives and indeed it will!

Take note and plan and review your options and we will gladly assist where we can.

In the next issue of Farming Matters we'll consider the longer term effects of this Budget and the white paper on government spending due in the Autumn.



For further information or advice please contact Rupert Jackson on 0151 600 3396 or rupert.jackson@brabnerscs.com

Planning – *How flexible is the new planning regime?*

We reported in the last issue of Farming Matters that councils were happy to review section 106 agreements but landowners who requested a concession on economic viability grounds would have to provide robust evidence in this to support. How flexible is this?

The rural economy is already under fire from the recession and migration of young (and old) residents moving away. The rural community needs flexibility in the planning regime to enable it to

expand and embrace different methods that it will need to attract people and companies and continue to survive.

This should not be limited just to rural housing schemes but extend beyond housing into modernisation of existing buildings in an aesthetic and preservative way. This will help diversification (as referred to by Rupert Jackson, Head of Agriculture, in a previous issue of Farming Matters). Responsibility for this rests with the new coalition government and as

Rupert refers to in his article in this edition of Farming Matters more detail on this will follow in due course.



If you have any planning enquiries please contact Kevin Halewood, Director of Planning on 0151 600 3365 or kevin.halewood@brabnerscs.com



Competition Update

On 30 April 2010 the OFT issued two announcements revealing the latest developments in relation to its ongoing investigation into the anti-competitive practices of a number of retailers and processors in the dairy sector.

In September 2003 the OFT began a formal investigation into allegations of price-fixing by certain large supermarkets namely, Asda, Morrisons, Safeway, Sainsbury's and Tesco and dairy processors namely, Arla, Dairy Crest, Lactalis McLelland, The Cheese Company and Wiseman. The precise allegations were that in the period between 2002 and 2003 the supermarkets and the processors had shared commercially sensitive information in relation to one or more of liquid milk, value butter and UK produced cheese with the aim of increasing the retail prices of those products.

In 2007 and 2008 the OFT announced that it had found provisional evidence that the allegations were true and that seven of the parties concerned had entered into early resolution agreements in which they had accepted liability for breach of competition law and agreed to pay penalties in respect of those breaches amounting to in excess of £120 million. In addition, it announced that Arla had previously applied for leniency and had been given complete immunity from financial penalty for its full co-operation. The investigation continued but focused upon Morrisons and Tesco as they had failed to enter into early resolution agreements.

The OFT has now announced that, in light of new evidence it has received, it

has insufficient evidence to sustain infringement actions in relation to some of the allegations, namely those concerning liquid milk in 2002 and value butter in 2003. As a result the penalties that the parties agreed to pay as part of the early resolution agreements will be reduced and are now likely to amount to somewhere in the region of £70 million.

Furthermore, a number of the allegations against Tesco have been dropped as have all the allegations against Morrisons.

The investigation is not yet complete and the exact details of why the OFT has changed its stance will not be known until the final decision is issued, which is expected in the next month or two.

Whilst the OFT's stance in relation to these particular allegations appears to have softened the sector clearly remains under close scrutiny by the regulators not least because some of the parties involved had been warned previously about their practices.

Throughout Europe there are real concerns about the apparent imbalance between the bargaining power of the large retailers and the suppliers and the lack of transparency throughout the grocery sector and the dairy and food processing sectors in particular. The European Commission has stated that the food supply chain is a malfunctioning area that needs to be addressed and has issued suggestions for improving the situation. A report to the Commission into the progress the member states are making with those suggested improvements is expected in November 2010.

In the UK, the Competition Commission has now implemented the Groceries (Supply Chain Practices) Market Investigation Order 2009 (the Order) which establishes the Groceries Supply Code of Practice (GSCOP) and requires the large retailers to incorporate the GSCOP into their supply contracts.

The retailers have thus far refused to co-operate in the establishment of an ombudsman to monitor and enforce the GSCOP but the government issued a consultation document in February relating to its establishment. It remains to be seen whether the current government will press ahead or not but for the time being the OFT has been charged with ensuring that the retailers comply with the Order.

Whilst the OFT does not have the power to deal with complaints about breaches of GSCOP itself (until an ombudsman is established such complaints will need to be addressed directly to the retailer and handled via the dispute resolution procedure set out in GSCOP), if the retailers fail to incorporate GSCOP into their supply agreements, fail to ensure that their suppliers have a written copy of the supply agreement or fail to follow the dispute resolution procedure set out in GSCOP the suppliers should inform the OFT who do have the power to investigate these matters.



Matt Brown is an Associate in our Commercial team and can be contacted on 0151 600 3059 or matt.brown@brabnerscs.com

Help . . . *I've got travellers on my land!*

With the summer months comes the perennial problem for farmers of travellers occupying their land. Philip Parker, an Associate in our Litigation team examines the options available for farmers.

Self Help

As the land owner, the farmer has the right to ask the travellers to leave. If, as is often the case, this request falls on deaf ears, the farmer has the right exercise the common law remedy of "self help". This involves instructing bailiffs or some other privately appointed manpower to physically remove the travellers from the land.

Whilst often the quickest way to remove travellers from land, the downside to this solution is that the required manpower often makes it cost prohibitive. Further, and whilst it is always advisable to ask the police to attend and observe any evictions, the farmer and manpower expose themselves to personal injury and/or damage to property claims for any incidents that occur during the course of the eviction. Accordingly, if a "self help" eviction is heavily opposed, it can often be abandoned leaving farmers with a hefty bill to pay and travellers still on their land.

So what alternatives are available to farmers? Can the police, the local authority or the civil courts help?

Police Powers

If the police are satisfied that (i) at least two persons have entered land to reside there and (ii) they have caused damage or been threatening, abusive or insulting towards

the farmer, his family, his employees or his agents and/or they have six or more vehicles, then the police can order those persons to leave the land.

Further, if persons enter on to land with the common intention of residing there with a vehicle and a caravan between them, if it appears to the police that there is a suitable pitch for the caravan on a caravan site run by the local authority for the land or a registered social landlord, then the police can order those persons to leave the land.

In each case, if the individuals do not leave the land within a reasonably practicable period or they leave and then return within three months, then the individuals can face a fine and/or imprisonment for up to three months. In certain circumstances, the police may also be able to seize vehicles.

Local Authority Powers

If the local authority is satisfied that persons are residing in a vehicle or vehicles on land without the consent of the landowner, it may order those persons to leave the land and remove the vehicle.

If the individuals do not leave the land within a reasonably practicable period or leave and then return within three months, then the individuals can face a fine.

Civil Courts

Regrettably, the police and the local authority are often unable to exercise their statutory powers in a timely fashion. This is due to them having other statutory obligations to comply with such as to

enquire about the personal circumstances and welfare of the travellers.

Accordingly, often the most successful, timely and safe way for a farmer to remove travellers from land is to apply to the County Court for an order for immediate possession of the land, a process which can take as little as two days depending upon the particular circumstances.

Thereafter, if the travellers still fail to leave the land, the farmer can ask the Court bailiffs to immediately remove the travellers from the land, by physical force if necessary, safe in the knowledge that he will not incur liability for any personal injury or damage to property that may occur in the process.

Costs

It is often a tempting for a farmer to avoid the costs of removing travellers from land on the basis that by virtue of their lifestyle, the travellers will soon move on to another pitch of their own accord.

Many farmers may however be insured against the costs of removing travellers. Indeed, these costs they may be less than the costs of repairing damage to fencing, gates and pasture after the travellers have left, the costs of which may not be covered by insurance if the farmer didn't take reasonable steps to remove the travellers once they arrived.



For further information or advice please contact Philip Parker on 0151 600 3056 or philip.parker@brabnerscs.com

Remember, Remember the Beginning of September . . . Rights of Common

Does your property enjoy rights of common? Have there been any changes since the 1970s to your rights or to your property? Have you sold off land or acquired land since the 1970s?

If the answer is yes to any of the above have you checked whether the register of common land held by your local County Council is up to date and accurate?

Under the Commons Act 2006 there is a limited time to record events relating to changes in rights of common which have taken place after 2 January 1970 but before 1 October 2008 which affect the rights of common such as grazing rights.

Applications to amend the register must be submitted prior to September 2011 and if submitted after September 2010 may incur a fee.

Therefore if you have acquired rights, transferred rights or surrendered rights we can help clarify the current situation and advise what changes, if any, are required.



For further information and advice please contact Rupert Jackson, Partner and Head of Agriculture, on 0151 600 3396 or rupert.jackson@brabnerscs.com

Did you have a registered waste exemption?

Currently, over 80,000 farmers have registered waste exemptions. Everybody, including farmers, will need to move into the new system. However, the EA recognises that farmers are relatively new to regulation, so they are being given the most time to prepare.

All exempt waste operations (exemptions) were replaced by new exempt waste operations on 6 April 2010.

Some waste exemptions have been changed, some have been added and some no longer exist. Higher risk waste operations that were previously exempt now require an environmental permit. There is no longer a distinction between simple and complex waste exemptions.

If you held exemptions for agricultural waste registered with the EA before 5 April 2010, you have until 1 October 2013 to

move them into the new system. Throughout this period, you will still need to comply with the limits and conditions of the exemptions which you hold under the old system. This includes renewing the following exemptions on a yearly basis:

- Spreading agricultural waste on your farm for agricultural benefit (paragraph 7)
- Using building waste from agricultural premises in construction (paragraph 19).

Most agricultural waste management activities that were carried out on farms under the old waste exemption system will be exempt under the new waste exemption system and there are some new exemptions which farmers may want to register.

You must register an exemption before you carry out any activities involving the recycling and disposal of waste. There are two key dates – 6 April 2010 and 1 October

2013 – which are particularly relevant to farmers using and managing the agricultural waste on their farms. If you want to register a new exemption or a new farm after 6 April 2010, you will be a 'new applicant' and will have to register your new farm or exemptions under the new system. If you have registered exemptions for agricultural waste management activities on your farm before 5 April 2010, you can continue to use them until 1 October 2013. This transitional period is to give you time to prepare and make the change into the new system.



If you have any questions on the changes to the waste exemption system, please contact Claire Gregory, Head of the Environment & Regulatory team on 0161 836 8858 or claire.gregory@brabnerscs.com

Seminar Invitation

Family Businesses – Surviving the Generations

Due to popular demand we will be hosting a re-run of our 'Family Businesses – Surviving the Generations' seminar.

Family businesses remain a key contributor to the UK economy but statistics show that only 10% survive beyond the third generation. How can you help your business survive the generations?

In this exclusive seminar, in conjunction with Howard Hackney LLP, we explore the various options available for family owned businesses, examine the importance of planning ahead and provide best practice tips that could help you avoid issues that effect the survival of a business.

The seminar will take place on Tuesday 21 September 2010 at our Liverpool office from 4pm to 6pm.

To book your free place for this seminar, simply respond via email to Lisa Alty at bcnewsandevents@brabnerscs.com

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