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Private Client Focus

Court of Appeal clarifies two stage test in claim for beneficial interest in solely owned property

In a dispute between former cohabitees, the Court of Appeal has ruled against millionaire ex market trader Michael Harris in his battle to claim a half share of two properties owned by his former partner.

Mr Harris lost his £900,000 divorce case after Lord Justice Sales found that Mr Harris had no right to claim either of the properties owned by his ex-partner, Miss Capehorn.

Michael Harris and Linda Capehorn had lived together for 20 years. Mr Harris had built a market trading business ("the Business") in which Miss Capehorn worked and they had transformed it into a frozen food business worth over £1.8 million. Unfortunately their relationship came to an end in 2001 when Miss Capehorn left Mr Harris over allegations that he was a 'serial womaniser'.

Miss Capehorn took over the Business after Mr Harris was made bankrupt in 1991 and continued it as a sole trader. Mr Harris was then employed as a manager within the Business. In 1993 Miss Capehorn purchased Sunnyside Farm (which had previously been her childhood home) in her sole name. The deposit was funded with money which the judge found came from the Business (during the time it was in her sole name) and with a mortgage arranged by Miss Capehorn personally and in her personal name for which she had sole responsibility. Miss Capehorn retained ownership of the Business when Mr Harris was discharged from bankruptcy in 1994 and he then went on to set up his own business. Miss Capehorn later purchased another property called Beaumont.

After the relationship between the parties began to break down, Miss Capehorn did not want Mr Harris to leave empty handed. In 2007 she transferred the Business to a company in Mr Harris's name. In return he was to pay her £750 per week. Miss Capehorn moved out of Sunnyside and Mr Harris continued to live and run the Business from there.

In 2012 Mr Harris dismissed Miss Capehorn from the Business. The issue before the Court was that Mr Harris claimed the couple had also agreed that he should have a share in Miss Capehorn's two Bedfordshire properties, one of which was Sunnyside Farm. Miss Capehorn denied such an agreement had ever been reached.

The case went before the Central London County Court where it was ruled that Mr Harris was due a 25 per cent share of Sunnyside Farm only. This ruling has now been overturned in the Court of Appeal.

The judges ruled that Miss Capehorn is to retain sole ownership of the two properties, which are jointly worth approximately £900,000. Mr Harris will keep the Business which is valued at around £415,000. Because the headquarters of the Business are still based at Sunnyside Farm, Mr Harris was instructed to pay Miss Capehorn £750 per week as long as his Business continues to be based there. Additionally, the judges ruled that Mr Harris pay his ex-partner £62,300 in arrears.

It is well established that a Claimant must show there was an agreement that they should have a beneficial interest in the property owned by their partner even if there was no agreement about the precise extent of that interest. If such an agreement can be shown to have been made then any absent agreement about the extent of the interest can be considered by the Court. The Court may impute an intention that the Claimant was to have a fair beneficial share in the property and assess the amount of the share in light of all the circumstances.

At the first stage, an actual agreement has to be found to have been made, which may be inferred from conduct. At the second stage, the Court is entitled to impute an intention that each person is entitled to the share which the Court considers fair, having regard to the whole course of dealing between the parties in relation to the property. A Court is not entitled to impute an intention to the parties at the first stage.

The trial judge had mistakenly omitted both stages of the test. The Court of Appeal judgment brings welcome clarity to the application of the test for establishing a beneficial interest, by way of a common intention constructive trust, in cases where property is solely owned.

Hollie Burnett

Also in this issue

Pensions tax relief – a continuing story

At the same time as the Chancellor of the Exchequer was announcing further restrictions on tax relief on pension contributions for higher earners in the Summer Budget in July, he also launched a consultation on reforming the current system of for taxing pensions. This is in part due to the ever increasing complexity of the system as a result of the repeated imposition of restrictions on tax relief in recent years.

The taxation of pensions was greatly simplified in 2006, with only two limits imposed on contributions and pension saving - these were the lifetime allowance, set at £1.5 million and the annual allowance, set at £215,000. These limits initially were raised, eventually ending up at £1.8 million and £255,000 respectively.

From that point, the limits have been steadily reduced, to the point that the lifetime allowance, reduced to £1.25 million previously, is to be reduced as a result of the Chancellor's announcement in July to £1 million from April 2016. The annual allowance had previously been reduced to £40,000.

Although the annual allowance is to remain at £40,000, the Budget introduced a tapering relief for high earners (those earning over £150,000) that would bring the relief down to £10,000 for those earning over £210,000.

The reason for all of these changes, according to the government, has been to manage the cost of pensions tax relief, and to limit the amount of tax-privileged pension saving that (essentially) higher earners can make.

This has resulted once again in a very complicated tax system, and one of the aims of the consultation on pensions tax reform is to see whether there is a way to limit reliefs on the taxation of pensions and reduce the costs to the government, whilst still incentivising long term saving and also provide a simpler tax system.

Ideas that have been suggested include changing the way tax is collected on pensions. Currently both employer and employee pension contributions are exempt from income tax, as are the employer's National Insurance Contributions (subject to the annual and lifetime allowances). Investment growth is also exempt from personal tax (again subject to the lifetime allowance), whereas pensions in payment are taxed as income, with the ability to take up to 25% of the pension fund as a tax-free lump sum on retirement.

One proposal is that pension contributions be taxed, with pensions in payment being tax-free - this is similar to the way ISAs work. There is an obvious advantage to the government in bringing forward the receipt of tax revenue; however there is a risk that people may feel that there is less incentive to save towards a pension, particularly when compared to an ISA, as individuals are restricted from taking a pension before age 55.

Critics have suggested that taxing contributions in this way may reduce the resulting pension, given the investment of contributions over the period of time prior to payment of the pension. The government has suggested paying a top-up to help incentivise saving under this proposal, which could help to offset such criticisms.

Whilst all options are open, one other proposal (and one which the former pensions minister Steve Webb had championed) is a flat rate rebate on pension contributions (of e.g. 33%). This would be advantageous for basic rate taxpayers (who receive a 20% rebate currently) but less advantageous for higher rate taxpayers (who currently receive a 40% rebate). This also has the advantage of being simple for people to understand.

Recent surveys of pension savers have provided mixed responses. A survey conducted by PwC indicated that savers would generally be in favour of the ISA-type of tax system, whereas surveys conducted by Aviva and Hargreaves Lansdown have suggested that a flat-rate relief would be more popular.

Whatever the outcome of the consultation, which closes 30 September, the solution should hopefully be one that will provide some stability to the system without the need for constant tinkering that has been prevalent to date.

Craig Engleman

Changes to Lasting Power of Attorney forms

On 1 July 2015, the Office of the Public Guardian ("the OPG") published new Lasting Power of Attorney ("LPA") forms. The main aim of these changes is to make the LPA forms simpler and clearer to complete and register.

The key changes to note are:

- There is more space for attorneys and replacement attorneys within the form which means that fewer continuation sheets are required.
- The application to register the LPA is in the LPA form itself, rather than being a separate form.
- The LPA for financial decisions enables the donor to choose whether he/she would like the attorney to act as soon as the LPA is registered with the OPG or only if/when the donor loses mental capacity.
- The donor has the opportunity to specify the order in which he/she would like each replacement attorney to step in.
- The donor can specify how he/she would like the replacement attorneys to act i.e. jointly; jointly and severally; or jointly for some decisions, joint and severally for other decisions.
- Some of the terminology has changed. 'Instructions' have replaced the 'Restrictions and Guidance'. 'Preferences' has replaced the 'Guidance'.
- If the donor does not appoint a notifiable person, only one certificate provider is required.
- If any old LPA forms are completed but not registered before 1 January 2016, form LP2 must be used to register the LPA and form LP3 must be completed to give notice of the registration to the notifiable person.

The old LPA forms can continue to be used until 1 January 2016, provided that the form is fully completed and executed by 1 January 2016. They can be registered at any time using forms LP2 and LP3. All LPAs made on or after 1 January 2016 must be on the new forms.

Please note that any LPAs that were registered before 1 July 2015 and any completed EPAs will continue to be valid.

Amy Marson

Inheritance tax
main residence nil rate band

One of the most important changes to the law for private clients and their solicitors as a result of the Budget delivered in July 2015 by the Chancellor, George Osborne, is the introduction of an additional nil rate band ("main residence nil rate band") for main residences which pass to direct descendants of the Testator.

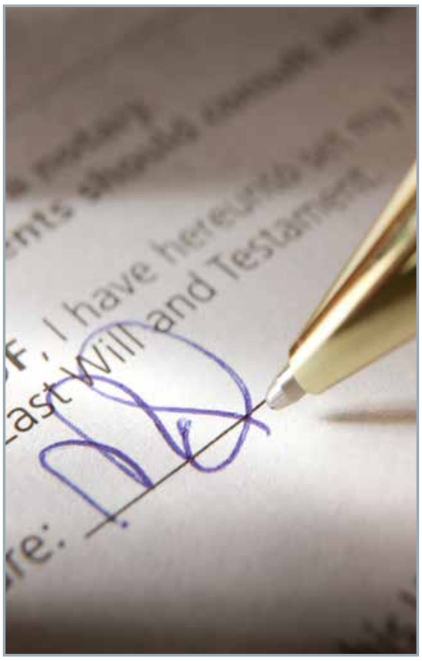
As the law currently stands, there is a nil rate band (currently set at £325,000), the unused proportion of which can be transferred between spouses and civil partners. However, the introduction of the main residence nil rate band will increase the amount which individuals can pass to their descendants on death without a tax charge. A "descendant" will mean a child (including a step-child, adopted child or foster child) of the deceased and their lineal descendants.

The main residence nil rate band will come into effect on 6 April 2017 and will initially be an additional nil rate band of £100,000. The band will increase by £25,000 each year up to the year 2020, by which point the additional nil rate band will be £175,000. Like the current nil rate band, the main residence nil rate band will be transferrable between spouses and civil partners.

In practice, this means that from 2020, a husband and wife will be able to leave a family home of up to £1m to their children without an inheritance tax charge by combining their individual nil rate bands of £325,000 and their main residence nil rate bands of £175,000.

This new relief is restricted to only one property and this property must have been the residence of the deceased at some point, and as such, it will not apply to buy-to-let properties. Although personal representatives will be able to nominate which residential property should qualify if there is more than one estate, they should carefully consider which property to elect because any unused part of the main residence nil rate band cannot be carried across to another property.

Another limiting factor of the relief is that if, after deducting any liabilities but before reliefs and exemptions, the net value of the estate is more than £2m, the main residence nil rate band will be reduced by £1 for every £2 that the net value exceeds £2m. As a result, estates with a net value of more than £2.7m will not be able to benefit from the main residence relief.



In cases where part of the main residence nil-rate band might be lost because the deceased had downsized to a less valuable residence or had ceased to own a residence before their death, that part will still be available, provided the deceased left that smaller residence or assets of equivalent value to the property to the deceased's descendants. The detail of these points will be included in the Finance Bill 2016.

To conclude, the intention of the introduction of the main residence nil rate band is to increase the number of individuals being exempt from inheritance tax charges. The Government has gone as far as to estimate that by 2020-2021 the measure will reduce the number of estates which will have an inheritance tax liability by 26,000. However, given that the main residence nil rate band will not be available to higher value estates, the measure will not be as generous as many media reports have suggested. Clients for whom this relief might be available should review their wills, and spouses should consider the values of their individual estates to ensure that they can benefit from the maximum reliefs available.

Ewan McNab

Are charity trustees accountable for everything their charity does?

The Charity Commission's recent case report into The Air Ambulance Service (TAAS) is an important reminder to charity trustees of their responsibilities and that they are accountable for all of the decisions made by the charity.

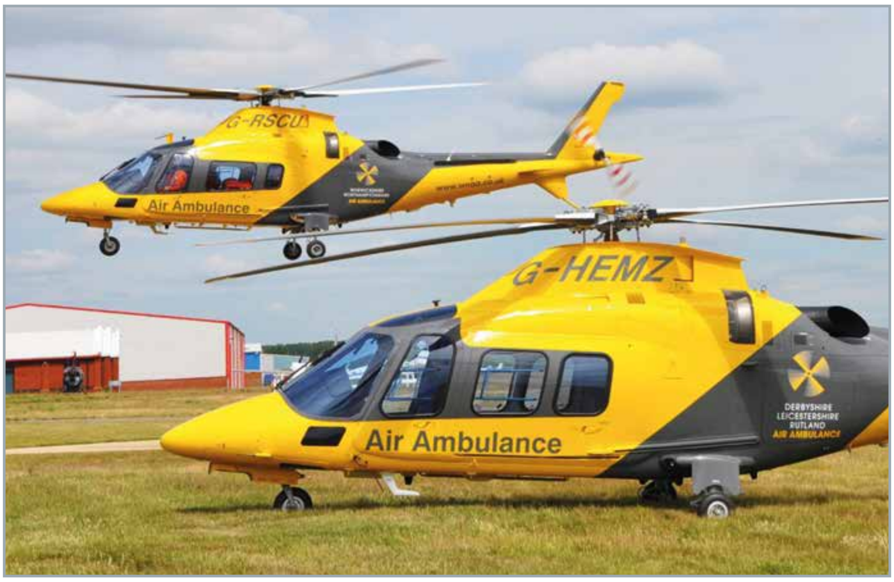
The Charity Commission has published a case report into The Air Ambulance Service (TAAS), criticising its loss of £111,000 in a single fundraising event in 2012 and a loan of £27,000 that it made to the charity's deputy chief executive.

The charity bought up seats for the London premiere of the Bodyguard in 2012. It then hoped to sell the tickets to raise funds, however, many of the tickets were not sold and the event lost the charity £111,000. The Charity Commission said that the event showed poor project management and a failure to make adequate risk or due diligence assessments. The report stated that 'processes in place for managing the event were significantly inadequate and that this amounted to a serious failure on the part of the trustees'.

TAAS argued that although it had made a loss on this specific event, it had nevertheless helped to raise the charity's profile and it had provided an opportunity for new donors to be identified. TAAS also stated that this was the only event not to make a profit in 2012, which was a record year for TAAS's fundraising.

However, the event did not have a wholly positive effect on the charity's reputation for potential donors. For example, one individual says he has become disillusioned with the charity's commercial interests and although he will continue to make a monthly donation, he no longer raises money for the charity. This individual, whose life was saved by the services of TAAS, has spent several years raising money for the charity. One event raised £11,000 alone. Therefore, the negative effect of such exposure could have a significant impact on money raised for the charity in the future. If such an avid supporter of the charity can be disillusioned by this event, it would seem likely that potential new donors will be even more easily discouraged by the event. TAAS states that it now has an experienced fundraising team to ensure that each event is profitable in its own right, which should prevent such a failure from occurring again.

The loan that the charity made of £27,000 to the charity's deputy chief executive has also been criticised by the Charity Commission. Following complaints that the Charity Commission received about the loan, it said that the loan had an unclear legal basis. The charity's accounts say that the loan was made to the deputy chief executive to 'secure her continuing employment' as she was a 'valuable employee facing unforeseen personal circumstances'. The charity said there was no financial risk for the charity. The chief executive acted as a guarantor and the loan accrued interest of 0.6% per annum and is repayable over five years from June 2013. However, no evidence was found of any advice being obtained for the loan and the trustee board did not find out about the loan until after it had happened. The charity said it phoned the Charity Commission's helpline regarding the loan but to obtain a formal view on an important decision, the Charity Commission states that a request should be made in writing.



The Charity Commission concluded that the Trustees had insufficient control over the chief executive and over-relied on the chief executive and the chair. The chief executive and the chair did not involve the trustee board as a whole and this was a serious governance failure.

This case report serves as a reminder to charity trustees that they are ultimately responsible for everything the charity does. They should, therefore, be aware of and monitor every significant endeavour that the charity undertakes and ensure that proper risk and due diligence assessments are carried out from the beginning, as well as being kept under regular review. Charity trustees should also remember that they must act collectively and are accountable for their decisions.

Amy Marson

Information

If you have any queries on any issues raised in this newsletter, or any private client matters in general please contact John Lane on (01904) 625790 or email john.lane@rollits.com

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The law is stated as at 14 October 2015.

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