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Spring 2017

Your quarterly bulletin on legal news, views and advice from Quality Solicitors Rose & Rose

EMPLOYER NOT LIABLE FOR POST PARTY CHRISTMAS ASSAULT

Employers can be found vicariously liable for the actions of their staff, but only if these occur in the course of their employment. Whilst an employer can, in some circumstances, be held legally responsible for an injury to a worker sustained during an office function, the High Court has ruled that a recruitment company was not liable for serious injuries inflicted by one member of staff on another some hours after a planned Christmas event had finished *(Bellman v Northampton Recruitment Limited)*.

Clive Bellman worked as the sales manager for Northampton Recruitment Limited. He sought £1 million in damages from his employer after he suffered a fractured skull and very severe traumatic brain injury as a result of being punched in the face by John Major, the managing director of the company. The incident took place after the work Christmas party at a golf club had passed without event and staff members had adjourned to the bar of the nearby Hilton Hotel. This was not a pre-planned extension to the party.

For some time the conversation was on social and sporting topics, but later turned to work matters. At around 3:00am, Mr Major became angry with Mr Bellman after he questioned one of his management decisions. He twice punched him hard in the face and Mr Bellman fell, hitting his head on the marble floor. His head injuries were so serious that he is unlikely to return to any paid employment and lacks the capacity to manage his own affairs.

Lawyers acting for Mr Bellman claimed that Northampton Recruitment was vicariously liable for Mr Major's actions and the consequences of the attack because he was acting 'in the course or scope of his employment'. The High Court disagreed, however. In its view, what took place at the hotel was a drunken discussion that resulted from a personal choice to consume more alcohol long after the works event had ended. The fact that the dispute was about work did not provide a sufficient connection to support a finding of vicarious liability against the company that employed the two men.

They had gone to the hotel for an impromptu drink, which by the time Mr Major delivered the punches had become an entirely independent and voluntary early hours drinking session, which the Court described as 'a frolic' of their own. It was of a very different nature from the Christmas party and was unconnected with Northampton Recruitment's business.

The judge went on to say that to hold that the fact that work-related matters were discussed at the hotel provided a foundation for liability would render such social events potentially uninsurable.

A huge thank you to Richard. You were so fantastic in every way helping me with the situation. Amazing service - I couldn't have asked for more.
Rachel W

Richard Turney, Head of Litigation

TYCOON MUST SHARE £130 MILLION FORTUNE WITH EX-WIFE

Those who fail to cooperate in divorce proceedings may get away with it for a while, but they will ultimately be made to pay for their recalcitrance. In one case, an international business tycoon who dragged his feet was ordered to hand over almost half of his £130 million fortune to his ex-wife.

The couple, aged in their 70s, had been married for 46 years before the husband divorced the wife by pronouncing 'Talaq', and the divorce was subsequently confirmed by a Sharia court in the United Arab Emirates. During their marriage, the husband had enjoyed enormous success as a hotelier, financier and property developer. The wife had lived in London since their separation and launched proceedings in England under the Matrimonial and Family Proceedings Act 1984.

The husband disputed that the English courts had jurisdiction to consider the wife's claim on the basis that she was habitually resident in Portugal. He had been ordered to pay maintenance and legal costs to his wife but had fallen £740,000 into arrears. Due to his lack of cooperation, a worldwide injunction had been issued against him, freezing his assets up to a value of £125 million.

In accepting jurisdiction to hear the case, the High Court noted that the wife had been living in London for two years since the separation. The couple had lived in England earlier in their marriage; both had permission to remain permanently in the UK and the wife was eligible for naturalisation as a British citizen.

Due to the husband's failure to participate in the proceedings, the Court had to take a rough and ready approach to valuing the marital assets. It put their worth at just under £130 million, of which the wife was entitled to a sum in excess of £61 million. After such a long marriage, there could be no serious argument that the sharing principle should not be applied. The Court noted that the husband had been given every opportunity to be heard and, due to his unhelpful attitude, could not complain that the assets had been overvalued or that the award to the wife was overgenerous.

In almost all cases, being uncooperative will lead to a worse result than a considered attempt to achieve an appropriate settlement at the outset. For advice on any aspect of family breakdown and financial arrangements on divorce, contact one of our Family Law team.

CHARITABLE PRINCIPLE NOT ENOUGH

It seems trite to say that the law is what the law is, but in cases where a decision is reached that is correct under the law but which seems unfair, or not in accordance with an underlying principle, it will nevertheless stand.

There is a general principle in UK law that assets left on death to charities are excluded from the deceased person's estate for Inheritance Tax (IHT) purposes.

When a Jersey-domiciled woman died n 2007, she left a UK estate of some £1.8 million. This was left to a charity to benefit people in Jersey and a claim was made to exempt the assets from IHT.

However, HM Revenue and Customs (HMRC) argued that although it was not relevant that the charitable purposes for which it was established were for the benefit of people outside the UK, the fact that the charity concerned was established outside UK jurisdiction meant the claim had to be rejected.

The legal fight went all the way to the Court of Appeal, which has ruled in HMRC's favour, triggering an IHT charge of some £600,000.

A further appeal, based on European law against restrictions on the free movement of capital, is now being pursued.

In practical terms, this case is a reminder that the courts will normally enforce the letter of the law, not the principle of the action taken. Had the gift been to a UK charity established to carry out charitable activities in Jersey, the relief would have been granted.

Seemingly innocuous errors in drafting any legal document can have a significant impact and, when the document is a will, the error may not be able to be corrected after death. For expert advice on all aspects of estate protection and wills, contact us.

Sally-Anne Joseph, Head of Estate Planning

Sally, thanks for all of your expert help.
Geoff Gibson

NON-WORKING DAUGHTER LOSES CLAIM FOR FINANCIAL PROVISION

Claims by disappointed children seeking a share, or a larger share, of a parental estate are on the rise, with the latest figures published showing a year-on-year increase of more than 10 per cent in such claims.

Although a widely reported case *(Ilott v Mitson)* – in which the disinherited daughter of a woman successfully claimed for provision out of her estate – may have been partly responsible for the uptick, it should be borne in mind that the outcomes of such cases are highly fact specific, and also that in the case in question an appeal by the charities named in the mother's will was recently heard by the Supreme Court.

In another recent case, the Central London County Court dismissed a claim by the daughter of a man who left his £700,000 estate entirely to his second wife. The daughter claimed that she and her children are dependent on her partner, as she does not work. She launched a claim for financial provision to be made for her and her children under the Inheritance (Provision for Family and Dependants) Act 1975.

The Court ruled that the estate was insufficient to support both the man's widow (who is elderly and unwell) and his daughter. It seemed to the judge that the daughter's lack of work was a 'lifestyle choice' and she had failed to prove any need for provision from the estate.

Accordingly, her claim was rejected.

For advice on how to ensure that your estate passes to your chosen beneficiaries, contact us.

JAIL THREAT FOR MAN WHO FAILED TO COOPERATE IN DIVORCE

A recent case shows that refusing entirely to engage in the court process is not a viable option in divorce proceedings.

It involved a man who refused to disclose his financial circumstances or attend court for the purpose of arriving at a financial settlement on divorce, despite repeated orders by the court over a five-month period. Eventually, he was served with an order to attend court to explain himself and provide the required information. He failed to attend that hearing also.

The judge found him in contempt of court and ordered that he should be sentenced to three months in jail, suspended for a period to give him time to 'purge his contempt' by providing the necessary information.

Judges have little time for those who take a non-cooperative approach and where this is carried to extremes, jailing the offender for contempt of court is an option.

Throughout the preparation and Court Case Andrew has always been extremely helpful, professional and sympathetic. Thank you for the excellent service that Andrew and his team including Zubair etc. have provided. I would be happy to recommend Rose & Rose Solicitors.

Andrew Perryman, Family Solicitor

WILL YOUR PROPERTY BE AN IHT TRAP?

Data published recently show that the new £100,000 additional 'private residence' exemption for Inheritance Tax (IHT), which is due to be introduced in April 2017 and will increase thereafter, could not come soon enough for many people.

More than two thirds of properties in outer London which sold in the first seven months of the year exceeded the current £325,000 IHT limit. Where a property is jointly owned between spouses or civil partners, a 'double limit' may be available on the death of the second owner. However, one in 13 properties in London sold in the same period exceeded that limit also.

The big problem which can occur when the value of a property exceeds the IHT limit comes as a result of the rule that the tax has to be paid within six months of death. The likelihood that the IHT will need to be paid before the property is sold may mean that, unless there are other realisable assets, the executors must borrow to pay the tax or make an arrangement with HM Revenue and Customs to pay it in instalments, which also carry interest. There is then a natural inclination to look for a quick sale, which may not be at the best price.

Where a second property or foreign property is owned, the IHT position is likely to be even worse.

If you are concerned about the financial or practical effect that IHT may have for your beneficiaries and/or executor, we can advise you of appropriate measures to take according to your individual circumstances.

IHT is a tax which can be mitigated with proper planning. Contact us for advice.

AIRBNB SHORT TERM PROPERTY RENTALS

SPRING 2017

The rise and rise of Airbnb and similar online community marketplaces that allow property owners to rent out their properties on short-term lets has led to many people making use of the facility to earn extra income, or even to operate as commercial providers of accommodation, using the Internet as their main marketing tool.

However, a recent court case highlighted just one of the factors that should be borne in mind when considering putting your property into the lettings market in this way.

It involved the owner of a leasehold property in Enfield, whose right to use Airbnb was challenged in court and found to be contrary to the terms of her lease, which stipulated that the property had to be used as a private residence only.

The court considered that the occupation by non-leaseholders on a short-term basis did not show sufficient permanence to constitute 'residential use'.

This ruling would not normally affect those who let out a room or rooms in their property whilst they remain in it, but it is not the only issue that may arise. There are also potential tax issues, as rental

income (unless covered by the Rent a Room exemption) will not only create a liability to Income Tax (or Corporation Tax if the property is owned by a company) but also can affect the owner's Capital Gains Tax position on an eventual sale.

Many mortgages also prohibit the renting out of a property and require it to be occupied by the mortgage holder only.

For advice on the legal implications of using your property as a source of rental income, contact us.

We thought the service was top class. Going through the process of sale/purchase after 25 years in the same house was a bit daunting for us, so your meticulous but friendly service was very welcome. Please accept our sincere thanks for all your efforts in our property sale and purchase. We have settled in here very well and thoroughly enjoy our new home. Also we would like to pass on our thanks to Lisa, who helped to make the whole process easier!

Rikki Bansoodeb, Head of Property

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