



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

COURT REJECTS WILL IN A CRISP PACKET

Unfulfilled hopes of substantial inheritance are commonplace, both in fact and fiction, but not often do they lead to such ham-fisted attempts at forgery as that shown by a disappointed widow after her husband left her just £25,000 of his £600,000 estate.

The woman was 50 years younger than her husband, who died aged 76, and their marriage had been a cause of consternation to his family. By a properly executed will, drafted by a solicitor, he left £430,000 of his estate to his only child by a previous marriage, £140,000 to an old friend and £25,000 to his widow.

After his death, however, the widow produced a purported later will that on the face of it bequeathed all but £50,000 of the estate to her. She said that she had found the document in the attic of her husband's

home, hidden inside an empty packet of crisps. In entering the earlier will to probate, however, a judge found that she had orchestrated an attempted fraud by forging the later document herself.

Describing her account as ridiculous, the judge noted that no explanation had ever been given as to how such an elderly man would have been able to gain access to the loft space or why he would have chosen to secrete his will in a crisp packet.

The contradictions in the widow's evidence were risible and the forgery had been comprehensively exposed by a handwriting expert. The document was also littered with errors, including a reference to the deceased in the attestation clause as 'her'.

There are a number of factors that may make a will suspicious – for example, a new will



created shortly before death which makes changes to the beneficiaries, a will made without the benefit of a solicitor or one which is discovered unexpectedly and so on.

This was not the first such case of this kind and it will not be the last. If you are concerned about the validity of a will that affects you, contact us for advice.

HIGH COURT BLOCKS 'SUPER-BASEMENT' EXTENSION PLANS

Basement extensions are increasingly popular, particularly in areas where property prices are high, but are not always looked upon favourably by neighbours. In one case, an objector obtained legal advice and succeeded in blocking plans for a three-storey 'super-basement' in a listed Central London home.

The local authority had granted planning permission and listed building consent to the company that owned the property for a basement extension to include a kitchen, laundry, cinema, gym and swimming pool. A subterranean extension had been permitted by an earlier consent but the recent plans were more extensive.

In upholding a judicial review challenge brought by an objector who lived next door, the High Court found that the council had committed

a very straightforward error of law in failing to take into account its own policy of disallowing basement extensions of more than one storey, save in exceptional circumstances.

Quashing the planning permission and the listed building consent, the Court noted that the council had approached the matter with the erroneous mindset that it could not refuse permission for a development that had in large part already been approved. Regardless of the earlier planning permission, the new scheme had to be measured against the council's basement extension policy.

If you have a neighbour who submits plans that will cause you significant inconvenience, contact us for advice on how to oppose them effectively.





GIVING UP YOUR CAREER TO GET MARRIED? THINK TWICE!

A person who voluntarily prioritises their marriage over their working life may not be entitled to compensation for the earnings foregone if their relationship ends in divorce. The Court of Appeal made that point in ruling on the case of a former headteacher who abandoned her career when she married a doctor who was 16 years older than her.

The woman was in her 40s when she married the semi-retired doctor. She gave up her job as head of a primary school and subsequently only worked as a supply teacher. She sold her house, using the proceeds to purchase a half share of her spouse's home, which was worth about £960,000. The couple had enjoyed an affluent lifestyle during their eight-year marriage. Following divorce proceedings, a judge ordered the husband to pay his former wife a £140,000 lump sum in order to achieve a clean break.

In challenging that decision, she argued that she had given up full-time employment after her husband assured her that he would

look after her financially. As a result, she had lost substantial earnings and her right to a generous final salary pension. She had been left with insufficient resources to purchase a home comparable to the one that she had shared with her husband during the marriage.

In rejecting her appeal, however, the Court noted that she had not been put under any pressure to give up her career and that her husband had not gained financially from her decision. The judge was right to confine his attention to ensuring that her future needs would be met. The standard of living that she had enjoyed during the marriage was not determinative and the judge was entitled to find that she required a housing fund of £450,000, rather than the £700,000 that she had claimed.

If you are facing the break-up of your marriage, strong and experienced legal representation is essential if you are to achieve a fair division of assets and maintenance agreement. Please contact us for advice.

DIVORCE SETTLEMENT NOT FINAL, RULES COURT OF APPEAL

A divorcee who made unwise investments and became impecunious after a divorce settlement in 2002 has gone back to court to obtain an increase in the monthly payments from her ex-husband and an extension to ensure that she will continue to receive the payments until the end of her life.

When the couple divorced after 13 years of marriage, the ex-wife was awarded more than £200,000 out of their capital and monthly payments of £1,100. However, her investments of her capital into property proved ill-timed and left her in debt.

The application was argued to the Court of Appeal, which ruled that her monthly payments should be increased to £1,441. It rejected her ex-husband's contention that it would be unfair were he to 'carry the can' for her unwise investment decisions.

Reaching agreement on the financial arrangements when a relationship breaks up often requires negotiating skill, tact and expertise. We can help you achieve a satisfactory outcome without unnecessary stress.

SOLICITOR EVIDENCE CRUCIAL IN PROVING WILL VALID

A recent case shows the importance of involving a solicitor in the preparation of a will, especially where it is considered that an attempt to invalidate it on the grounds of lack of mental capacity may be made.

It involved an elderly man who changed his will when he was 81 years old. His earlier will, made when he was 76, gave his business interests to his son, who also stood to inherit a quarter of his estate, the balance of his estate being left to other relatives.

However, fearful that his son would fritter away his share of the inheritance, the man changed his will so that his son stood to inherit his business only.



When he died, his son challenged the later will.

The critical evidence in the case was that given by the man's solicitor, who had no

doubt that he had full mental capacity ('was of sound mind') at the time the second will was drawn up and so was capable of making a will that was both understood by him and reflected his wishes. The court ruled that the new will should stand.

Solicitors are trained to ensure that they satisfy themselves to the maximum extent possible that anyone who instructs them to draft a will understands the effect of the will and is acting under their own volition, not under the undue influence of anyone else.

To ensure that your estate passes to those you choose and to minimise any chance of a successful legal challenge, contact us for advice.



COURT UPHOLDS PRE-NUPTIAL AGREEMENT

When the marriage of a wealthy couple broke up, the English court had to consider the impact of two pre-nuptial agreements the couple had made before they wed.

The Swedish couple married in 2000 and separated in 2015. They had lived in the UK since 2011, so their divorce was dealt with under English law. When their divorce was made final in 2016, their joint assets were worth £10 million.

However, they had entered into pre-nuptial agreements in 2000, under which the wife agreed to waive entitlement to any capital payment from the husband in the event that their marriage was dissolved. She argued that the agreements were entered into as a result of the husband's misrepresentation and also that they were so unfair that the court should decline to enforce them.



IT'S NOT A GAME...

IT'S OUR BUSINESS
...BUT IT'S PERSONAL

However, evidence was given that before she signed the agreements, she had taken independent legal advice.

In a case that contained many complexities, the judge concluded that 'the parties did consensually enter into one or more pre-nuptial agreements and that, at the time when they were entered into, the effect of the agreement or agreements was not vitiated by factors such as fraud, misrepresentation or undue pressure'.

The settlement ordered was one dealing with maintenance of the ex-wife and two children, giving the wife £2 million from the proceeds of the sale of the matrimonial home in order to provide a home for the family until 12 months after the eldest of their children ceases full-time education. In addition, the ex-wife was awarded annual maintenance of £95,000 per year.

Dear Diana,

With best regards and many thanks personally for the assistance you gave us.

As always, "Rose & Rose" advice and conduct has been exemplary and we have no hesitation in recommending both yourself and colleagues.

MG & CG



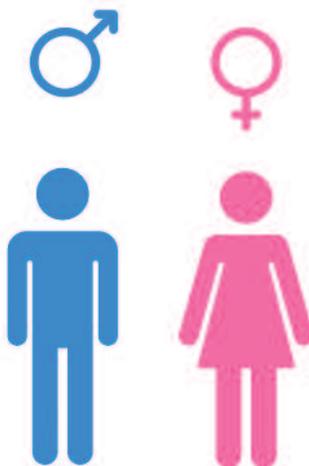
Diana Cosk

GENDER PAY GAP REPORTING

The Equality Act 2010 (Gender Pay Gap Information) Regulations 2017 introduce mandatory gender pay gap reporting on an annual basis for private and voluntary sector employers with 250 or more employees.

Employers will be required to compute and report on the difference in pay between 'relevant' male and female employees on an annual basis using data from a specific pay period that contains the relevant 'snapshot' date – the first of which was 5 April 2017. Employers will then have 12 months beginning with the relevant date in which to publish the information – i.e. the first report will be due no later than 4 April 2018.

The Advisory, Conciliation and Arbitration Service and the Government Equalities Office



have published guidance and fact sheets on this topic to assist employers in complying with their gender pay gap reporting obligations.

The Equality Act 2010 (Specific Duties and Public Authorities) Regulations 2017 extend the requirement to report on the gender pay gap to public sector employers.

The Regulations are being introduced as part of the existing public sector equality duty and the snapshot date for the collection of data was 31 March 2017. Public sector employers must therefore publish their first gender pay gap information no later than 30 March 2018.

All employers are advised to take pay equality seriously and take remedial action where a significant gender pay gap is found to exist.

In a decision that could have significant ramifications for pension scheme managers, the Supreme Court has ruled that the long-time partner of a deceased man is entitled to a survivor's allowance from his local government pension scheme, despite not having been nominated to receive the benefit by the deceased.

The man died two days after the couple, who had been together for a decade, became engaged. He left no will.

The scheme rules require that unmarried members of the scheme must nominate their partners in order for them to be eligible for a

survivor's pension. No such requirement is present with regard to spouses and civil partners. The surviving partner, who otherwise satisfied the scheme's conditions, argued that this stipulation was incompatible with Article 14 of the European Convention on Human Rights, which guarantees the right to 'peaceful enjoyment of possessions'...in this case, the rights under the scheme.

The ruling was specific to the Northern Ireland local government pension scheme as those in the rest of the UK do not have the 'opt-in' requirement. However, it remains to be seen what impact it may have on other pension schemes which have similar rules.

Additionally, in some cases there may be room for argument over the length and permanency of the relationship needed to qualify for the survivor's pension, although there is established law in other areas which can help.

The real message of this case is that if there is a procedure to follow which can avoid legal action being necessary, it is best to act appropriately. Similarly, making sure you have a valid will at all times is sensible: even if your estate is small, administration is much easier when there is a will.

AND FINALLY.....

QS ROSE AND ROSE WELCOMES A NEW MEMBER TO THE DISPUTE RESOLUTION TEAM



Ryan Senior

We are delighted to welcome Ryan Senior to our team, joining the litigation department. Ryan has 8 years experience representing both claimants and defendants, coming from an in-house legal team for a UK insurer. Ryan has experience in

litigation, personal injury, employment and immigration. Welcome aboard Ryan!

And congratulations to Dimitra Pantopoulou who is starting her training contract with us after all of her hard work and help as an assistant and paralegal.



Dimitra Pantopoulou



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