

BEVISS & BECKINGSALE

NEWSLETTER

WINTER 2011/12

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HELP FOR FIRST TIME BUYERS

We are offering a fixed fee of £550.00 plus VAT for first time buyers. Please see our "LATEST NEWS" section of our web site for more details.

www.bevissandbeckingsale.co.uk

MOVEMBER—A GREAT EFFORT BY THE TEAM

Members of Beviss & Beckingsale's Movember team 2011 (Pictured below) are proud to have raised the princely sum of £3,047.00 in support of the Movember Foundation. When added to the Giftaid sum the final total received by the Movember Foundation will be in excess of £3,800.00!! Pictured are the 8 participants.

(Back Row L to R)

Michael Micklethwait, Ken Jenner, Howard Quinlivan (Team Captain), Paul Watkins.

(Front Row L to R)

Mark Ollier, Nigel Cole, Robin Dickenson, Steve Rideout.

Nigel Cole says:- "People have been incredibly generous. We hope that we have sparked discussion and raised awareness of the importance of Movember for family, friends, clients and colleagues alike"



CONTESTED PROBATE—Part 2

Part 2

A loved one has died, but left you nothing. Can you do something about it?

Maybe. The will might be open to challenge on one or both of the following grounds:-

- A. Lack of testamentary capacity, “knowledge and approval”, undue influence, or conflict with lifetime promises by the deceased
- B. Under the provisions of the Inheritance (Provisions for Family and Dependents) Act 1975 (“the 1975 Act”)

Following the commentary in our most recent newsletter on claims under the 1975 Act, we turn our attention to other possible grounds for challenging a will.

Towards the end of last year, the Court of Appeal heard and gave judgment in the heavily publicised case of Gill -v- The RSPCA & Others, where it considered the law surrounding challenges to wills. In particular, the Court had to consider whether the deceased (Mrs Gill) had known and approved the contents of her will. In that case Dr Gill, who was the only child of Mrs Gill, was left nothing from her £1 million estate, which instead was left to the RSPCA.

Mrs Gill was found to have been suffering from severe agoraphobia and a panic disorder, which medical evidence suggested would have affected her ability to concentrate and process information. The Court found that because of this, although she had “testamentary capacity” i.e. the necessary mental capacity to make a will - she would not have been able to appreciate the terms of her will when the solicitor read it to her, and therefore did not have the necessary “knowledge and approval”. In addition, the Court heard evidence that Mrs Gill did not even like the beneficiary which she had named in her will and had been insulting toward the RSPCA during her lifetime.

This was not a case where the daughter had been estranged from her parents. On the contrary, Dr Gill had been close to both of her parents and had done a great deal for them over the years. In addition to her claim that Mrs Gill did not know and approve her will, Dr Gill raised the claim that her mother had been unduly influenced in the making of the will by her father, who was a domineering and opinionated character. The Court of Appeal did not feel it was necessary to give a ruling on this part of the claim as Dr Gill had already successfully established that the will was invalid.

Whilst the facts of the Gill case were exceptional, it does serve as a very useful reminder of the fact that there are a number of ways in which the validity of a person’s will can be challenged. It is therefore important to seek legal advice as soon as possible if you, or someone you know, suspects that the person who has died either didn’t (or couldn’t) understand what was in their will or was pressurised into making it by one or more of the beneficiaries.



If you have any queries regarding a possible claim against the estate of someone who has died then please contact either myself on 01404 548050 or by email to ego@bevissandbeckingsale.co.uk, or my colleague, Stephen Fisher Crouch on 01404 548050 or by email to sfc@bevissandbeckingsale.co.uk.



PROPERTY CHALLENGE

A woman who paid more than 90 per cent of the cost of a £3 million property purchased for her daughter, in whose name the title is held, has failed in her attempt to have the ownership of the property changed to reflect her contribution.

It would seem that the dispute arose after the daughter married. Her mother disapproved of her choice of husband, a tax inspector who had been married three times before.

The daughter claimed that her mother's contribution to the purchase price of the property was intended as a loan.

The result was a bitter court battle, which has led to a schism in the family as well as needless expense.

The judge ruled that the daughter was the rightful owner of the property, although he ordered her to repay her mother £101,000 on the loan.

“Had the financial arrangements been set out clearly at the time the property was bought, the case would not have arisen,” says **Mark Ollier of our Seaton Office**. “If you are considering giving financial help to someone else in order to buy a home or for any other purpose, it makes sense to have the arrangements properly documented, so that the possibility of a later challenge is minimised.”



AMENITY VALUE STOPS DEVELOPMENT

A recent case serves as a warning to developers who regard covenants as inconveniences rather than serious impediments.

Builder Wimpey had secured land in Gloucestershire and proposed to build 17 houses on it. The land had a covenant attached to it which prevented any building on it, so Wimpey applied to have the covenant removed.

Wimpey argued that the covenant impeded the ‘reasonable use of the land’ – a ground which can justify a covenant being modified or removed. However, a group of local people opposed the removal of the covenant on the ground that if the development took place, the character of the land would change from being semi-rural to being suburban.

This, they argued, would cause them a substantial loss of amenity value.

The Tribunal backed the action group.

The case shows that determined opposition can make it difficult or impossible for a developer to proceed with the development of land which is subject to a ‘no build’ covenant.

We can advise you on all aspects of planning law.

For further advice on this and any other commercial property matters, please contact **Mark Carlisle of our Axminster office**.



GET IT IN WRITING

A recent case concerning a lease over a property in Manchester illustrates yet again the importance of making sure that any matters under negotiation which are crucial are agreed in writing and unequivocal.

The problem occurred when a property was 'split' between a man (strictly his company) and his sister-in-law's

company as part of the break-up of a family company. The man's company had a 15-year lease over the building and his sister-in-law's company became the landlord. The lease contained a three-month break clause. The upper floors of the building were used as offices and the ground floor for the trading activities of the man's company. He assumed that the lease would remain with his company to be renewed ad infinitum and that the break clause would not be enforced.

All went well until the landlord decided to redevelop the property and gave notice to the tenant company under the break clause that it would require possession for its own purposes. The tenant opposed the application, claiming that the landlord was 'estopped' (prevented by its earlier representations, on which the tenant had relied to its detriment) from Claiming possession. The tenant also claimed that the transfer of the

property should be rectified by making the break clause applicable only to the upper floors of the building.

The court considered that there had been no specific representation made by the landlord regarding the break clause, nor was there any implied representation. The tenant's claims were therefore rejected.

This dispute could have been avoided had the original documentation been appropriately drafted. It is essential to ensure that all commercial documentation deals with the likely eventualities and that important issues are not left to be dealt with by way of 'understandings'.

For further information or advice please contact **Frances Griffiths of our Chard office.**



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Our Legal Services: -

Moving House

Wills, Trusts & Probate

Family & Co-Ownership

Country & Agricultural

Commercial

Resolving Disputes

Financial Advice

This newsletter is intended merely to alert readers to legal developments as they arise. The articles are not intended to be a definitive analysis of current law and professional legal advice should always be taken before pursuing any course of action.

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