SUMMER 2015

MOSS SOLICITORS

SUMMER LEGAL REVIEW

Your legal bulletin on news & views from Moss Solicitors LLP

Sock Gallery Loughborough Town Hall

Following the success of last year's event, we're delighted to be repeating our Summer Art Spectacular networking evening.

This year's event is on Tuesday 16th June from 5pm onwards and will feature live music from Leicestershire Jazz, to be enjoyed whilst taking in an exhibition by Artspace Loughborough.

There will also be the chance to win a painting by Jo Sheppard, one of the members of Artspace.

This year's event will be free to attend, but tickets (to include arrival drink and buffet) must be reserved in advance.

If you are interested in attending, please email: events@moss-solicitors.co.uk, quoting 'SAS – N'.

HARD WORK NOT ENOUGH FOR SHARE OF HOME

A woman who sued her ex-partner for a half share of his £500,000 home – on the basis that she and members of her family had put two years of toil into renovating the property before the relationship ended – has had her claim rejected by a judge.

The woman had been 'devastated' when her boyfriend broke up with her four months after moving into his new home. There was no dispute that she and her relatives had worked hard restoring the property to a good state of repair and decoration in the belief that the couple would live there together. She was convinced that marriage was on the horizon and that the house would be their family home.

However, the judge rejected any suggestion that the whole episode was a 'deceitful scheme' by the boyfriend to get his property restored by the woman and her family free of charge. Arguments that he had orally agreed to give her half the property during a family dinner party were also dismissed.

Although the woman and her relatives had contributed much to the project, her boyfriend – who had paid for the house which was in his sole name – had never committed himself to becoming engaged, nor was their labour provided on the condition that she would be entitled to an interest in the property.

Cases like this occur with depressing frequency. The most effective way to avoid such disputes is to make a 'living together agreement' and to make sure this is appropriately evidenced at the outset in legal form. Alternatively, a trust arrangement can be set up.

We can advise you on how to protect yourself in circumstances such as these.

COMPANY NAME CHANGES

Changes to the rules governing company names have come into force which simplify and reduce the restrictions imposed on the names that can be registered at Companies House.

Fewer words need to be disregarded for the purposes of ascertaining the similarity of company names. This will allow more companies with similar names to be registered.

Another change is that the provisions relating to the display of the company name at the registered office have been relaxed.

When searching for information on a company, to avoid confusion, it is sensible to use the company's registered number, which is always definitive.

For advice on all aspects of setting up a new business, contact us.

MOSS SOLICITORS UPDATE

FAILURE TO ASSIGN LEASE LEAVES TENANT LIABLE

Termination or assignment of commercial leases can have many pitfalls, so cases involving tenants who wish to, or do, vacate let premises abound in the courts. A recent case concerning what seemed like a straightforward assignment of a commercial lease illustrates just one problem that can arise.

The tenant had a ten-year lease on the premises, but after a year wished to vacate them. It found another tenant to take on the lease and the 'new' tenant moved in and started paying the rent due.

The new tenant carried out works on the premises, as did the landlord at the new tenant's request. However, a year later the new tenant decided to vacate the premises because of an inability to agree the precise terms under which it accepted the assignment of the lease. These had been in negotiation since before it occupied the premises.

In particular, the new tenant had refused to provide personal guarantees from its directors, which were insisted upon by the landlord. The new tenant moved out and the landlord then claimed the rent due from the original tenant under its lease.

The case turned on whether the lease had been successfully assigned in the first place. The argument went to the Court of Appeal, which ruled that it had not.

Assignments of leases can be very tricky and good advice is needed to make sure that your legal position is fully protected.

DELUXE NOT DISTINCTIVE

Lidl has had an application to have 'Deluxe' registered as a Community Trade Mark rejected on the ground that it is not sufficiently distinctive in character to warrant trade mark protection.

The trade mark itself emphasised the word 'deluxe', but the presentation of the mark was not sufficiently unusual to give it uniqueness.

If you are planning to use a descriptive trade mark, especially one that doubles as a description of quality, great care must be taken if formal trade mark protection is wanted. Take legal advice at an early stage.

We can advise you on all aspects of protecting your intellectual property.

OUT-OF-DATE WILL LEADS TO DISPUTE WITH CHARITY

In a case which underscores the wisdom of keeping your will up to date, changes in the law relating to Inheritance Tax (IHT) led to a bitter dispute between a widow's family and her favourite charity in respect of her £680,805 estate.

In an apparently straightforward attempt to achieve tax efficiency, the widow had in 2001 signed a professionally drafted will, leaving to her family the proportion of her estate which fell below the nil rate threshold for IHT, which was £325,000 at the date of her death in 2011. The balance she left in trust for the Woodland Trust.

Between the signing of the will and her death, the Finance Act 2008 became law. In a widely welcomed loosening of the IHT regime, the Act made it possible for the unused portion of the nil rate band to be transferred between spouses and civil partners. The widow's husband had died many years earlier. His nil rate band was unused and £650,000 of her estate was thus free from IHT.

In those circumstances, a dispute arose as to whether the charity was entitled to £355,805 from the widow's estate, or just the lesser amount of £30,805 as claimed by her family – that being the sum remaining after the total available nil rate band was exhausted. A judge ruled in the family's favour on that issue.

In dismissing the Woodland Trust's challenge to the decision of the lower court, the Court of Appeal found that the implicit purpose of the will was to leave as much as possible to family members without incurring IHT. The widow was unlikely to have had a sophisticated appreciation of the intricacies of tax planning and, on a correct interpretation of her will, her family was entitled to inherit up to the full extent of the tax break available to her on her death.

Charities are eager to maximise their bequests and cases in which wills are challenged are by no means uncommon. This dispute could have been avoided had the will been brought up to date with a simple codicil.

If your will was created some time ago, we would be happy to review it for you to ensure that it achieves its intended aims.

LADY OF LEISURE LIFESTYLE NO LONGER AN OPTION, SAYS COURT OF APPEAL

The Court of Appeal has turned down a woman's appeal against a decision that maintenance payments from her ex-husband should no longer be payable once he reached retirement.

The case concerned a couple who had divorced after an 11-year marriage. The original decision of the court was that the ex-wife should receive £75,000 per annum from her former husband. As well as child maintenance and school fees, this included £33,000 in maintenance for her for life. The couple's matrimonial home was ordered to be sold and the proceeds divided between them, allowing her to have a property free of mortgage with stabling for the family's horses.

However, when the husband, now 59, began to consider his retirement and the consequent reduction in his income, he applied to the High Court to have the maintenance payments to his ex-wife reduced.

A family judge criticised the ex-wife for making no effort to find work for herself and expecting that her ex-husband would maintain her for life, saying that she should 'get on with it' and get a job to support herself. She ordered that the payments must cease, being gradually reduced over a five-year period until the ex-husband's retirement.

The Court of Appeal refused the ex-wife permission to appeal against the ruling, Lord Justice Pitchford saying, "It is now imperative that the wife go out to work and support herself."

Judges have discretion when deciding the financial arrangements on divorce and each case will be decided on the individual facts.

If you are concerned about your maintenance obligations, contact us for advice.

GOVERNMENT ANNOUNCES NEW NATIONAL MINIMUM WAGE RATES

The Government has announced the National Minimum Wage (NMW) rates that will apply from 1 October 2015.

The following rates are as recommended by the Low Pay Commission (LPC):

- The adult rate will increase by 20p (3 per cent) from £6.50 to £6.70 per hour;
- The rate for 18- to 20-year-old workers will increase by 17p (3.3 per cent) from £5.13 to £5.30 per hour; and
- The rate for 16- and 17-year-olds will increase by 8p (2.1 per cent) from £3.79 to £3.87 per hour.

The NMW rate for apprentices will increase by 57p (20 per cent) from 1 October 2015, from £2.73 to £3.30. The LPC had recommended an increase of 2.6 per cent to £2.80 per hour.

IS YOUR SMOKING POLICY UP TO DATE?

A recent Employment Tribunal (ET) case *(Insley v Accent Catering)* is a reminder of the importance of keeping workplace policies and procedures abreast of current innovations as well as developments in the law.

The ban on smoking in pubs, restaurants and workplaces, which was introduced in 2007, does not cover e-cigarettes, which work by vaporising 'e-liquid' rather than by burning tobacco. Ms Insley, a contract catering assistant at a secondary school, was the subject of a complaint by the head teacher to her employer that she had been smoking an e-cigarette in full view of pupils at the school.

Ms Insley resigned before a disciplinary hearing to decide whether her conduct was serious enough to warrant her dismissal. She brought a claim of constructive dismissal.

The ET dismissed her claim as she had resigned before any decision as to the seriousness of her conduct had been taken.

In reaching its decision, the ET commented that had Ms Insley been dismissed, the school's smoking policy would have been an important factor in deciding whether or not the decision to dismiss her was reasonable in the circumstances. The policy banned smoking on the school premises but did not expressly prohibit the use of e-cigarettes.

We can assist you in drawing up policies and procedures tailored to your organisation or in updating those already in existence.

COLLECTIVE REDUNDANCY CONSULTATION AND THE MEANING OF 'ESTABLISHMENT'

Under Section 188 of the Trade Union and Labour Relations (Consolidation) Act 1992, employers have a duty to consult with appropriate representatives of employees concerning forthcoming redundancies if 20 or more employees are to be dismissed at one establishment within a 90-day period. Failure to do so can lead to a protective award requiring the employer to pay each affected employee 90 days' pay.

In May 2013, in a decision involving the protective awards payable to employees made redundant by retail chains Woolworths and Ethel Austin, the Employment Appeal Tribunal (EAT) ruled that the words 'at one establishment' should be deleted from the Act, in order to give effect to EU Council Directive 98/59EC, which it is intended to implement, and protective awards were payable to former employees who had worked at stores with fewer than 20 members of staff *(USDAW and Another v Unite the Union and Others)*.

The effect of the ruling would be that the duty to consult would be triggered when 20 or more employees were to be dismissed as redundant from a business as a whole, irrespective of the number of people employed in each individual workplace.

The employers appealed to the Court of Appeal, which in turn sought the opinion of the Court of Justice of the European Union (CJEU).

The Advocate General has now published his opinion, which is that the Directive does not require – nor does it

preclude – aggregating the number of dismissals in all the employer's establishments for the purposes of verifying whether the '20 person' threshold has been met. Furthermore, the term 'establishment' denotes the unit to which the workers made redundant are assigned to carry out their duties, which it is for the national court to determine.

Member states may decide to increase the level of protection afforded to workers when there are to be collective redundancies, provided that this would, on every occasion, be more favourable to the workers. It is for the national courts to verify that this is the case.

The Advocate General's opinion is not binding on the CJEU but it is followed in approximately 80 per cent of cases. Its decision is due later this year.

We will keep you informed of developments in this important case.

WHEN TAX SAVING CAN COST...

It is common for company directors who are shareholders in their own company to take reduced salaries, but high levels of dividends.

As long as doing so does not fall foul of the law which prevents the distribution of profits that have not been made, it is normal for this strategy to be effective in producing a saving of both employer's and employee's National Insurance Contributions. However, where the arrangement is such that its purpose can be regarded primarily as one of tax avoidance, it is possible that HM Revenue and Customs may attack its validity under the 'General Anti-Abuse Rule'.

Following such a policy can also pose other risks, as a recent case shows. It involved a director who was very modestly paid, but who received substantial dividends. When he lost his job, he claimed unfair dismissal at the Employment Tribunal (ET) seeking compensation based on his salary and the dividends he was accustomed to receiving.

His claim was successful but, in calculating his compensation award, the ET found that his earnings did not include his dividend income. His entitlement was, therefore, capped, in accordance with the Employment Rights Act 1996, at 12 months' salary (£9,254), as only this was due to him under his contract of employment.

Termination of the employment of directors, even those who do not consciously use tax-saving strategies, can lead to unwanted results. If you are considering leaving the employment of a company in which you are a shareholder, it is best to plan in advance and take appropriate advice.

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