

Farming partnership disputes: the Sargeant case

The devil is in the detail in farming accounts especially when a partnership is involved. Julie Butler, partner and Libby James, tax and accounts associate at Butler & Co, examine the recent case of Sargeant

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With so many farming cases going through the courts, there has been a huge emphasis on the need to ensure that farm accounts are right. *Ham v Bell* [2016] EWHC 1791 (Ch) showed the importance of farm accounts and partnership property, and the courts continue to emphasise this.

The recent case of *Sargeant v Sargeant* [2018] EWHC 8 (Ch) was yet another instance of a dispute between farming families and shows the need for family members to understand their full position regarding the future ownership of their farm prior to death.

In this case, the claimant, being the spouse of the deceased, Mary, tried to exercise her right to bring a claim under s1(1)(a) of the Inheritance (Provision for Family and Dependents) Act 1975 (IPFDA 1975), almost 10 years after the grant of probate. Her reason for such a delay was a misunderstanding of the situation, not least the all-too-common question of whether farmland was or was not partnership property.

The difference between partnership and non-partnership property is one that tax advisers and planners are aware of due to the inheritance tax implications: while partnership property can achieve 100% business property relief (BPR), non-partnership property will only allow for 50%.

Many farming families, particularly spouses, do not understand the power of the partnership agreement and how partnership farmland can be left to the surviving partners rather than the widow. The *Sargeant* case only serves to highlight this.

Joe Sargeant died in May 2005, leaving the majority of his farming estate to his executors to hold on discretionary trust. The beneficiaries under the trust were Mary, his wife, Jane, his daughter, and Jane's children. While there was no dispute over his will initially, following a

planning permission application for residential development and the subsequent steep increase in the value of the farmland from circa £3.2m to £8m, ownership of this land became an issue.

Mary believed the land was part of Joe's personal estate. Conversely, Jane took the position that the farmland was owned by the farming partnership, which had passed to her by succession and, as such, was outside the estate. Mary should clearly have been made a farming partner to be protected, but, more importantly, she should have sought advice from the outset.

Generalised statements

The issues arose from the fact that while asset rich, Joe Sargeant's estate was cash poor. Mary placed reliance on generalised statements her husband made to her before his death, stating that she would 'be a wealthy woman after I die'. However, the agreed salary from the farming partnership of £20,400 was hardly sufficient to cover her expenditure of circa £40,000 per annum.

This led to a dispute with her daughter, Jane, and drove Mary to make a claim for 'reasonable financial provision' from her late husband's estate under the IPFDA 1975, s1(2)(a).

This is defined as follows: 'In the case of an application made... by the husband or wife of the deceased (except where the marriage with the deceased was the subject of a decree of judicial separation and at the date of death the decree was in force and the separation was continuing), [reasonable financial provision] means such financial provision as it would be reasonable in all the circumstances of the case for a husband or wife to receive, whether or not that provision is required for his or her maintenance'.

Time limit

Usually the time limit for such a claim is six months after the date that probate was granted. Given that this occurred in 2006, Mary was years too late. However, it is possible for a person to apply for the time limit to be extended in exceptional circumstances.

As such, Mary required permission to bring proceedings under s2 of the IPFDA 1975, though her daughter opposed this.

In addition to this claim, Mary was also disputing Jane's original partnership agreement with her father and wished to remove her as an executor. However, Mary said she would drop this if her reasonable provision was allowed.

It was acknowledged that the claim was brought a long time after the six-month deadline, 'longer than in any reported case in which permission has been granted', but this was not deemed 'fatal' by the claimant.

Para 35 of the judgment states: 'What is important is the context and the reasons for the delay. In that respect he submits that Mary did not understand her position as a discretionary beneficiary, or the financial implications for her...she always believed she was the owner of half of all the matrimonial assets (and one of the additional claims she seeks to bring if permission is not given is that she is so entitled, by virtue of her understanding prior to her husband's death).

‘No estate accounts had been produced which might have shown that all the assets were contained [in] the estate. Although she had been involved in meetings before the will was entered into, she had not understood what was discussed about the discretionary trust arrangements. She had not had to be concerned while her husband was alive with family finances or how to finance her lifestyle and was not prepared for the costs that would be incurred in doing so after his death.

‘She had deferred to Jane's wishes or placed Jane's interests above her own, which he said Jane had abused. As a result, her income position and savings had eroded over time to the point where she was compelled to take advice.’

Mary's reliance on general comments her husband made is far removed from the benchmark set by the court - they require concrete evidence

General rule departure

When dealing with the discretion to permit a claim to proceed outside the time limit, reference is usually made to the considerations identified by Megarry VC in *Re Salmon* [1981] Ch 167 and it was no different here. This places the onus on the claimant to establish sufficient grounds for departing from the general rule.

Furthermore, the court needs to look at the reason for the delay, the promptitude with which the claimant did take steps to commence their action and whether they have an arguable case.

With regards to the latter, the representative for the claimant argued: ‘Mary would have a very strong claim to provision equal to half the matrimonial assets, on the basis that she was the wife of a multimillionaire with a 45-year marriage and provision on divorce would have started from consideration of equal division, from which he said there were no strong reasons to depart.’

However, while judge David Cooke acknowledged there would be an arguable case, he did not wish to speculate on the strength of it.

He stated: ‘It is clear that hypothetical provision on the basis of a divorce is not determinative; the fact that the will made provision for Mary as the beneficiary of a discretionary trust with guidance given by letters of wishes would be relevant for the court dealing with a claim under the 1975 Act in considering not only whether the will made ‘reasonable provision’, but also whether it was fair and just to depart from the wishes of the deceased by making different provision. It is not necessary for me to decide whether Mary's claim would be a strong one, and I decline to do so.’

The high court thus rejected the application for while her argument had good prospects of success, she had had every opportunity to seek legal advice and chose not to do so in a timely manner. The delay was her doing and unreasonable. The judge ruled: ‘Drawing all these matters together, in my judgment the claimant has not made out a sufficient case that is right and just to permit the claim to proceed.

‘This is not a case in which any material facts have been concealed from Mary at any stage, or where she has been misled by Jane or the trustees.

‘Nor is it a case in which the claim is been made necessary by any supervening event outside Mary's control, either an unexpected external event or some act or conduct for which Jane or the trustees are responsible...

‘The reality is that Mary took her own decision to continue to work within the arrangements provided for by the will rather than to explore whether she had any option available to vary them, in the full knowledge of the financial difficulties she was under, and maintained that decision over a very long period.’

Given the very extensive delay, the operative cause of which was Mary's own failure to take any steps to explore whether she could disturb those arrangements, it would not be right to give her permission to do so now.

Mary was thus unable to pursue her claim.

Moral of the story

This case is the common modern-day story of farming families and inheritance tax, starring a misunderstanding of the role of the partnership, potential development values and family conflict. The moral, as always, is to seek advice at an early stage and goes to show the importance of accounts and tax advisers.

When the farming family, landowners and members of the partnership go through farm accounts and tax returns, it is imperative the tax role of the spouse and other dependents is also considered. Where there is a partnership agreement it can be very beneficial to attach this to the accounts, so everyone is aware of the position of ownership and how the accounts correctly reflect that.

As in *Ham v Bell*, the question of what constitutes evidence of intention was again raised by this case, be it the financial statements or ‘notes of key meetings and conversations’ made by solicitors, tax advisers or accountants. Mary’s reliance on general comments her husband made is far removed from the benchmark set by the court. They require concrete evidence, and all farm advisers must remain conscious of the fact that this often comes in the form of documents prepared by professionals.

All such assumptions used in the preparation of documents need to be raised on researched fact with a strong trail, not just ‘informed guesses’. Tax planning and legal understanding is all about the attention to detail.

About the authors

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