Ground control

JULIE BUTLER UNDERLINES THE IMPORTANCE OF ESTATE AND TAX PLANNING IN THE CONTEXT OF FARM DISPUTES IN ENGLAND AND WALES

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KEY POINTS

What is the issue?

There have been a number of farm proprietary estoppel and dispute cases in the UK that highlight the need for legal agreements and for estate planning practitioners to help with legal and tax clarity for the farming industry.

What does it mean for me?

Farmers have a history of high-profile disputes within the farming family/business and the potential for future disputes still remains. The associated risk must therefore be factored into one's strategy.

What can I take away?

A large number of farmers do not have the correct legal agreements and tax protection in place, and the opportunities to help the farming industry are significant.

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On 11 November 2020, the *Agriculture Bill 2019-2021* became the *Agriculture Act 2020*, heralding a total change to how farmers and land managers in England will be rewarded in the future with public monies for 'public goods'. It is intended to transform the way the government supports farmers. It is timely to review all farm tax planning and legal understanding in anticipation.

There have been a number of farm proprietary estoppel and dispute cases featured in the farming and the national press over the past few years that demonstrate the animosity felt by farmers. These cases highlight the need for legal agreements and for estate planning advisors, accountants, tax advisors and private client lawyers to help with legal and tax clarity for the farming industry.

Examples of recent cases are *Guest* v *Guest* and *Horsford* v *Horsford*.[1,2]

GUEST v *GUEST*

The England and Wales High Court (the Court) case of *Guest* has demonstrated the need for the correct recording and understanding of promises made by farming parents, together with the need for the correct application of payroll and wages for members of farming operations. Such disputes and developments are not unusual in family farming operations and show the need for robust legal documentation prior to these types of problems erupting.

Guest deals with a son's claim, based on proprietary estoppel for a share in a farming business. The claimant, Andrew, worked on the family farm for 30 years at a reduced wage (compared to the industry average for the skills he developed). He claimed that he did this in reliance on assurances that his father had made and on which he said his father should not be able to renege.

A legal and tax definition of Andrew's role from the outset would have helped, with the addition of ensuring that this was updated as the role developed.

THE ROLE OF THE ADVISOR

Estoppels operate where one party has been induced to act on the basis of a promise made by another party, and that other party has then sought to retract that promise. Where an estoppel is established, it will typically bind the second party to their original promise. It is important that there is evidence in writing that the promise was made.

The Court found that it would be unconscionable to allow Andrew's parents to not honour their promises, and the England and Wales Court of Appeal upheld that decision. The facts could be considered familiar in farming terms; the parent/s make promises to one of their children that they will inherit the family farm at some time in the future. The history is that the farming child relies on those promises to the extent that they forego alternative opportunities and work long hours for very little money, in the knowledge that they will possibly receive their reward in due course. Farming families have to work closely and this can create pressures. Without the correct legal agreements, relationships often subsequently deteriorate and what seemed an agreed strategy at the time is overridden.

How the award from the court is treated for tax purposes must be taken into consideration from the outset and at the settlement agreement stage. Indeed, interactive succession and tax planning by the parents is considered part of the solution to help prevent such claims.

We now consider the case of *Horsford* v *Horsford*, where the partnership agreement resulted in the claim failing.

HORSFORD v *HORSFORD*

The Horsford family is made up of Marian and Davis (now divorced) and their children: Elizabeth, Helen and Peter. Peter was the only child to work in the family farming business, which was traditional at that time. He joined the farming partnership with his parents in 1987 on an equal basis. Davis retired from the partnership when he was in his 90s and, accordingly, the partnership then only consisted of Marian and Peter. In June 2012, a written partnership agreement was agreed and signed by the parties, and in December 2016, Marian served notice on Peter of her intention to retire from the partnership, taking effect from the end of June 2017.

> 'The tax position arising from business decisions must be fully understood by all parties, which can be a way to force understanding of the legal situation'

Marian, the claimant, issued proceedings against Peter in March 2018, claiming payment for her share of the partnership, calculated at over GBP2.52 million. There was a dispute over valuations. It was agreed that it is common ground that a 50 per cent beneficial interest in land is worth less than 50 per cent of the value of the land. The judge held that the land had to be valued, not the beneficial interest. It is generally considered that all partnership agreements should be reviewed regularly to ensure that everyone is happy with them. Peter defended the claim by his mother and issued a counterclaim for proprietary estoppel on the grounds that he had been promised by his parents that he would inherit the entire farm on their deaths. But, of course, Marian had not died.

Peter's case was that his reliance on the alleged promises made by his parents involved being groomed to take over the business and not being able to spend any substantial time away from the farm.

THE MULTIPLE BENEFITS OF THE PARTNERSHIP AGREEMENT

One of the most interesting points in this case is the effect of the written partnership agreement (the Agreement), together with the retirement provisions contained within it. The Agreement stated that, from the commencement date, it would be 'deemed to have governed the affairs and operation of the partnership' and 'superseded any earlier agreement'. The Agreement contained provisions to be followed on the death or retirement of any of the partners.

Peter had assumed that his mother was owed no monies on her retirement due to promises that she had made. It was under these retirement provisions that Marian served her notice of retirement. Peter claimed proprietary estoppel in relation to alleged assurances made prior to the written Agreement being entered into; however, the Agreement stated to supersede any earlier agreement, which would include estoppel claims. Some farm advisors and farming partners would see the introduction of a well-thought-through partnership agreement as a way of overriding previous promises and misunderstandings, providing all parties fully understand the implications.

There was no documentary evidence of the promises and by the time Peter signed the Agreement he was a wealthy man. The judge found that Marian was fully entitled to retire under the terms of the 2012 partnership agreement, an agreement that had been discussed and negotiated with Peter at that time and was also drawn up by the solicitor instructed by Peter. It was considered he was aware that Marian could decide to retire and therefore there was no basis for claiming that this was unconscionable on her part. The estoppel claim failed mainly due to the overriding partnership agreement.

UNDERSTANDING PREVENTS FUTURE LITIGATION

It could be argued that the most important lesson of this case is the crucial need for farming families to have full and frank discussions with each other about the future of the farming business and succession planning moving forward. This should tie into the understanding of the partnership agreement together with the farm accounts, with full tax planning. Although these discussions may feel difficult at the time, ensuring that everybody fully understands their position can prevent litigation such as in *Horsford*, which can be extremely costly in more ways than one. The tax position arising from business decisions must be fully understood by all parties, which can be a way to force understanding of the legal situation.

The advantage of the advisor explaining the overall tax advice in detail around succession planning and the partnership agreement is that this presents another opportunity for all parties to discuss ownership of the farm, inheritance tax (IHT) and capital gains tax.

There is much speculation that the spring budget will include the all-party parliamentary group suggestions that IHT and farm tax be turned on their head. Consequently, all farm tax planning will potentially need updating, and now is a positive time to start work on farm understanding, legal agreements and succession planning to head off the uncertainty that lies ahead.

#CONTENTIOUS TRUSTS AND ESTATES #ESTATE PLANNING #FAMILY BUSINESS #LAND AND PROPERTY

1 [2020] EWHC 584 **2** [2019] EWHC 869 (Ch)