

Promised land



Julie Butler illustrates the importance of keeping detailed farm accounts, tax reports and meeting notes in warding off disputes of agricultural inheritance claims

The potential for dispute in farming families over ownership and succession is highlighted by the recent case of *James v James*,¹ in which Raymond Allen James (known as Sam James) lost his battle in the England and Wales High Court. The claimant's father, Allen James, died in 2012, leaving everything he owned, including the family farm, to his wife and daughters. Sam, aged 60, took legal action against these family members, as he felt his father's will did not provide him with what he had been promised. Sam had worked on Pennymore Pitt Farm for nearly 35 years and claimed that he was 'completely cut out' of his father's estate, after devoting his whole life to working for his father on the promise that a substantial amount of the farm would eventually be his.

between the three children' and that his will reflected this.

THE IMPORTANCE OF TAX REPORTS

This case highlighted how the actions of professionals bear significant weight in such disputes. For example, tax reports can be used as evidence to show the intention of farming partners. From Matthews J's judgment:

'I have already referred to the letter from Mr Hardy [the farm tax advisor] to the partners (the testator, Sam and Sandra) dated 20 January 2003, referring to a meeting the previous week. Mr Hardy had checked rates of agricultural property relief and taper relief on tax in relation to gifts of land. Since the land belonged to the testator alone, there must have been some discussion of possible gifts by him to others in the future. But there is no mention of any existing promises to do so.'²

Such reference by the court shows the need for all farm accountants and advisors to keep excellent notes of all discussions and intentions of their clients that are raised as part of the fact-find and tax planning. Given the importance of both the farm tax relief and the size of the potential farm claims, everything discussed in the context of farm succession must be recorded with a high attention to detail, including the motives behind all tax planning.

THE IMPORTANCE OF THE FARM CAPITAL ACCOUNTS

With regard to the partnership accounts, the judgment looks at the capital accounts together with the context of where land has been bought using partnership funds. The judge continued:

'He also complains that the testator financed the further purchases of land out of the profits of the business. Yet it

➔ KEY POINTS

WHAT IS THE ISSUE?

With farmland values remaining high, despite the worries over Brexit and low farm profitability, there appears to be an increased risk of disputes over ownership and succession. This problem is often exacerbated by the generic lack of strong legal agreements within the farming community, which is highly aware that 'proprietary estoppel' and will claims can be time-consuming, stressful and expensive, in terms of legal fees.

WHAT DOES IT MEAN FOR ME?

Practitioners should aim to provide detailed records in order to accurately show clients' motives and intentions.

WHAT CAN I TAKE AWAY?

How best to plan, record and agree with the farming family how they wish to further their business, with clarity and understanding.

THE WILL CHALLENGE

Sam's barrister described him as an 'absolute grafter' who 'worked his socks off' on the family farm. However, when dismissing Sam's claim, Judge Matthews expressed the view that there was no evidence Sam's father had promised him anything. He considered that Sam had already received land and cash from the business during his father's lifetime. Sam's father had also bought him cars, described in the accounts as 'bonuses', which were several times greater than Sam's annual remuneration. Further, Sam and his family had been able to live rent-free on part of his father's property.

Sam also argued that his late father, who suffered from dementia in his latter years, had lacked capacity to make a will and was subject to undue influence by his wife (Sam's mother, Sandra).

However, Matthews J concluded that Sam's father ultimately 'appreciated that the balance needed to be redressed

is clear, from the accounts which have been shown to the court, that in almost every case where land has been bought using partnership funds, the cost of the purchase has been debited to the testator's capital account, meaning that in essence the testator has borrowed from the partnership in order to make personal purchases. Accordingly, they became his property, and not that of the partnership. The same point was made in relation to other personal expenditure, such as money paid for the wedding present given to Sam's eldest daughter Samantha. In cross-examination these points were put to Sam, and he accepted that he made no complaint in relation to them.³

This section of the judgment shows the need for all agricultural advisors to understand farm accounts, the capital account and how monies move within the farm partnership accounts. A suggestion for farm accountants is to analyse the capital accounts each year with the farming partners. Similarly, any movements within drawings should be set out by the farm accountant.

THE IMPORTANCE OF THE EVIDENCE OF THE *LARKE v NUGUS* STATEMENT

The judge in *James* also focused on the quality of attendance notes, and the need for them to show a full understanding of all matters discussed. The same principle of quality applies to keeping notes at meetings to approve the accounts.

Matthews J, at para.102, stated: 'In the present case I have had the benefit not only of a *Larke v Nugus* statement made by the drafting solicitor, Ms Thomas, but also of a lengthy and detailed attendance note of the signing meeting made shortly afterwards. She was also cross-examined on it during her evidence.'

Such emphasis by the judge highlights the need for the various farm advisors to work together and to keep a good record of not just the 'will file' and the full facts of the *Larke v Nugus*⁴ statement, but also the contemporaneous understanding and notes of all meetings.

Matthews J continued, at para.107: 'Ms Thomas records in her attendance note that she was "confident that [the testator] was happy to sign his will and had not been forced in any way to sign his will but appeared to be far more comfortable with [Sandra] present discussing the will, rather than with [Ms Thomas] alone".'

PROTECTION STRATEGIES

Accountants, solicitors and tax advisors must continue to consider the need for high-quality attendance notes in respect of all meetings, from the finalisation of all accounts and instructions for tax planning to the drafting of legal agreements such as wills and partnership agreements, as these might be called on at a later date. In the case of *Ham v Bell*,⁵ the 'intent' of the wills was key in deciding whether the farm was partnership property. In that case, the accounts were considered to be evidence of the partnership property status, but the intention of the will was considered more important in this regard.

The ideal strategy is for the farming family to plan, record and agree in advance how they want the business to move forward with clarity and understanding.

Some positive suggestions for farming families are:

- regarding succession planning, professionals ensure all legal agreements are in place and understood;
- all advisors must keep good notes

of meetings and discussions with farming families, as there must be contemporaneous evidence to support the defence of any claim; and

- farming families connect to the need for quality professional advice and how much future cost this can save them.

There is clearly a need for legal and tax advisors to be detailed and meticulous in the drafting of the farm legal agreements and their understanding of the tax and accounts details. Obviously, discussions around farm accounts, tax returns and tax advice is extremely beneficial in highlighting any misunderstandings there might be in how the farm is owned and 'enjoyed', particularly with regard to the farm capital accounts, including the land capital account.

The pattern of farming children taking their parents to court to obtain what they believe belongs to them, in this case as well as the cases of *Ham v Ham*⁶ and *Davies & Another v Davies*,⁷ shows there is greater need for farming families and partnerships to discuss succession plans during life to prevent problems on death. Ideally, farming families should aim to avoid court cases through protection via quality legal agreements and well-drafted accounts. These should be supported by detailed notes of all decisions, combined with full discussions by the family and the professionals.

¹ [2018] EWHC 43(Ch) ² para.27 ³ para.41
⁴ [2000] WTLR 1033 ⁵ [2016] EWHC 1791 (Ch)
⁶ [2013] EWCA Civ 1301 ⁷ [2014] EWCA Civ 568



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