Protecting of the Ham (bringing home the bacon)

With farmland prices having 'rocketed' upwards in value in the last decade and development potential returning through changes to planning regulations in the summer of 2013, there is greater need to protect the land values. It is understood that despite this big worry very few farming partnerships have undertaken the work and expense of an up-to-date, well thought through Partnership Agreement.

Facts of the Ham case (Ham v Ham [2013] EWCA Civ 1301)

Mr Ron and Mrs Jean Ham, husband and wife, started their farming business in 1966 with a modest five-hectare plot, and continued growing the business from this time onwards. Lower West Barn Farm, Frome (95 hectares) was purchased in 1986. John Ham (son) joined the farming partnership on 1 October 1997, when the family farm in Frome covered 178 hectares.

How many farming partnerships are there across the UK where there are differences that cannot be resolved? Likewise how often is there a Partnership Agreement that does not provide help, or indeed no Partnership Agreement?

Per the terms of the Partnership Agreement in the *Ham* case, the other partners would buy out the leaving partner after three-months notice of the intention to quit. It is here that there was the key dispute over the value of the buyout:

(a) John felt he was entitled to a share of a full market value of the farm, whereas

(b) Mr and Mrs Ham argued that their son's share should be assessed on the book value of the assets – a far more meagre payout as it ignores the soaring land values.

The dispute occurred because of the poorly worded Partnership Agreement – what value John was entitled to was a matter of interpretation, rather than a clear defined value or basis of calculation specified in the original 1997 Partnership Agreement. One of the Appeal Court Judges expressed sadness that a lack of clarity in the Agreement's drafting had caused so much 'anxiety and expense' to the family.

With so much at stake why are quality Partnership Agreements avoided? The cost? The problems of facing very difficult decisions? The parents will only be able to afford the payout by selling thus breaking up the farm.

Historic cost or market value?

The initial court hearing was at Bristol County Court in March 2013. HHJ McCahill QC, presiding, decided that, as a matter of interpretation of the partnership deed, John's share was to be determined on the same basis as annual accounts were drawn during the continuation of the partnership, rather than on the basis of an up-to-date market valuation of the partnership assets.

What is the basis under which partners should be paid out – historic or market value? John appealed this decision and the case went before the Appeals Court in London in October 2013. On Wednesday 30 October 2013, the three judges ruled that 'John was legally in the right and that his parents must be held to the bargain they struck with him 15 years ago'. Lord Justice Lewison said 'I reach this conclusion with some reluctance because, on the particular facts, it may be thought that John will receive a substantial windfall'. The other two judges also expressed sympathy to Mr and Mrs Ham Senior, but concluded that John was entitled to make a market value claim.

The tax importance of the partnership agreement

The potential for dispute is not the only reason for a well-drafted agreement. There is also the need to identify what is 'personal' property and what is 'partnership' property for the availability of 100% as opposed to 50% BPR. The tax facts are straightforward – farmland made available to a partnership only achieves 50% BPR whereas 'partnership' property achieves 100% BPR.

Farms need BPR to protect so much of the farm. Examples are development and amenity value, non-agricultural activities, cottages etc.

Action plan for advisers

- Ensure there is a robust updated Partnership Agreement in place from the commencement of every farming partnership.
- Review all Partnership Agreements, and ensure clarity has been achieved – the whole *Ham* case was triggered because the deed of partnership was not clear on the value of the buyout when a partner left the farm.
- Some Partnership Agreements do not even provide for an exit strategy.
- Ensure all parties are aware of the risks that cases like this exist.

- Take steps to ensure all potential business disagreements are covered by this partnership 'wonder document'.

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