



SEEDS OF PEACE

Julie Butler appeals to tax and legal advisors to work together to better protect farming families from the effects of disputes, in light of two England and Wales Court of Appeal cases

KEY POINTS

WHAT IS THE ISSUE?

Advisors must appreciate the risk of proprietary estoppel claims by members of farming families, as well as the problems of weak partnership agreements and the possibility of losing inheritance tax reliefs.

WHAT DOES IT MEAN FOR ME?

Advisors should stress to farming families the need for strong legal agreements to be integrated with robust tax planning.

WHAT CAN I TAKE AWAY?

With high farm values and many elderly landowners in the UK, there is a need to help the farming industry protect itself against unnecessary legal disputes.

Many farms run the risk of being crippled by proprietary estoppel claims where promises have been made to family members but not kept.¹ Likewise, claims under the *Inheritance (Provision for Family and Dependants) Act 1975* present a serious risk to the future of farming operations as united enterprises. Further problems can arise through intestacy, and weak or misleading partnership agreements, or the absence thereof.²

As such, tax planning and compliance protection in relation to farms must be integrated with legal agreements, as they are all intertwined. Tax and legal professionals must work together.

A SALUTARY CASE

The recent case of *Davies v Davies*,³ in the England and Wales Court of Appeal, centred on a Welsh farming family, the Davies, and the commercial interactions and representations of the parents and their daughter. It was found that the daughter had established equity in the farm under the legal doctrine of proprietary estoppel. The case highlights the need for the farming community to embrace strong legal agreements to protect the legal position of the parties and to avoid future court proceedings.

There are also advantages in such legal protection with regard to inheritance tax (IHT). For example, tax planning includes ensuring that a farm maximises agricultural relief and business property relief (BPR) for IHT, while also maximising capital gains tax relief – e.g. entrepreneurs' relief. Partnership property achieves 100 per cent BPR, whereas property outside the partnership only achieves 50 per cent BPR.

FACTS OF THE CASE

In *Davies*, the hard-working daughter was assured by her parents that she would ultimately take over the thriving farm and its pedigree milking herd, after working for years for free or little pay.

Over the years, the daughter moved in and out of properties owned as part of the farm, often as a result of arguments with her parents.

In 1998, she signed a partnership agreement that she believed secured her long-term interest in the farm. However, for one reason or another, her parents never signed it. In 2002, her parents made wills that left the farm to all of their children in equal shares.

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The daughter claimed she was shown a draft will in 2009 that left the majority of the farm to her. But her parents later proposed to place the farm in trust for the benefit of all three sisters equally.

In 2012, a physical fight between the daughter and her father led to the final termination of the daughter's employment and the commencement of proceedings to evict her from her home in a farmhouse owned as part of the farm.

As part of her defence, the daughter claimed equity in the farm and farming business, based on her detrimental reliance on the representations made to her by her parents (the doctrine of proprietary estoppel). The trigger was the legal action as to the proposed eviction of the daughter. Any such catalyst for a counterclaim must be considered very carefully.

The Court of Appeal found the daughter had relied on her parents' promises and devoted herself to working on the farm. She was thus entitled to a beneficial interest in the business.

The parents argued in court that compensation should be in the form of a sum of money enabling their daughter to buy a house. The court said this would not truly reflect the daughter's suffering or the nature of the promise made to her.

It was ruled that the farm was worth about GBP3.8 million and an 'appropriate award' for the daughter would be GBP1.3 million for her to start a farm of her own. However, the legal costs would erode the ability to carry on.

AN EARLIER CASE

The earlier case of *Ham v Ham* involved a farming partnership between parents and son, which began in 1997. Following family differences, the son gave notice of his desire to end the partnership, triggering the right to buy him out. The Court of Appeal held the net value of his shares should be based on market value, rather than book value, as it was an alternative to termination. The parents thought book value should apply.

Many farming partnership agreements refer to 'per accounts'. It is essential to understand what the accounts show and for the solicitors who draft the partnership agreement to work with the accountants. The question is: are all accountants aware of the reliance that may be placed on their accounts? It may be prudent for each set of accounts sent to farming clients to refer to the partnership agreement that defines the structure of the accounts.

ACTION POINTS

Given all of the above, advisors should ensure that there is legal definition of all family farming arrangements. Are family members employees or members of the partnership? Whatever the legal position, the advice has to be to either pay the correct rate for employment under a strong employment contract, or enter into a partnership agreement. Such an agreement needs to be well drafted, attempting to cover all eventualities. This should be tied into tax planning.

All farming families must consider who is working in the family business and what the legal situation is. Tax advisors must work with the farming family and legal advisors to introduce effective legal agreements. This is an ideal time to incorporate protective tax planning.

- 1 Proprietary estoppel is a legal claim for financial remedy for the rights to use the property of the owner where there was a clear understanding between the parties that fell short of a contract. The value of the claim for equity will depend on the evidence of 'detriment' suffered by the claimant and has recently become very popular with disputed transfers of ownership of land
- 2 An example of a confusing partnership agreement can be found in *Ham v Ham* [2013] EWCA Civ 1301
- 3 [2014] EWCA Civ 568



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