

Legal News

The newsletter for Clients of **hodgehalsall**

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Failure to disclose affair amounted to undue influence



A couple lived together in the family home with their children. The husband got into debt and persuaded the wife to agree to remortgage the home so that his debts could be discharged. The wife later discovered that the husband had been having an affair and divorced him. The husband lost his job and became bankrupt.

The wife bought the home for £1 from the husband's Trustee in Bankruptcy, but was then unable to meet the repayments on the remortgage. Possession proceedings were commenced and the court

made an order repossessing the house in which the wife had continued to reside with the children. The Court of Appeal overturned the possession order deciding that at the time when the wife agreed to the home being remortgaged, to meet the husband's debts, she was entitled to receive all relevant information that would allow her to make an informed decision. She had assumed that her husband was as committed to the marriage as she was and had she been aware of his affair the court considered that she would no doubt have reached a

different conclusion about the remortgage. The failure by the husband to disclose that affair amounted to undue influence of the wife, which invalidated the remortgage between them.

For further advice relating to possession proceedings please contact Judith Bond (judithbond@hhlegal.co.uk) and for advice on matrimonial difficulties please contact Clare Ellison (clareellison@hhlegal.co.uk) or Sinead Connolly (sineadconnolly@hhlegal.co.uk) in our Family Dept; on 01704 531991.

Inside this issue

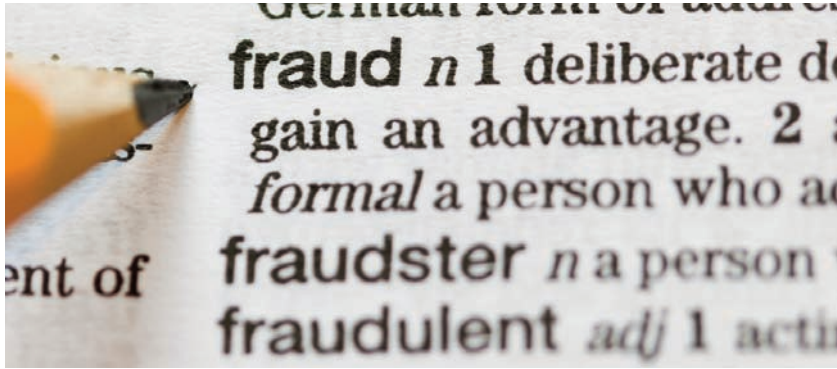
<i>Husbands Failure to disclose affair</i>	1
<i>Protect yourself from property fraud</i>	2
<i>Care home closure</i>	2
<i>Stranded by the dust cloud</i>	3
<i>Scrapping HIPS</i>	3
<i>Co-habitees</i>	4
<i>Residential Care Home Fees Part 2</i>	4

Welcome to Hodge Halsall's Newsletter For Private Clients

This Newsletter is designed to summarize various areas of law that may impact upon you and your family. It is a periodic publication of Hodge Halsall LLP and is intended for legal guidance only. It is not to be construed as a substitute for legal advice. For advice specific to your circumstances please contact your Hodge Halsall representative.

We are interested in your opinion. If you have any suggestions about how we can improve Legal News or if you would like us to cover a specific topic please contact: Derek Alman at derekalman@hhlegal.co.uk or call 01704 531991.

Protect yourself from property fraud



The Land Registry recently launched a Protect your Property campaign to help protect homeowners most at risk of property fraud emphasising that "land and buildings are usually the most valuable assets people own. They can be sold and mortgaged to raise money and can, therefore, be attractive targets for fraudsters".

Examples of situations where property fraud might arise include where:-

- a relationship breaks down
- a property is empty or bought to let
- the owner is abroad or absent
- the owner is infirm or in a home

Sophisticated property fraud can take place, but in many cases a

fraudster impersonates a home owner and forges documents in an effort to have the Land Registry transfer the title into their name. If successful, the property can then be used to raise finance from a Bank/Building Society following which the fraudster disappears with the money.

Steps that can be taken to minimise the risk of fraud or forgery in relation to your property include:-

- registering your title at The Land Registry
- keeping your name and address on The Land Registry title up to date
- having up to 3 addresses for service noted on the register,

which can include your Solicitors as a "care of" address. Each such address registered will have notice of any changes on the register served upon it thereby reducing the risk

- placing a restriction on your title to limit the powers of a registered owner of the land to be able to deal with or dispose of it thereby preventing changes on the register without a Solicitor or other professional conveyancer certifying the identity of the person who has signed the deed. This may help to prevent a fraudster forging your signature on a deed
- taking care when being asked to sign documents and taking professional advice if you are uncertain as to what you are being asked to sign.

For further information on property fraud or assistance with any of the measures raised in this article, please contact Paul Leadsom at paulleadsom@hhlegal.co.uk or by calling 01704 531991.

Care home closure no breach of human rights



Louisa Watts, who at 106 is one of Britain's oldest women, was moved by Wolverhampton City Council to a new care home against her will. Her solicitor made an application against the move but this was rejected at the first instance by the High Court.

On appeal Lord Justice Sedley said there was nothing unlawful in the decision by the local authority to close Mrs Watts' old home and move her to the new one.

Having been refused leave to appeal further Mrs Watts went to the European Court of Human Rights in Strasbourg. It was argued by her

solicitor that the Council's decision to transfer her presented an inherent risk that her life expectancy would decrease by 25% and that this was incompatible with her right to life in Article 2 of the European Convention on Human Rights.

However, the Strasbourg Judges held that on the basis of the evidence considered by the Appeal Judge in the UK that his conclusions had not been unreasonable.

They acknowledged that a "badly managed transfer of elderly residents of a care home could well have a negative impact on their life expectancy as a result of the general frailty and resistance to change of older people" and that Article 2 was applicable in the present case. However, it appeared that the procedure for the closure of the care home had been "carefully managed in order to allow full consideration of

residents' views and, in respect of the transfer, their health and well-being".

The European Court added there was "no reason to doubt" that the Council had sought to minimise any risk to Mrs Watts' life and it was within the local authority's powers to set out a general policy to rationalise care for the elderly in its area.

"Closure would allow the Council's budget to be distributed in a more cost-effective manner. A requirement to keep the home open indefinitely would have a significant impact on the local authority's ability to provide care to other users in the area and to manage its resources effectively" said the Judges.

For further advice on challenging care home decisions please contact Mark Robinson (markrobinson@hhlegal.co.uk) on 01704 531991.

Stranded by the dust cloud



It is estimated that more than 150,000 Britons were stranded abroad when the eruption of the Icelandic volcano caused air travel chaos. When they eventually returned home many air travellers are likely to have found themselves caught in a tussle between airlines, tour operators, insurers and credit card companies over who should pay compensation and what should be compensated. The small print in both the contract of carriage and any policy of travel insurance that may exist could prove to be crucial in establishing who is ultimately liable to reimburse air travellers for expenses incurred abroad.

Anyone who travels with a European Union air carrier has certain rights under EU law. European regulations provide that airlines must support passengers if their flight is cancelled or severely delayed. In those circumstances the regulations entitle passengers to care and assistance, including:

- reimbursement within 7 days of the full cost of the air ticket, or
- re-routing to their final destination at the earliest opportunity, or
- re-routing at a later date at the passenger's convenience

If a passenger has chosen to be re-routed to their final destination on the next available flight, they are also entitled to the following:

- meals and refreshments which reasonably relate to the waiting time
- hotel accommodation where a stay of one or more nights becomes necessary, and
- two telephone calls, telex or fax messages or emails

It is important to note that the carrier is liable for the reasonable costs

incurred while a passenger waits for a return flight. Any over-indulgence by the passenger is likely to result in the passenger meeting the shortfall between the carriers responsibility and the cost of the passengers excesses.

There is also an important distinction to be drawn between the "assistance" which airlines are required to provide and "compensation". An entitlement to the latter does not arise under the regulations if a flight is cancelled due to "extraordinary circumstances which could not have been avoided even if all reasonable measures had been taken by the airline to avoid delay or cancellation". Air travellers who fall into this category are entitled to recover restitutionary losses (as mentioned above) from their airline but not any additional compensation for delays or cancellation due to an exceptional event such as an erupting volcano.

Those left to fend for themselves at a hotel with no support from their airline (to which they were entitled) should retain receipts and any other documentary evidence, records of money spent and any other transactions. A record of any conversations with airlines and hotels is also important, even if they were not contemporaneously recorded.

The regulations do not compel airlines to pay for passengers who make their way home by alternative means. Accordingly, anyone who could not, or would not, wait to be re-routed on the next available flight and who made their own arrangements to get home will only be entitled to the cost of their original flight ticket.

The first line of redress for an

aggrieved air traveller should be against the carrier and tour operator. However, there will be many travellers who have incurred expenses that fall outside the scope of the remedies provided by the EU regulation, particularly those who attempted to get home "under their own steam". An insurance policy may be the final refuge for those attempting to recoup expenses that are irrecoverable under the regulations.

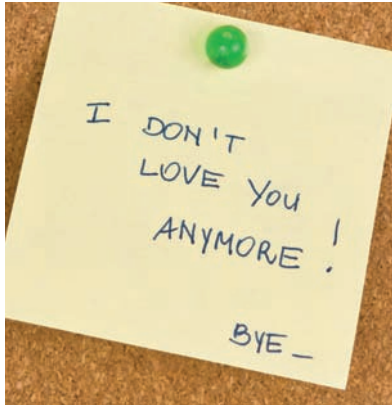
If flights or accommodation were at least partly paid for by credit card a claim may be made under section 75 of the Consumer Credit Act 1974 which covers credit card users for losses sustained in respect of goods and services that are not supplied with a value from £100 to £30,000. It may also cover consequential losses such as hotel costs and subsistence. However, the law surrounding the application of section 75 could well give rise to controversy if liability is challenged by the credit card company. Again retaining receipts and records is essential.

Scrapping HIPs

The new coalition government has confirmed that whilst Energy Performance Certificates will be retained, Home Information Packs (HIPs) will be scrapped. HIPs were launched in 2007 and became mandatory for anyone selling a domestic property. They were criticised from the outset with sellers complaining about the funding of the HIP which could cost up to £400. The decision to scrap HIPs was stated to be designed to "...encourage sellers back into the market, and help the market as a whole and the economy recover".

Sellers are still required to obtain an Energy Performance Certificate as this an EU requirement. The Certificate indicates how energy efficient a property is, and must be obtained within 28 days of placing the property on the market. The cost of such a Certificate is approximately £50.

Co-habitees – A hard lesson in joint ownership



An unmarried couple bought a property in joint names, in 1985 for £30,000, of which £6,000 was contributed by her and the remainder financed by an interest only mortgage, supported by an endowment policy. Payments off the mortgage and endowment policy were initially shared jointly by the couple. In 1993, the relationship broke down, he left the home and

stopped paying his portion of the mortgage. He did not contribute towards the upbringing of the 2 children of the relationship and insisted upon cashing in the endowment policy that underwrote the mortgage, to enable him to buy a new home. After that time, she made all the interest only mortgage payments. He continued to live in and finance his own home.

By 2008, the value of the property had increased from £30,000 to £245,000. He claimed a 50% share in the property. She argued that she had an entitlement to 90% based upon her financial contributions. The Judge agreed with her and he appealed. The Court of Appeal allowed the appeal emphasising that there was no evidence of any mutual intention to depart from the original 50/50 rule when the house had been bought in joint names. They

described the case as a “cautionary tale” for unmarried couples who failed to adequately organise their affairs.

The decision suggests that unmarried couples who purchase property together, and fail to consider the possibility of a later break up of the relationship and how any property is to be divided at that time, can expect little sympathy from the Courts. The assumption remains that the original intention of joint ownership persists, even in situations where one party's financial contributions, over a lengthy period of time, are not mirrored by the other's.

For practical advice on cohabitation and Prenuptial Agreements to avoid such problems, contact Clare Ellison or Sinead Connolly on 01704 531991.

Kernott v Jones [2010]

Residential Care Home Fees – Part 2

In our last issue we looked at examples of when a property may be excluded from the assessment for Care Home Fees.

Where a property is not going to be excluded for any of the reasons stated, it is often thought that the best way forward is to give the property away completely, usually to a child or children. There are serious drawbacks with regard to these outright gifts.

We shall look at an example of how this may work in practice. For the purposes of this illustration, there is just one recipient who is the child of the property owner. Potential problems that may arise include:

- The child may die before the parent, in which case ownership of the house would then pass to the beneficiary of the child's estate. This will either be under the terms

of the child's Will or according to the laws of intestacy if no Will is left. If the child is married, it is more than likely that ownership would pass to the child's spouse, who would then be the owner of the property in which her or his parent-in-law lived. This may be far from what the parent would want.

- If the child is married then, if the child and his wife subsequently separated, then the house would be an asset to be taken into consideration in the divorce settlement.
- If the child is made bankrupt, then creditors of the child may claim possession of the house.
- A good relationship at the time of the gift between the parent and child may not always continue, as the actual making of the gift changes the balance between the

parent and child which could itself lead to future difficulties.

Whereas the parent would be exempt from any capital gains tax in respect of their own home, the child would not be exempt and therefore if any gain on the eventual sale of the property exceeded the child's capital gains allowance then any surplus would be taxable.

If the drawbacks of an outright gift are considered to be too great, then it may be worth considering whether to put the home into a trust. Various forms of trusts are available which can be tailored to suit the particular needs and circumstances of the client. To discuss this further please contact Geoff Dootson (geoffdootson@hhlegal.co.uk) at our Southport office on 01704 531991 or Gordon Hatton (gordonhatton@hhlegal.co.uk) at our Ainsdale office on 01704 577171.

We use the word 'Partner' to refer to a member of the LLP. Hodge Halsall LLP registered Office: 18 Houghton Street, Southport, Merseyside PR9 0PA Tel: 01704 531991. Also at: 565 Liverpool Road, Ainsdale, Southport PR8 3LU Tel: 01704 577171. Partners: Mark P Robinson, Judith Bond & Gordon Hatton. Hodge Halsall LLP is a Limited Liability Partnership registered by the Solicitors Regulation Authority. registered No. OC328351

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