



Legal News

The newsletter for Clients of **hodgehalsall**

Winter 2010/11 Issue no.6

Warning - divorce can be a lottery



A lottery winner who won £56 million has made the news recently for more than his winnings!

Nigel Page was divorced. However, when he and his ex-wife divorced they failed to record the agreement they reached in respect of financial

matters in an appropriate legal document. His wife Wendy was, therefore, entitled to make a claim for a share of his winnings and is reported to have agreed to accept £2 million.

Unless the terms of a financial agreement are set out in a legal document known as a Consent Order and approved by the court it is open to either the ex husband or ex wife to make further claims against the other's assets, income or pension at any time in the future. The order should also include a "clean break" clause preventing any party from making any future claims on the other party's earnings or wealth.

In the case of Mr & Mrs Page when they divorced they had agreed financial matters, but they didn't take the necessary legal steps to finalise the financial aspects of their

divorce by recording this in an Order and lodging this at Court.

Therefore without a Consent Order those who enjoy career success, inherit money or assets or win the lottery, could find ex spouses returning for a share of their increased wealth.

The Page case is a vivid warning to all couples to take advice from a specialist family solicitor when resolving matters arising from marriage breakdown. Otherwise they may face a costly payout in the future.

For specialist and confidential legal advice relating to all aspects of divorce please speak to Clare Ellison (clareellison@hhlegal.co.uk) or Sinead Connolly (sineadconnolly@hhlegal.co.uk) on 01704 531991.

Inside this issue

<i>Divorce can be a lottery</i>	1
<i>REMO - the answer for absent parents</i>	2
<i>Pre-nuptial agreements</i>	2
<i>Old enough to choose</i>	2
<i>Boundary disputes</i>	3
<i>Property owners & electronic gates</i>	3
<i>Beginners guide to property auctions</i>	4
<i>Recession and Wills</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.



REMO - the answer for absent parents?

Current economic conditions are forcing many people to look abroad for work. This can cause severe difficulties for separating and divorcing couples where one party stays in the UK to look after the children and the other party goes abroad, and fails to pay any, or the correct maintenance.

The Child Support Agency only has jurisdiction to obtain maintenance from absent parents in the UK, save for the following situations where the absent parent works abroad for either:-

- the UK Civil Service
- a UK governmental agency

- a UK company
- the Armed Forces

Other than the above specific examples it is often a difficult and arduous process to obtain maintenance from a reluctant parent who is working abroad.

Help may be at hand by pursuing child maintenance through a process known as REMO – Reciprocal Enforcement of Maintenance Orders. Under this system participating countries can enforce a UK Court Order on behalf of UK citizens. The process begins with an application to the local Magistrates Court which is forwarded to the REMO unit in

London who forward it to the Court abroad. The system is based on mutual agreement and therefore the UK authorities have no power to compel foreign courts to enforce maintenance orders, or to give a time estimate, and the process is often lengthy. Only certain countries are governed by the scheme and some are more efficient than others in enforcing any orders.

For further details regarding REMO, or any family matter, please contact Sinead Connolly (sineadconnolly@hhlegal.co.uk) or Clare Ellison (clareellison@hhlegal.co.uk) on 01704 531991.

Pre-nuptial agreements

- the long awaited Supreme Court decision in the case of Radmacher v Granatino

The Supreme Court, in the case of Radmacher v Granatino, has recently determined that pre-nuptial agreements can have “decisive or compelling weight”.

The matter involved multi-millionaire Katrin Radmacher and her former husband Nicolas Granatino and concerned the validity of a prenuptial agreement made in Germany between a German and French national living in this country. Mr Granatino challenged the validity of the pre-nuptial agreement in the English Courts stating that he had not received any independent legal advice and the marriage had produced two children.

The agreement was not ratified in the High Court although it was later upheld by the Court of Appeal

following an appeal by Ms Radmacher. It was said that the Judge at first instance ought to have given greater weight to the pre-nuptial agreement to reflect the fact that both parties were from countries where such agreements are standard practice and enforceable. It was suggested that UK divorce laws should be brought in line with those in other EU states. Mr Granatino appealed to the Supreme Court.

The Supreme Court dismissed Mr Granatino’s appeal, establishing as a point of principle:

“The Court should give effect to a pre-nuptial agreement that is freely entered into by each party with a full appreciation of its implications unless in the circumstances prevailing it

would not be fair to hold the parties to their agreement”.

This goes further than the previous approach to pre-nuptial agreements. It now appears that in the right case, a prenuptial agreement can have decisive or compelling weight. Previously pre-nuptial agreements had been one of many factors that the Court takes into consideration when determining the appropriate level of financial settlement. The decision taken by the Supreme Court indicates that pre-nuptial agreements could become legally binding in the future.

For advice on pre-nuptial agreements please contact either Clare Ellison (clareellison@hhlegal.co.uk) or Sinead Connolly (sineadconnolly@hhlegal.co.uk) on 01704 531991.

“Old enough to choose”

In a landmark ruling in the High Court Mrs Justice Black ruled that two children aged 6 and 8 were old enough to choose which parent they wanted to live with. The children had been born and brought up in Ireland until their mother walked out on their father claiming that he was violent and abusive towards her and drank excessively. She brought the children to England without their father’s

permission. He applied to the English courts for the children to be returned to him in Ireland and the Judge made the unique decision to consult the two children who were said to have become upset when told they might be returned to live with their father in Ireland and had informed the Cafcass officer that they were frightened of him. The Judge considered they had “attained an

age and level of maturity” and that their wish to remain with their mother should be respected. The Court of Appeal subsequently declined to overrule Mrs Justice Black’s decision. The case may have wide reaching implications and may mean that in future children may be asked which parent they want to live with and their answer might be decisive.

Boundary disputes

Boundary disputes can rapidly escalate into the most acrimonious of disagreements often involving an issue of relatively insignificant financial value and with neighbours fighting over a point of "principle". Such disputes often concern the position of a fence or hedge or the obligation to repair or maintain it.

The starting point to determine ownership of a boundary is to check the property's title deeds. Most property is now registered at the Land Registry and for about £8.00 it is possible to obtain a copy of the deeds and of the registered plan although it is only on a scale of 1 to 1,250. It is also possible to obtain a copy of the neighbouring property's title deeds/plan for a similar amount. This can be done on line at www.landreg.gov.uk. Boundaries shown on the registered plan only provide a general indication, however, and are not completely accurate.

It may be necessary to search for earlier plans on deeds perhaps from when the property was first sold. These may contain a reasonable scale plan showing the boundaries in more detail. Any "T" mark on a boundary plan establishes ownership



on the part of the property owner within whose land the "T" mark is drawn. An "H" mark overlapping the boundary indicates a party wall which is the responsibility of both property owners.

If the deeds are silent as to ownership, as often they will be, the law presumes that in the case of a fence with posts or struts on one side the owner of that side owns and bears responsibility for repairing the fence.

Title Deeds will sometimes contain an obligation upon one owner to erect/build a fence/wall and if the deeds do contain such an obligation it may be possible for the neighbour to make application to a court for an order for specific performance or for an injunction if the "owner" refuses to comply.

If there is no formal obligation in the title deeds to maintain a fence/wall

there may still be a responsibility in negligence or nuisance if the "owner" allows the boundary structure to cause damage to neighbouring property. There are also obligations to prevent the structure becoming dangerous under the Occupiers Liability Acts of 1957 and 1984.

Boundary disputes should be avoided wherever possible. When buying property it is sensible to photograph the boundaries as they exist at the time you take up occupation and to periodically repeat the process over the years so that any alterations can be chronologically tracked. When erecting a new fence or wall or planting a hedge always seek to agree its location with your neighbour and the posts should be on your land with the face of the fence pointing towards the neighbours. Any hedge planted should be at least a metre inside the boundary line to allow scope for it to grow without encroaching upon your neighbour's land.

For advice on any disputes over land please contact Judith Bond (judithbond@hhlegal.co.uk) on 01704 531991.



Following a couple of tragic accidents in 2010 involving two young children killed in separate incidents in which they were trapped by sliding metal gates clients whose properties are fitted with electric gates or who are thinking of installing them need to ensure that a comprehensive risk assessment is carried out prior to their design and installation. Electric gates are a formidably powerful piece of equipment with the potential to cause serious injury and, as shown by these recent accidents, even to kill. A review by the Health & Safety Executive ("HSE") revealed that one gate failure was caused by the fact that no sensors detected the child was in the path of the closing gate and the second revealed that the gates closing force was greater than allowed.

Such accidents can lead to legal action and prosecution not only of the installers of the gates but also of the property's owners. To avoid legal action the HSE offer the following advice for property owners in relation to the operation of electronic gates :-

- ensure that a full risk assessment is carried out as early as possible during the design phase.
- those using the gates regularly should be given appropriate information, instruction and training on how to safely operate them.
- maintain the gates regularly once installed.
- sensitive protective equipment should be installed including fixed guards, pressure sensitive strips

(which trigger a break when they meet resistance) and infra red detectors.

The HSE recommend asking questions at design phase such as "Is the gate braking action designed to stop the gate moving when a child not a car obstructs it?"

When buying a property with electronic gates buyers should request full information about the installation and maintenance of the gates. Solicitors instructed to act in a purchase will generally not be aware that a property has electronic gates and buyers should ensure that the matter is drawn to the attention of their solicitors in order that appropriate enquiries and information can be obtained.



Beginners guide to property auctions

With increasing numbers of repossessions and people looking for a 'quick sale' auctions can be a good way to pick up a property purchase bargain. Here we provide some useful hints and tips in order to ensure your auction transaction runs as smoothly as any other.

1. Keep well informed. Sign up to the newsletters of as many auctioneers as you can so you can choose from the widest possible range of properties.
2. Once you have chosen a property or made a shortlist, arrange an inspection via the auctioneers as soon as possible. You should also consider instructing a surveyor for a professional report.
3. Research. Make sure you do your research and be aware of as many facts and figures as you can. Speak to local agents and use the internet. Is the auctioneers guide price a fair price? Know your budget for the property in question and stick to it.
4. Act quickly. If you carry out the above as soon as possible and have your financial arrangements in place it may be possible to exchange contracts on the purchase before the auction date and possibly ensure a better deal. The property would then be withdrawn from the auction.
5. Due diligence. Buying a property at auction requires all the same searches and pre-contract investigations as a normal transaction. The auctioneers should provide you with a legal pack which you should then take to your Solicitor for him to carry out the usual checks. Once the hammer has come down and you have won the auction, you are contracted to buy the property so it is vital that all these investigations are carried out before the auction.
6. Deposit You will normally be required to put down 10% of the purchase price on the day of the auction.
7. Completion. You will usually have to complete your purchase within say 21 or 28 days of the auction. It is again important to ensure that you have your finances (possibly your mortgage offer) in place before the date of the auction. If you win the auction and are then unable to complete due to lack of finances, you will be in breach of contract and face the possibility of losing your deposit and maybe more.
8. Costs. In addition to the purchase price don't forget the other fees to factor in to your budget such as Stamp Duty Land Tax, Land Registry fees, legal fees, surveyors fees and the cost of any remedial works to the property.

If you follow the above tips then there is no reason why you cannot obtain a good deal at an auction and have fun in doing so.

For all conveyancing matters please contact Paul Leadsom
(paulleadsom@hhlegal.co.uk)
on 01704 531991.



Recession may be leading to rise in disputes over Wills

The Times recently reported that the number of contested Wills was on the rise blaming the recession, divorce, remarriage and the previous increase in property values for the trend. Disappointed beneficiaries are increasingly resorting to the courts as the recession bites and the size of Estates shrink caused by a fall in the value of property, shares and other assets. Divorce and remarriage has had an impact on family relationships which have become more complex and a wider category of family members often fight over a smaller pie.

Another factor influencing the rise in such claims may be an increase in

unregulated will writers whom the Law Society describe as "...causing havoc amongst members of the public..." by badly drafting wills leaving the courts to sort out the mistakes.

Examples of recent disputes in which Hodge Halsall have been involved include an application to set aside a Grant of Letters of Administration obtained by a disinherited daughter who had falsely sworn that no Will existed after she had been left out as a beneficiary; an application by an illegitimate child of a deceased under the Inheritance (Provision for Family and Dependents) Act 1975 and an application under the same

Act by a cohabitant of a deceased who, whilst separated from his wife had remained married, had not changed his will and ran a large successful business.

Such claims can be difficult to avoid but making a will and ensuring it is kept up to date is an essential first step. Placing a letter with the will explaining the wishes of the Testator may also make it harder to challenge in the future.

Hodge Halsall has significant experience of dealing with all aspects of challenging a Will and further details can be obtained from Mark Robinson (markrobinson@hhlegal.co.uk) on 01704 531991.

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

hodgehalsall