Neves SOLICITORS

Client Update - Summer 2014

Farewell David Swain

Neves are sad to announce the retirement of David Swain. David has been a part of the team at Luton for a number of years, following the merger of his own practice with Neves at the beginning of 2006. In doing so, David became a consultant at Neves, specialising in both Commercial and Residential Property, Wills and Probate.

David was born and educated in Bedfordshire and has spent most of his working life in the county since qualifying as a solicitor in 1975. For 17 years he was a partner in a local firm dealing mainly with litigation and property-related matters before branching out on his own. His extensive experience within the legal profession has helped to build and establish the high quality service that Neves strives to achieve. David will be greatly missed.

On behalf of everyone at Neves, we would like to wish David a well deserved and relaxing retirement.

Mary Moves to Harpenden

After months in the planning, Mary McEvoy has officially moved out of the Luton office into the new suite four in our Harpenden office. It was a momentous occasion leaving the Luton office having been there for over 20 years! The move went smoothly with the support of all the staff at Harpenden. Mary will continue to see clients at both offices but will be predominantly based at Harpenden.
A special thank you to Hollie Hadley whose dedication saw the project to its conclusion.

Herts School Awards

Neves were proud to be involved in sponsoring the Hertfordshire School Awards on 24th June in St. Albans. Mary McEvoy, was once again on the judging panel and helped to select the shortlist of finalists and winners. This is the third year that Neves have been involved with the awards, that help celebrate a wide range of achievements in the Hertfordshire area. Neves sponsored the award for the Teacher of the Year (Primary) which was won by Stephanie Nye of High Beeches School.

The prizes were awarded at a ceremony held at Oaklands College and was attended by many school children, teachers, head teachers and parents. The event was co-hosted by 'The Parent Show' which is also sponsored by Neves.

What Our Clients Say About Us

"I cannot thank you enough for such an excellent piece of work and for all your help. It has been an exceptional service."

"Very Professional, when matters arise then you know you can count on the expertise to deal with it. I would choose Neves over any call centre type conveyancers"

"Completely smooth process from start to finish. Delivered quality on time at the agreed price."

"We very much appreciate the manner in which the business transactions were conducted, efficient and pleasant."

"I was so pleased with the service. I trusted my solicitor and felt I could always turn to her. It was easy to make initial contact."

"Trustworthy, reliable, extremely high attention to detail. Very friendly like a family-run business".

Follow us on twitter Neves Solicitors

Like us on Facebook Neves Solicitors LLP

Join us on LinkedIn Neves Solicitors

Harpenden
Tollgate House
69-71 High Street
Harpenden
Hertfordshire AL5 4ET
T: 01582 715234

Luton
8 George Street West
Luton
Bedfordshire
LU1 2DA
T: 01582 725311
E: info@nevesllp.co.uk

Milton Keynes
Kingsbridge House
702 South Seventh Street
Milton Keynes
MK9 2PZ
T: 01908 304560
W: www.nevesllp.co.uk

Northampton
Independent House
Units 1 & 2 Wilks Walk
Grange Park
Northampton NN4 5DW
T: 01604 814500

Neves SOLICITORS

Client Update
Summer 2014

The Legal 500 United Kingdom Leading Firm 2013

Nice Cup of Tea Helps to Heal Long-Standing Family Rift

A family judge has hailed the miraculous benefits of sitting down to a 'nice cup of tea' after this played a central role in healing a bitter ten-year rift between parents of twin boys and enabled them to agree a shared residency order.

The former couple, who had separated six months after their sons were born prematurely, had been in dispute over contact with the boys ever since, meeting in court on no less than 24 occasions. However, Mrs Justice Pauffley said that her prompt that they should sit down together for a cup of tea had brought extraordinary results.

The judge added, "I suggested that, when the boys were dropped off and picked up, each parent should be made welcome in the home of the other, invited to sit down around the kitchen table and offered a cup of tea."

The judge said that the twins' birth had put enormous pressure on the parents' long-term relationship. When the boys came home, after eight weeks in hospital, they were extremely weak and the mother was 'intensely protective of them'. The father 'felt excluded' and the parents' relationship crumbled under the strain.

The twins, now aged 12, were less than a year old when their mother and father had their first date in court, and the judge said that 'the very sad reality' was that there had been a decade of conflict between the former couple, focused on the father's role in the boys' lives.

However, after the father described everyone in the family as 'exhausted' by the years of litigation, the judge made her 'cup of tea' suggestion and sense began to prevail. Both parents, 'to their very great credit', made concessions and agreed to build bridges.

The new spirit of compromise had led to 'a seismic shift of attitude' and the parents had put their years of conflict behind them, agreeing shared contact arrangements which would ensure the father played a full role in his sons' lives.

After paying tribute to social workers and other professionals involved in the case, the judge had 'great pleasure' in confirming a new consensus between the former couple, whereby the boys will spend alternate weekends with each parent and contact over school holidays and half terms will be shared more or less equally.

A Council's need to get to the root of the problem quicker

The Court of Appeal recently ruled that when a council neglected to reduce the crowns of trees in a park for several years, thus allowing the roots to grow, it was foreseeable that this might result in damage to adjacent properties.

The case involved a woman who owns a property in Kent adjacent to a park. The local council had undertaken work to reduce the crowns of trees in the park in 1998, with a view to limiting the growth of the root systems beneath them. Although it had intended to repeat the exercise in 2004 and 2005, the work was not carried out until 2006.

Even though the trees were situated more than 100 feet from the woman's house, the root systems caused damage to her property. In 2009, she commenced a claim for more than £150,000 in compensation for the damage.

The claim reached the High Court, which concluded that the council (which had faced a similar claim in 1996) should have been aware of the problem and could reasonably have been expected to have undertaken a regular programme of crown reduction to prevent damage to adjoining properties.

The council's appeal against that decision was based on the argument that even if such a programme had been undertaken, it would have been insufficient. The Court of Appeal rejected that argument, concluding that the council had not taken such steps as were 'reasonably required' to prevent damage being sustained by the woman's property. The failure to undertake crown reduction works between 1998 and 2006 was a breach of its duty to the claimant.

Inside this issue:

Nice Cup of Tea Helps to Heal Long-Standing Family Rift	1
A Council's need to get to the root of the problem quicker	2
Family Members In Divorce And Finance Proceedings	2
Schizophrenic's Will Upheld By Court	3
A Family Feud leads to Forged Signature Will	3
Neves News	4

Family Members In Divorce And Finance Proceedings

With the economy now on the up, more and more clients are finding informal ways of getting their hands on funds. Clients are getting informal loans or gifts from family members or some clients might be named as beneficiaries in trusts created by their parents, aunts and uncles or grandparents.

When a couple divorces, all financial aspects must be considered, whether they are debts owed to loan companies or debts owed to family members. Money which the spouse may or may not receive through trusts or inheritance will also need to be factored in when deciding how the marital pot will be split.

Usually, both parties to the divorce/separation can agree how the loan or asset from the family member is to be treated. However, there are occasions when one spouse believes that the loan was in fact a gift or vice versa and the other spouse disputes it. When this happens, there may be no other option than to join that family member as a party to the divorce and finance proceedings.

There are other situations involving family members that may warrant that person becoming a party to the proceedings, for example if that family member believes that they have an interest in an asset that forms part of the matrimonial pot between the Husband and Wife.

In those examples above, where the separating spouses cannot reach agreement as to how to treat the interest or loan, that family member should be joined to the proceedings as the spouse disputing the issue can only challenge the third party if he/she is given the opportunity to have their say too. In these circumstances, the third party joinder is usually limited to forming part of the proceedings and not the proceedings as a whole.

A third party cannot be forced to join such proceedings. In practice, the third party will usually be given the opportunity to intervene in the proceedings but if he/she fails to do so, then they cannot subsequently challenge any findings made against them.

In some circumstances, for example where a family member legally owns a property but one spouse believes that they have a beneficial interest in the property, and the family member is not or refuses to join in those proceedings, any decision by the court will not be binding on him. That is to say, if the Husband's brother legally owns the former matrimonial home, any order the court makes to change the ownership will not be binding on the brother unless he becomes a party to the financial proceedings.

If the issue of legal or beneficial ownership between one or both spouses and a family member arises or has the potential of arising, this must first be resolved before any decisions are made regarding the finances of the marriage.

In short, the third party family member can be invited by the court to intervene in the financial proceedings. Alternatively, if they refuse then they can be joined as a third party to the proceedings by an order of the court. Whether the court will exercise this will depend upon whether it would be desirable to add the third party to enable the court to resolve all the matters in dispute.

Family

If you need help or assistance with any family law issues then contact our family team.

Email:
family@nevesllp.co.uk

Mary McEvoy
Partner & Notary Public
Head of Divorce & Family Law,
Collaborative Lawyer

John Walsh
Legal Executive
Divorce and Family Law

Beth Woodward
Partner
Divorce & Family Law,
Collaborative Lawyer

Pui Uro
Solicitor
Divorce and Family Law

Don't get our monthly newsletter? Subscribe online at www.nevesllp.co.uk

Neves SOLICITORS Client Update - Summer 2014

Schizophrenic's Will Upheld By Court

A recent decision shows that the courts place a heavy burden of proof on those who claim that a will should be invalidated because the person making it lacks testamentary capacity (the legal term for 'being of unsound mind' and therefore incapable of making a valid will).

The case involved a dispute over the final will made by a man who died in 2007. The man, who was schizophrenic with a 'severe thought disorder', had an estate of more than £1 million when he died.

In the 1990s, he had made a series of wills which left his estate to the sons of his younger sister. In 2006, however, he made a new will. This left his sister's sons a legacy of £5,000 to be shared between them.

The rest of his estate he left to two charities with which he had no prior connection. The will was opposed by his family, who claimed that he lacked testamentary capacity when he made it.

There was no dispute that the man had suffered from a thought disorder and exhibited behavioural abnormalities throughout his entire adult life.

However, the question before the court was whether or not the man was mentally capable of making a will at the time he made it. The court heard evidence that he had undertaken property transactions, which indicated that he was capable of acting rationally. It was also claimed that he thought that his nephews were stealing from his mother, so he believed there was good reason to exclude them from his will.

In the circumstances, the court accepted that the man did not lack testamentary capacity when he made his 2006 will and declared that it was valid.

Private Client *If you need help or assistance contact our team.* Email: **wills@nevesllp.co.uk**

Jennifer Duckett
Solicitor
Private Client

Gail Donaldson
Senior Associate
Head of Private Client

Paul Ashby
Solicitor
Private Client

A Family Feud leads to Forged Signature Will

In resolving a bitter family dispute, the High Court had no hesitation in finding that the signature on a woman's purported last will was a clever forgery designed to cheat a favoured relative of his rightful inheritance.

The will was said to have been signed in Mumbai three years before the woman's death in England. No will emerged at that time and her assets passed to her husband on the basis that she had died intestate. When the widower died, he left the majority of his estate to a relative of his deceased wife.

There was no dispute that the widower's will was valid. However, one of the woman's nephews launched proceedings on the basis that letters of administration in respect of her estate had been issued on the mistaken assumption that she had died intestate. He claimed that there was a valid will and that her assets should have passed in accordance with its terms.

The sole question in the case was whether the woman's signature on the purported will was genuine. The Court noted that the testimony of two eminent handwriting experts was inconclusive on the issue but nevertheless ruled that the signature was a forgery and dismissed the nephew's claim.

The Court observed that it would have been 'extraordinary' if, in the nearly three years that passed between the alleged making of the will and her death, the woman had not told her favourite sister of the document's existence. In the Court's view, the evidence of three people – including the woman's brother and brother-in-law, who claimed to have witnessed her signature – was implausible and inconsistent and the Court was left with the distinct impression that their testimony had been 'rehearsed'.

Having found that the purported will was invalid due to 'want of proper execution', it was unnecessary for the Court to go on to reach specific conclusions as to how, or when, the disputed document had come into existence.