GRANT SAW
SOLICITORS LLP
Incorporating Lawbridge Solicitors

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Your quarterly bulletin on legal news and views from Grant Saw Solicitors LLP

Legal UPDATE

Firm Not Responsible for Investor Losses Due to Employee Fraud

When a person relies on a financial adviser, their future livelihood is at risk. There is, accordingly, a robust protection scheme available in the UK when the adviser is regulated under the Financial Conduct Authority. However, that protection does not cover all eventualities and also does not apply to unregulated individuals.

However, even when a person is a representative of an authorised investment adviser, that is not a guarantee of probity.

One of the clearest signals that something may not be right is when returns are offered to investors that are well above the market rates.

In a recent case, a man who was the appointed representative of a firm of financial advisers began a Ponzi scheme on his own account. Such schemes offer very high 'investment returns', but in reality the

apparently high rates of return are an illusion: the money being paid into the scheme by new dupes is used to pay the earlier investors. As long as the new inflows of cash are greater than the payments, all appears well, but when the financial tide turns, collapse is normally fast.

The liability for the losses of the investors became the subject of legal argument. They had received receipts for their investments on the letterhead of the representative, which showed him to be the authorised representative of an investment advisory business. The regulatory and supervisory systems operated by the firm were not used in respect of the Ponzi scheme and it was unaware of the representative's activities until there was a 'whistleblowing' disclosure.

Seeking recompense for their losses, the claimants argued that the financial advisers (presumably because they carry insurance) were liable for the acts of their representative. However, all the lines of argument advanced were rejected, leaving them to salvage what they can from the fraudster.

Anyone promised 'over the odds' returns on an investment should be very wary. If you have doubts about any investment opportunity you are offered, take professional advice before you part with your money. If it seems too good to be true, it almost always is.

Health and Safety Policies Must Be Taken Seriously

When employees are working 'out of the office', their employer remains responsible for making sure their working conditions are reasonably safe, and in that context having a safety policy alone is not enough...it must be taken seriously.

A recent case dealt with a personal injury claim brought by an employee who had previously raised issues with her employer regarding the moving of heavy items when doing her job as a tiler. The firm's policy was that heavy items such as refrigerators should be moved prior to employees commencing work. However, when she raised the issue because this was not happening in practice, her employer did not take the complaint seriously.

When she was subsequently injured trying to move a heavy item of white goods so that she could carry out her work, the employer was left with no credible defence.

Not only must appropriate risk assessments be carried out, but health and safety policies must also be enforced.

If you have been injured in an accident in the course of your work because your employer failed to take reasonable steps to eliminate or minimise obvious risks to your health and safety, you may be entitled to compensation. Contact us for advice on how to proceed with your claim.

Attorney Allowed to Take Over as Executor

It is commonplace for people to appoint siblings or friends as their executors. When they do and they are of a similar age, there is a risk that when the person who has made the will dies, the proposed executor will have predeceased them or lack the mental capacity to act as executor.

Clearly, it is sensible to make a will which caters for this possibility. In a recent case, a will by which a man appointed his second wife and a niece as his executors led to questions that needed to be answered.

The wife was the sole beneficiary of the man's estate. In 2003, he made a will that specifically excluded his daughter by his first marriage, from whom he was estranged. In 2013, his wife moved in with her own daughter so that she could be better cared for and she gave her daughter a Lasting Power of Attorney (LPA) over her affairs, which was registered in 2014. She was suffering from the early stages of dementia, but was still mentally fit to execute a will. Her dementia continued to advance and by 2015 she required full-time care and moved into a residential home.

The man died in 2016. The joint assets passed directly to his wife, leaving a residuary estate of about £60,000 to distribute. His estranged daughter, who lives in Australia with her husband and is in a difficult financial position, questioned the validity of the will and put a 'caveat' on the estate, which prevented it being distributed until the issue was resolved. She also claimed that her father had an obligation to provide for her financially.

The niece wished to have no part in the proceedings. In subsequently granting the wife's daughter's application to remove the caveat, the judge hearing the claim observed that the man's daughter had taken no active steps to challenge the validity of her father's will. Her stance had resulted in a stalemate and an unjustified and unnecessary delay of over two years in the administration of the estate.

The wife's daughter, as attorney, then applied to the High Court to replace the niece as second executor, in addition to administering her mother's affairs under her LPA.

The Court held that as the man's wife was the sole beneficiary of the estate and the LPA allowed her daughter to deal with her financial and property affairs without restriction, it was within the daughter's powers under the LPA to deal with the executorship of the estate.

For advice on creating a will that can be robust if circumstances change, contact us.

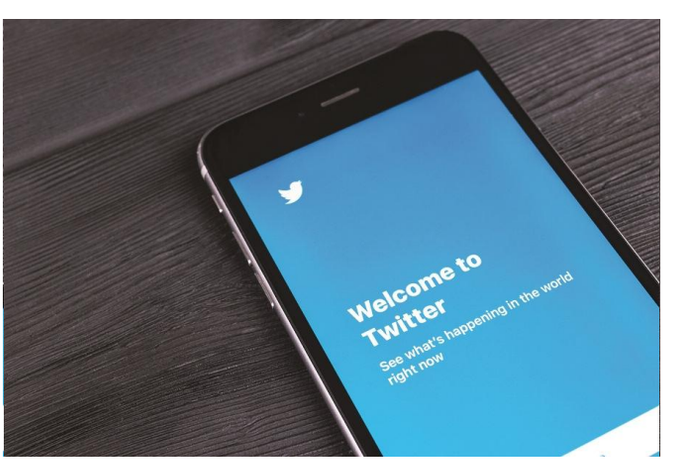
Social Media – Be Careful!

The legal dispute between Elon Musk and Vernon Unsworth, the man who helped to rescue boys trapped in a cave in Thailand, may have dropped out of the press over the last few weeks, but a recent case shows the lack of accuracy of Mr Musk's assertion that Twitter was just the forum for a 'schoolyard spat' that would not be taken seriously by users who expect to read 'opinion, not facts'.

The case involved a tweet made by the agent of a former chairman of UKIP in the run-up to the last General Election. It showed a man said to be standing next to 'child grooming taxi drivers', the apparent inference being that he kept company with paedophiles. The High Court awarded the man £40,000 in damages.

In the circumstances, Mr Unsworth's claim for $75,000 does not look excessive.

If you use social media, it is important to remember that publishing defamatory comments on the Internet can wind up causing a deep hole in your pocket.



If you have been defamed on the Internet, the law may assist you to obtain recompense and to prevent further untruths being spread. Contact us for advice.

When a Covenant May Be More Than it Seems

If you own or buy a property, you may find that there are covenants which apply to it, a covenant being a requirement to do something or refrain from doing something with your property. A covenant will benefit other property in the vicinity.

Typically, a covenant may be something like refraining from developing or adding to a property or a prohibition from using it for specific purposes. Covenants are often included when a property is sold out of a larger land holding.

It might appear that if you know what property was owned by the person benefiting from the covenant when you bought the property that was subject to it, you would know its limits, but a recent decision shows this is not quite correct.

The owner of a parcel of land had a covenant over the property preventing any development that would interfere with the view over Green Belt land from adjacent land. The problem arose when the owners of the land that benefited from the covenant bought additional land and then claimed that the covenant should apply to the whole of the land they owned, not just the land they owned when the covenant was first put in place. The Upper Tribunal (UT) ruled in their favour.

In a subsequent case, the UT made the point that the purpose of a covenant is to secure practical benefits for the owner of the land benefiting from it. The UT noted that statute does not limit the application of a covenant by reference to particular land. A covenant will apply to the person objecting to its breach, if they are entitled to and do receive a practical benefit from it.

If you are considering a property purchase, a thorough examination of any covenants which attach to it needs to be undertaken.

Tribunal Paves the Way for Suburban Garden Development

Restrictions on land use appear in the title deeds of many properties – but the law permits their deletion or modification if they become obsolete over time or stand in the way of reasonable development. Exactly that happened in one case in which the Upper Tribunal (UT) opened the way for construction of three new homes in a large suburban garden despite neighbours' objections.

The garden once formed a large field on the outskirts of a major city. Part of it was subject to a restrictive covenant, dated 1928, which forbade construction of more than three detached homes on the land. Those homes had long since been built. A further covenant, dated 1929, affected another part of the garden and required that any house built on that plot must have direct frontage to a public road.

A couple who owned one of the detached houses were granted planning consent to construct three houses on their land. It was accepted that two of the properties would breach the 1928 covenant and that the third was precluded by the 1929 covenant. In those circumstances, the couple applied to the UT to discharge or modify the covenants so as to enable the development.

In ruling that the 1929 covenant was obsolete, the UT noted that it did not amount to an absolute prohibition on house building. Due to the city's expansion during the 20th century, the area had been absorbed into the urban area. The covenant had already been breached by a previous construction project and the protection it was designed to afford had been significantly eroded. It was therefore discharged, enabling construction of the third house.

Despite neighbours' concerns that their sunlight and views would be harmed, the UT found that, by impeding development of the other two homes, the 1928 covenant did not secure any practical benefits of substantial advantage to objectors. The covenant was modified to the extent required to permit the development. The modification would take effect on the couple paying a total of £15,000 in compensation to the owners of two properties whose value would be affected by the project.

Our property experts are here to help.

High Court Decision Underlines the Finality of Divorce Arbitration Awards

Divorcing couples can sometimes achieve savings of both time and money by opting for arbitration, rather than court proceedings, as a means of resolving any financial disputes. However, as a guideline High Court case underlined, arbitration has its potential downsides and it is vital to remember that arbitrators' decisions are generally treated as final.

Faced with the prospect of having to wait several months for a court date following the breakdown of their ten-year marriage, a middle-aged couple chose to submit their differences to an arbitrator. He decided that the net capital assets of the marriage should be divided 60 per cent to 40 per cent in the husband's favour.

Such division was to be achieved by the sale of the family home and was designed to enable each of them to purchase a new property. The wife was awarded 76 per cent of the husband's pension and he was required to pay her maintenance at steadily reducing rates up to the date of his retirement. The wife was, however, dissatisfied with the arbitrator's award, arguing that it was untenable.

She claimed, amongst other things, that the arbitrator had failed to take into account her inability to take on a mortgage and the husband's excessive spending following the end of the marriage. In those circumstances, she argued that the award should not, as is usual, be recognised in the form of a court order.

In ruling on the matter, the High Court noted that arbitration awards are binding in their own right, although they are generally confirmed by court order so that they can be enforced against third parties. However, an arbitration agreement, or an award, does not oust the Court's

jurisdiction under the Matrimonial Causes Act 1973 to investigate the circumstances and make an order in different terms.

The efficacy of the arbitration scheme, however, depends on awards being generally treated as effective and binding. In pursuit of a swift resolution of the dispute, both husband and wife had freely entered into the arbitration process with the benefit of legal advice. Both had also signed a form by which they signalled their understanding that the arbitrator's award would in principle be final.

In dismissing the wife's arguments, the Court found that she had failed to establish any fundamental change in circumstances, or mistake on the arbitrator's part, sufficient to undermine his clearly reasoned and balanced award. In the circumstances, the Court made an order in the terms of the award.

Our family lawyers are experienced in helping clients negotiate financial settlements on divorce.

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