

*Up*front

VOL EIGHTEEN WINTER 2020

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Forbes celebrate
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SUCCESSSES**

**RELATIONSHIPS
AT WORK**

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Welcome

to Upfront
Volume Eighteen

What do businesses all have in common? DISRUPTION.

Disruptions come in many shapes and sizes with no two being the same; in fact, even the same disruption can have hugely varying impacts on different businesses or sectors. Whilst I've heard some say "Is it really a disruption if you're ready for it?", the reality is that you can never be 100% ready whether the disruption be a small speed bump or a huge mountain like, dare I say, BREXIT. Even if you think you can see it coming, it can morph, grow legs, peter out or become something you never expected!

However, as disruptions hit businesses and individuals on a daily basis, their ability to react will help to dictate whether the outcome of the disruption ends positively or negatively. Whilst it is impossible to gaze into a crystal ball and to plan for every eventuality, the only possible way to minimise negative disruption is to continually drive change and focus on building the new....disruption to stability is necessary for growth and/or survival. How many companies and sectors have failed to react and evolve, credited to disruption?

Our business faces constant disruption....changes to the law, the economic climate, deregulation of the industry, I could go on. However, if we focus on problems, we'll have more problems. If we focus on the possibilities, we'll have more opportunity. I know this sounds idealistic and simple especially with a backdrop of huge economic change on the horizon, however I guess in simple terms what I'm saying is, be your own disrupter and evolve. Be other people's disrupter and make them evolve, driving evolution and not doing what you've always done.

At Forbes, we can help you evolve and we want to be with you every step of the way.

I hope you enjoy our latest edition of Upfront which provides you with some great articles, advice, news and updates.

Oliver



IN THE *News*

Forbes Solicitors shortlisted in Prestigious North West Dealmakers Awards



SHORTLISTED

Our Corporate team were shortlisted in the Mid-Size Law Firm of the Year category in the prestigious Insider North West Dealmakers Awards 2019.

The Dealmakers awards is the opportunity to celebrate the achievements of the North West's leading corporate financiers, accountants, bankers, funders, lawyers and M&A professionals.

Up to 1,000 people attend the awards evening each year, with some of the biggest names in the professional and financial services sector celebrating their own success and the successes of the region.

Pauline Rigby, Partner & Head of Corporate said: "The Dealmakers Awards is recognised as the premier event of its kind in the region and we were delighted as a firm based across both Lancashire and Manchester to be shortlisted in what was a new category this year.

"It is a glowing endorsement of all the hard work and success that the team has put in."

Legal 500 Successes

We are delighted to have been recommended in 15 Legal 500 categories and ranking as a Top Tier Firm, with 35 lawyers listed as recommended.

Our category recommendations are up one from last year, with Contentious Trusts and Probate being ranked for the first time.

The firm has moved up a tier for Corporate and Commercial (Tier 1), Insurance: Personal Injury Defendant North West (Tier 1), Crime: General (Tier 1), Crime: Fraud (Tier 1), Public Sector: Education (Tier 2), and Private Client: Family (Tier 3).

The firm has remained in tiers for Social Housing North West (Tier 1), Insurance Yorkshire and the Humber (Tier 2), Real Estate: Commercial Property North West (Tier 2), Employment North West (Tier 3), Private Client: Wills North West (Tier 3) and Real Estate: Property Litigation North West (Tier 5).

The Legal 500 guide has also named Partners Chris Booth, Kella Bowers, Daniel King, David Ryan and Stuart Penswick in the elite "Leading Individuals" list, with Jennifer Hankinson included in the Next Generation Partners rankings.

Partner Craig Liversidge has been named a Next Generation Lawyer and Associates John Pickervance, Nick Pickup, Sarah Rogers, Kirsty Varley, Adrian Williams and Judith Wright have all been identified as Rising Stars.

We have been recommended in the North West for our work in the following areas:

Corporate and Commercial, Crime: General and Fraud, Dispute Resolution, Employment, Clinical Negligence, Insurance: Personal Injury Defendant, Education, Contentious Trusts and Probate, Wills, Family, Commercial Property, Property Litigation and Social Housing.



IN THE News



“The Forbes Foundation started with the will to make a difference and it has been embraced by the amazing team of people we have here at Forbes”

Forbes Solicitors launches charitable foundation with £6,000 grant to help little Isaac

We have launched our own charitable foundation to help local people and provide vital grants to good causes across the UK.

The Forbes Foundation became a registered charity on the 11th January 2019 and is funded by staff joining forces to organise and take part in fundraising events, both internally and with support from family, friends, clients and professional contacts across the North of England.

The Foundation's launch was marked with a £6,000 grant to little Isaac Wood, aged one from Darwen, who was born with the muscle wasting disease spinal muscular atrophy type 1.

The money will help towards the fundraising, his mum Kerry is currently undertaking to fund an electric wheelchair to help Isaac get about when he is older.

CEO Oliver Burton said: “The Forbes Foundation started with the will to make a difference and it has been embraced by the amazing team of people we have here at Forbes.

The Foundation provides financial support to children, and their families, who are in need, by reason of ill health, disability, and/or financial hardship within England and Wales, but predominantly the North of England, by providing facilities, equipment and monetary grants.

When we heard about little Isaac and the amazing progress he is making we wanted to do something to help to support him and his amazing family.

This is exactly why we set up the Foundation - to make a difference to people's lives - and we are always looking for ideas to raise funds in order to help fulfil that goal”.

Isaac's condition means that the signal from his spine to his muscles is blocked. He has been undergoing revolutionary drug treatment since he was three weeks old and he can now move his arms and legs and sit up.

The NHS has provided a supported seat and walking aid to help his bones develop properly as well as a bath seat.

But additional things that make day to day life easier, such as wheelchairs, are not provided.

His mum Kerry said: “I'd like to say a massive thank you to the Forbes Foundation and everyone at Forbes for everything they have done. It is going to have a massive impact on Isaac's life and all the time and effort people have put in is just so overwhelming.”

For more information on the Forbes Foundation go to www.forbesfoundation.org.uk.



Forbes Foundation raises £3,500 for Derian House with Tour de Forbes Charity Cycle

Fundraising volunteers here at Forbes have collected £3,500 for charity after creating our own version of the Tour de France cycling event.

The event, which raised money for Derian House Children's Hospice in Astley Village, Chorley, involved a team of around 30 volunteers making the 100-mile cycle from the firm's Leeds office to our base in Accrington.

The journey took in all Forbes' other offices in Manchester, Salford, Chorley, Walton Summit, Preston and Blackburn.

Forbes works to support charities located close to our offices and the fundraising event was arranged by Partner Jonathan Holden to purchase shower chairs for the hospice.

Jonathan, who is our Head of Employment, said: "This is the second year we have completed the Tour de Forbes and I would like to thank all those involved. It was a real team effort, from the cyclists to the support crew and all those who cheered us on and helped with sponsorship.

Abigail Williamson, Corporate Sponsorship Manager at Derian House said: "We're really grateful for the amazing total that the 30 intrepid fundraisers from Forbes Solicitors managed to raise with their Tour de Forbes event - it just shows that a little creativity and a lot of hard work can go a long way!

"The new shower chairs will make a positive difference to the children and young people we look after at Derian House."

Management Buyout of Business Insight 3 Ltd

Preston-based Business Insight 3 Ltd has undergone a management buyout by Director Glen Higson.

Bi3 has been keeping property secure and people safe and informed since 2009. It combines innovative, cutting edge technology from around the world with in-house expertise to provide bespoke solutions for the security and business information sectors.

Glen Higson, who has been a Director of Bi3 since 2009, having previously worked for some of the biggest names in the security industry, was delighted to appoint Forbes as legal advisors for the MBO. The deal for the company, which is based at Preston Technology Centre, Marsh Lane, was handled by Associate Solicitor Nick Pickup from our Corporate team.

Glen said: "Nick's knowledge and expertise provided great support as we move the business onto its next chapter. We are committed to being the best in our field by providing a first class, trusted and friendly service and this was matched by the Forbes team".

Nick said: "This was a deal with a number of considerations which needed to be factored in and I am delighted to have been able to help and advise Glen at this important stage in the company's development."

FORBES SOLICITORS ANNOUNCED AS NEW

Lancashire Ambassador

We are delighted to have joined the county's growing network of Lancashire Ambassadors.

Lancashire Ambassadors, launched by Marketing Lancashire, brings together Lancashire business leaders who share a passion for the county's success and a desire to champion Lancashire's world leading businesses and sectors.

Together their unwavering pride, entrepreneurial spirit and relentless energy in pursuit of the economic possibilities for Lancashire, will help shape and drive the county's future success.

A group of well-known Lancastrians, including the very first Lancashire Ambassador, Andrew 'Freddie' Flintoff, has also committed to helping Marketing Lancashire promote the county nationally and internationally for the greater prosperity of those who invest, live and work in the Red Rose county.

Andrew appears in a rousing video created for the launch of the Lancashire Ambassadors which celebrates the county's unique qualities and assets.

Pauline Rigby, Partner and head of the Corporate team, said: "Although Forbes Solicitors has offices across the North our roots are firmly based in Lancashire.

"We recognise the importance of telling the world what an amazing place Lancashire is, the benefits of marketing it both nationally and internationally and we want to play our part in that."

Rachel McQueen, Chief Executive of Marketing Lancashire, said: "We are really thrilled to have such strong advocates for Lancashire on board; amplifying the Lancashire brand amongst their peers and contributing their expertise on new ideas to help generate growth and investment in Lancashire.

"Companies like Forbes Solicitors, with a proud Lancashire heritage, are essential to the success of the Lancashire Ambassadors programme and we hope the initiative shown by them will inspire other businesses to take part."

Forbes advises Danish Retailer Søstrene Grene over Manchester City Centre move

Danish retail chain Søstrene Grene has opened a new store in Manchester city centre after being advised on the lease of the site by Forbes Solicitors.

Søstrene Grene sells contemporary and affordable Scandi furnishings and crafts and has 250 stores across Europe. The store concept artfully combines classical music, beautiful displays and telling the story of its heritage. The brand offers refined and innovative product ranges, chosen on the basis of being both practical and aesthetically pleasing.

Helen Marsh, a Partner in our Commercial Property team, advised the retailer on acquiring the former Nationwide Building Society base in Cross Street; a bustling street in the very heart of Manchester.

The new 3,000 square foot store is in a prestigious location as it is part of The Royal Exchange building and is Grade II listed.

Helen said: "This is the second store I have advised Søstrene Grene on in the Manchester area, the first one being Altrincham. I am delighted to see the business continuing to go from strength to strength and wish them all the best with the opening of this new store."

Jonathan Cooper, Søstrene Grene's UK joint venture partner, said: "We are delighted to have been able to work with Helen again and value the support and expertise she has provided in relation to this key move for the business. We are very pleased to be on target for opening our store in time for the busy trading period in the run up to Christmas."

Oral Agreements

A WARNING TO DEVELOPERS



The recent case of *Pezaro and another v Bourne and another* [2019] EWHC 1964 (ch) highlighted the risks faced by purchasers of land relying on oral agreements, particularly those to which the purchaser is not a party.

The Oral Agreement

A property being acquired was subject to a right of way which had been registered at the Land Registry. The previous owner (A) of the land that benefited from the right of way had made a verbal agreement with the owner of the land (B) which was subject to the right of way that the right would be removed.

Proposed Development

B had plans to develop and build on the land over the land where the right of way existed. In the meantime, A sold their property to a new owner (C). C claimed the benefit of the right of way which remained noted on the title of the property.

B pursued a determination from the Courts that the right of way had in fact been extinguished by the oral agreement with the previous owner of the land by relying on the legal principle of promissory estoppel.

The Courts Decision

The Court found in favour of C hoping to exercise the right of way. While the removal of the right of way was applicable to the former owner under the principle of estoppel, the right remained intact for C due to the fact the extinguishment of the right had not been registered (as required under section 29 of the Land Registration Act 2002).

Registering an Interest

The message for developers from this case is that if you are purchasing land and you become aware that there are informal verbal agreements which have been made in relation to the land, be wary of proceeding without such agreements being formally documented and registered at the Land Registry.

Our Commercial Property team will expertly assist in helping you avoid property pitfalls and so if you have any questions regarding the registering of agreements relating to land please do not hesitate to contact our advisors.

For more information or assistance please do not hesitate to contact our Commercial Property department on 0333 207 1158.

Relationships at Work

The departure of the Chief Executive Officer of McDonalds, Steve Easterbrook, attracted a large amount of media coverage this month and highlights a number of issues to business owners and HR professionals.

The CEO was exited from the company after engaging in a consensual relationship with an employee who was his subordinate. In this case, McDonalds had a policy in place which prevented managers from having relationships with employees, whether they reported directly or indirectly to them. Although McDonalds recognised that the relationship was consensual, they concluded following review and investigation that Mr Easterbrook had demonstrated poor judgement and had not acted in accordance with the company's work place policies. In a departing email to his colleagues, the CEO acknowledged the relationship, said it was a mistake and that given the values of the company it was time for him to move on.

This case highlights the complex situations which can emerge for businesses where personal relationships arise between colleagues, even where such relationships are consensual. Personal relationships in the workplace can be disruptive and time consuming for an employer to deal with, and can increase the risks that an employer is exposed to, particularly in relation to complaints of sexual harassment and/or sex discrimination if a relationship breaks down.

For this reason, and due to recent publicity surrounding the #MeToo movement, it is important for businesses to adopt a 'Relationships at Work' policy which clearly sets out the guidelines and boundaries which must be adhered to.

Some businesses choose to enforce a zero-tolerance approach to relationships between colleagues regardless of their status within the business, however this could be considered overkill and employees

may even assert that such a policy breaches their human right to a private life under Article 8 of the European Convention.

A typical 'Relationships at Work' policy will outline an expectation of professional conduct and place a requirement upon employees to confidentially disclose the existence of a relationship as soon as it is initiated, in order to enable the employer to take steps to manage the situation, particularly where one employee has direct or indirect managerial responsibility over the other. It is also commonplace to reserve the right to transfer one or both employees to another department, or to change their reporting lines, when there is a potential conflict of interest.



For further information contact our Employment team at emma.swan@forbessolicitors.co.uk or on 07817 392 717.

Incoterms® 2020

WHAT HAS CHANGED?

Incoterms®, short for International Commercial Terms, are internationally accepted standards that explain commonly used trade terms reflecting business-to-business practice in contracts for the sale and purchase of goods. They were developed by the International Chamber of Commerce to simplify the provision of international trade and were originally introduced in 1936. There have been various revisions to the Incoterms® since their inception, with the latest edition, Incoterms® 2020, recently being published.

Incoterms® are designed to provide clarity as to the obligations, risks and costs of each contracting party. They are not in themselves a contract for sale, and therefore it is advised to effectively incorporate them into the delivery provisions within a contract to give them maximum effect.



Overall, the Incoterms® 2020 have been articulated in a way which is much more user friendly. With each individual Incoterm®, both the buyer and the seller's obligations are now clearly stated in relation to delivery, mode of transport, destination, loading and unloading, the transfer of risk, and which party is obliged to deal with import and export clearance (and the associated costs).

A greater emphasis has been placed on including the most appropriate Incoterm® within your contract, outlining:

- (a) when delivery will take place;
- (b) when risk in the goods will pass from seller to buyer; and
- (c) which party will bear the costs associated with delivery.

More specifically, DAT has now changed to DPU in order to remove the uncertainty with the word 'terminal'. The previous common misconception with businesses was that the 'terminal' in this sense was restricted to the terminal at the airport, seaport or otherwise. However, under DAT and now more clearly under DPU, the 'terminal' or 'place' can be any place (such as a container yard or warehouse) agreed between the parties.

Incoterms® 2020 clarify issues relating to when the seller needs to arrange insurance for the goods. Costs and cost structures are also clarified. Under Incoterms® 2010, costs were a big issue whereby carriers would change their pricing structures to deal with additional add ons and sellers would find themselves being subject to further charges as a result. Incoterms® 2020 more appropriately clarifies the applicable costs to each party, in order to avoid (as far as is possible) any further confusion relating to costs such as terminal handling charges.

Under FCA and the D-based rules (including DAP, DPU and DDP), Incoterms® 2020 have been changed to allow for own modes of transport by the buyer. This attempts to alter previous problems relating to third party transport, where Incoterms® 2010 were drafted in a way which presumed that the goods carried were always by the third party. Incoterms® 2020 therefore provides flexibility for both parties.

There has also been clarification surrounding Bills of Lading. Previously, sellers used FOB to ensure that they received payment via letter of credit. Now Incoterms® 2020 suggest that under FCA the parties can agree (at the buyers cost and risk) to use a transportation document to confirm that the goods have been unloaded. It will also reduce any uncertainty for sellers relating to costs and risk.

EXW has also been clarified in that it is no longer deemed suitable for international trade. EXW is the Incoterm® which imposes the least amount of obligations on the seller, whereby the buyer is responsible for loading goods onto a vehicle, for all export procedures and for onward transportation costs. The practicalities of this hinder the use of EXW in cross border contracts, and in some circumstances the seller may still be required to be involved in reporting and clearance processes. Instead it is advised that the parties use FCA as an alternative to remove any uncertainty from the contract.

Security in relation to transport has also been clarified within Incoterms® 2020, with each individual Incoterm® now clearly stating where the safety liability lies.

Following the new updates, we would strongly advise making clear reference to Incoterms® 2020 and effectively incorporating them into your contracts and the latest edition explains how to do so. Failure could result in difficulties in the event of a dispute between the parties, and in such a case, the judge or arbitrator would need to determine which version of the Incoterms® apply.

For more information on the recent changes or updating your contracts in light of Incoterms® 2020, contact John Pickervance in our Commercial department via email at john.pickervance@forbessolicitors.co.uk or phone on 0333 207 1134.

Agreement to agree:

Court of Appeal rules SPA earn-out unenforceable

The following case serves as an important reminder of the importance of providing certainty within agreements and displays the perils of leaving the option to agree terms at a later date.

Morris v Swanton Care & Community Limited (2018)

In November 2009, Mr Morris (Claimant) and his business partner sold his shares in Glenpath Holdings Limited for an initial consideration of around £16 million to Swanton Care (Defendant). Both parties entered into a Share Purchase Agreement (SPA), which detailed the terms of the agreement and in particular, an earn-out provision, to be calculated in accordance with the schedule annexed to the SPA, which was payable in return for Mr Morris to provide consultancy services to Glenpath Holdings.

As such, the SPA provided: “Mr Morris shall have the option for a period of 4 years from Completion and following such period, a further period as shall reasonably be agreed between Mr Morris and the Buyer to provide the following services [.....] (the Consultancy Services)”.

Following the sale, the consultancy services were provided by Mr Morris and Swanton Care accordingly paid the earn-out consideration in accordance with the terms of the SPA. However, in 2010, Mr Morris served his formal notice to request an extension to the earn-out period. Swanton Care

refused the extension arguing it was not obliged to agree to any extension. Consequently, Mr Morris issued proceedings in the High Court claiming that there was a contractual entitlement to extend the earn-out period as per the provision (above) in the SPA.

JUDGMENT

The High Court rejected the Claimant’s extension as an enforceable right. The Claimant subsequently appealed to the Court of Appeal.

The Court of Appeal, agreeing with the High Court, held that the provision in question expressed the option to continue the consultancy services provided by the Claimant, which was to be reasonably agreed after a period of four years from Completion. Further, taking the SPA as a whole, there had to be a further agreement between the parties to agree such extension i.e. an agreement to agree. As such, there was no obligation for the Defendant to agree the extension and this was subject to any further agreement at the time.

Accordingly, the Court of Appeal dismissed the appeal.

What we learn

This case demonstrates that entering into an agreement on the basis of agreeing terms in the future will render such terms within the agreement unenforceable. The remainder of the terms within the agreement will continue to be binding. It is therefore important, where possible, to agree all terms at the time of entering into the agreement.

In this case, the provision in dispute did not seem to be out of the ordinary which, due to the nature of uncertainty, resulted in a very costly dispute. However, specifying a period in this instance, or even outlining an objective criteria within the SPA for the extension, would have avoided the matter reaching the Courts and, in turn, would have resulted in an enforceable obligation for the Defendant to agree.

For further information please contact a member of our Corporate team on 0333 207 1131.

“ This case demonstrates that entering into an agreement on the basis of agreeing terms in the future will render such terms within the agreement unenforceable. ”



Forfeiture rights

take precedence over a CVA

Debenhams is the latest to announce a CVA. As most of the Debenhams stores operate under a lease, the CVA adversely affects several landlords.

A recent High Court decision found that even though a CVA has the power to reduce rent, it cannot prevent a landlord from exercising its forfeiture rights.

What is a CVA?

A CVA (Company Voluntary Arrangement) is a formal arrangement between a company and its creditors in relation to its debt. It is flexible and allows a company to agree to differing payment terms. In order for a CVA to be approved, 75% of the creditors (by value) need to agree to the proposal.

For most creditors, a CVA is much more attractive than other forms of insolvency as it usually involves some payment towards the debt.

How does this impact landlords?

A CVA can unilaterally amend a lease. It can reduce the rent payable either temporarily or permanently. It can allow a tenant to break their lease early or even assign part of the premises. It can forgive a serious breach.

Often when a CVA proposal is drafted, there are no rent arrears, leaving the landlord with little voting rights, meaning that the terms are imposed on them.

What power does a landlord have?

All creditors, including landlords have a right to challenge a CVA on the grounds that they have been unfairly prejudiced by the terms. Unfair prejudice is where one creditor or group of creditors is treated differently than another - without good reason. There have been precious few cases of this type.

What happened with the Debenhams CVA?

Six landlords joined forces to challenge the CVA, powered by Sports Direct. Under the proposed CVA suppliers were being preferred to landlords, whose rents were being slashed. In addition, the CVA took away the landlord's right to forfeit the lease.

“For most creditors, a CVA is much more attractive than other forms of insolvency as it usually involves some payment towards the debt.”

What was decided?

The Court did not agree that the disparity between creditors meant that the CVA was unfair – the ‘good reason’ being the need to continue trading.

This means that landlords cannot claim for future rent or rent arrears. However, the Court did find that preventing a landlord from forfeiting was a step too far.

What does this mean for retail landlords?

If your retail tenant has proposed a CVA, you should take advice immediately. There may be many options other than to put up with it as drafted.

For further information please contact our Dispute Resolution team on 07976 271 000.

Chasing debts:

worried about client relationships or the effect it is having on your health?

A recent report has found that 75% of SMEs are fearful of taking action against debtors through fear of ruining client relationships, and ultimately losing future custom. This, unfortunately, results in small businesses tolerating late payment or non-payment of invoices, which can be extremely detrimental to a small business' prospect of long-term success. It should not be necessary for businesses to have to choose between being paid and retaining custom.

New research has shown that the non-payment of invoices is having a staggering effect on the mental health of Freelancers and SME business owners.

The impact of non-payment to small business operators can be catastrophic. Recent reports have shown that Freelancers and SME business owners are spending an average of 77 minutes every day chasing clients for unpaid invoices.

Currently, late payments are costing SMEs in the UK an average of £10,000 per year. Furthermore, research has shown that 40% of small business owners have had to use savings to keep cash flow moving as a result of non-payment of invoices.

Additionally, recent studies have shown that over a third of small business owners were not aware that interest can be applied to overdue payments and only a small amount are aware of what action can be taken against those who fail to make payment when due.

We understand that chasing debt can often be a mammoth task that small businesses are unable to focus on as they are often extremely busy and do not have the time nor resources to chase unpaid invoices.



“ The impact of non-payment to small business operators can be catastrophic. ”

Outsourcing late payment collection to Forbes Collect will ensure that your time is spent on providing a great product or service to your customers whilst having Debt Recovery experts lead your case. We will run your claim from start to finish; ensuring that debtors are continuously pursued without any time being taken out of your own day.

Please get in touch with Forbes Collect on 0333 207 1130 to learn more about our expert Debt Recovery services and we would be more than happy to assist you.

Forbes save

Company Director from disqualification

The Case

We recently acted for a Company Director who faced criminal prosecution by Companies House for late submission of company accounts. Because there had been two earlier similar breaches the director was exposed to a disqualification from acting as a director for up to 5 years.

The company was successful and well-run but the Director in question, who was also Company Secretary, had simply taken on too much of the responsibility for complying with the various regulations relating to the filing of information with Companies House. The company was growing and the various other demands, together with pressures in their personal life, meant that deadlines were missed.

However, applying our extensive knowledge of the regulatory framework and of the processes of the Magistrates' Court we were able to demonstrate that there were a number of significant mitigating features, including various personal difficulties, which had impacted on the Director's performance. We advised on how the client could take steps to demonstrate that action had been taken to improve the processes of compliance and that there was no likelihood of any further breaches of the regulation, and we were able to persuade the Court not to apply the disqualification.

Needless to say, our client was very relieved and pleased with the outcome and our Corporate team was able to provide further advice about how other areas of the business could be improved.

The Message

It is important to remember that Directors carry legal responsibility for making sure that information is sent to Companies House within the time limits and as well as the annual accounts this includes:

- any change in your company's officers or their personal details
- a change to your company's registered office
- allotment of shares
- registration of charges (e.g. mortgage)
- any change in your company's people with significant control (PSC) details.

A failure to comply with these duties can result in prosecution, fine and potential disqualification from acting as a Director.

The moral of the tale is to be aware of, diarise and keep on top of all the regulatory requirements in respect of filing accounts and other documents, and if you receive a requisition, or if you have any concerns, or if the processes are becoming challenging, contact someone who can advise you and help to resolve and manage the situation before it becomes serious.

For further information please contact Daniel King on 01772 220257 or email daniel.king@forbessolicitors.co.uk.

“ The moral of the tale is to be aware of, diarise and keep on top of all the regulatory requirements ”



Planning

YOUR RETIREMENT

Retirement is a significant life event and often coincides with a change in financial and personal circumstances. Whilst sorting your legal affairs might not be at the top of your to do list, dealing with matters sooner rather than later will give you peace of mind.



The most important consideration is to review your Will, or make one if you do not have one. Changes in personal and/or financial circumstances may mean your Will is no longer suitable for your situation or reflects your current wishes. You should also think about whether your estate is likely to be liable to inheritance tax and consider how you could reduce any tax payable, either in your Will or during your lifetime with gifts or the use of trusts.

If you are retiring from or selling your own business or shares in a business it is important to take professional advice at an early stage to ensure that it is done in the most tax efficient way, not only for you in the short term, but also for your family and beneficiaries in the future. In particular, selling your business usually means converting shares into cash. Shares in trading companies can get relief from inheritance tax, but the proceeds of sale do not. However, with the right planning and documentation in place, inheritance tax on your death could be reduced.

Trusts can be a useful way of protecting assets for you and your family. They can provide for incapable or wayward relatives, protect assets against remarriage or divorce, simplify financial arrangements for later life and can be useful for tax planning. They can also be a good way of passing assets on to the next generation whilst retaining an element of control.

As we live longer lives, many people need help dealing with their affairs later in life. Having a lasting power of attorney in place early can be invaluable in providing reassurance, allowing your finances to be dealt with and used for your benefit if the worst happens. Without a lasting power of attorney, it would be necessary to apply to the Court to access your money and investments which can be an expensive and time-consuming process.

You can also make a lasting power of attorney appointing someone to make health and welfare decisions on your behalf.

For further information, please contact Jane Burbidge, Partner & Head of Wills, Probate, Tax & Trusts on 01772 220022 or email jane.burbidge@forbessolicitors.co.uk.

To Buy

OR NOT TO BUY?

The freehold on a long leasehold house

What is the difference between freehold and leasehold properties?

Freehold means you own the land and the property outright with no time limits.

Leasehold is where the land the property sits on is owned by the freeholder and the home owner pays an annual charge (ground rent) to the freeholder. When the lease expires, the ownership of the property reverts to the freeholder unless the lease has been extended.

There has been a lot of adverse publicity about leasehold properties and escalating ground rents, which are causing issues for their owners. These relate to either short leases and /or ground rents, which multiply within a short space of time and can soon become eye-watering amounts and make the property unsaleable. Short leases (usually below 70 years) can be an issue for mortgage lenders and it can be costly to extend them.

Here in the North West we have something quite different, we have leasehold houses on long leases, generally 999 years with fixed, often nominal ground rents of a few pounds. The length of the lease is not an issue as the house may not be in existence by the time the lease ends. There is no provision for the ground rent to increase and the ground rent is fixed for the entire term of the lease.

We have noticed an increase in enquiries from our clients who have been offered the opportunity to buy their freehold by the freehold owner.

What do you need to consider?

1. What are you paying for?

In some cases, apart from owning the freehold all you are doing is getting rid of the obligation to pay the ground rent, which if it is only a few pounds a year, may not make economic sense. There can however be restrictions in deeds, for example, you need the freeholders consent to carry out an extension which can be a few hundred pounds, or administration fees for change of ownership or late payment fees which can make it worthwhile.

2. What is the total cost?

In most instances, it is not just the cost of buying the freehold that you need to consider, but also the freeholders and your own legal costs and Land Registry fees.

3. Buying the freehold will not necessarily get rid of all the obligations in the lease, particularly on newer properties so we recommend if you do decide to proceed, that you have the paperwork checked by a solicitor.

4. Whilst buying the freehold will not necessarily increase the value of your house, it may make it more saleable due to the publicity surrounding leasehold properties.

If you are considering buying your freehold please contact Michelle Thompson for advice at michelle.thompson@forbessolicitors.co.uk or phone 01254 222399.



THE QUEEN *has spoken!*

The most recent Queens speech (19th December 2019) included the Divorce Dissolution and Separation Bill, otherwise known as the no fault divorce.

In 2018 there were 92,361 divorces finalised according to the Ministry of Justice. This is over 100,000 less than the year before. Cohabitation is more and more common and so, of course, with less marriages, there will be less divorces proportionately.

Indeed, over the last 10 years the number of marriages taking place, where both parties, have previously been divorced, has fallen by nearly a third.

Divorce Law in England and Wales has not changed in over 50 years and 42% of all marriages now end in divorce.

At present there are five factors to try and prove the ground of irretrievable breakdown of a marriage. Five-year separation, without the other parties' consent, two-year separation with the other parties' consent, desertion, adultery and unreasonable behaviour. Commonly, I see clients who quite simply have just grown apart. The people they were when they got married in their late 20s' are not necessarily the same people 10, 15, 20 years' later. It is rarely down to one of the parties' fault, with neither being to blame, yet I must explain that because of this absence of blame, they will have to wait 2-years before they can start their divorce proceedings.

In some cases that does not impact them hugely if they have been able to resolve the financial aspects amicably between the two of them, but if they cannot, then they are being penalised. You cannot issue an application to Court for Financial Remedy until the divorce proceedings are up and running. This means some couples must wait 2-years to try and resolve their finances. I rather suspect that what happens in some of my cases, is that the parties get their heads together and then one decides to "blame" the other, with their full acceptance, just so

the divorce petition can be issued and the financial matters resolved. I have no proof of this, but I do suspect this.

A "no fault divorce" will mean that this is no longer an issue and would allow couples to separate as amicably and as painlessly as possible without having to point the finger to enable them to continue to discuss parenting and other issues that will affect the family once they have separated.

The Divorce, Dissolution and Separation Bill entered Parliament as of 7th January 2020. The Bill has been described as the "biggest shake-up of divorce laws in half a century" and it is hoped that it will bring divorce law in line with the Governments approach to family justice - avoiding confrontation and reducing the damaging effect on couples and in particular, children.

The Bill is also set to introduce a 20-week period between the initial petition stage and the pronouncement of Decree Nisi. It is thought that this will allow couples a meaningful period of reflection and better enable them to cooperate and plan for the future.

The Bill has been welcomed by the family law community who have been campaigning for such a change.



Please contact Judith Wright, Associate in our Family department on 01254 220022 or email judith.wright@forbessolicitors.co.uk.

Sector

FOCUS

Construction

Our Construction team draws together specialists from a number of different departments who support clients in both the public and private sectors, across a wide range of industries.

Whether you are an employer, contractor or consultant working on commercial or residential projects or railways, roads and bridges we can support you. Our dedicated team have the experience and knowledge to deliver the results you need in the timescales you need them.

We can support you with areas such as:

- Production of contracts, subcontracts, ancillary agreements (collateral warranties, professional appointments, performance and guarantee bonds and deeds of novation), advising on and negotiation of the above and advising on procurement law
- Site acquisitions, sales of development sites, plot disposals, taking and granting leases of development sites, preparation of documents for developments and acting on behalf of owners/ banks in connection with lending facilities
- Shareholder agreements, joint venture agreements, acquisitions and disposals, financing
- Construction contractual disputes, including JCT arbitration
- Professional negligence/ breach of contract claims
- Boundary, easements and right of way disputes
- Invoice/debt recovery
- Construction-site accidents, long tail disease claims, regulatory breaches
- Bringing and defending commercial dilapidations claims
- Defending residential disrepair claims
- Section agreements - water/ highways/ diversions
- Statutory Easements
- Substation leases and transfers

Our clients include construction companies, developers, builders, land owners, banks/ financial companies, facilities management companies, contractors, subcontractors, local authorities, registered providers of housing, schools and charities.

Sector

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(continued)

Cause and Effect; the Anatomy of Liability

I recently found myself at trial, facing a man who had hit himself with a sledgehammer. Not a likely basis for a personal injury claim, you might think, and you are probably right. However, somewhere along the line two things happened; the Claimant decided that it probably wasn't his fault, and a Lawyer agreed with him. Turns out that they were both wrong as he lost the trial, but it did get me thinking that causation is not greatly understood, even by some Lawyers.

Let me give you some background. The Claimant was an experienced Carpenter with a specialism in formwork. He was working on a site run by a Joint Venture partnership as Principal Contractor. He was tasked with connecting formwork panels and, as he was doing so, he came across a slightly defective panel; the edge had clearly been knocked and contained a kink. Given that the panels had to fit together perfectly, the defective panel was unsuitable.

Rather than reject it and take a new one, the Claimant decided to straighten the edge using a 14lb sledgehammer. He retrieved the tool, which was owned by the PC, stood with his feet either side of the kink, and proceeded to strike it. He managed to do so successfully four times, but on the fifth attempt the sledgehammer bounced awkwardly and struck him on the ankle, fracturing it in the process.

“...the distinction between cause and effect is fairly apparent”

The Claimant brought Court proceedings alleging that the formwork panel was defective and that the work system that he had to work within was dangerous, thereby exposing him to a risk of injury. He sued his employer (a labour only sub-contractor), alleging breach of their non-delegable duty of care, and the PC, on the basis that they had supplied him with defective equipment and a dangerous work system. I represented the latter.

On the face of it, the arguments are sound. Your employer does retain a duty of care to you, even when they have no direct control over your work environment, although it is not quite as simple as that. In addition, the panel was supplied by the PC (albeit by a third party provider) and it was defective. The Claimant was just doing his best in the face of a difficult situation wasn't he?

Well no, not quite, and this is where the misunderstanding comes in, particularly in the context of work system paperwork such as risk assessments. The standard argument in these types of cases is that the scenario was not properly risk-assessed; nobody thought that it, or something similar, might occur so no steps were put in place to deal with the eventuality. It is also standard to try to defer blame; the Claimant is nought but a simple worker, humbly carrying out orders in the face of bad supervision and poor work systems.

All of those things can be true, but the question to ask in law is this; did it cause the injury?

Let's trace that back in the context of this case. The Claimant was experienced and very well trained. Did he know how to use a sledgehammer? Yes, of course. Did the PC check that? No. Was that negligence? No, because you cannot check that every labourer that you have on site is capable of basic construction tasks, particularly if you have relied upon an agency to provide you with suitably experienced and trained personnel in accordance with the Labour Only Sub Contract (check the NEC3 or similar contracts if you want to look at the provisions which require this). It is only reasonable to assume a basic level of knowledge.

Was the task risk-assessed? No, but generally the RAMS were found to be in good order.

Was the Claimant specifically asked to carry out this task? No, although he did claim that his "Supervisor" agreed that it was the best way of dealing with the problem. Note that he agreed; the Claimant himself actually thought this action was a good idea and it was his suggestion to do it. Apparently, this is something that he came across regularly and he dealt with it in the same way each time.

So the ultimate question is, therefore, did either the failure to risk-assess or the supply of a defective panel cause the Claimant's injury?

The answer is no; the injury was caused by poor technique in using the sledgehammer, which caused it to deflect into his ankle. Being faced with a defective panel does not, in itself, expose you to injury, nor does it require you to remedy the defect. You can simply get a new one, reject it, make a complaint, refuse to use it, there are all manner of responses to being faced with defective equipment, but none of them exposed him to any risk of injury. It would be different if he had lacerated his hand on the defective edge, or if he had been ordered to try to fix the panel, but neither of those scenarios occurred.

However, the Claimant's argument was that supplying a defective panel put him in a position where he had to remedy the defect, so whilst he may have hit himself by mistake, he would not have even been required to attempt to use the sledgehammer if the panel had not been defective in the first place.

Let us consider the question again. Was it using the sledgehammer that caused the injury? No, not at all, he had successfully struck the same panel four times before his accident, and he had done the same thing with any number of defective panels on previous occasions on other sites, all without sustaining injury. It was therefore possible to use a sledgehammer to carry out this

task without the risk of injury, as long as the tool was used properly, and there wasn't anything inherently dangerous about doing so over and above the danger that exists when using sledgehammers generally.

In effect, it does not really matter whether the panel should have been supplied in perfect condition, whether the task was risk-assessed, or whether the work systems were poor because, in the end, the Claimant would not have sustained any injury (despite those legal failings) if he had used the sledgehammer properly. The context may have been negligence or breach of duty, but the cause was simple human error. Even if those failings had been remedied, the accident would have played out in exactly the same way.

In this claim the distinction between cause and effect is fairly apparent, but that is not so in many other cases, where it is often difficult to distinguish. However, in the face of poor documentation it is common for liability to be admitted on the assumption that the failures resulted in the accident, but that is not always the case. Of course, the poorer the work systems and RAMS the more likely it is that things will go wrong and people will suffer injury, but it does not follow that there is a causal link in every case, even where negligence or breach of duty can be proved. I have seen many claims where there have been catastrophic failings, but not a single one of them caused the accident. For that reason, it is essential to get specialist legal advice in order to protect the company's position as early as possible.

For further information please contact the Construction team on 0333 207 1130.



upcoming *events*



forbes | collect 
Debt Recovery Made Easy

6 February 2020

Forbes Collect Seminar

6th February - 8.30am - Oak House, Walton Summit,
Preston, PR5 6AW

Time: 8.30am

10 March 2020

Considerations at Lease End Breakfast Seminar

Church House, 90 Deansgate, Manchester, M3 2GP

The seminar will cover the following topics:

- Breaks
- Dilapidations
- Contested Lease Renewals
- Reinstatement
- Notices

There will be an interactive question and answer session based on a range of reported case studies and also our team's own experiences.

Time: 9.00am - 10.30am

18 March 2020

HR Forum. Business Owners/Directors/Managers and HR Practitioners across Lancashire are invited to the HR Employers' Forum.

The aim of these forums is to keep you up to date with changes and developments in Employment Law along with bringing you key speakers who can inspire you and your business. The full programme will be advertised nearer the time and there will be an Employment & HR Advice Clinic at the end of the event.

6 May 2020

Burnout

University Centre at Blackburn College

Spotting the signs and dealing with the consequences

Time: 8.00am - 11.30am

University Centre at Blackburn College

This event is aimed at business owners, HR professionals, CIPD students and Senior Managers who are critically placed to identify the signs of burnout and support those likely to suffer from burnout.

2 April 2020

Forbes Foundation Ball

Preston Marriott Hotel

The night will include a delicious three course meal, auctions and spectacular live entertainment.

Time: 7.30pm

Money raised will provide financial support to children, and their families, who are in need, by reason of ill health, disability, and/or financial hardship.

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