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SYDNEY MITCHELL
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NEW SENIOR PARTNER AT SYDNEY MITCHELL



New Senior Partner, Div Singh (left), shown with new Consultant Solicitor, David Billings.

After 20 years, Richard Holland has stepped down as Senior Partner at Sydney Mitchell. Taking over the position is partner Div Singh, a 'home grown' member of the firm. Div started with Sydney Mitchell as an articulated clerk, trained with the firm, qualifying in 1986. He worked his way up to partnership in 1989.

Richard Holland commented, "Div has many years' experience as a partner, and has always demonstrated his unwavering dedication to the firm. He can rely on my whole-hearted support for his new role as Senior Partner."

Div is based in the firm's City Centre office where he heads up the commercial property department and specialises in company commercial work and commercial property.

Div comments "I feel very honoured and privileged to have been appointed Senior Partner of the firm. Richard Holland has been a very inspiring Senior Partner and I am ready for the new challenge that has been passed to me."

Richard continues with the firm as a Consultant.

This award-winning firm has seen many changes in the last year, with more still to come. Taking on new Partners, Consultants and Associates, the firm is expanding and is set to continue with this growth into 2009, with particular focus on the corporate and commercial side of the business.

The most recent member to join the growing team at the firm's Birmingham office is David Billings. He has joined the firm as a Consultant Solicitor specialising in commercial and corporate work and commercial property. David has a wide client base including substantial corporate clients, developers and individuals of high net worth. He has acted on mergers and acquisition for publicly quoted companies and has been the lead on extensive property acquisitions and property portfolios.

AND THEN THERE WERE THREE...

Sydney Mitchell has recently expanded its commercial property service with the appointment of a new associate at its Shirley office.

Commercial property specialist Simon Jobson will be working with Richard Holland, head of department at Shirley, and associate Daniel Blood. Simon joins the firm from DLA Piper and will be working on behalf of clients in all aspects of commercial property work, including retail, building development, landlord and tenant, and educational property work.

Simon commented on his new position "The team here are really forward thinking and have a real focus on the future growth of the commercial side of the business. Coupled with their exceptionally loyal client base, I am delighted to have joined at this time and looking forward to some exciting times ahead."



The Sydney Mitchell Commercial Property team left to right: Daniel Blood, Richard Holland, Simon Jobson.

Despite the current downturn in the economy the firm has seen a growth in its commercial and corporate departments as a whole. Firm-wide, Sydney Mitchell has a 10 strong commercial property team that boasts a full range of specialist expertise in this area. Proving that even in tough times there are still promising signs amidst the gloom. Simon can be contacted on 0121 746 3300 or via email to s.jobson@sydney Mitchell.co.uk.

BANKRUPTCY AND THE FAMILY HOME

With the economy in poor shape and personal debt still at high levels, the outlook is less than rosy for people who are facing insolvency. Even after the changes made by the Enterprise Act 2002, bankruptcy is still a difficult experience for most bankrupts. This is especially true where the family home is the main asset of the bankrupt's estate.

The trustee in bankruptcy will normally seek a possession order over the property so that it can be sold to satisfy the claims of creditors.

When deciding whether the possession order is to be granted, the court is obliged to consider:

- the interests of the creditors;
- the conduct of any spouse or civil partner (current or past) in contributing to the bankruptcy;
- the needs and financial resources (if any) of the current or former spouse or civil partner and any children; and
- the other applicable circumstances of the case.

Where an application for a possession order is made more than a year after the property has vested in the trustee in bankruptcy, the court will normally regard the interests of the creditors as paramount. The 12 month delay between the bankruptcy and the application may give a false sense of security, but does at least allow time for alternative living arrangements to be made if a sale is probable.

An application to resist the possession and sale can be made if there are exceptional circumstances, but consequences for the family arising from the bankruptcy will only very rarely be considered as exceptional circumstances.

Where a delay in paying creditors is unlikely to cause them any prejudice, a case may be able to be made out that the circumstances are exceptional enough to justify the defeat of an application for possession. An example might be when there is a great deal of equity in the property, such that the debts plus interest thereon are likely to be paid in full on an eventual sale. Such an argument might apply where the creditor is HM Revenue and Customs, for example.



Serious illness in the family (not that of the bankrupt personally, except where this creates a need for a family member to remain in the house to look after the bankrupt) may also be regarded as an exceptional factor.

There are a number of other factors that may also constitute exceptional circumstances. If you are faced with a possession application, it is important to take legal advice promptly as there may be other solutions (such as a relative purchasing the trustee in bankruptcy's interest in the property) which can be explored.

However, the best approach is to take advice as soon as you get into financial difficulty. Normally, the earlier such issues are addressed, the greater the likelihood of a satisfactory outcome – possibly avoiding bankruptcy altogether.



Contact Judi Wood on 0121 700 1400 or email her at j.wood@sydney Mitchell.co.uk for further advice.

FATAL ACCIDENTS

– COURT CONFIRMS NO SET-OFF

When a person is fatally injured, it may be possible to make a claim for compensation under the Fatal Accidents Act 1976 (FAA). When the accident is the fault of another person, it is also normally possible to claim damages from them. In these cases the damages will include, where appropriate, a sum for loss of earnings.

One of the main principles of the British civil legal system is that where damages are payable, the intention is to put the claimant in the same position in which they would have been had the event which led to the claim not occurred, not to make them better off. There is no concept of punitive damages.

This has led to the insurers of those found liable for damages in accident cases arguing that the payment they are required to make should be reduced where there is any other form of compensation paid.

Recently, a case came before the Court of Appeal which involved a man who died after being caught in a machine at the paper waste recycling plant where he worked. His employer was prosecuted and the case was serious enough for the managing director of the firm to be imprisoned for 12 months for manslaughter. The man's widow was paid £100,000 from a trust fund set up by her late husband's employer and a further £129,600 under the employer's death in service benefit scheme. These payments were discretionary.



The company's insurers argued that the payments should be set off against the widow's claim for damages from the company. In court, the judge agreed that the payment from the death in service scheme should be set off, but the trust fund payment should not. The widow appealed.

The Court of Appeal ruled that since both payments were discretionary, neither should be taken into account when fixing the amount of damages payable to the widow. The FAA (Section 4) would exempt them from being taken into account. It states that, 'In assessing damages in respect of a person's death in an action under this Act, benefits which have accrued or may accrue to any person from his estate or otherwise as a result of his death shall be disregarded'.

Therefore the payments should be disregarded for the purposes of assessing the damages due to the widow.

The Personal Injury department at Sydney Mitchell is very familiar with this concept and the other complexities that can surround a Fatal Accident Claim. Should you find yourself in the unfortunate position to need to advise following a fatal accident whether as Claimant or Defendant, please contact Jonathan Simpson on 0121 698 2200 or email pi@sydnemitchell.co.uk.



LET'S GET TOGETHER!

Sydney Mitchell Estate Agents' New Residential Lettings Service

We now have a recession, credit crunch and property market crash. However, unlike the property sales market, the rentals market continues to enjoy steadily growing demand and supply. There is a constant and steadily growing demand for property to rent - our population is far more mobile, and people need to rent privately due to short-term employment contracts, training, university places, and so on.

Everyone has to live somewhere, so those who cannot obtain a mortgage, for example, become renters. Canny landlords are already buying up repossessed properties at auctions to expand their portfolios, and many owners who cannot sell are deciding to rent out their properties instead.

In reaction to this demand, Sydney Mitchell Estate Agents launched its new letting service in October. Covering Solihull and South Birmingham, the agency already has a number of prospective tenants on its files looking for properties to rent. Along with a very competitive monthly management fee, the agency is offering an introductory discount to those who place their property up for rent and who use its tenant finding service.

Whether a landlord or tenant, our on line database makes it quick and easy to search for a property, and the experienced agency staff can offer advice on rental values and ways to maximise returns.



For further information, please contact Louise Cooper or any of our agency staff on 0121 746 3355.

Alternatively you can visit our website www.sydnemitchell.co.uk/estateagency/lettings.

The articles contained in this newsletter are only intended to be for general interest and do not constitute legal advice. Accordingly, you should seek special advice before acting on any of the subjects covered.

COURT ADOPTS BROAD BRUSH VALUATION OF BUSINESS ON DIVORCE

On divorce, the valuation of a family business is often a highly emotional and contentious issue, so it was unsurprising when the divorce of a couple after 15 years of marriage led to an acrimonious dispute over the value of their successful restaurant business.

The ex-husband valued the total assets (including the business, which he had run for 33 years) at £4.2 million. His ex-wife placed a valuation on the assets of £7.6 million, valuing the business at £5.3 million. She sought 50 per cent of the net assets plus school fees for the children. Her ex-husband offered 42 per cent of the net assets (£1.7 million), although this offer was later reduced.

Both produced expert witnesses to back up their respective valuations of the business, which was the main point of dissent. The experts differed, but the main point of contention was whether the valuation should be based on a multiple of six times 'maintainable earnings' or nine times.

The judge relied on evidence of transactions in similar circumstances and ruled that the multiplier should be 6.5.

He commented that the valuations of experts were of 'doubtful utility' because they are a matter of opinion and experts' opinions differ. He therefore adopted a broad brush approach.

Since there were insufficient resources for a 'clean break' arrangement to be financed, he ordered that the wife should receive £1.45 million plus periodical payments of £60,000 annually, child maintenance of £20,000 per annum and the cost of the school fees.

Says Mauro Vinti, "Few aspects of the financial arrangements in a divorce can be as contentious as the value of a family business and it is by no means uncommon for quite unrealistic values to be put forward. In many cases, the best overall result is achieved by the use of a single joint expert and sensible negotiation."



Please contact Mauro for further advice on 0121 746 3300 or by email to m.vinti@sydnemitchell.co.uk.

COVENANT PROHIBITS LAWFUL USE

Covenants containing restrictions on the use or development of land can cause problems between neighbours.

Recently, a couple obtained planning permission to build a bungalow on a corner of their land.

Their property was subject to a covenant on development, which prevented them from building a residential property on it without the agreement of their neighbour. This was asked for and denied. The neighbour was of the view that the occupants of the bungalow would have use of the surrounding garden land and this might

interfere with her privacy. She was unmoved by the argument that the owners of the existing property could use the land themselves without a bungalow being built and this would have the same effect on her privacy but would not breach the restrictive covenant.

The couple applied to the Lands Tribunal to have the covenant lifted. It refused permission and so they appealed to the Court of Appeal.

The Court upheld the decision of the Lands Tribunal. In its view, the value of the covenant to the neighbour was that her privacy was protected not only by prevention of the building, but also because of the potential use of the surrounding land as a garden. It was not in point that the benefit to her derived from the covenant

restricting construction of the building rather than restriction of use of the land in question as a garden.

Says Daniel Blood, "In this case, the covenant prohibited what was, in effect, a lawful use of the land as a garden. The prohibition was for occupiers of the proposed bungalow, not the couple who owned the land. Their use was not restricted, but the protection operated by prohibiting the construction of the bungalow."



Daniel can help you with any restrictive covenants matters. Please contact him on 0121 746 3300 or via email to d.blood@sydnemitchell.co.uk.

IN THE NEXT ISSUE...

Family Department launches its Collaborative Law service - Separation without Litigation