

## Promises, Promises.....?

A very interesting recent case has been reported which is fascinating reading for all concerned.

Bill had previously lost his wife, he had not remarried and lived alone in a large house in Cornwall. Bill for want of seeking company help and support persuaded his nephew & partner and their two children to move from their home in the North to live in a separate part of Bills house.

Sensibly the parties had a chat about what was expected of each party and indeed there was a draft letter from around that time referring to Bill proposing to leave the house to his nephew & partner subject to certain conditions. But unfortunately the discussions did not go any further. The Nephew & his partner wanted Bill to confirm by a Will that he would leave them the property and that he would not change his mind. Bill did not do this.

Sadly as time passed by the relationship soured & all was not well. It may well be that both parties felt rightly or wrongly that the other failed to keep to their promises.

Bill by Will initially gave some limited rights to his Nephew & partner however through a series of Wills over time diluted the interests of his nephew & partner to eventually no rights at all in the property.

Bill then wrote to his nephew & partner advising as to his intention & advising them they would have no right to stay at the property after his death. Bill wrote: Initially, I invited you to live here, rent free, in a different environment, in a not unpleasant house and garden; and should you accept it would be occasional company for me and the occupation of an unused part of the house. That is all it was.

Bill then sought a declaration from the Court that his Nephew & partner had no rights in the property.

Bill died the day before the Court hearing. Nevertheless the Hearing went ahead.

The Judge had to consider all the evidence including the witness statement evidence made by Bill before he died.

What was the Judge to do?

Arguments were put forward by the legal representatives of both sides.

What was the intention of the parties?

What was the significance of Bill not making an initial will leaving the property to his Nephew & Partner?

The Estate acting on behalf of Bill argued that the Nephew & Partner suffered no detriment but even if they had this was balanced by the Nephew & partner having lived rent free for over 10 years which was of significant economic benefit.

The judge in summing up had careful regards to the law and case law. The judge noted where it is alleged that a party has made a Promise the Court takes into account the following elements: assurance, reliance and detriment.

On the issue of assurance & reliance the Judge found there were assurances & they were clearly understood, namely, if the Nephew & partner moved to Cornwall and made their contribution as stated then Bill agreed to leave them the property.

As for Bill not making an initial will leaving the property to the Nephew & Partner the Judge took the view that Bill's failure to put anything down in writing did not amount to a communication to them that he reserved to himself the right to deal with the property as he thought fit in his will

The Nephew & partner had relied upon Bills assurance & moved to Cornwall

In respect of detriment, the judge dismissed the Estates claims as to there being no detriment. The judge found that the move itself amounted to a detrimental reliance even though there were substantial benefits for the couple from the move. The judge also accepted that the couple had provided care for Bill and that work done and expenditure incurred by the couple in improvements to the House was also detrimental reliance.

The Judge concluded that the three elements were satisfied.

The Judge then had to consider whether it would be disproportionate to order the transfer of the house.

The Judge ordered the property to be transferred.

Of further interest, the Estate appealed the decision to the Court of Appeal.

The Court of Appeal refused to intervene in the Judges findings or award.

Comment:

In these harsh economic days where money is limited, mortgages in short supply, unemployment & redundancy not far from the horizon added to which people are living longer with all the complications this creates the above picture of a son /daughter & their partner moving in with their parent or vice versa is one which is happening up and down the country on a regular daily basis.

I suspect little or no thought is being given to the intention of the parties involved & those intentions being translated into an Agreement acceptable by all parties involved. Indeed it is quite understandable to positively avoid addressing such issues as money, finance, agreements, terms and conditions. You can positively see the family members involved recoil in horror at the prospect of discussing such issues. Far better to take comfort and draw whatever conclusion each party wishes from vague comments 'Don't you worry, I'll see you right' or even more vaguely ' You know I own my own property' and be further assured in the thought that after all they are family.

In truth there are other parties involved in such situations. Those parties are twin elephants known as Doubt & Misunderstanding. You would barely know they were there from the outset. Swept into the far reaches of the darkest corner or cellar of the House known as Despair. But day by day the twins grow and grow. They get so big they nearly fill the whole house yet funnily enough no one mentions them. As the elephants get bigger and bigger the occupants of the Home get crushed demoralised desperate tearful and begin to find life is perhaps not really worth living.

In reality if only parties talked & set down in writing clearly and concisely what they were hoping to achieve from the outset then an awful lot of the problems which are likely to be encountered could be resolved. We find that the parties involved would benefit greatly from taking the advises of their respective Solicitors & have an Agreement drawn between the parties. Solicitors deal with many of the issues involved on a daily basis and can provide guidance, a helpful way forward and peace of mind.

Setting down an Agreement is not just beneficial for the parties alone. Always remember there may be other sons daughters partners and other dependants who may feel that reasonable financial provision is not being made for them. In such circumstances such parties may seek to bring a claim against the Estate of the parent. Careful thought needs to be given to such parties needs and expectations. To ignore such a party could be a costly burden for the Estate. An Agreement can go some way to explain the wishes of the parties to the agreement & this would assist the Court in any deliberations it may be called upon to make.