

Estate Litigation briefing

Disputes associated with passing a family business on to children

October 2020

Michael Spencer, Special Counsel

At O'Loughlins Lawyers, we recommend that families that operate businesses (including farms) seek proper legal advice – as early as possible – about how the business will be passed on, in due course, to family members. Such succession planning can help to avoid the significant financial impact and emotional distress that can arise when family members are in dispute with each other over the business.

We have an experienced team of lawyers who are skilled in estate planning.

Unfortunately, disputes do arise within families who have not obtained early legal advice. Such disputes can end up in lengthy court proceedings, as occurred in the case of *Rodda v Rodda* [2015] SASC 95.

The Rodda family comprised of a father, a mother and four children. They had a farm on the Yorke Peninsula which the father had purchased from his own father. The eldest son lived away from home at times after he finished high school but he returned home to the family farm at around the age of 20 in 1994. The trial judge later decided – despite the father's denials – that the father had asked the eldest son to return to the farm. The eldest son was married at around age 23 and he and his wife then lived on the farm. The eldest son and his wife renovated and lived in one of the homesteads on the farm. The eldest son then worked full time on the farm for the next 15 years until the mother died. The other children had all pursued careers away from the farm. A few years later, the father became engaged to another woman and this led to a breakdown in the relationship between the father and the eldest son.

The eldest son commenced proceedings in the Supreme Court arguing that he and his wife should be recognised as owners of the farm on the basis of legal principles known as equity, estoppel and constructive trusts. The case proceeded to a trial that ran for 4 weeks, and each side had a Queen's Counsel plus a junior barrister plus instructing solicitors. The other children sided with their father, perhaps unsurprisingly, as their future

inheritances from their father were at risk. The legal costs spent by the family members fighting the case are likely to have been in the hundreds of thousands of dollars.

The trial judge formed the view that the eldest son was truthful and generally reliable and that the father was uncooperative, evasive and even untruthful. The judge observed that the eldest son had committed himself to working for 18 years on the farm, and had experienced considerable hardship in doing so, in the expectation that he would eventually own the farm – although he would also be expected to make some provision for his father and his siblings.

The trial judge decided that the farm should now be treated as being owned by the eldest son. The outcome suggested by the trial judge was that the eldest son and his wife should receive approximately \$750,000 plus either (1) part of the farm and compensation of more than \$1.5m or (2) \$4.75m in compensation. We suspect that the eldest son would have further received a large sum of money from the farm to pay for his legal costs.

This case was therefore an example of how a court can give ownership of a family business to a family member who did not originally own the business but who has worked in the business for many years to their own personal detriment in the expectation that the business will eventually be passed on to them.

How we can help you

O'Loughlins Lawyers has a team of lawyers who are highly experienced in conducting estate litigation where a family member may have died or where there may be a dispute between living family members.

We can assist you by providing you with legal advice about your circumstances and represent you in any estate claim, including in any court proceedings that may arise.



A court can give ownership of a family business to a family member who did not originally own the business.



Disclaimer

This newsletter is merely an overview and accordingly it is not to be relied on as legal or other advice or on any other basis whatsoever. All legal liability arising from use of information contained in this newsletter is disclaimed to the maximum extent permitted by law. Readers should obtain independent legal and other professional advice suitable to their individual circumstances.

If you require any further information, please contact a member of O'Loughlins' Estates Team:



Alf Macolino
Partner
alf.macolino@oloughlins.com.au



Hamish Archibald
Partner
hamish.archibald@oloughlins.com.au



Michael Spencer
Special Counsel
michael.spencer@oloughlins.com.au



Julie-Ann Sparkes
Associate
julie-ann.sparkes@oloughlins.com.au



Nikki Harder
Probate Clerk
nikki.harder@oloughlins.com.au

www.oloughlins.com.au