



JOSIAH HINCKS SOLICITORS

Law in your Language

Winter 2014

The Firm continues its growth and expansion

The Firm was delighted when on 1st September Radmila Balac became a partner. Radmila (pictured right) joined the firm early in 2014 taking up a position as a family solicitor in the Coalville office and quickly established herself as a valued member of the team.

Radmila brings with her over 20 years of experience in public and private family law and law firm management. Originally qualifying as a barrister, she deals with all aspects of divorce and separation, child and care issues and finances. Radmila will be the resident partner in the Josiah Hincks Coalville office.

Senior Partner Andrew Eagle said "This appointment of Radmila just strengthens the team and is indicative of the growth and expansion we are currently experiencing. As well as Radmila we have appointed several other senior members of staff and I hope that we will shortly be announcing the appointment of further partners. Since the opening of the Syston office we have seen sustained growth across the whole firm and we are currently looking at other areas of the county."

In the Blaby office, Matthew Thom has joined as a family and conveyancing solicitor. Matthew studied at Leicester

University then undertook his training in Kent and has now relocated back to the East Midlands. Matthew is assisted by Nicola Josselyn who is promoted to Conveyancing Executive. Nicola has several years' experience as a Legal Secretary and following successful completion of legal exams at De Montfort University has become a fully-fledged case handler.



In the Coalville office we have recruited Peter Shoebottom who brings over 40 years' experience in Conveyancing and Residential Property as a Chartered Legal Executive.

In Leicester, we have added to the Commercial Property team with the arrival of Kam Singh an Assistant Solicitor. Kam advises on Commercial Property transactions including SIPP/SASS pension purchases.



Fixed Fee Trademark Registration Service

We have recently launched a fixed fee trademark registration service. We provide expert advice on whether your proposed mark can be registered, carry out a search of existing trademarks and deal with all the paperwork required with the Intellectual Property Office (IPO).

Registering a Trademark can help your business protect its name, its branding and its uniqueness in the market place. It will ensure that no one can copy your brand name or product name.

Registrations can be for a word only or for a logo.

The full process takes around 3 months before a final registration certificate is provided.

Our fixed fee is £350+vat plus IPO fees of £180. Additional charges apply if the application is for a number of different classes, or categories of goods/services. We can advise what categories once we have considered your proposed mark.

For more information, contact Steven Mather.



Steven Mather

Josiah Hincks wish everyone a Merry Christmas and a Happy New Year

Success in Claims against IFAs

Josiah Hincks have been successful in recovering in total over £2M for a number of current and former sports stars in two group litigation claims against a firm of Independent Financial Advisors. The first claim was issued in 2011 and the second in 2012.

The claims in substance were centred on negligent financial advice provided to each of the clients, who were unsophisticated members of the public and were not used to dealing with financial investments. The clients were wholly dependent on the advice provided to them by the firm, who classified themselves as experts in the field of financial investments and advice and reliance was placed on this by the clients.

The common factor between the clients was that they all wished to invest the capital they had available, primarily for securing their children's education; allowing them to maintain their high standards of living and provide a pension pot at retirement. All the clients wished to generate a steady income without loss to the capital invested, however they appreciated they could lose the income generated.

Proceedings were issued against the firm by the clients, who sought damages in respect of losses they had suffered as a result of entering into various investments on the advice of the firm. The investments recommended by the firm were unregulated collective investments schemes and as such the firm should not have communicated any invitation or inducement to enter into such schemes as this was contrary to section 238 FSMA.

In addition, we alleged that the firm also breached its duty of care in the way they dealt with the clients by:

- i. Failing to follow their instructions as to the nature of the investments they wished to enter into;



- ii. Recommending unsuitable investments;
- iii. Failing to obtain sufficient information as to their financial standing, expertise or knowledge
- iv. Failing to communicate clear information and warnings to the clients that were associated with these investments in a manner that each individual client would understand.
- v. Coercing the client into signing statements of High Net Worth Individuals and Self-Certified Sophisticated Investors for which they did not meet the criteria as some of the clients were housewives.

Both sets of proceedings were stayed to allow mediation to take place. At mediation, an agreement was reached which is bound by confidentiality and hence we cannot go into more detail. While the other party did not make any admissions, a substantial settlement was achieved.

Andrew Eagle, Senior Partner led this matter and was assisted by Solicitor Sheila Valand.



Andrew Eagle

Interest Rate Hedging Litigation Update

Josiah Hincks has been spearheading litigation against all of the major Banks for the mis-sale of Interest Rate Hedging Products, often know as "rate swaps".

To date, we have successfully recovered almost £2 Million for our clients either through the Financial Ombudsman Service (FOS), the FCA review scheme or Litigation.

Many Businesses may now have received a basic redress offer under the FCA review scheme, but the banks are only making an offer of 8% basic interest in respect of all consequential losses. These are losses incurred as a result of having the product. Businesses may have consequential losses into several hundreds of thousands of pounds, so what options does such a business have.

We have found success in seeking an appeal on the FCA review decision. Consequential losses need to be properly identified, ideally in an accountants report, and argued from a legal position as to why they are consequential to the missold product.

We have also had success in referring the review to the FOS to consider the issue.

However, the main approach will in many cases need to be litigation as this appears to be the only real way to get the bank to take matters seriously.



Litigation needs to be considered urgently by many small businesses in the review because of what is known as the limitation period. For claims of this kind, it is 6 years from the date of the contract. Many sold pre-2008 now find themselves out of time. There is another option of issuing within 3 years of your "date of knowledge" of a claim, but this is not straight forward and will very much depend on the facts.

Josiah Hincks can assist any business with a rate swap claim, or indeed any financial services dispute so please do not hesitate to speak to Steven Mather for more information.

Conversion of Civil Partnership Into Marriage Will Not Revoke Will

It is sensible for a couple to ensure that they have valid Wills once they start to cohabit and share their assets.

However, it is regrettably not well known that marriage revokes an existing Will (unless the will was specifically made in contemplation of the marriage), so if a couple decide to get married, their existing Wills will lapse and they should write new ones. The same has been true for couples entering into a civil partnership since the Civil Partnership Act 2004 came into effect.

From 14 December 2014, civil partnerships will be able to be converted into marriages under the Marriage (Same Sex Couples) Act 2013 and the marriage will be treated as commencing on the day the civil partnership commenced.

However, the Act did not state whether the conversion of a civil partnership into a marriage would revoke an earlier Will.

To remedy this situation, legislation is currently before Parliament that will provide that the conversion of a civil partnership into a marriage will not invalidate an earlier Will made by a civil partner.

To make sure that your Will has exactly the legal consequences you desire or for advice on any aspect of Wills and estate planning, contact Sandy Kaur.



Sandy Kaur

Cohabiting Couples - Common Law Wife/Husband?

Many people believe by living with a partner for a period of time they become their 'common law' spouse and therefore the law is the same upon separation as if they were legally married - unfortunately this is not the case.

In many circumstances it is the person that purchases an item who is the legal owner should an unmarried couple separate, however it is not that simple when couples purchase property together.

Should such situations arise parties need to consider not only who is the 'legal' owner of the property (the party who is named on the title deeds), but also any 'beneficial' owner.

A person can gain a beneficial interest by contributing towards the mortgage repayments or towards any renovations made, however such an interest may arise should a party simply contribute to the household bills for a period of time. The period of cohabitation and payments made would be taken into account when considering the extent of a parties' ownership and when considering the value of this in relation to the property itself.

The Court would need to consider any children living within the property as they will be the paramount consideration and their needs must be met, over and above the needs of any adult owner.

Should one party refuse to sell a property upon separation it is sometimes necessary to obtain an Order for Sale from the Court. Such applications are necessary to ensure parties can home themselves upon separation should a disagreement arise. The Court considers all the above matters, together with the intention of the parties at the time of purchase together with the parties' comments and actions during occupation.

At Josiah Hincks we regularly assist non-married couples and we are able to provide clients with clear, concise and practical advice either prior to purchasing property, or upon separation.

If you are concerned about any property you may own with your partner, or are considering purchasing a property, whether this be in joint names or simply your own, please contact us for advice.

Pension Schemes and Commercial Property

We have seen an increase of investors structuring their pensions through a Self-invested Personal Pension Scheme (SIPP) or Small Self-Administered Pension Schemes (SSAS) to plan for retirement.

A SIPP will allow an individual to make their own investment decisions where a SSAS on the other hand is a group scheme and can have multiple members. These schemes are designed to give the members control in terms of the investments made by the pension.

A common investment is purchasing a commercial property through a SIPP or SSAS. This has many advantages from a tax point of view and allows you to release equity from your business premises. If there is not enough in the pension fund the SIPP or SSAS can borrow up to 50 per cent of the net value of the assets of the pension to help fund a commercial property purchase.

Businesses who already own commercial property could also benefit from transferring their assets into a SIPP or SSAS as

the pension scheme will lease the property back to the business which allows the rental income to go back into the pension to boost the value.

While there are many advantages with SIPPs and SSASs, it is important you obtain specialist legal advice due to the complex rules and regulations that are associated with property and pension schemes, alongside the advice of your pensions specialist/wealth management company.

We have extensive experience and expertise when advising clients on intricate legal issues in relation to SIPPs and SSASs. We work closely with pension providers which enables us to provide an efficient service.

Our team can deal with various transactions such as purchasing, leasing and selling of property effectively and within strict timescales. Please contact Kam Singh for further advice.



Businesswomen Must Pay for Breach of Non-Compete Covenant

A businesswoman who made more than £3 million from the sale of her shares in a social care company - and then promptly set up in rivalry with it in breach of a non-compete covenant - is facing a substantial damages bill.

On the sale of her shares, the woman had agreed not to compete with the company or solicit its clients for three years. However, even before her departure, she and her civil partner, who had also worked for the company and agreed to the covenant, had set up a business which operated in a similar field. They commenced trading within a year and subsequently sold their business for almost £13 million.

The company accused both women of 'blatant breaches' of the restrictive covenant. They denied that there had been any infringement, however, arguing that the two businesses served different customers and that the similarities between them were only superficial.

However, in upholding the company's claim, the High Court was entirely satisfied that the women had breached the covenant, both by competing with the company in the same geographical area and in soliciting its clients. The terms of the covenant were also reasonable, being 'no wider than necessary'.

The ruling has opened the way for the company to seek compensation from both women, either to reflect its loss of business or based upon the sum that the women could have been expected to pay to obtain their release from the covenant. The assessment of the damages award will be dealt with at a separate hearing.

Cases involving breaches of non-compete agreements following the sale of a business are common. A well-drafted agreement is an important protection for business buyers.

Steven Mather can advise you on your individual circumstances.

Employment Updates

The Right to Request Flexible Working Arrangements

Employers are reminded that, with effect from 30 June 2014, the right to request flexible working arrangements has been extended to all employees who have completed 26 weeks' qualifying service. The statutory procedure for dealing with such requests has been repealed and replaced with a Code of Practice, produced by the Advisory, Conciliation and Arbitration Service (Acas), on handling requests in a reasonable manner. In addition, Acas has updated its guidance on this topic, giving practical examples to help businesses manage the new extended right.

Employers who have an existing policy for handling requests for flexible working should make sure this is updated in light of the changes. Employers who do not should consider establishing a policy as this can help to ensure consistency of treatment across the workforce.

The Code of Practice and revised Acas guidance on the right to request flexible working can be found at <http://www.acas.org.uk/index.aspx?articleid=1616>.

Time Off to Accompany a Pregnant Woman to Ante-Natal Appointments

From 1 October 2014, an expectant father or the partner (including a same-sex partner) of a pregnant woman will be entitled to take unpaid time off work to accompany the woman to up to two of her ante-natal appointments.

The time off is capped at six and a half hours for each appointment.

The Department for Business, Innovation and Skills has produced guidance for employers on the new right in the form of frequently asked questions. This can be found at https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/351413/bis-14-1063-time-off-to-accompany-a-pregnant-woman-to-ante-natal-appointments-employer-guide.pdf

For advice on Employment Matters contact Andrew Eagle or Steven Mather.



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