SUCCESSION PLANNING AND THE SUPREME COURT

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There have been several recent decisions by the Supreme Court of Western Australia that have direct implications for farming families and their succession planning (or lack of it).

A number of these decisions relate to the *Family Provision Act 1972* (WA), which is the legislation by which family members (or other dependents) can seek to challenge Mum or Dad's will, with a view to seeking a greater share of any assets that are part of the estate.

The court takes a two-stage process in considering whether a change in the terms of a deceased person's will is warranted. Firstly, whether the applicant has been left without adequate provision for his or her proper maintenance, education and advancement in life. Once satisfied with the first stage, the Court then decides what provision ought to be made from the deceased's estate.[1]

In recent years, we have seen an increase in non-farm children seeking to obtain a greater share of the overall pool of assets by challenging Mum or Dad's will. As a result, farming assets being transferred to the next generation in the will are facing an increased risk that the estate, and therefore those farming assets, are subject to a Family Provision Act challenge.

The most secure way to hand down assets is whilst you are alive. There are tax implications that need to be understood, however those costs need to be considered against the benefit of certainty and potentially avoiding protracted legal proceedings in the future.

A separate but related legal development recently occurred with the decision in the Supreme Court in *Browne v Browne*[2]. In this case, the Court found that Mr Browne Snr had made promises to his son that the farm would be left to him in his will, and that he had to be held to those promises. In what was a surprising outcome, the Court found there was a promise to transfer the farm by the will (i.e. upon the parents' death), and significantly the remedy ordered by the Court included the immediate transfer to the son of the farm upon the payment of, in our view, a quite modest sum of money to Mr Browne Snr, including annual payments for the rest his life.

There are a lot of other factors at play in Browne (it was an 88-page Supreme Court decision), but in ordering the immediate transfer of the farm this decision has ramifications for all families and their advisors who may be in a similar situation. Notwithstanding the merits or otherwise of these types of claims, any Supreme Court litigation costs the parties significantly in financial, time and emotional terms.

Another recent case in this area is *Currie v Currie*[3]. Note, the Court decisions are open to the public and can be reviewed on the Supreme Court website at https://www.supremecourt.wa.gov.au.

Pacer Legal practices extensively in this complex and specialised area of law. Should you wish to discuss your circumstances, please call Christina Ware or David Park at Pacer Legal.

[1] Lemon v Mead [2017] WASCA 215
[2] Browne v Browne [No. 2] [2017] WASC 375
[3] Currie v Currie [No. 2] [2017] WASC 312

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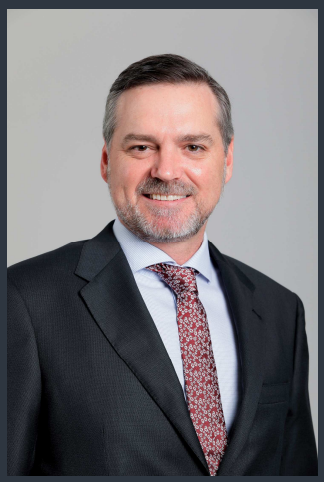

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