Succession Planning for a Family Business Can Be Tricky

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Lawyers You Should Know: Irvin Schein

The recent decision of the Ontario Court of Appeal in *Metske v. Metske*[1] provides useful guidance for those involved in succession planning for family businesses. As the Court said at the opening of the decision:

“Some businesses remain in the family. Others do not. Business owners might muse about succession within the family unit. However, musings do not always give rise to enforceable promises.”

In this matter, Martin and Roseanne Metske built and ran a farming business for many years. The farm involved both cash crops and also a dairy farm.

They had owned the farm since 1993. Between 2003 and 2011, their son Tim worked on the farm. During that period of time, Martin told his son Tim more than once that the farm would be his someday. In 2011, after an argument with his father, Tim moved out.

The following year, Tim and his wife learned that Tim’s parents were planning to sell their cows and dairy quota (a dairy quota is a license that allows a farmer to produce and sell a specific amount of milk within Ontario’s supply-managed system). They met with Tim’s parents to discuss an arrangement whereby Tim and his wife would acquire the dairy farm in stages.

Tim’s wife proceeded to write a cheque to Tim’s parents to purchase their dairy herd. Tim’s parents made it clear that the price for the entire operation would be $1 million for the quota and $1 million for the land.

The parties proceeded with the expectation of working towards the transition of the entire dairy farm to Tim and his wife. The process would initially involve the purchase of the dairy herd followed by the quota and the land at market value. The latter part of the transaction would not occur for five years. No further specifics were discussed or agreed upon. In fact, as the trial judge noted, the terms about the transfer of land and exactly what the succession would involve were hazy. However, it was understood that in the interim, Tim and his wife would own the herd

and pay rent for the quota and the barn that housed the dairy operation as well as a house on the property.

Several months later, Tim and his wife took over the operation of the dairy farm while Tim's parents continued to operate the rest of the farm. Over the next several years, there was friction between the couples. In 2018, Tim's parents asked Tim and his wife to leave the farm and they moved out. At that point, they had to immediately sell their cows because they no longer had any quota. Tim and his wife then sued Tim's parents for damages for unjust enrichment.

At the trial, the judge raised a point which had not been put forward by any of the parties. In the judge's view, this might well have been a case of proprietary estoppel. Under that doctrine, if a promise is made by one party (the promisor) to another (the promisee) in response to which the promisee relies and acts to his detriment pursuant to that reliance, such that it would be unfair for the promisor to turn back on his word, the doctrine might apply and the promisor might be stuck with the consequences of his promise.

In this case, the trial judge concluded that this is what had happened. He found that Tim's parents had made enforceable assurances as to the farming operation eventually belonging to Tim and his wife and awarded damages.

Tim's parents appealed to the Court of Appeal, and the Court of Appeal set aside the trial judgment. The Court of Appeal concluded that while the parties had spoken of the farm eventually belonging to Tim and his wife, and discussed an arrangement that would have had them purchase the business for fair market value, those tentative discussions never crystalized into a concrete plan. The parties recognized that such a plan would require further discussion and negotiation, which never took place because of rising tension and acrimony between the couples. As a result, there was no clear representation or enforceable assurance about the transfer of the farming business.

Furthermore, it was clear to the Court of Appeal that without financing, which might never have become available, Tim and his wife would never have been able to purchase the farm. They simply couldn't afford it and there was no prospect that they would ever be able to take over the business.

The Court of Appeal noted that there may well be a culture of succession in family farming businesses. However, this is purely a contextual consideration. What is traditionally done might be of some relevance but does not speak to what was contemplated within any particular family. In this case, the terms of the transfer were never clarified or quantified beyond the general notion of sale for fair market value. There was no agreement as to how fair market value would be determined or the terms on which the price would be paid.

For those and other reasons, the appeal was allowed.

This case provides some useful guidance to parties interested in a succession plan for a family business. Vague comments by a father to a son about how "some day all of this will be yours"

are not going to cut it. A transaction between family members must be documented as carefully and precisely as a transaction between arm's length parties.

To learn more about how our firm supports clients with family law matters and complex succession planning, visit our **Family Law Group** and our **Private Client Group**.

About the Author

Irvin Schein is a senior litigator and member of Blaneys' commercial litigation group with a broad litigation practice. He can assist clients who are involved in succession planning disputes. He can also direct clients to lawyers in our corporate/commercial and wills and estates groups who can provide advice on succession planning before disputes arise.

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[1] Metske v. Metske, 2025 ONCA 418 (CanLII), also summarized by Blaneys Appeals here