

#### **Introduction**

The basic ingredients for proprietary estoppel are well known, and many property practitioners would feel comfortable in spotting an estoppel when it has arisen. However, there is a shadowy question that is often avoided - assuming the estoppel is established, what is the actual result? After all, that is what the client will be most interested in!

A debate has always existed about what the correct remedy should be as a matter of principle. There appears to be two options at either end of the spectrum:

- Enforcing the “promise” that the estoppel was based on; or
- Compensating the promisee for his detrimental reliance.

Last month, the Court of Appeal handed down judgment in *Guest v Guest* [2020] EWCA Civ 387. The court unanimously dismissed the appeal brought by two parents against their son who had successfully established an equitable interest in the family farm. In particular, it was held that the High Court had been correct in finding that the appropriate remedy to satisfy the equity was a substantial lump sum payment in order to achieve a clean break.

This decision marks the latest in a long succession of proprietary estoppel cases concerning next generation farmers claiming an interest in farms owned by family members. The case also provides a useful insight into the way in which the court has fashioned a remedy for the equity that had been established.

#### **The Doctrine of Proprietary Estoppel: A Brief Overview**

The doctrine of proprietary estoppel is an equitable remedy that can enable an individual to acquire a proprietary interest in land.

As outlined in *Thorner v Major* [2009] UKHL 18 at 29, the following elements must be present in order to successfully raise an equity under the doctrine:

- An assurance of sufficient clarity;

## “For every promise, there is a price to pay” continued...

- Reliance by the claimant on that assurance; and
- Detriment to the claimant in consequence of their reasonable reliance.

Most significantly, when assessing whether the above elements are present, the court is required engage in a retrospective exercise. In particular, the doctrine ‘looks backwards from the moment when the promise falls due to be performed and asks whether, in the circumstances which have actually happened, it would be unconscionable for the promise not to be kept either wholly or in part.’ (1)

In the event that a claim for proprietary estoppel is established, the court has to then ‘exercise a broad judgmental discretion’ (2) and ‘weigh the detriment suffered by the claimant in reliance on the defendant’s assurances against any countervailing benefits he enjoyed in consequence of that reliance.’ (3) It is evident, however, that the overarching essence of the doctrine of proprietary estoppel is to do what is necessary and proportionate to avoid an unconscionable result.

### **Guest v Guest: The Background**

Tump Farm is a working dairy farm that had been run by members of the Guest Family for three generations. The farm was bought by David Guest in 1964 and his wife, Josephine Guest, subsequently became a member of the farming partnership in 1992. In 1981, the parents had each made wills, stipulating that their two sons would inherit Tump Farm and its business in equal shares. The terms of this will were not communicated to either of their sons at the time.

In 1982, their eldest son, Andrew, left school and worked full time at the farm until 2015, receiving a basic wage. The parents had permitted him to live rent-free in a cottage located on the farm. Andrew also undertook a significant amount of training, including an apprenticeship, which ultimately contributed to the success and development of the farm.

Ultimately, the son had dedicated a period of approximately 33 years of his life working at the family farm, with the initial expectation of inheriting the whole farm. His expectation of inheriting the whole farm did, however, change when his younger brother started to show an interest in farming.

The relationship between Andrew and his parents deteriorated significantly in 2015, resulting in the parents revoking their wills from 1981. The new wills excluded Andrew from receiving any inheritance and merely provided him with the opportunity to carry on farming at Tump Farm under a Farming Business Tenancy. Andrew declined to accept those terms.

The eldest son subsequently brought proceedings against his parents, seeking a declaration of entitlement, on the basis of the doctrine of proprietary estoppel, to a beneficial interest in the family farm along with a declaration of entitlement to reside at the cottage.

### **The case before the High Court**

#### *Assurance of sufficient clarity*

The High Court was satisfied that David Guest had consistently led his son to believe that he would succeed to the farming business. This assurance was evidenced by the 1981 will as well as David’s failure to correct Andrew during secretly recorded conversations. Notwithstanding the fact that there had been shifting expectations over time (where Andrew initially expected to inherit the whole farm but subsequently came to recognise that he would share it with his younger brother) it was still held that David Guest’s statements ‘were clear enough to amount to an assurance that Andrew would inherit a sufficient stake in the farm to enable him to carry on farming following his parents’ death.’ (4)

#### *Reliance and Detriment*

HHJ Russen QC, adopting a broad-brush approach, moved on to conclude that it was obvious that Andrew had reasonably relied on the assurances. This was evidenced by the fact that Andrew had worked hard on the farm for 33 years and for little financial reward. The court found that Andrew would not have done so had his father not encouraged the idea of an inheritance.

#### *Unconscionability*

When turning to the matter of unconscionability, HHJ Russen QC underlined the fact that Andrew had a proprietary expectation and found that it had been inequitable that the parents had cut Andrew

out of his inheritance.

## *The Remedy*

Dealing with the question of remedy, HHJ Russen QC highlighted that it was necessary to exercise broad judgmental discretion in an endeavour to do what was necessary to avoid an unconscionable result or, alternatively, to identify the minimum equity to justice.

Having established that the extent of the fractured relationship between the parties necessitated relief that would achieve a clean break, it was deemed that the determination would therefore involve an acceleration of Andrew’s entitlement.

Accordingly, it was held by the High Court that Andrew should be awarded a lump sum payment consisting of, after tax, 50% of the market value of the dairy farming business and 40% of the market value of the freehold land and buildings. Most significantly, HHJ Russen QC accepted that the farm would inevitably have to be sold.

## **The case before the Court of Appeal**

The decision and remedy handed down by the High Court was appealed by David and Josephine Guest. Permission to appeal, however, was only granted in respect of three grounds concerning the remedy.

The appeal was dismissed entirely. The highlights of the judgment are as follows:

The Court of Appeal, rejected that the appropriate approach to relief was to base the remedy on what David and Josephine must be taken to have intended to avoid an unconscionable result (opposed to Andrew’s subjective expectation). Drawing upon the objective bystander test, it was held that such an approach should take account of all the circumstances, including the expectations of the claimant and the detriment to the claimant. It was emphasised that the test should not solely focus on matters through “the eyes of the owner.” (5) The court made clear that the test proposed by the appellants, which asked what the bystander would have thought the owner to have intended to avoid an unconscionable result, ultimately risked

distorting and skewing the exercise in a manner that was not supported by authorities.

The Court of Appeal also rejected the submission that the relief went beyond what was necessary and that there were more appropriate sums that should have been considered. In particular, the court considered that a remedy based upon the increased value of the farm was inappropriate and ‘completely out of kilter’<sup>(6)</sup> as the nature of the assurance given was never that Andrew’s efforts and dedication would be generously rewarded by reference to any increase in the value of the land. The fact of the matter was that Andrew had always expected to inherit a substantial interest in the farm that would enable him to farm himself and had acted upon this assurance for over thirty years. As a consequence of repudiating that assurance and cutting Andrew out of his inheritance, the appellants were found to have acted unconscionably. As such, it was found that HHJ Russen QC had correctly directed himself to the appropriate authorities and was perfectly entitled to take Andrew’s expectation as a strong factor in deciding how to ultimately satisfy the equity.

Finally, the Court of Appeal determined that, in light of the fact that there was no prospect at all of the parties being able to continue working together, HHJ Russen QC had also been correct to view that a clean break was the most appropriate equitable remedy.

## **Concluding Remarks**

The case of *Guest* is yet another significant decision which demonstrates the continuing importance of the doctrine of proprietary estoppel in respect of inheritance disputes within the farming industry.

In respect of what the correct remedy should be as a matter of principle, the Court of Appeal made clear that ‘a remedy must be fashioned paying proper regard to the nature of the assurances given.’<sup>(7)</sup> The court also placed emphasis on the fact that an unconscionable result would be avoided if one takes account of ‘all of the circumstances, including the expectations and detriment to the

claimant.’<sup>(8)</sup> On this basis, the judgment indicates that the purpose of any remedy is to enforce the “promise” that the estoppel is based and compensate the promisee for his detrimental reliance. Ultimately, *Grant* shows how both options are equally important.



Finally, the continuing rise of these cases, with many making it all the way to trial, highlights the real importance of clearly addressing the issue of succession at the earliest opportunity. The judgment also conveys that the courts will engage in a practical approach when deciding upon these disputes.

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*Whilst every effort has been taken to ensure that the law in this article is correct, it is intended to give a general overview of the law for educational purposes. Readers are respectfully reminded that it is not intended to be a substitute for specific legal advice and should not be relied upon for this purpose. No liability is accepted for any error or omission contained herein.*



*References:*

- (1) *Thorner v Major* [2009] UKHL 18 at 57.
- (2) *Jennings v Rice* [2002] EWCA Civ 159 at 51.
- (3) *Henry v Henry* [2010] UKPC 3 at 51 and 53.
- (4) *Guest v Guest* [2020] EWCA Civ 387 at 55.
- (5) *Guest v Guest* [2020] EWCA Civ 387 at 77.
- (6) *Guest v Guest* [2020] EWCA Civ 387 at 81.
- (7) *Guest v Guest* [2020] EWCA Civ 387 at 81.
- (8) *Guest v Guest* [2020] EWCA Civ 387 at 77.