

Proprietary Estoppel: Recent Updates

By George Mallet

Proprietary estoppel is a flexible and useful cause of action. Instances of parties claiming entitlement to equitable relief by way of proprietary estoppel have increased markedly in the last few years. Proprietary estoppel is often pleaded in addition to other causes of action, such as resulting trusts, common intention constructive trusts and contract claims. Consequently it is an important area of law for property, family and commercial practitioners.

In recent months the Court of Appeal has had two opportunities to consider the principles of proprietary estoppel. [George Mallet](#) examines the recent decisions in this Alerter.

INTRODUCTION

1. In recent months the Court of Appeal has had two opportunities to consider the law of Proprietary Estoppel.
2. In the case of *Liden v Burton* [2016] EWCA Civ 275 the Court found for the Claimant notwithstanding that the Defendant's initial assurance of an interest in a property lacked specificity and clarity. In *Davies & Anor v Davies* [2016] EWCA Civ 463776 the Court considered a complex case involving a number of quasi-agreements that were periodically broken by both parties due to the acrimonious relationship between parents and daughter.

The case is notable as the daughter was awarded monetary compensation instead of a proprietary interest in her parents' land.

3. Judgments for both cases can be found [here](#) and [here](#) respectively.

RECAP ON THE LAW OF PROPRIETARY ESTOPPEL

4. The preeminent recent proprietary estoppel authority is the House of Lord's decision in *Thorner v Major* [2009] 1 WLR 776 (the transcript for which can be found [here](#)).
5. The principles can be summarised as follows: a landowner allows a 3rd party to believe that he or she can obtain some right or interest over that land. For instance, it might be that the landowner promises to leave a farm to a farmworker in his will if he works on the farm for life. If, to his detriment, the 3rd party relies on that understanding the landowner may well find himself bound by his earlier promise. As it would be unconscionable for the landowner to resile from his earlier promise, an equity arises in the 3rd party's favour thereby giving the 3rd party the right to obtain equitable relief in Court. That equitable relief may be by way of interest in the property, although in some cases a monetary compensation can be awarded instead.
6. A summary sheet can be found [here](#).

LIDEN V BURTON [2016] EWCA CIV 275

7. The parties had lived together in the Defendant's property. The Claimant's case was that, during that time, she had paid £500 per month to the Defendant "towards the house." She did this in reliance on an understanding that she would obtain an interest in the property. When the parties'

relationship broke down the Claimant asserted that she was entitled to an equity by way of proprietary estoppel.

8. The Claimant based her claim on the fact that she had been told by the Defendant, from the outset, that her payments were required to pay (*inter alia*) mortgage repayments. Although she did not know the details of the financial arrangements she knew that her payments were necessary.
9. The judge at first instance found in the Claimant's favour, deciding that an interest equating to £33,522 was held on trust for the Claimant. The Defendant appealed, citing (*inter alia*) that the assurance that the payments were going "towards the house" was neither (a) sufficiently clear, nor (b) an assurance of beneficial interest.
10. The Court of Appeal dismissed the appeal holding that there had been a sufficiently clear assurance that had been relied on to the Claimant's not insubstantial detriment. It was also reasonable, in the circumstances, for the Claimant to have understood that her payments entitled her to an interest in the property. Consequently the trial judge had not erred and the appeal was dismissed.
11. The judgment is interesting for a number of reasons:
 - a. Firstly, there is no identifiable promise. Instead, the assurance is created, essentially, by a construct of logic – (i) the Claimant understood that the parties would not be able to live in the property unless she paid something towards the costs, and (ii) she was not a tenant, so (iii) "towards the property" would reasonably be believed to mean "towards an interest in the property." The logic suggests an entitlement to an interest despite, apparently, that subject never having been discussed.
 - b. Secondly, the case shows how reluctant appellate courts can be to disturb first instance findings. The Court of Appeal noted that it should

be slow to disturb findings of fact. As proprietary estoppel claims tend to be particularly fact sensitive, this is a point worth remembering before embarking on an appeal.

DAVIES & ANOR V DAVIES [2016] EWCA CIV 463776.

12. In this case Lord Justice Lewison considered remedies for proprietary estoppel. Specifically, he considered the quantum of equitable relief that should be granted following a successful proprietary estoppel claim.
13. The Claimant worked, at various stages from the age of 17, on one of her parents' farms in Wales. Initially she was promised land on the basis of her working there for the rest of her life. She was given various other assurances regarding her future entitlement to the land, assets and business of the farms. These were contingent on a number of factors. She left the farm after a number of years work following a dispute regarding her choice of husband. At which point, she admitted, she understood herself to have lost her entitlement to the property (not least since she had only part performed her side of the quasi-bargain). At another point, following a reconciliation and return to the farm, she was promised accommodation for life. In all, she left on three separate occasions but was enticed back after reconciliations on differing terms.
14. Whilst the Court found that the Claimant had a cause of action under the doctrine of proprietary estoppel, the claim was less than straightforward. First, a number of different representations were made over the relevant period. Second, the Claimant left the farm on several occasions, once having "given up on [one of the farms]". Third, the Claimant's expectation of the farm and the business was dependent on her continuing to work in the business, but that did not happen. With respect to detrimental reliance, the Court found that the Claimant had not "positioned her whole life on the

basis of her parents' assurances “but had worked for low wages and forgone an alternative career opportunity and accompanying lifestyle.

15. The Defendants argued that their daughter should not be entitled to a proprietary interest in the farms, assets and business (which ran into more than £3m after CGT) but instead should be entitled to a lump sum of £350,000 (quantified with respect to the detriment suffered, being unpaid wages, profits and an accommodation element). At first instance the judge awarded £1.3 million. The parents appealed.

16. The Court of Appeal considered the remedy. Lewison LJ summarised the position as follows: In deciding how to satisfy the equity the court has to exercise a broad judgmental discretion (*Jennings* at [51]). However the discretion is not unfettered. It must be exercised on a principled basis, and does not entail a “portable palm tree”: *Taylor v Dickens* [1998] 1 FLR 806. The remedy must be the minimum to do justice between the parties.

17. He went on to consider the academic arguments surrounding the quantification of compensation in proprietary estoppel claims, stating:

“There is a lively controversy about the essential aim of the exercise of this broad judgmental discretion. One line of authority takes the view that the essential aim of the discretion is to give effect to the claimant's expectation unless it would be disproportionate to do so. The other takes the view that essential aim of the discretion is to ensure that the claimant's reliance interest is protected, so that she is compensated for such detriment as she has suffered. The two approaches, in their starkest form, are fundamentally different... Much scholarly opinion favours the second approach.... Others argue that the outcome will reflect both the expectation and the reliance interest and that it will normally be somewhere between the two... Logically, there is much to be said for the second approach. Since the essence of proprietary estoppel is the combination of expectation and

detriment, if either is absent the claim must fail. If, therefore, the detriment can be fairly quantified and a claimant receives full compensation for that detriment, that compensation ought, in principle, to remove the foundation of the claim.... Fortunately, I do not think that we are required to resolve this controversy on this appeal.”

(Emphasis added)

18. He concluded that the financial loss inherited in the broken promises (i.e. lost wages accommodation entitlements) amounted to roughly the sum offered by the parents (i.e. c.£350,000). Lewison LJ concluded that the ‘gap’ between that figure and the award of £1.3m comprised the value attributed by the first instance judge to the non-financial aspects of the detrimental reliance and the disappointment of the Claimant’s expectations.
19. That sum was excessive. The Claimant had not dedicated her life to performing her side of the bargain and her expectations, for the majority of the time in question, were significantly lower than the award.
20. The Court held:

“In some cases it may well be that the impossibility of evaluating the extent of imponderable and speculative non-financial detriment (for example life-changing choices) may lead the court to decide that relief in specie should be given. But that is not this case, not least because the judge rejected the claim for the transfer of assets in specie.

Neither of these factors is capable of precise valuation, but since it is now common ground that the ultimate award will be a purely monetary one, we must do the best that we can. In different situations the court is often called upon to award compensation for non-pecuniary losses, and the difficulty of assessment is no bar to an award.”

21. The Court of Appeal ultimately awarded a total of £500,000.

CONCLUSION

22. These two cases demonstrate that proprietary estoppel claims are continuing to increase in number and that, while *Thorner* is certainly the established law, appellate courts will continue to hone the application of the principles.

23. Those involved in a great many legal areas are advised to familiarise themselves with the principles of proprietary estoppel. They can arise in a number of different contexts. While farming matters have long been the most common sector within which to find proprietary estoppel claims, they also appear in family and commercial matters.

24. The cause of action can be used instead or as well as more traditional claims under resulting trusts, common intention constructive trusts or even simple contract law.

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