Coventry
University

Coventry Law Journal

2007

Case Comment

Property: proprietary estoppel - assurance

Sukhninder Panesar

Subject: Succession. **Other related subjects:** Equity

Keywords: Assurances; Farms; Intestacy; Promises; Proprietary estoppel; Succession

Case: Thorner v Major [2007] EWHC 2422 (Ch); [2008] W.T.L.R. 155 (Ch D (Bristol))

*Cov. L.J. 76 Facts

In 1997 Peter Thorner made a will by which, after a number of pecuniary legacies, left the residue of his estate, including his farm (Steart Farm, Cheddar) to his nephew, David Thorner. The will was subsequently destroyed and Peter died intestate in November 2005. In accordance with the intestacy rules Peter's estate, including Steart Farm, was available for his blood relatives, namely, his sisters. David commenced proceedings against Peter's sisters and the personal representative to claim the farm on the grounds that he had the benefit of a proprietary estoppel against Peter and his estate. The claim was based on the grounds that Peter has made an assurance to David that the farm would be left to him after his death and that David had relied on that assurance by working for a period of some 28 years on the farm and thereby suffered a detriment.

The relevant facts in David's claim to be entitled to a proprietary estoppel begin around about 1976 when Peter's first wife died at an early age. David helped Peter in some aspects of the running of the farm; however, after Peter's second marriage failed, David worked on the farm almost on a daily basis for no remuneration at all. The work included attending to the animals; mending the fences and gates; taking cattle to and from the market; working on farm buildings and bringing in hay. Additionally, it was observed that much of the paperwork relating to the management of the farm was in a mess when David first started helping out on the farm. David took it upon himself to sort out the paperwork and continued to look after it from then on. The court was told that by 1985, David was working 18 hours a day and 7 days a week for no payment. Several witnesses remarked that David was an exceptionally hard worker and had no social life as such. Other witnesses, including a surveyor, noted that in any discussions relating to the farm, Peter would always consult with David and his father (Peter's cousin). It was further noted that, despite working punishing hours, David lived on pocket money which his own parents gave him.

Around the early 1990's Peter made a number of assurances that Steart Farm would be left to David. He handed David a number of documents and discussed with David that he would take over the farm and run it. The timing of these discussions was important because they were at a time when David was possibly thinking of pursuing his own career. The court was pointed to the fact that the timing of these discussions *Cov. L.J. 77 was duly to encourage David to stay with his parents, who lived nearby, and continue helping Peter. In 1997, Peter made a will in which he left the farm to David along with a number of pecuniary legacies to others who had helped Peter on the farm. Peter's intention was clear, in that, he wanted David to have the farm. In 1998, Peter fell out with some of the persons who were receiving the pecuniary legacies under his will and thus destroyed the will with the intention of making another one. In 2004 Peter suffered a stroke and David continued to look after him, but more importantly, engaged in major work on the farm. Peter died in November 2005 a couple of weeks after David's own father had died.

Decision

John Randall Q.C. proceeded to deal with the claim for proprietary estoppel as laid out in the authorities and, in particular, by Robert Walker L.J. in *Gillett v Holt* [2001] Ch. 210.

Although the grounds for the setting up of a claim for proprietary estoppel are fairly well defined in the authorities, in other words, unconscionability founded on an expectation, reliance and detriment (see, *Wilmott v Barber* (1880) 15 Ch.D 96); the question has arisen as to what would be the effect if an expectation that property will be left in a will was revoked. In other words, what is the effect on estoppel where the person making an assurance says that he or she will leave the property in a will but then fails to do so. Is the claim for estoppel negated in such a situation? In *Taylor v Dickens* [1998] 1 F.L.R. 806 a promise was made by an elderly lady that she would leave her property to her gardener in her will. The gardener then offered to work for the lady without any remuneration. The lady duly made a will in which she left the property to the gardener and his wife, however, later revoked that will without telling the couple. The elderly lady died having left her property to someone else. When the gardener bought an action for estoppel against the lady's estate, the court rejected it on the grounds that what the lady had promised was that she would make a will and leave the property to him and not that she would not subsequently revoke it. The fact that she had made the will was sufficient to fulfil the expectation that she had created. This approach was, however, rejected in *Gillett v Holt* [2001] Ch. 210 by Robert Walker L.J. who explained that there was no requirement that there must be some binding agreement not to revoke the will. In his Lordship's opinion it was sufficient that there was some clear understanding that the property would be left to the person claiming the estoppel. On this basis, Randall Q.C. explained that, irrespective of the will, the expectation that David would inherit the farm went back many years before the execution of the will.

Cov. L.J. 78 Having established the expectation, the court proceeded to entertain the question whether there was detrimental reliance. It is an integral part of the process of establishing an equity by way of estoppel that the claimant suffers a detrimental reliance. This requires the claimant to show that he acted on the faith of the expectation and as a consequence suffered a detriment. Reliance can take the form of monetary expenditure (as, for example, in *Plimmer v Mayor of Wellington* (1884) 9 App. Cas. 699) or giving up a career, education or looking after an ill person (see, for example, *Ottey v Grundy* [2003] EWCA Civ. 1176 and also *Jennings v Rice* [2003] EWCA Civ 159). Randall Q.C. explained that when the expectation became clear to David in 1990, David began to put in a lot of hard, unpaid work on the farm. This labour continued for a period of some 14 years. In the process, and as a result of the expectation, David continued to live near Peter rather than pursue some of the opportunities that presented themselves to him. In light of these findings, Randall Q.C. explained that the necessary degree of unconscionabilty required for a finding of estoppel had been proved. He explained that it would be grossly unconscionable to deny David a right to the farm by allowing the intestacy rules to stand. Having established the equity, the court moved on to the question of satisfying the equity. This required the court to determine how best the expectation would be fulfilled. Accepting that, in satisfying the equity, the court must have regard to the fact that the award must be proportionate to the expectation, Randall Q.C. held that David was entitled to the farm. In his opinion, given the expectation that David had, it was not disproportionate to award him the farm.

Commentary

The decision in *Thorner v Curtis* provides a neat illustration for students of law of the doctrine of proprietary estoppel and the informal creation of rights in land. Provided that the claimant can establish the expectation, which in the case of a promise to leave property in a will need not take the form of a binding agreement not to revoke the will, the court will find an equity in circumstances where there has been detrimental reliance. Such detrimental reliance in the face of an expectation will provide the necessary degree of unconscionability for the court to satisfy the equity by making an appropriate award. In satisfying the equity, the court can make one of two awards. Firstly, the court can award monetary compensation reflecting the loss that the claimant has suffered as a consequence of reliance. For example, in *Dodsworth v Dodsworth* (1973) 228 EG 1115 where the legal owner of land allowed ***Cov. L.J. 79*** her brother and his wife to live with her on their return from Australia. They spent some £700 on improvements on the expectation that they would be able to remain in the bungalow for as long as they wished. The Court of

Appeal held that they had no right of occupancy but were entitled to the return of the money spent. On the other hand, in *Pascoe v Turner* [1971] 1 W.L.R. 431 a lady was given a house and its contents in circumstances where she was led to believe that the house would be hers.

In more recent cases the courts have explained that in satisfying the equity, they must have regard to proportionality. This means that the award must be proportionate to the expectation and detrimental reliance. The award should not confer a windfall on the claimant. For example, in *Pascoe v Turner* [1979] 1 W.L.R. 431 the claimant was awarded the house which she was promised. However, compared to her reliance, the award of the house was rather generous and thus disproportionate. The issue of proportionality was discussed at length in *Jennings v Rice* [2003] 1 P & CR 8 where the claimant was a part-time gardener for Mrs Royle. In the late 1980's Mrs Royle stopped paying him, but provided him with a deposit so that he could purchase a house nearer to Mrs Royle and continue looking after her. The claimant did so under the belief that Mrs Royle would leave her property to him after her death; however, there were no specific assurances. In the latter years of Mrs Royle's life, Jennings stayed with her almost all of the time attending to personal care. When Mrs Royle died intestate leaving behind an estate worth £1.285m including a house worth £435,000, Jennings claimed to be entitled, by way of estoppel, to her estate. The trial judge awarded a sum of £200,000 reflecting the cost of employing a full time nurse.

This was confirmed by the Court of Appeal, which explained that the remedy must not simply look to the expectation, but must also be proportionate to the reliance and detriment.

It is submitted that the approach in *Thorner v Curtis* does represent a proportionate result. Although in *Jennings v Rice* the claimant had cared for Mrs Royle over a significant period of time, the facts of *Thorner v Curtis* are rather different in the sense that the amount of work and time expended by David Thorner was exceptional.

Sukhninder Panesar, Principal Lecturer, Coventry University

Cov. L.J. 2007, 12(2), 75-79